

ORDINANCE NO. _____

RELATING TO BUSINESSES REGULATED; ADDING ARTICLE XXVII TO CHAPTER 7, BUSINESSES REGULATED, OF THE TUCSON CODE FOR THE REGULATION OF TOWING FROM PRIVATE PROPERTY; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council finds that revisions to the Tucson Code regarding towing from private property will build confidence in the integrity of the towing industry, avoid unnecessary confrontations between a towing operator and the driver of a vehicle about to be towed, and enhance public safety.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. Article XXVII, Sections 7-514 through 7-528 are hereby added to Chapter 7, Businesses Regulated, of the Tucson Code, as follows:

Article XXVII. TOWING CARRIERS.

Sec. 7-514. Definitions.

Sec. 7-514(a). *Parking area* means one or more spaces not affiliated with a single family residence, intended for temporary public motor vehicle parking.

Sec. 7-514(b). *Property owner* means a person who owns private property, including the authorized representative of the property owner.

Sec. 7-514(c). *Tow* includes transport by any means.

Sec. 7-514(d). *Towing carrier* means any person who tows, or attempts to tow, motor vehicles from private property in the city, for compensation of any kind.

Sec. 7-514(e). *Vehicle owner* means the person who owns a motor vehicle, including the vehicle operator and authorized agent of the vehicle owner.

Sec. 7-515. Applicability.

Sections 7-514 through 7-528 apply to a towing carrier operating in the city, and all transactions related to a tow that originates in the city, regardless of the impound lot location. Police- and fire- directed tows, as well as city-directed tows from city property, shall be exempt from this article.

Sec. 7-516. Private parking areas—generally.

No person shall park a vehicle on any private property without the express or implied consent of the property owner. The property owner of any private parking area is deemed to have given consent to unrestricted parking by the general public in such parking area unless parking restrictions are otherwise posted in accordance with Section 7-517.

Sec. 7-517. Required signs.

- (a) To tow a motor vehicle from a private parking area, the following signs are required.
- (b) The signs shall contain the following information:
 - (1) Warning—Private Property;
 - (2) Parking violators towed at owner's expense;
 - (3) Maximum cost to the violator, including storage fees and any other charges that could result from the disposition of a vehicle parked in violation of parking restrictions;
 - (4) Towing carrier phone number and address where vehicle can be located; and
 - (5) A reference to Tucson Code, Sections 7-514 through 7-528.
- (c) The signs shall be located to put drivers on notice that the area restricts public parking:
 - (1) At each entrance to the private parking area, including each entrance to a multi-level parking garage and each entrance to a multi-family residential development where parking is not contiguous; and
 - (2) In surface private parking areas (except for a multi-family residential development where parking is not contiguous), to be clearly visible and readable from any point in the private parking area.
- (d) The size and height of signs shall be:
 - (1) At each entrance to a private parking area:
 - (A) Minimum size: 12 inches by 18 inches.
 - (B) Height range above the ground: minimum height of 3 feet and maximum height of 6 feet.
 - (2) Within surface private parking areas (except for multi-family residential development where parking is not contiguous):
 - (A) Minimum size: 9 inches by 12 inches.

- (B) Height range above the ground: minimum height of 3 feet and maximum height of 10 feet.
- (e) The minimum height range above the ground is measured from the bottom of the sign. The maximum height range above the ground is measured from the top of the sign.
- (f) All signs shall:
 - (1) Be red and white, except as provided below for property owners' associations;
 - (2) Be rigid and inflexible, and include those made of metal, sturdy plastic, or other material that resists bending;
 - (3) Be flat; and
 - (4) Be fade resistant and weather resistant.
- (g) Signs located on private parking areas owned by a property owners' association in an area containing private streets shall conform to the requirements of subsection (f) above, except that the signs may have contrasting colors other than red and white.
- (h) Signs at each entrance to a private parking area shall be reflective.
- (i) Signs shall be updated within 90 days of any changes in circumstances or the law.
- (j) Signs are required to conform to this section six months after the effective date of the ordinance from which this article is derived.
- (k) Additional signs regarding towing from private parking areas are permitted in conformance with the Tucson Code, including No Parking signs, if the information on the signs does not conflict with the information required by subsection (b) above.

Sec. 7-518. Exemption from sign requirements.

Signs are not required to tow a motor vehicle left in a private parking area for more than 72 consecutive hours. However, the Tucson Police Department shall be notified as specified in Section 7-521.

Sec. 7-519. Permission to tow required.

- (a) A person towing a motor vehicle from private property, including private parking areas, must have permission from the vehicle owner, or written permission from the property owner or the property owner's authorized representative, as follows:
 - (1) The property owner shall sign each towing order at the time of the towing, or
 - (2) The property owner shall enter into a written contract authorizing towing, with the following provisions:
 - (A) The property owner's name, representative's name, and phone numbers;
 - (B) The towing carrier's name, owner's or designee's name, and phone numbers, including a phone answered 24 hours a day, seven days a week;
 - (C) The date of the contract;

- (D) The term of the contract does not exceed one year; and
 - (E) The contract is not transferable between property owners or between towing carriers.
- (b) When an authorized representative acts on behalf of the property owner, the representative shall show the written authorization, upon request, to a law enforcement officer. If requested, the towing carrier shall provide a copy of the written authorization to the law enforcement officer within one day (not including weekends or City holidays) of the request.
 - (c) A person towing a motor vehicle shall not act as the property owner's representative.
 - (d) The person towing a motor vehicle under this section shall show a copy of the current written contract, upon request, to a law enforcement officer. If requested, the towing carrier shall provide a copy of the current written contract to the law enforcement officer within one day (not including weekends or City holidays) of the request.

Sec. 7-520. Photographic evidence of parking violation required.

Prior to mechanically connecting a vehicle to a tow truck, the towing carrier shall document, through the use of date- and time-stamped digital photography or digital video, the precise nature of the violation of the private property parking regulations. The photographic evidence shall include images of the vehicle that also contain the sign pursuant to Section 7-517, if applicable; images of the entire vehicle taken from each of the four corners of the vehicle; and the license plate or vehicle identification number (VIN). The towing carrier shall provide all images to the claimant, if requested.

Sec. 7-521. Notice to Police Department required.

- (a) Any person towing a motor vehicle from private property without permission from the vehicle owner shall notify the Tucson Police Department within one hour of mechanically connecting a vehicle to a tow truck.
- (b) The person towing the motor vehicle shall provide the Tucson Police Department with the following information:
 - (1) The name and address of the vehicle owner, if known;
 - (2) The motor vehicle license number, vehicle identification number (VIN), and description;
 - (3) The reason the motor vehicle was towed;
 - (4) The street address of the impound lot where the motor vehicle will be taken;
 - (5) The name, phone number, and driver's license number of the person that will tow the motor vehicle; and
 - (6) The towing carrier's name, address, and phone number(s), including a phone answered 24 hours a day, seven days a week.

Sec. 7-522. Staging prohibited.

A towing carrier is only authorized to tow a motor vehicle from the parked location directly to the towing carrier's permanent impound lot. A towing carrier shall not drop a motor vehicle at any place between the parked location and the towing carrier's permanent impound lot.

Sec. 7-523. Reasonable care required.

- (a) A towing carrier shall exercise reasonable care when mechanically connecting a vehicle to a tow truck.
- (b) A towing carrier shall exercise reasonable care when transporting a vehicle from the parked location to the towing carrier's permanent impound lot.
- (c) A towing carrier shall exercise reasonable care to keep the towed vehicle and its contents safe and secure at all times, which shall include appropriate permanent fencing.

Sec. 7-524. Release of motor vehicles.

- (a) A motor vehicle towed pursuant to this article shall be immediately released to a claimant upon the production of a government issued photo identification and at least one of the following:
 - (1) A valid certificate of title.
 - (2) Proof of current vehicle registration, not including a restricted use three-day permit.
 - (3) A repossession affidavit, a hold harmless liability release from legal claims, and, if applicable, a proof of lien on the vehicle.
 - (4) An insurance company release pursuant to A.R.S. § 28-4847.
 - (5) A certified motor vehicle record.
 - (6) Proof of a bona fide security interest or other financial interest in the vehicle that exists at the time of the tow.
- (b) A person in possession of a motor vehicle towed without the vehicle owner's permission shall assist a claimant, by retrieving ownership documents, including any of the documentation listed in subsection (a) above from the towed motor vehicle or by accompanying them while they retrieve documents from a towed motor vehicle, without charge.
- (c) A person in possession of a motor vehicle towed without the vehicle owner's permission shall allow a claimant, with valid proof of ownership or authorization, immediate access to the towed motor vehicle, upon request, to assess the vehicle's condition and to retrieve personal property, without charge.
- (d) A person in possession of a motor vehicle towed without the vehicle owner's permission may require a claimant:

- (1) To provide a current address and phone number for billing.
- (2) To sign an invoice for the motor vehicle claimed. However, the invoice shall only contain the following:
 - (A) The letterhead, name, and address of the towing carrier;
 - (B) The name and address of the claimant;
 - (C) The date and time when the motor vehicle was claimed;
 - (D) A description, including the license number, of the claimed motor vehicle;
and
 - (E) A statement of the unpaid balance, if any.
- (e) A person in possession of a motor vehicle towed without the vehicle owner's permission shall provide the claimant with information regarding billing and collection procedures. This information shall not contain any promissory note language.
- (f) A person in possession of a motor vehicle towed without the vehicle owner's permission shall accept cash and credit and debit card payments for all fees. No person in possession of a motor vehicle towed without the vehicle owner's permission shall require exact change to release the vehicle.
- (g) No person shall release any motor vehicle after having been advised by any law enforcement agency that the vehicle has been reported as stolen unless otherwise advised by law enforcement.
- (h) A towing carrier must be available to release a vehicle within a three-hour window after the tow of that vehicle has taken place as determined by the timestamp of the photographic evidence of a parking violation pursuant to Section 7-520.

Sec. 7-525. Maximum charge for towing.

(a) All services performed under this article shall be invoiced and paid in accordance with the maximum allowable DPS contract rate schedule for a metro area. Rates shall be set at the current rates as of the date of the tow.

(b) For the purpose of determining storage charges, no charge shall be incurred for storage during the first calendar day in which the vehicle is towed. A calendar day is defined as midnight to midnight.

(c) For the purpose of determining after-hours charges, after-hours shall be outside the hours of 8 a.m.—6 p.m. Monday through Friday and 8 a.m.—12 p.m. on Saturday and all day Sunday.

Sec. 7-526. No charge for incomplete service call.

- (a) When towing from private property without the vehicle owner's permission, if the vehicle owner or driver returns to the motor vehicle before the following occur, the attempt to remove the motor vehicle is an incomplete service call.
 - (1) The motor vehicle is fully secured on the tow truck;

- (2) The motor vehicle is removed from the immediate area where it was parked; and
- (3) The tow truck enters a public street.
- (b) The person or towing carrier shall release the motor vehicle subject to an incomplete service call upon a person's claiming lawful possession of the motor vehicle and producing the keys to the motor vehicle. No payment or other proof of ownership or control shall be required before release.
- (c) The person or towing carrier shall release the motor vehicle subject to an incomplete service call without charge.

Sec. 7-527. Violations.

- (a) No person shall tow a motor vehicle from a private parking area without the vehicle owner's permission, as required by Section 7-519, unless the property is properly posted with signs that conform to Section 7-517 and photographic evidence of the parking violation is obtained consistent with Section 7-520.
- (b) No property owner of any private parking area shall permit towing unless the property is properly posted with signs that conform to Section 7-517.
- (c) No property owner of any private parking area without signs that conform to Section 7-517 shall permit towing, except
 - (1) On direction from the vehicle owner; or
 - (2) On direction from a city police officer, police aide, or firefighter; or
 - (3) As exempted by Section 7-518.
- (d) No person shall tow a motor vehicle from private property that is not a private parking area without the vehicle owner's permission, except
 - (1) On direction from the property owner as required by Section 7-519; or
 - (2) On direction from a city police officer, police aide, or firefighter.
- (e) Tows performed without subsequent notice to police, consistent with Section 7-521, shall be a violation of this article.
- (f) No person shall drop, store, or hold a towed motor vehicle at any place between the parked location and the towing carrier's permanent impound lot, as required by Section 7-522.
- (g) No person shall fail to exercise reasonable care when towing or storing a motor vehicle, as required by Section 7-523.
- (h) No person shall fail to release a motor vehicle towed without the vehicle owner's permission immediately after the claimant has produced the documentation required in Section 7-524.
- (i) No person releasing a motor vehicle after its being towed without the vehicle owner's permission shall require as a condition of release any documentation different from that permitted in Section 7-524.

- (j) No person releasing a motor vehicle after its being towed, including an incomplete service call, without the vehicle owner's permission shall charge more than the maximum charges permitted in Sections 7-525 and 7-526 or more than the maximum charges posted in the parking area signs, whichever is less.
- (k) No person releasing a motor vehicle after its being towed without the vehicle owner's permission shall hold the vehicle as security for payment of the charges.
- (l) Ignorance of any violation under this section shall not be a defense in any prosecution brought under this article.

Sec. 7-528. Penalties.

- (a) An act in violation of Section 7-527 is punishable as a class 1 misdemeanor.
- (b) Fines for violations of this article include a maximum of \$1,000 and up to six months in jail or 36 months of probation.
- (c) In addition to the penalties above, a violation of Sections 7-518 through 7-526 shall result in a fine equal to the greater of
 - (1) The maximum charge for towing, or
 - (2) The actual charge collected by the towing carrier.
- (d) The fines imposed from subsections (b) plus (c) above shall not exceed \$2,500.

SECTION 3. The various city officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Ordinance.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of Tucson that this Ordinance become immediately effective, an emergency is hereby declared to exist, and this Ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

DRAFT