

ORDINANCE NO. 911

AN ORDINANCE OF THE CITY OF REXBURG, MADISON COUNTY, IDAHO, KNOWN AS "THE TOWING AND PARKING ENFORCEMENT ORDINANCE", PROVIDING DEFINITIONS OF THE TERMS USED IN THE ORDINANCE; REQUIRING A LICENSE FOR THE OPERATION OF TOWING OR PARKING ENFORCEMENT COMPANIES WITHIN THE CORPORATE LIMITS OF THE CITY OF REXBURG; ESTABLISHING LICENSE APPLICATION PROCEDURES; PROVIDING FOR FEES; PROVIDING SPECIFICALLY FOR ACTIONS UPON PRIVATE PROPERTY ASSOCIATED WITH MULTI-FAMILY RESIDENTIAL LOTS; PROVIDING PENALTIES FOR FAILURE TO COMPLY WITH ANY PROVISIONS OF THIS ORDINANCE AND SETTING FORTH A VIOLATION OF THIS ORDINANCE CONSTITUTES A MISDEMEANOR; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF REXBURG IDAHO:

**Towing and Parking Enforcement**

1. Definitions.
2. License Required.
3. License - Application.
4. License - Issuance and Renewal Conditions.
5. License Fees.
6. Duty to Display License.
7. Investigation by Police Department.
8. Sign Requirements for Non-residential Lots
9. Non-Consensual Towing and Booting Practices on Multi-Unit Residential Private Properties.
10. Violations and Penalties.
11. Repeal.
12. Severability.

**1. Definitions.**

(A) "**Authorized Vehicle**" means a motor vehicle parked on private property for which permission has been granted or an invitation extended to park such vehicle.

(B) "**Boot**" means a device used by a towing or parking Enforcement Company to temporarily immobilize or disable a motor vehicle for purposes of enforcing parking restrictions.

(C) "**Parking Enforcement Company**" means a business entity engaged in the practice of immobilizing ("booting"), or otherwise disabling vehicles for the purpose of enforcing parking restrictions either on public streets, private property, or public parking lots restricted as to use.

(D) "**Parking Enforcement Operations**" means the business of enforcing parking regulations for compensation within the corporate limits of the City of Rexburg by booting motor vehicles.

(E) "**Person**" means an individual, a firm, a partnership, a corporation, a company, an association, or a joint stock association.

**Instrument # 318928**

REXBURG, MADISON, IDAHO

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MARILYN R. RASMUSSEN

Fee: 0.00

Ex-Officio Recorder Deputy

(F) "**Regular Business Hours**" for purposes of this Ordinance shall as a minimum be from 9:00 a.m. to 5:00 p.m. on Monday through Friday excluding State recognized holidays, or those hours posted at the place of business if they exceed these hours.

(G) "**Towing Company**" means a business entity engaged in the practice of towing vehicles.

(H) "**Tow Truck**" means a motor vehicle which has been altered or designed, equipped and primarily used for the purpose of towing vehicles by means of crane, hoist, tow bar, tow line, chain, or dolly, or consistent with current practices of the towing industry.

(I) "**Towing Operations**" means the business of towing for compensation motor vehicles within the corporate limits of the City of Rexburg, whether or not the towing extends beyond the city limits. Such business shall also include the storage of towed vehicles, pending their return to the owner thereof by the person or his agent who towed such vehicle.

## **2. License Required.**

It is unlawful for any person to engage in commercial towing operations or parking enforcement operations within the corporate limits of the City of Rexburg, excepting such operations authorized by the Rexburg City Police Department, unless the person operating such business has applied for and obtained a license to do so. Such license shall be applied for, granted and maintained in compliance with the provisions of this chapter.

## **3. License - Application.**

An application for a license hereunder shall be filed in writing with the City Clerk or the designated city employee and shall specify:

(A) The name and address of the applicant, and if a firm, corporation, partnership, association or club, the principal officers thereof and their addresses;

(B) If the applicant is a partnership, the requirements of the preceding section shall be given regarding each member of the partnership, together with the managing partner's name;

(C) If the applicant is a corporation, the information required by subsection 1 of this section shall be given for each officer and active member of the corporation;

(D) The name and location of the principal place of business; and

(E) A statement disclosing whether any person listed in the application has ever been convicted of a felony or misdemeanor, and if so, the nature of the offense, and where and when it was committed.

## **4. License - Issuance and Renewal Conditions.**

(A) Upon receipt of a completed application, a license may be issued to towing or parking enforcement companies which have a principal place of business within the corporate limits of the City of Rexburg, upon proof being presented that the applicant has met and will continue to meet the following requirements:

(1) Comply with the current Department of Transportation rules and regulations for tow truck operators;

(2) Maintain each tow truck during the policy term of the license in accordance with all applicable DOT regulations;

(3) Provide competent evidence of valid property damage liability insurance, on hook or cargo coverage and garage keepers coverage as applicable, issued by an insurance company authorized to do business in the State of Idaho in the minimum amounts required by State law or \$50,000 whichever is greater, issued with applicant named as an insured, including the policy number and insurance company name.

(i) A copy of such insurance policy or a certification from the insurer as to duration, kind and extent of insurance, shall be kept on file with the City business license department.

(ii) The licensee or his insurance agent shall notify the City of Rexburg of any termination or change of policy. Failure to do so shall be grounds for suspension or revocation of any business license issued under this chapter.

(4) Affix permanent readable signs on the doors of any tow truck or parking enforcement vehicle listing the name of the applicant's business, address and telephone number;

(5) Provide competent evidence that the towing company stores motor vehicles in a secure fenced area, enclosed yard or building within the City limits, unless otherwise required by the State of Idaho;

(6) Ensure that all tow trucks and parking enforcement vehicles are operated by personnel carrying a valid Idaho driver's license which authorizes operating a tow truck. Parking enforcement companies which do not provide towing services shall be operated by personnel carrying a valid Idaho driver's license and a company identification card identifying the driver as an employee of the parking enforcement company;

(7) Provide competent evidence that all business operations have been conducted in a fair, equitable and lawful manner;

(8) File with the City of Rexburg a list of current fees for all non consensual services covered by this Ordinance and performed by the company.

## **5. License Fees.**

The fee for a business entity desiring to provide towing services and/or parking enforcement services within the City of Rexburg shall be two hundred and fifty dollars (\$250) for the initial year and fifty dollars (\$50) per year for renewals. Such fee shall be assessed in consideration of the expense incurred by the City to conduct required background checks prior to issuing a license and in recognition of costs incurred by the police department in responding to incidents involving towing and parking enforcement companies.

## **6. Duty to Display License.**

Every tow truck operator or parking enforcement employee shall carry upon his person:

(A) A valid Idaho driver's license which allows for operation of a tow truck (if towing services are to be performed);

(B) Evidence of a valid license issued by the City of Rexburg;

(C) A company business card giving the name, address and phone number of the company, and each operator shall provide upon request, proof of identity; and

(D) All other identification required by law.

## **7. Investigation by Police Department.**

(A) Each application for a license hereunder shall be referred to the Chief of Police who may investigate to determine compliance with the requirements set forth the Rexburg City Ordinances.

(B) Background checks may be conducted on all employees of the entity desiring to obtain a license under this section.

(C) If a background check discloses a criminal history, or any current conduct that would threaten the health, welfare or safety of the public, a license may be denied or revoked by the Chief of Police. Any person aggrieved by a decision of the Chief of Police may appeal such decision to the Rexburg City Council.

## **8. Sign Requirements for Non-residential Commercial Lots**

Signs as described in this Ordinance shall be posted in parking lots open to the public but restricted as to use. Such signs shall be posted in a conspicuous place giving notice that clearly indicates towing will be used, and that parking is restricted.

## **9. Non-Consensual Towing and Booting Practices on Multi-Unit Residential Private Properties.**

(A) To authorize monitoring of towing and booting by third parties; all of the following conditions must be met:

1. **Visitor Parking:** Properties with less than 10 on-site parking spaces shall not be required to provide visitor parking. Properties with 10 or more on-site parking spaces must provide visitor parking equal to 3% of the number of onsite parking permits or spaces (with a minimum of one visitor parking space).
2. **Visitor parking stall(s)** must be conveniently located.
3. **Tenants using Visitor parking after BYU-I curfew:** Tenants will not be allowed to park in visitor parking except during the following times:
  - a. From (30 minutes) after the nightly curfew of BYU-I until the beginning of BYU-I visiting hours the next day for student housing complexes.
  - b. Non-student complexes may set convenient visiting hours.
4. **Visitor parking times** may be variable but not less than 10 minutes.
5. **Visitor parking areas** must have adequate and visible signage and text. Signs must be at least 12" x 18" and include the words "Visitor Parking Only", "Permit Parking only during \*\* A.M. to \*\* P.M." (based on current BYU-I curfew and visiting hours), and "All others may be booted and/or towed"
6. **Parking Permits:** Properties may only issue parking permits equal to the number of available spaces (on and/or off-site parking).

7. **Offsite parking:** There shall be no limit to offsite parking. There shall be no restriction on distance from the residential complex to the offsite parking for residential complexes legally existing on the effective date of this ordinance. There shall be no required visitor parking for areas designated as offsite parking.

(B) Owners of multi-unit residential private property may, to the extent authorized by this section, boot or tow away any unauthorized vehicle on their premises. An unauthorized vehicle is any vehicle that is parked or stopped, in violation of any private property parking regulations which govern parking for authorized tenants and visitors and which restricts parking in loading zones, handicapped zones, fire lanes, and no parking zones only.

(C) Except as provided in Section 9 (A) above; It shall be unlawful for any person, firm or corporation to boot or tow away any motor vehicle on any authority other than by the direct request of the owner, authorized agent of the owner, or a Rexburg City Police officer present at the location from which the motor vehicle is to be removed. The towing of any vehicle shall be reported to the Rexburg City Police or the Madison County Dispatcher within one half hour thereof, using the current published non-emergency telephone number of the police department or dispatch. The report shall include:

- (1) The make and license number of the motor vehicle being impounded or towed;
- (2) The name of the person, firm or corporation impounding or towing;
- (3) The location from which the motor vehicle was taken; and
- (4) The location where the subject motor vehicle will be kept and the twenty-four (24) hour phone number which an owner can call to arrange for release of the vehicle.

(D) Any towing or parking enforcement company desiring to operate within the City or Rexburg under the provisions of this section shall:

- (1) Obtain a business license pursuant to the requirements of this Ordinance.
- (2) Register its business name, address, telephone number, and fee schedules with the Rexburg Police Department. In the event of a change in business name, address, telephone number, or fee schedules, such company shall register such information with the Rexburg Police Department and City offices within ten (10) days. It shall be unlawful for any towing or parking enforcement company to operate within the City of Rexburg without obtaining the required business license and providing the information required herein to the Rexburg Police Department.

(E) No person shall have the right to boot or tow a motor vehicle from a private parking lot having four (4) or more parking spaces, other than a vehicle which has been continuously parked in such a lot for more than seventy-two (72) hours, unless a conspicuous sign posted on, or immediately adjacent to, the property provides notice that vehicles will be booted or towed from the parking lot if not authorized to be parked in the parking lot. Such signs shall:

- (1) Be at least eighteen inches (18") by twenty-four inches (24") in size for primary signs and allowing for secondary signs to be twelve inches (12") by twelve inches (12");

(2) Give adequate warning, in large lettering, that improperly parked vehicles will be booted or towed,

(3) Provide sufficient information to assist vehicle owners in the prompt recovery of any vehicle booted or towed,

(4) Give the name, telephone number and location of the firm(s) authorized to boot or tow vehicles,

(5) Be posted within five (5) feet, of each entrance to a parking lot.

(i) For purposes of this subsection, a parking lot entrance shall mean any access allowing the entrance or exit of a vehicle between a private parking lot and a city street unless such access is not the property of the parking lot owner. In such case, the parking lot entrance shall mean:

(a) the intersection of the parking lot property line and the property line of the access point, or

(b) any privately owned road connected to a public right-of-way leading to the entrance of a parking lot located on private property.

(ii) A sign posted directly over a driveway leading to an underground lot shall be deemed to meet the location requirements of this subsection.

(iii) If signs cannot be posted within 5 feet from the entrance to a parking lot for reasons of practical difficulty (such as the necessity of drilling a hole through concrete, removing a tree or shrubs, or because of an immediately adjacent private driveway not owned by the owner of the parking lot), a sign may be placed as close as reasonably practicable to the parking lot entrance. However, no sign shall be further than 30 feet from the edge of the curb that borders the private property.

(F) Any person acting to remove or otherwise disturb any motor vehicle parked, stalled or otherwise left on privately owned or controlled property, and any person owning or controlling such private property, or either of them, shall be liable to the owner, operator or driver of a motor vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of such motor vehicle which does not comply with the requirements of this section.

**(G) Before booting:**

(1) Except as provided in Section 9 (A) above: Before booting or towing a vehicle located on private property a parking enforcement or towing company shall:

(i) Receive from the property owner or his authorized agent, who shall not be affiliated in any way with the parking enforcement or towing company, a signed request for each booting or towing of a particular vehicle;

(ii) Post a copy of a schedule of fees in a prominent place at the business location where vehicles are released from storage. Upon request, the company shall show a current copy of fee schedule to a person whose vehicle is being towed or booted.

(iii) Maintain personnel authorized to release any vehicle to its owner twenty-four (24) hours each day. A vehicle shall be released within fifteen (15) minutes of receipt of payment during regular business hours, or within sixty (60) minutes of initially contacting the towing or parking enforcement personnel after business hours and payment being made of any required fees authorized by this section.

(iv) If any vehicle booted or towed pursuant to this section remains unclaimed after forty-eight hours, the towing or parking enforcement personnel shall follow all applicable State regulations with respect to such vehicle.

a) In the event such certified letter is refused or returned to the sender unclaimed, the notification to the law enforcement agency as provided in subsection 2 of this section shall constitute actual notice to the registered and legal owner(s) of the vehicle.

b) The effect of other laws notwithstanding, the costs of booting, towing, storing or other services rendered during the course of booting, removing, impounding or storing any motor vehicle shall not constitute a lien upon the legal ownership of such motor vehicle until forty-eight hours after the notice required by this subsection has been received by the local law enforcement agency or owner of the vehicle, at which time the lien may be enforced as otherwise provided by law for the enforcement of towing or storage liens or liens general.

c) Any such lien shall not exceed the total of the actual costs of storage or any other services rendered by the parking enforcement or towing company.

d) If the towing company assesses a fee according to the miles a vehicle is towed, the lien shall be, and the towing company shall attempt to recover, no more than the fees that would accrue for towing to the nearest storage locations under the control of the towing company.

(v) No storage fees shall begin to accrue for the first twenty four (24) hours after a vehicle is towed pursuant to this section.

(2) Failure to comply with any of the provisions of this subsection with regard to any particular vehicle shall waive the lien on such vehicle insofar as the failure resulted in additional fees, and shall be grounds for the suspension or revocation of the license of any parking enforcement or towing company.

(H) Any parking enforcement or towing company booting or towing a motor vehicle pursuant to this section shall release such vehicle to its owner or authorized agent immediately upon payment sufficient to cover actual costs incurred in booting, towing, storing or providing other services rendered as the result of booting or towing the vehicle as provided in this section.

(1) The parking enforcement or towing company shall accept payment offered in cash, or be willing to wait up to 15 minutes while cash is retrieved; however, the parking enforcement or towing company shall not be obligated to accept checks or payment in coins and shall maintain sufficient cash on hand to make change of up to forty dollars (\$40.00).

(2) Every parking enforcement and towing company providing services pursuant to this section shall post in a conspicuous place upon its business premises a true copy of this section.

(3) A parking enforcement company that utilizes booting practices instead of towing shall be limited to a maximum fee for booting of one-half the current maximum fee established by the Idaho Department of Transportation for towing services for class A and B vehicles. A towing company shall be limited to the maximum fees for services established by the City of Rexburg if established.

(4) If the registered owner or authorized agent arrives at a vehicle before the parking enforcement or towing company has finished booting the vehicle and the required paperwork or before a tow truck operator has the vehicle in tow, the parking enforcement or towing company shall be entitled to only one-half the regularly charged fee for booting or towing a vehicle. The representative of the parking enforcement or towing company shall not be required to wait for any longer than fifteen (15) minutes for the owner or authorized agent to produce the necessary payment to obtain the release of the vehicle.

(I) Property owners, managers, or their agents shall not receive any consideration whatsoever from any parking enforcement or towing company in exchange for utilizing such company's services to boot or tow unauthorized vehicles from the owner's property or for entering into a services contract with a parking enforcement or towing company.

## **10. Violations and Penalties**

Any person who violates or fails to comply with any of the provisions of this Ordinance or who, having obtained a license hereunder, willfully fails to continue to comply with the conditions set forth in this ordinance is guilty of a misdemeanor, and upon conviction thereof, may be fined in accordance with State Statutes.

## **11. Repeal.**

All ordinance and parts of ordinance in conflict with this ordinance are hereby repealed.

## **12. Severability.**

The provisions of this ordinance are severable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutional or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, clause sentence, subsection, word, or part had not been included therein, and if such person or circumstance to which the ordinance or part thereof is held inapplicable had been specifically exempt therefrom.

