



Municipal Towing Guide

TRAA Municipal Towing Guide

The purpose of this guide is to assist governmental agencies in implementing or refining programs that provide for roadside services (such as tire changes, gas or minor repairs) or the orderly removal of disabled, illegally parked or abandoned vehicles from public or private property. These programs generally take the form of franchises, in which a single towing company is authorized to provide services within a certain geographic area or rotation programs, in which two or more towing companies are authorized to perform these services on a rotating basis.

Reasons for Forming a Towing Program

In many instances, governmental agencies form towing programs in response to safety concerns that arise when tow trucks race to the scenes of accidents in hopes of securing a tow. When this practice, which often referred to as “chasing”, is outlawed, it becomes necessary to provide a means to dispatch tow trucks to accident scenes. They may also be formed in response to allegations of favoritism – and even illegal kickbacks - that arise when one or two towing companies secure all of the business of a particular governmental agency for reasons that do not appear to be based upon objective criteria. Lastly, they are often formed simply because they seem to be the right thing to do.

In some instances, governmental agencies award franchises to towing companies that place a high bid to perform towing services, a low bid for fees that will be charged to motorists, or a combination of both. TRAA disapproves of bidding for franchises because the practice tends to enrich a few at the expense of the many and often leads to consumer abuse, because the winning bidders often resort to financial chicanery in order to break even.

Nevertheless, many municipalities prefer franchise systems because of the convenience of dealing with a single tower for a given geographical area, as opposed to several towers who may participate in rotation plans. The most successful franchises place premiums on performance. Towers are selected on the basis of such factors as technical ability, size and diversity of fleets, ability to respond in a timely fashion and length of time in business. One municipality, for example, awards 20 points for each of five categories (upper level management, facility, employees, equipment, operations) and awards contracts to the companies with the highest raw score.

What Type of Rotation Program Works for You?

In the event that a governmental agency chooses to form a rotation program (as opposed to a franchise system), considerable thought should go into designing a program that best suits the needs of the agency. The simplest rotation program is one in which the qualified applicants respond to calls on a rotating basis. However, if the governmental agency covers a large territory (such as an entire county or a large city) it is often necessary to form zones in order to achieve desired response times. In some instances, it is found that rotating blocks of time work best (i.e.; Tower “A” responds to all calls

between 7 a.m. and 7 p.m. on Monday, Tower “B” responds to all calls between 7 p.m. on Monday and 7:a.m. on Tuesday, etc.). TRAA recommends that it is always best to work these details out with the prospective participants, as they often know as much as, if not more, than the governmental agency about volumes of calls, response times, traffic patterns, and other issues that must be dealt with if the program is to succeed.

It is then necessary to determine how many lists you need. In many instances, it is only necessary to form a “light duty” list (to tow vehicles of under 6,000 or 10,000 pounds) as there are not enough medium duty (10,000 to 26,000 pounds) and heavy duty (more than 26,000 pounds) towing companies in the area to warrant the formation of a second or third list. If it is necessary to form a second or third list, it is not uncommon to find that one list will suffice because most heavy duty towers also perform medium duty tows, as well. It may also be advisable to form a separate list roadside assistance calls, another list for accidents, and, even a third list for abandoned vehicles. Separate lists for accident calls are justifiable because of the greater degree of skill that it takes to clear an accident scene. Specialization in recovery work is becoming more prominent with the intervention of “quick response” and “incident management” programs.

Who Should Participate?

Whereas TRAA believes that all “qualified” towers should be able to participate in a towing program, it places a high premium on the term “qualified” and has found that most governmental agencies do not place sufficient emphasis on this most important element. In this regard, it should be noted that a court could find a towing company to be an “agent” of a governmental agency – regardless of the steps that the agency may take in an effort to shield itself from the towing company’s actions. With this in mind, the following criteria should be examined:

Business Location: Although many towing programs require a towing company to respond to the scene of an accident or disablement within a specified period of time, TRAA recommends that the emphasis be placed upon safe driving time, as arbitrary time constraints often lead to secondary accidents. If necessary, zones should be created in order to insure that towers can respond within reasonable time frames, given the time of day and traffic conditions. It is not unreasonable, on the other hand to require a participant in a program to be on the road in a certain amount of time. It should be noted that it is unlawful in some states¹ to discriminate against towing companies because they are not located within the jurisdiction that is creating a towing program.

In many instances – particularly in more metropolitan areas – it may also be necessary to insure that participants towing programs can properly care for vehicles that are in their possession. Accordingly, it is not unusual for programs to contain specific provisions concerning fenced-in storage and other security measures. In some instances, it is also necessary to determine if the participant’s place of business is properly zoned for vehicle storage. The business location should also be accessible to motorists who wish to retrieve their vehicles.

Equipment: In order to participate in a “light duty” program, a towing company should own, at a minimum, one light duty wrecker with a Gross Vehicle Weight Rating (GVWR) of between 10,000 to 19,500 pounds and one car carrier (sometimes referred to as a flatbed or rollback) with a GVWR of at least 14,500 pounds. A car carrier is essential in today’s market because many vehicles (i.e.; ones with all-wheel drive or low-slung air foils) cannot be towed with a conventional tow truck. A tow truck with a GVWR of between 19,501 to 29,999 pounds should be required for a medium duty program and a tow truck with a GVWR of over 30,000 pounds should be required for a heavy duty program.

Depending upon local circumstances, it is often necessary to require participants to own more than the bare minimum number of tow trucks and car carriers. For example, it is often necessary to deploy more than one wrecker to tractor trailer rollovers and other heavy duty wrecks. Franchise programs in which a tower is required to respond to all incidents within a certain geographical area may also require the deployment of more than one tow truck or car carrier at the same time. The requirement for participants in rotation programs to own larger fleets is also beneficial in multi-vehicle accidents, as it is preferable to have as few responders as possible at the scene. If the first responder is able to clear the entire scene, he or she should be permitted to do so.

Consideration must also be given to the types of equipment that a tower must own in order to participate in a towing program. Here, care must be taken to determine the needs of the program – and needs vary for countless reasons. Urban, suburban and rural settings all have their unique characteristics. Whereas it may be sufficient to require a tower to own a 10,000 pound GVWR tow truck with an underlift for most city towing, it is often necessary to require a heavier truck with winching capabilities in rural settings. At times, it may be necessary to require towers to have smaller trucks (for parking garages) and larger trucks (i.e.; a rotator) for certain heavy duty recoveries. Support vehicles that contain air bags, welding equipment, chain saws, traffic cones and other essential recovery gear are also becoming more common on heavy duty programs.

Experience: It is not unusual to require a towing company to be in business for a period of time (usually one to three years) in order to be considered for participation in a towing program. Some jurisdictions require drivers who will be responding to their calls to be certified by TRAAⁱⁱ or receive training through an approved instructor.ⁱⁱⁱ Although it is beyond the scope of these guidelines, local governments should consider even more stringent standards for companies that participate in incident management activities. Some jurisdictions also require the owners and employees of towing companies to undergo criminal background checks.

Financial Security: All participants in towing programs should be required to provide the governmental agency with proof of workers compensation coverage (if their state mandates such coverage). Participants in a light duty program should also be required to maintain at least \$300,000, combined single limit, in liability insurance and \$50,000 in garage keeper’s legal liability or “on-hook” coverage (the latter coverage is necessary because a vehicle under tow is not covered under a standard liability policy).

These amounts should be increased to \$750,000 and \$150,000 for medium and heavy duty rotation programs. Additional garage keepers' legal liability should be required in an amount that will cover all vehicles that are stored on a participant's lot. Liability policies should require the governmental agency to be notified if the terms and conditions of the policy are to lapse or change.

Rates: Governmental agencies have an obligation to consumers to insure that the rates that participants in towing programs charge are fair and reasonable. Although it is one of the few areas in which a governmental agency can dictate rates,^{iv} TRAA recommends that participants be required to post their shop rates with the agency. The agency could refuse to allow the company to participate if it deems the rates to be excessive and it could remove the company from the list if it fails to abide by the posted rates. If the agency elects to set rates, TRAA recommends that it do so in consultation with participants in the program. In this regard, it should also be noted that the Congressional debate that authorized governmental agencies to set rates cautioned that they must be "compensatory and reasonable."^v

Considerable thought is required to insure that rates cover the multitude of circumstances that can occur in the towing and recovery of vehicles. For example, towers should be compensated for using specialized equipment (i.e., dollies), disposables (i.e., oil removal agents), extended clean-up operations (which may involve additional labor and equipment) and stand-by time. They should also be compensated for administrative time and costs attendant to lien sales if customers fail to pay or if they are required to deal with abandoned vehicles. As a rule of thumb, most light duty programs have rate structures that are based upon hook-up and mileage charges and most heavy duty programs are on based upon hourly rates or price per pound, which is a fairly new, and sometimes controversial, concept. TRAA recommends that all rates be on an hourly basis.

The greatest temptation for a local government in setting rates is to base them upon the lowest common denominator. In many instances, they adopt rates that are authorized by motor clubs – which, in the vast majority of instances, are unreasonably low. At other times, they adopt rates charged by "the cheapest guy in town." Unfortunately, it is most likely that the majority of persons who are engaged in towing do not know their own costs for doing business. It generally does not take long for most governmental agencies to identify the most professional and responsible towers who apply to participate in the program. Their opinions concerning rates should be given considerable weight because their participation in the program will help to insure its success.

Lastly, many jurisdictions set rates by commissioning an accounting firm or recognized professional in the towing business to conduct a cost study to determine such factors as overhead and profit margins that lead to a fair rate. Regardless as to how rates are established, they should be reviewed periodically to insure that they remain fair. In this regard, the towing industry is plagued by volatile cost factors, such as fuel and insurance, that can render a fair rate obsolete in a short period of time. The obsolescence

of rates can be mitigated if they are tied into the consumer price index (CPI) for a particular locality.

Credit Cards/Retrieval of Vehicles: Participants in towing programs may be required to honor at least two major credit cards; one of which should be a bank credit card. They should also be required to make themselves reasonably accessible to motorists who wish to claim their vehicles.

Maintenance of a Rotation List

One of the most basic requirements of a rotation list (or, for that matter, a franchise system) is that motorists should be provided with an opportunity to call his or her own towing company, if the conditions warrant providing this courtesy. In order to insure fairness to all participants, dispatchers should be required to maintain a record of all calls, and this record should be made available to participants, upon request. The most insidious detriment to a properly run rotation list involves favoritism shown to select towing companies by dispatchers or patrol officers. The agency should, therefore, actively guard against such an occurrence, which is generally spotted by unusual numbers of “owners’ requests” by certain patrol officers. Policies on cell phone usage by patrol officers should also be initiated and closely monitored. As any police agency should know, even an appearance of impropriety can be damaging. It may also be illegal.^{vi}

Proper maintenance of a rotation list is also crucial when it comes time to discipline or suspend towing companies for overcharging, negligence or other wrongdoing, and failing to respond to calls in a timely fashion. Governmental agencies should enact guidelines concerning these issues and apply them evenly.

TRAA Will Help

TRAA will assist governmental agencies and towing companies in tailoring towing programs to meet their particular needs. For further information, contact: Harriet Cooley, Executive Director, Towing and Recovery Association of America, 2121 Eisenhower Avenue, Alexandria, Virginia 22314. Tel: (800) 728-0136 FAX: (703) 684-6720; e-mail: towserver@aol.com

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- i. See New York State General Municipal Law §80 and Wharram v. City of Utica, 56 NY2d 733 (1982)
 - ii. TRAA has a three-level certification process. Level I applies to light duty towing, Level II applies to medium and heavy duty towing and Level III applies to heavy duty recovery specialists
 - iii. TRAA and most state towing associations maintain lists of approved instructors.
 - iv. 49 U.S.C. §14501 (c) (1); City of Columbus v. Ours Garage, 536 U.S. 424 (2002)
 - v. Congressional Record, 104th Congress, 1st Session at page H15601
 - vi. In O’Hare Truck Service v. City of Northlake, Ill., 518 U.S.712 (1996), the U.S. Supreme Court ruled that it is illegal to expel a participant from a rotation list on the grounds that he supported a Sheriff’s political rival.