

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE AMENDING CHAPTER 115 OF THE LOUISVILLE METRO CODE OF ORDINANCES RELATING TO PRIVATE TOW OPERATORS.

SPONSORED BY: COUNCIL PRESIDENT DAVID JAMES

WHEREAS, private parking lot owners are entitled to insure their premises are used only by those who are authorized to do so, and in accordance with any applicable restrictions for use of the property; and

WHEREAS, while vehicles that may be parked on private parking lots without permission to do so are subject to removal, vehicle owners are entitled to clear notice of the rules and regulations that apply both to the parking lot and to removal of improperly parked vehicles therefrom; and

WHEREAS, the 2021 General Assembly has enacted legislation with respect to tow operators, portions of which apply to tow operators engaged in towing from private parking lots, necessitating adjustments in Metro’s local regulation of private tow operators.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: The Louisville Metro Code of Ordinances (“LMCO”) Sections 115.450 through 115.459 are hereby repealed in their entirety and shall be replaced with the following provisions.

SECTION II: LMCO Section 115.450 shall provide as follows:

§ 115.450 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (A) **DEPARTMENT.** The Louisville Metro Department of Codes and Regulations.
- (B) **MOTOR VEHICLE.** Every device in, on, or by which any person or property is or may be transported or drawn on any street, except devices moved by human power or used exclusively on stationary rails or tracks.
- (C) **STANDARD VEHICLE.** A motor vehicle with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, which is capable of transporting one or more persons.
- (D) **MEDIUM DUTY VEHICLE.** A motor vehicle with a GVWR of 10,001 pounds or more, which is capable of transporting one or more persons. This shall include the tractor portion of a tractor trailer when no trailer is attached.
- (E) **TRACTOR TRAILER VEHICLE.** A combination of a tractor with a trailer attached to the tractor.
- (F) **PRIVATE TOW OPERATOR.** Any person or entity engaged in any business of privately impounding vehicles, including but not limited to any corporation, partnership, LLC, sole proprietorship, and any employee of such a business who operates a tow truck.
- (G) **PRIVATE PROPERTY IMPOUND.** The act of towing and/or removing and/or immobilizing a motor vehicle parked on or in a private parking lot without the consent of the vehicle owner and at the lawful direction of a person having control or possession of the private parking lot upon or in which the motor vehicle was located.
- (H) **PRIVATE PARKING LOT.** A parking lot wherein vehicles are parked or stored for hire, or a parking lot provided by a business wherein customers are allowed to park. Private parking lot shall include a parking area or lot associated with a building used for residential purposes.

(I) **STORAGE YARD.** Any property used by a private tow operator upon which vehicles that have been privately impounded from a private parking lot are stored.

(J) **IMMOBILIZE.** The act of rendering a vehicle incapable of moving by any means including but not limited to attaching a device to the wheels or physically blocking the vehicle to prevent its movement.

(K) **TOW or REMOVE.** The act of attaching, lifting, pulling, or dragging any vehicle behind the wrecker or tow truck which is doing such attaching, lifting, pulling, or dragging, or positioning a wrecker or tow truck or other object to tow, remove, or otherwise impede or restrict the free movement of a vehicle, Said towed vehicle can be self-supporting, carried on a dolly-type platform, or be supported on any other item necessary to facilitate such towing. This subchapter does not necessarily require the removal of a vehicle from the private parking lot to be considered "towed" or "removed."

SECTION III: LMCO Section 115.451 shall provide as follows:

§ 115.451 LICENSURE REQUIREMENTS; FEES.

(A) No private tow operator shall privately impound any motor vehicle or offer to provide such services unless the private tow operator possesses a valid license issued in accordance with this Section.

(B) Application and fee.

(1) Application for licensing as a registered private tow operator shall be made on forms furnished by the Department, shall be signed by the applicant or an authorized agent, and shall include the following information:

(a) The name and address of the person, firm, partnership, association, or corporation under whose name the business is to be conducted;

(b) 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;

(c) The full address of each storage yard where vehicles may be stored;

(d) The address of the business location where the files of the private tow service operation are kept;

(e) A fee schedule which states the fee that is charged for private parking lot towing services, the fee that is charged for the storage of a vehicle, and any other charges which may be incidental to a private parking lot impoundment, which fees may not exceed any fees prescribed by this ordinance;

(f) Name of current liability insurance carrier and policy number; any information regarding change in coverage during a license term must be provided to the Department 10 days prior to the effective date of such new coverage; and

(g) A list of all private property from which applicant is authorized to tow vehicles, such list to be kept current and up to date within ten (10) days of any change during the entire term of the license.

(2) Any lapse in liability insurance coverage shall be grounds for suspension or revocation of the license.

(C) License non-transferrable.

A license issued under this section is not transferable.

(D) Fees.

Simultaneously with the submission of the initial license application, the applicant shall pay to the Department a nonrefundable application fee of twenty-five

dollars (\$25.00). When the license is issued, the private tow operator shall pay to the Department an annual license fee of two hundred dollars (\$200.00), which fee is due and payable upon the issuance of a license and on or before January 1 of each year thereafter.

(E) Renewals.

Each license shall expire on December 31 of each year, unless earlier suspended or revoked. A license may be renewed by making a renewal application and payment of the annual license fee prescribed in subsection D. Application for renewal shall be made at least thirty (30) days prior to the expiration date.

(F) Liability.

The private tow operator holding the license shall ultimately be responsible for all actions of the operator and all agents and employees thereof related to the towing or removal of motor vehicles.

SECTION IV: LMCO Section 115.452 shall provide as follows:

§ 115.452 LICENSE SUSPENSION OR REVOCATION

(A) A license issued pursuant to this chapter may be suspended or revoked by the Director of the Department of Codes and Regulation subject to appeal pursuant to LMCO § 32.286. A license may be suspended or revoked for the following reasons:

(1) Fraud, misrepresentation or false statement contained in the application for a license.

(2) Fraud, misrepresentation or false statement made in connection with the business of acting as a private tow truck operator.

(3) Failure to pay any fines or penalties for violations of this ordinance.

(4) Any facts or conditions which would justify the denial of the original application.

(B) This section shall be self-executing and the suspension or revocation shall be effective immediately. The Director of the Department of Codes and Regulation shall give notice of the suspension or revocation of the license and sufficient notice shall be given if either hand-delivered or mailed to the licensee at his/her local address as listed on the licensee's application.

(C) It is unlawful for any person whose license has been suspended or revoked to continue in the business of a private tow truck operator to keep the license issued to him/her in his/her possession and control, and the same shall immediately be surrendered to the Director of the Department of Codes and Regulations or his/her designee.

SECTION V: LMCO Section 115.453 shall provide as follows:

§ 115.453 REMOVAL OF VEHICLES FROM PRIVATE PARKING LOTS BY PRIVATE TOW OPERATORS; FEE LIMITS.

(A) Where a private tow operator lawfully tows or removes a motor vehicle:

(1) parked in a private parking lot in a manner inconsistent with posted instructions; and

(2) pursuant to a contract between the owner of the private parking lot and the tow operator for the removal of any such improperly parked motor vehicles; and

(3) with the express approval required under Section 115.453 of this ordinance, the private tow operator may collect the following charges from the owner or lienholder of the motor vehicle, payable before the vehicle is released:

(a) Charges for a standard vehicle: up to but not more than \$138 for removal and the first 24 hours of storage, and up to but not more than \$25 per calendar day for storage thereafter. In addition to the towing charges, private tow operators may charge an additional fee up to \$27 per vehicle for a vehicle transported by a dolly type platform. Dolly fees shall not be allowed if a dolly is not needed to tow the vehicle

(b) Charges for a medium duty vehicle: up to but not more than \$280 for removal and the first 24 hours of storage, and up to but not more than \$50 per calendar day for storage thereafter.

(c) Charges for a tractor trailer vehicle: up to but not more than \$500 for removal and the first 24 hours of storage, and up to but not more than \$100 per calendar day for storage thereafter.

(d) A private tow operator may not charge a calendar day for storage for days that the private tow operator or the storage facility to which the private tow operator has taken the motor vehicle is not open for the motor vehicle to be released.

(B) A private tow operator may not charge any fees beyond those set forth in subsection (A) of this section to release a motor vehicle properly impounded from a private parking lot.

(C)(1) If the private impound tow truck operator has lawfully fully hooked up and physically raised the vehicle to normal transportation height in accordance with the requirements and provisions of this ordinance, but has not yet towed or removed the motor vehicle from the private parking lot before the vehicle operator returns to the vehicle, then the private tow operator may charge one-half of the fee authorized by subsection 2 of this Section to release the motor vehicle.

(2) Private tow operators shall not hook up occupied motor vehicles. Any occupied motor vehicle that has been hooked up shall be immediately dropped. If the motor vehicle was improperly parked and the private tow operator was lawfully authorized to remove the motor vehicle pursuant to this ordinance, then the private tow operator shall be entitled to collect one-half of the fee authorized by subsection 2 of this Section.

(D) A private tow operator shall not move any motor vehicle to any intermediate place of storage, or to any location other than to the registered secure storage yard of a private impound tow truck service, unless specifically requested by the owner or custodian of said vehicle.

SECTION VI: LMCO Section 115.454 shall provide as follows:

§ 115.454 SIGNS ON PARKING LOTS REQUIRED BEFORE VEHICLES MAY BE TOWED.

Owners or operators of private parking lots, with marked parking spaces, who have a contract with a tow operator as described in § 115.451 shall not tow or cause to be towed from such private parking lot any vehicle unless such owner or operator has conspicuously posted and maintained at such private parking lot signs near the entrance and exit, in clear view by a driver seated in a vehicle and free from interference from natural or man-made objects. Signs must contain the following information:

- (A) That the parking lot is privately owned;
- (B) That unauthorized vehicles are subject to tow;
- (C) The hours vehicles are prohibited from parking and subject to tow;
- (D) Name, address, and telephone number of the tow operator; and
- (E) Tow and storage fees of the tow operator.

SECTION VII: LMCO Section 115.455 shall provide as follows:

§ 115.455 PARKING LOT OWNER'S AUTHORIZATION FOR TOWING REQUIRED.

(A) No private tow operator shall remove a vehicle from a private parking lot unless the owner of the private parking lot, or said owner's authorized agent, signs a contemporaneous specific written authorization for such removal. The written authorization shall include the following:

- (1) The make and model of the vehicle to be towed;
- (2) The license number and state of issuance of the license plate of the vehicle to be towed;
- (3) The location of the private parking lot from which the vehicle is to be towed;
- (4) The signature and printed name of the person authorizing the towing;
- (5) A written statement indicating the date and time of the authorization, that the person authorizing the tow is the owner of the private parking lot, or his or her authorized agent, and that said owner or authorized agent is not the employee of any tow operator; and
- (6) A written statement indicating why the motor vehicle was parked in a manner inconsistent with posted instructions and subject to tow.

(B) Private tow operators shall also comply with reporting and notifying requirements contained in § 115.456.

SECTION VIII. LMCO Section 115.456 shall provide as follows:

§ 115.456 NOTIFICATION TO POLICE, KENTUCKY TRANSPORTATION CABINET AND REGISTERED OWNER REQUIRED.

(A) Prior to towing any vehicle from a private parking lot, a private tow operator shall contact the Louisville Metro Police Department via telephone at (502) 574-5673 and provide the information as set forth in subsections (A)(1) through (A)(5), below. Louisville Metro Police Department will advise the private tow operator to either proceed with the tow or to leave the vehicle for the Louisville Metro Police Department to investigate. Private tow operators towing a vehicle located in a suburban city within Jefferson County that operates its own police department should also notify the suburban city police authority. This notification shall include:

(1) The make, model, color, and vehicle identification number of the vehicle to be towed;

(2) The license number and state of issuance of the license plate;

(3) The location where the tow is to occur;

(4) The location name, address, and telephone number of the private tow company storage yard where the towed vehicle will be taken; and

(5) The name, address, and telephone number of the private tow operator.

(B) Within one business day of the towing of any vehicle by a private tow operator from a private parking lot, the private tow operator shall notify the Kentucky Transportation Cabinet with similar information as set out in subsections (A)(1) through (A)(5), above, except, in subsections (A)(3) and (A)(4), the private tow operator shall set forth the date, time, and location from where the vehicle was towed, and the location of the private tow company storage yard where the vehicle was taken.

(C) Upon receipt of the name and address of the registered owner and any lienholder of the motor vehicle from the Transportation Cabinet, the private tow operator shall notify the registered owner and any lienholder, by certified mail, that the motor vehicle has been towed or removed, providing all information set forth in subsection (B), and any additional information needed for the registered owner or lienholder or authorized designee thereof to reclaim the motor vehicle.

(D) Private tow operators shall be responsible for all notifications required by subsections (A)–(C) of this section, and any additional notifications required by KRS 281.928 and KRS 376.275, and all costs associated therewith.

(E) It shall be unlawful for a private tow service operator, owner or employee to provide false information to any person or entity designated to receive information under subsections (A) through (D) of this section.

SECTION IX: LMCO Section 115.457 shall provide as follows:

§ 115.457 STORAGE YARD REQUIREMENTS.

(A) Any private tow operator that removes a motor vehicle as authorized by this ordinance shall insure that the storage yard to which the motor vehicle is towed has either:

(1) an attendant who is on site 24 hours per day, seven days per week, to return motor vehicles to the owner, operator, driver, lienholder or authorized designee thereof, upon the payment of towing and storage charges, or

(2) a conspicuously located and well lighted sign at the storage yard that is clearly visible and readable from the entrance of the storage yard, which gives the telephone number where the owner, manager, or attendant of the storage yard may be reached at any time 24 hours per day, seven days per week, so that a towed motor vehicle may be reclaimed in a minimum amount of time, not to exceed one hour.

(B) Any private tow operator that removes a vehicle as authorized by this ordinance shall insure that the storage yard to which the motor vehicle is towed shall release a towed vehicle to the owner, operator, driver, lienholder, or authorized designee thereof, upon the presentation of commercially reasonable tender sufficient to cover the costs of towing and storage authorized by this subchapter. Commercially reasonable tender shall include, without limitation, cash, and credit cards, debit cards, money orders, checks from an insurer or its agent, and checks drawn by banks or other financial institutions.

(C) A private tow operator may not charge fees permitted for storage under Section 115.452 if the storage yard is not able to timely release a motor vehicle as provided under this section.

(D) The owner or operator of a storage yard to which the motor vehicle has been towed or removed shall not, upon request by any owner or custodian of a currently licensed vehicle, deny or prevent access to said vehicle for the purpose of removing personal items authorized to be recovered under state law, whether or not the owner or custodian is then able to reclaim the vehicle.

SECTION X: LMCO Section 115.458 shall provide as follows:

§ 115.458 REBATES TO LOT OWNERS PROHIBITED.

It shall be unlawful for a private tow operator to pay or rebate money, or solicit or offer the payment or rebate of money, or other valuable consideration to private parking lot owners for the privilege of towing or removing vehicles.

SECTION XI: LMCO Section 115.459 shall provide as follows:

§ 115.459 TOWS VIOLATING ORDINANCE; NO FEES ALLOWED.

When an owner of a private parking lot, his or her agent, or a tow operator causes a vehicle to be towed 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 tow and storage. Such persons who violate this subchapter may be liable to the vehicle owner for any amounts actually paid for the tow, transportation, and storage of the vehicle, as well as for any damage to the vehicle resulting therefrom.

SECTION XII: LMCO Section 115.460 shall provide as follows:

§ 115.460 EXEMPTIONS FROM TOWING FOR EMERGENCY VEHICLES.

No person may, under the authority of this subchapter, cause the removal of any ambulance, police vehicle, fire vehicle, civil defense emergency vehicle, or emergency ambulance service vehicle while such vehicle is on official business.

SECTION XIII: LMCO Section 115.461 shall provide as follows:

§ 115.461 ENFORCEMENT; PENALTIES.

The provisions of this ordinance may be enforced by any law enforcement officer, and may be subject to both civil and criminal penalties as provided in Section 115.999(J).

SECTION XIV: LMCO Section 115.999(J) is hereby repealed and replaced with the following:

§ 115.999 PENALTY.

(J) (1) Any person who violates §§ 115.452 through 115.453, §115.455 or §§ 115.458 through 115.460 shall be punished as follows: for the first violation a minimum civil penalty of \$150 or a maximum civil penalty of \$200; for the second violation within a period of 24 months of the date of the first violation, a minimum civil penalty fine of \$200 or a maximum civil penalty of \$250; and for any additional violations after the date of a second violation within a period of 24 months from the date of a first violation, a minimum civil penalty of \$250 and a maximum civil penalty of \$300. Any person cited pursuant to this subsection may pay the minimum civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Code Enforcement Board ("Board") in accordance with §§ 32.275 et seq. If the person fails to respond to the citation within seven days as referenced above, the person shall be deemed to have waived the right to a hearing. In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty set forth in the citation.

(2) Any person who violates §§ 115.454., 115.456 or 115.457 shall be guilty of a violation and shall be subject to a fine of not less than \$25 or more than \$200.

(3) Any person who tows a vehicle from private property without a valid license in violation of § 115.451 shall be guilty of a Class B misdemeanor and subject to a criminal fine not to exceed \$250 or a term of imprisonment not to exceed 90 days, or both. In addition, to the criminal penalty, the person shall be subject to a civil penalty in the amount of \$500.

(4) Each day such person, firm, or corporation shall neglect or refuse to comply with or violate any of the sections of §§ 115.450 through 115.460 shall constitute a separate offense.

SECTION XIV: This Ordinance shall take effect upon its passage and approval.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

By: _____
O-474-21 – private tow operators v.1 – 9-22-21 (hh)