

ORDINANCE NO. BG2020 - 38
As Amended

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 15
(BUSINESS AND GENERAL REGULATIONS) OF
THE CITY OF BOWLING GREEN CODE OF
ORDINANCES RELATED TO ADMINISTRATIVE
CHANGES AND IMMOBILIZATION DEVICES IN
PRIVATE PARKING LOTS

WHEREAS, the City of Bowling Green recently had a judicial review performed of the Code of Ordinances which recommended further review and consideration of Section 15-6 (Storage, Sale and Use of Fireworks); and,

WHEREAS, it is recommended to make necessary revisions to Section 15-6 to reflect current language from the Kentucky Revised Statute; and,

WHEREAS, the City has been notified of the use of immobilization devices in private parking lots within City limits; and;

WHEREAS, the City has an interest in balancing the rights of private property owners and the welfare of citizens of, and visitors to, the City; and,

WHEREAS, the City has an Ordinance that regulates private tow companies and storage yards; and,

WHEREAS, the City desires to amend Chapter 15 (Business and General Regulations) of the City of Bowling Green Code of Ordinances to establish uniform requirements for immobilization companies; and,

WHEREAS, it is in the best interest of the City to approve these amendments as requested.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 15 (Business and General Regulations) of the Code of Ordinances is hereby amended as follows:

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...

15-6 STORAGE, SALE AND USE OF FIREWORKS.

15-6.01 Definitions.

“COMPETENT DISPLAY OPERATOR” shall have the same definition as set out in KRS 227.710(1)(c).

...

“PYROTECHNIC DEVICES” shall have the same ~~[definition as set out in]~~ meaning as the phrase is used throughout KRS Chapter 227.

“SEASONAL FIREWORKS RETAILERS” shall have the same definition as set out in KRS 227.715(3).

...

15-6.06 Penalties, Revocation or Suspension of Permit and Removal of Fireworks.

...

b. Any person convicted of violating the remaining provisions of this Subchapter shall ~~[be deemed guilty of a misdemeanor and shall]~~ be fined not more than one thousand (\$1,000.00) dollars, or imprisoned for not more than thirty (30) days, or both, pursuant to KRS 227.990.

...

15-7 TOWING OR IMMOBILIZATION OF VEHICLES FROM AND IN PRIVATE PARKING LOTS.

15-7.01 Definitions.

As used in this Subchapter:

“ABANDONED VEHICLE” shall mean any vehicle left in a private parking lot for more than twelve (12) hours without the consent of the owner or operator of the private parking lot.

“BOOT, BOOTING OR VEHICLE IMMOBILIZATION” shall mean the act of placing on

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a parked motor vehicle a lockable vehicle wheel clamp or similar device that is designed to be placed on a parked vehicle to prevent the operation of the vehicle until the device is unlocked and removed. The term “boot” shall include the devices used for this purpose. Such devices shall be a high-visibility color, such as yellow, orange or red. No cables, chains, ropes or other similar means of vehicle immobilization shall be allowed.

“MOTOR VEHICLE” shall mean a vehicle with a gross weight of ten thousand (10,000) pounds or less which is capable of transporting one (1) or more persons.

“PRIVATE PARKING LOT” shall mean any parking lot wherein vehicles are parked or stored for hire or a parking lot provided by a business wherein customers or tenants are allowed to park. For the purposes of this Subchapter, a private parking lot shall not include a lot on which is situated a single-family unit, a lot on which is situated an owner occupied multi-unit structure of not more than six (6) units or in front of any driveway or garage entrance where the vehicle is blocking access to the driveway or entrance. For the purposes of this Subchapter, a private parking lot shall also not include residential community, office or commercial parking lots in which parking spaces are assigned to residents, owners or tenants and the assigned spaces are clearly marked as such and there is a sign posted in conspicuous places at all vehicle entrances that states that unauthorized parking in an assigned space is prohibited, that unauthorized vehicles will be towed or booted at the owner’s expense and contains information about the telephone number and address of the impound tow operator.

“TOW OR REMOVE” shall mean the act of attaching, lifting, pulling or dragging any vehicle behind the wrecker or tow truck and in which the vehicle can be self-supporting, carried on a dolly-type platform or supported on any other item necessary to facilitate the towing. For the purposes of this Subchapter, this definition does not require the vehicle to be towed or removed from the parking lot.

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15-7.02 Signage.

a. No private immobilization company, impound tow truck service or operator shall boot, tow or remove from private parking lots nor shall owners or operators of private parking lots have booted, towed or cause to be booted, towed or removed from any private parking lots in the City of Bowling Green any vehicle unless the owner or operator has conspicuously posted and maintained notice signs meeting the specifications set forth below.

b. Notice signs shall be placed near each entrance of the private parking lot, in clear view free from interference from natural or manmade objects and easily visible to a motorist seated in a motor vehicle and permanently affixed to a structure or post to prevent the unauthorized removal of the sign. The signs shall be at least twelve (12) inches by eighteen (18) inches with bold lettering. The sign shall indicate:

1. That the parking lot is privately owned;

2. That unauthorized vehicles are subject to booting and/or towing, and the hours of authorized booting or towing with specific language indicating that a vehicle is subject to booting or towing twenty-four (24) hours per day, seven (7) days per week if applicable; and,

3. The name and telephone number of the private immobilization company, impound tow truck service or operator if parking in the parking lot is enforced by a private immobilization company, impound tow truck service or operator; or a telephone number for the owner or manager of the parking lot if parking in the parking lot is not enforced by a private immobilization company, impound tow truck service or operator.

15-7.03 Requirements for Immobilization Companies, Impound Tow Truck Service or Operator and [X] Storage Yard [Requirements].

a. No vehicle shall be booted, towed or removed from a private parking lot unless directed by:

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1. A law enforcement officer;
2. The owner, owner's representative, or operator of the vehicle;
3. The owner or operator of the private parking lot or the owner's or operator's

authorized agent provides a contemporaneous specific authorization for such immobilization or removal; or,

4. The private parking lot owner or operator or the private parking lot owner's or operator's authorized agent has a written agreement with a private immobilization company, impound tow truck service or operator that grants approval for the booting and/or towing of unauthorized vehicles.

b. All immobilization company vehicles and tow trucks used to boot, tow or remove vehicles from private parking lots shall be clearly identified with the name of the immobilization or towing company on the side of the truck or vehicle. Any private impound tow truck service or operator that tows or removes a vehicle from a private parking lot in the City of Bowling Green shall tow or remove that vehicle to a storage yard located within the City.

c. The storage yard used by a private impound tow truck service or operator that tows or removes a vehicle from a private parking lot in the City of Bowling Green shall post a sign clearly visible to the public specifying the tow and storage rates, not to exceed those imposed by this Subchapter.

d. The immobilization company, towing company or storage yard shall provide either an attendant who is on the site twenty-four (24) hours per day, seven (7) days per week or provide a conspicuously located and well lighted sign which gives the telephone number where the owner, manager or attendant of the immobilization company, towing company or storage yard may be reached at any time, twenty-four (24) hours per day, seven (7) days per week so that the vehicle may be released or reclaimed in a minimum amount of time, not to exceed one (1) hour from the initial

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contact of the owner of the vehicle or the owner's authorized agent.

~~[e. — The storage yard shall release a towed vehicle to the owner, the lessee or a person designated in writing by one of the above persons upon presentation of a valid driver's license and upon receipt of the appropriate payment to cover the costs of towing and storage authorized by this Subchapter. The storage yard may accept checks for payment, but shall accept other commercially reasonable methods of payment including, without limitation, cash or bank credit or debit cards. The storage yard may charge a reasonable service fee for the use of bank credit or debit cards not to exceed ten (\$10.00) dollars.]~~

[f]e. Any storage yard used to store vehicles delivered by a private impound tow truck service or operator that tows or removes a vehicle from private parking lots in the City of Bowling Green shall provide reasonable security. ~~[The storage yard and the private impound tow truck service or operator shall be licensed by the State if applicable, shall comply with the City's occupational licensing and registration requirement and shall comply with all applicable laws, rules and regulations. Both the private impound tow truck service or operator and the storage yard used by that private impound tow truck service or operator shall obtain and maintain general liability and on-hook insurance coverage or similar insurance coverage for damage to the towed vehicle and all other insurance required by state law. Proof of the required insurance shall be made available to the City of Bowling Green upon request.]~~

f. All immobilization companies, towing companies, storage yards and/or operators shall be licensed by the State if applicable, shall comply with the City's occupational licensing and registration requirement and shall comply with all applicable laws, rules and regulations. The immobilization company, private impound tow truck service or operator and the storage yard used by that private impound tow truck service or operator shall obtain and maintain general liability and on-hook insurance coverage or similar insurance coverage for damage to the booted or towed vehicle

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and all other insurance required by state law. Proof of the required insurance shall be made available to the City of Bowling Green upon request.

g. All vehicle immobilization devices used within the City shall be in safe and proper working condition.

h. It shall be unlawful for any person to immobilize a vehicle unless the boot is installed on a tire located on the driver's side of the vehicle.

i. Immediately upon attaching a boot to the vehicle, the private immobilization company shall affix a written notice to the driver's side window containing the following: a warning that any attempt to move the vehicle may result in damage to the vehicle; the name and telephone number of the licensee responsible for removing the device; the fee established, the time and reason the vehicle was immobilized, and the private immobilization company will respond within one (1) hour from the initial contact of the owner to accept payment and remove the boot.

j. Any private immobilization company engaged in booting or immobilization of a vehicle on a private parking lot shall, upon the request of the vehicle owner or operator, display and exhibit a photo identification card issued by the booting company containing contact information for the company.

15-7.04 Police Notification Requirements.

At the time any vehicle is being towed or removed from a private parking lot in the City of Bowling Green, the private impound tow truck service or operator shall contact the Bowling Green Police Department by telephone and shall provide the following information:

1. The make, model and color of the vehicle being towed or removed;
2. The license number and state of issuance of the license plate and, if known, the vehicle identification number;
3. The time and location that the tow is occurring;

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4. The location of the private tow company storage yard; and,
5. The telephone number which the vehicle owner can call to reclaim the vehicle.

15-7.05 Fee Limits and Payment.

a. The maximum charge which may be collected by a private impound tow truck service or operator or storage yard for towing or removing a vehicle from a private parking lot meeting the requirements of this Subchapter is one hundred twenty-five (\$125.00) dollars which shall include the first twenty-four (24) hours of storage. If the owner of the vehicle arrives while the private impound tow truck service or operator has initiated the tow by attaching any towing related device to the vehicle, the tow truck operator shall release the vehicle upon payment of one hundred (\$100.00) dollars and the tow truck operator must be able to settle the tow charges at that time, including the acceptance of bank credit or debit cards.

b. The maximum storage charges which may be collected by a private impound tow truck service or operator or storage yard is twenty-five (\$25.00) dollars per day after the first twenty-four (24) hours.

c. The maximum charge which may be collected by a private immobilization company for booting a vehicle in a private parking lot meeting the requirements of this Subchapter is one-hundred dollars (\$100.00). An immobilization device or boot cannot be affixed to a vehicle and a fee cannot be charged if the driver of the vehicle returns before the installation of the immobilization device or boot is complete.

[e]d. When an owner or operator of a private parking lot, his agent or a immobilization company, private impound tow truck service or operator causes a vehicle to be booted, towed or removed in violation of this Subchapter, there shall be no charge to the owner or other person in charge of the vehicle for the cost of the immobilization, tow or storage. Any owner, his agent or a

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boot or tow operator who violates this Subchapter shall, in addition to the penalties set forth below, be liable to the owner of the vehicle for any amounts actually paid for the immobilization, tow and storage of the vehicle, as well as any damage to the vehicle resulting from the immobilization, tow or storage.

e. The immobilization company, towing company or storage yard shall release a booted or towed vehicle to the owner, the lessee or a person designated in writing by one of the above persons upon presentation of a valid driver's license and upon receipt of the appropriate payment to cover the costs of immobilization, towing and storage authorized by this Subchapter. The immobilization company, towing company or storage yard may accept checks for payment, but shall accept other commercially reasonable methods of payment including, without limitation, cash or bank credit or debit cards. The immobilization company, towing company or storage yard may charge a reasonable service fee for the use of bank credit or debit cards not to exceed ten (\$10.00) dollars. All immobilization companies, towing companies or storage yards must utilize secure and encrypted processing systems for debit card and credit card payments such that said payments may be made and immediately processed in the driver's presence without need to photograph or manually record credit card or debit card information for processing.

f. It shall be unlawful for a private immobilization company or operator to fail to provide a receipt for payment of the booting fee to the owner, driver or person responsible for a vehicle. The receipt shall have the following information: the name, address and phone number of the private immobilization company, and the name and signature of the person who applied/removed the boot or vehicle immobilization device. Such receipts may be provided to the owner or operator of the vehicle electronically.

15-7.06 Rebates Prohibited.

It shall be unlawful for a private immobilization company, impound tow truck service or operator to pay, rebate money or to solicit or offer the payment or rebate of money to private parking

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lot owners or operators for the privilege of booting, towing or removing vehicles. It shall also be unlawful for private parking lot owners or operators to solicit or to accept payment or rebate of money from a private immobilization company, impound tow truck service or operator for the privilege of booting, towing or removing vehicles. For the purposes of this Section, the payment or rebate of money shall mean the sharing of fees collected for the booting or towing of a specific vehicle between the private parking lot owner or operator and the private immobilization company, impound tow truck service or operator, or a payment per vehicle from the private immobilization company, impound tow truck service or operator to the private parking lot owner. Nothing in this Section shall prohibit the private immobilization company, impound tow truck service or operator or the private parking lot owners or operators from negotiating other terms related to the contractual relationship between the parties.

15-7.07 [~~Tow~~] Exemptions [~~and Other Restrictions~~].

a. No vehicle shall be towed or removed from any public parking lot, street or any other publicly owned or leased property without the express approval of the owner of the vehicle, a representative of the owner or a law enforcement official.

b. No person may boot, tow or remove from marked private parking lots any clearly identified emergency vehicles, including but not limited to ambulances, police vehicles, fire vehicles, civil defense emergency vehicles or similar vehicles while such vehicles are on official business.

c. No tow truck operator shall attempt to hook up to, tow or remove an occupied vehicle without first contacting the Bowling Green Police Department.

d. The provisions of this Subchapter are not applicable to the towing of abandoned vehicles.

15-7.08 License Requirements.

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a. No private immobilization company, impound tow truck service or operator shall privately boot or impound any vehicle unless the [~~private impound tow truck service~~] company or operator possesses a valid private immobilization company, impound tow truck service or operator license issued by the City of Bowling Green. The application for the license shall be made on forms developed by the Department of Finance and shall include:

1. The name and address of the person, firm, partnership, corporation or other business entity under whose name the business is to be conducted;

2. The names and addresses of all persons having an interest in the business or if the owner is a corporation, the names and addresses of the officers of the corporation;

3. The address of each storage location where vehicles may be stored;

4. The fee schedule for [~~both~~] booting, towing and storage fees; and,

5. The name of the current liability insurance company and policy number.

b. The application shall be accompanied by a nonrefundable fee of fifty (\$50.00) dollars.

c. Each license shall expire on [~~June 30~~] December 31st of each year and may be renewed by making a renewal application along with payment of an annual fee of fifty (\$50.00) dollars. Each renewal application shall be filed with the Department of Finance no later than thirty (30) days prior to the expiration date.

15-7.09 License Suspension/Revocation, Information Hearing and Appeal.

a. In addition to any other penalties, upon a citation issued by the City Police Department that a private immobilization company, impound tow truck service or operator violated any provisions of this Subchapter or upon a finding that the applicant gave false information in the original or any renewal application, the City Attorney may suspend or revoke a license issued under

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this Section. Any notice that the City Attorney is considering suspending or revoking a license shall be in writing and delivered to the private immobilization company, impound tow truck service or operator by certified mail. The notice shall include a statement of the factual basis for the proposed action, including a copy of the citation or other appropriate documents, whether a suspension or revocation is proposed, and if a suspension is proposed, the length of the suspension.

b. Within ten (10) days of the date of the notice, the private immobilization company, impound tow truck service or operator may request an informal hearing with the City Attorney. If no request for an informal hearing is made, the City Attorney may proceed with the suspension or revocation. If an informal hearing is requested, the City Attorney shall schedule the informal hearing as soon as practicable and provide written notice to the private immobilization company, impound tow truck service or operator not less than twenty (20) days in advance of the date of the informal hearing. The written notice shall include witness names and the evidence to be used at the informal hearing. The City Attorney shall issue a final written decision following the informal hearing within ten (10) days of the hearing.

c. Any appeal of that decision may be appealed to the [~~Administrative Appeals Board~~] City Manager within thirty (30) days of the date of the final written decision by the City Attorney. If no appeal is made to the [~~Administrative Appeals Board~~] City Manager, the decision of the City Attorney shall be final and non-appealable.

15-7.10 Penalties.

Any person who violates any provision of this Subchapter shall be guilty of a violation and upon conviction shall be punished by a penalty and fine not to exceed the maximum penalty and fine authorized by [s]State law. Each day of such violation shall constitute a separate offense and no additional notice other than notice of the original offense shall be required to convict a person for violations resulting from a continuation of such offense.

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2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on November 17, 2020, and given final reading on December 1, 2020, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: December 1, 2020

APPROVED: Brian Wilkinson
Mayor, Chairman of Board of Commissioners

ATTEST: Ashley Jacobson
City Clerk

SPONSORED BY: Jeffery B. Meisel, City Manager
Ordinance No. BG2020-38 was amended on the floor at the November 17, 2020 Board of Commissioners meeting.