

ORDINANCE NUMBER O- 18955 (NEW SERIES)

ADOPTED ON JUN 19 2001

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER III, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING DIVISION 40 AND SECTIONS 33.4000, 33.4001, 33.4002, 33.4003, 33.4004, 33.4005, 33.4006, 33.4008, 33.4009, 33.4010, AND 33.4011, ALL PERTAINING TO LICENSING AND REGULATING TOWING COMPANIES.

WHEREAS, current Chapter III, Article 3, Division 40, of the San Diego Municipal Code is a comprehensive licensing and regulatory scheme governing business enterprises engaged in the practice of towing and removing motor vehicles that have been parked on private property without permission of the private property's owner; and

WHEREAS, the United States Court of Appeals for the Ninth Circuit recently struck down a similar licensing and regulatory scheme in the City of Santa Ana, California, because the court found the Santa Ana law was preempted by federal legislation (*Tocher v. Santa Ana*, 219 F.3d 1040 (9th Cir. 2000)).

WHEREAS, in the City Attorney's opinion, this City's laws contain the same types of provisions that were held to be preempted in Santa Ana (see City Attorney Report to Mayor and Council No. RC-2001-14).

WHEREAS, in the City Attorney's opinion, San Diego's laws licensing and regulating towing companies located in Chapter III, Article 3, Division 40, of the Municipal Code are unenforceable in light of the *Tocher* holding; and,

WHEREAS, the City Attorney recommends that current City laws governing towing companies be removed from the Municipal Code so that the public is not misled into believing that the police regulate and license towing companies; and

WHEREAS, the Council accepts the City Attorney's recommendation; NOW,
THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter III, Article 3, of the San Diego Municipal Code is amended by repealing Division 40, titled "Towing of Motor Vehicles from Private Property," and sections 33.4000, 33.4001, 33.4002, 33.4003, 33.4004, 33.4005, 33.4006, 33.4008, 33.4009, 33.4010, and 33.4011.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By Shannon Thomas
Shannon Thomas
Deputy City Attorney

SSG/CCM/jrl
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