

ORDINANCE 2013-46.

AN ORDINANCE (1) AMENDING PROVO CITY CODE SECTION 9.32.140 TO ALLOW PRIVATE PROPERTY OWNERS TO INITIATE A NON-CONSENSUAL BOOT OR TOW OF A MOTOR VEHICLE ON OR FROM THEIR PROPERTY BY CONTRACT RATHER THAN BY DIRECT AUTHORIZATION ONLY WHEN USING A PROVO CITY CERTIFIED TOWING OR PARKING ENFORCEMENT BUSINESS AND MEETING OTHER REQUIREMENTS; (2) SPECIFYING THE REQUIREMENTS TO BECOME A PROVO CITY CERTIFIED TOWING OR PARKING ENFORCEMENT BUSINESS; AND (3) AMENDING PROVO CITY CODE SECTION 6.08.040(2)(j) AND RENUMBERING PROVO CITY CODE SECTION 9.32.140 TO RECODIFY SECTION 9.32.140 AS PROVO CITY CODE SECTION 9.31.110. (12-113)

WHEREAS, the booting and towing of motor vehicles is undertaken at all hours of the day and night and can leave motorists and their passengers, including small children, stranded and vulnerable; and

WHEREAS, Utah State Code § 41-6a-1407 provides that a person may not remove an unattended vehicle without prior authorization of a peace officer, a law enforcement agency, a highway authority having jurisdiction over the highway on which there is an unattended vehicle, or the owner or person in lawful possession or control of the real property where the vehicle is located; and

WHEREAS, until 2005, Provo City Code required all non-consensual booting and towing of motor vehicles from private property to be initiated by the property owner; and

WHEREAS, in 2005 Provo City amended its Code to allow the non-consensual towing of a motor vehicle from private property without the property owner's involvement if the property owner has entered into a contract with a towing or parking enforcement business and the provisions of the contract were consistent with the provisions of Section 9.32.140; and

WHEREAS, since amending its Code to allow towing and parking enforcement operators to tow and boot in accordance with a contract without property owner involvement, complaints and concerns regarding non-consensual towing having increased; and

WHEREAS, towing and parking enforcement operators often hire employees on a commission basis to patrol parking lots, which creates a financial incentive on the part of employees to tow and boot in circumstances where towing and booting may not always be in the public or property owner's interest; and

WHEREAS, it is proposed that Section 9.32.140 of the Provo City Code be amended to remove the ability for private property owners in Provo City to initiate a non-consensual tow or boot of a motor vehicle on or from their property via a contract with a towing or parking

enforcement company, unless the property owner uses a Provo City Certified Towing or Parking Enforcement Business and meets other requirements; and

WHEREAS, Provo City desires to specify the minimum requirements to become a Provo City Certified Towing or Parking Enforcement Business; and

WHEREAS, for codification purposes it is recommended that Provo City Code Section 9.32.140 of Chapter 9.32 Miscellaneous Traffic Provisions, dealing with parking and towing matters, be renumbered and re-codified as section 9.31.110 of Chapter 9.31 Parking Regulations; and

WHEREAS, it is also recommended that Section 6.08.040(2)(j) be amended to correct references to Section 9.32.140 due to the renumbering of that Section; and

WHEREAS, on November 19, 2013, December 3, 2013, and December 17, 2013, the Provo City Municipal Council held duly noticed public hearings to ascertain the facts regarding this matter, which facts are found in the hearing records; and,

WHEREAS, after considering the facts and comments presented to the Municipal Council, the Council finds: (i) the Provo City Code should be amended as described herein; and (ii) such amendments are in the best interests of the residents of Provo City and reasonably further the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Section 6.08.040(2)(j) and Section 9.32.140 of the Provo City Code are hereby amended and Section 9.32.140 is renumbered and recodified as Provo City Code Section 9.31.101 as follows:

6.08.040. License - Issuance and Renewal Conditions.

(1) Upon receipt of a complete application, a business license may be issued to a business which conducts towing or parking enforcement operations and which has a principal place of business within the corporate limits of Provo City upon proof that the applicant has met and will continue to meet the requirements set forth in Subsection (2) of this Section.

(2) The holder of a business license authorizing towing or parking enforcement operations shall continuously conform to the following conditions:

...

(j) provide competent evidence that the licensee is in compliance with applicable regulations set forth in Section ~~9.32.1.11401~~, Provo City Code, and

...

91 | **9.321.1410. Towing and Parking Enforcement Operations.**

92 | (1) The definitions set forth in Section 6.08.010, Provo City Code, shall apply to this Section.

93 | (2) An owner or a person in lawful possession or control of real property may, to the extent
94 | authorized by this section, ~~boot or~~ tow away or boot any unauthorized vehicle located on the
95 | property. An unauthorized vehicle is any vehicle parked or stopped in violation of private
96 | property parking regulations which govern parking for authorized tenants and visitors or which
97 | restrict parking in a loading zone, handicapped zone, fire lane, or a no parking zone.

98 | (3) No person may conduct a towing or parking enforcement ~~or towing~~ operation unless:

99 | (a) authorized by the owner of the private property on which the vehicle is located, or the
100 | owner's agent, or

101 | (b) requested by a peace officer or by an order of a person acting on behalf of a law
102 | enforcement agency.

103 | (4) Except as otherwise ordered by a peace officer or a person acting on behalf of a law
104 | enforcement agency, after performing a tow ~~ing truck service operation being done~~ without the
105 | vehicle owner's knowledge, the tow ~~operator truck driver or tow truck motor carrier~~ shall report
106 | the towing of the vehicle to the Provo City Police Dispatcher within the soonest of one (1) hour
107 | or immediately upon arriving at the place of storage or impound of the vehicle using the current
108 | published non-emergency telephone number of the Provo Police Department. The report shall
109 | include:

110 | (a) the vehicle's description, including its vehicle identification number and license
111 | number or other identification number issued by a state agency;

112 | (b) the name of the person, firm or corporation impounding or towing the vehicle;

113 | (c) the name of the person who requested removal of the vehicle;

114 | (d) the date, time, and location ~~from which of~~ the vehicle ~~'s was removed~~;

115 | (e) reason(s) for removal of the vehicle;

116 | (f) the location where the subject vehicle will be kept; and

117 | (g) a telephone number, staffed twenty-four (24) hours a day, which an owner can call to
118 | arrange for release of the vehicle.

119 | (5) No person may conduct a towing or parking enforcement ~~or towing~~ operation ~~at on~~ a parking
120 | lot having four (4) or more parking spaces, other than on a vehicle which has been continuously
121 | parked in such a lot for more than seventy-two (72) hours, unless:

122 | (a) "no parking" areas, restricted parking spaces, and visitor parking spaces, if any, are
123 | clearly marked, with signage installed in such a manner as to provide adequate notice to
124 | those utilizing the parking area, including marking of the boundaries between the subject
125 | parking lot and any adjoining parking lot owned by another person; and

126 | (b) a conspicuous sign posted at, or immediately adjacent to, each entrance to the
127 | property provides notice that unauthorized vehicles may be ~~booted or~~ towed from the
128 | parking lot or booted. Each such sign shall:

129 | (i) be at least eighteen (18) inches by twenty-four (24) inches in size;

130 | (ii) give warning, in large reflective lettering, that unauthorized vehicles may be
131 | towed or booted ~~or towed~~;

132 | (iii) give the name and telephone number of business(es) authorized to conduct a
133 | towing or parking enforcement operation on the property;

134 | (iv) state the fees charged for tow ~~ing truck~~ and parking enforcement
135 | operations services; and

- (v) be posted within approximately five (5) feet of each entrance to a parking lot.
- (A) 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:
- (I) the intersection of the parking lot property line and the property line of the access point; or
- (II) any privately owned road connected to a public right-of-way leading to the entrance of a parking lot located on private property.
- (B) A sign posted directly over a driveway leading to an underground lot shall be deemed to meet the location requirements of this Subsection.
- (C) If signs cannot be posted within five (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 thirty (30) feet from the edge of the curb that borders the private property.
- (6) No person may conduct a towing or parking enforcement operation regarding a vehicle located on private property unless:
- (a) the owner ~~or owner's agent~~ of the subject real property or the owner's agent:
- (i) conforms to the requirements of Subsections (6)(b)(i) and (7) of this ~~Section~~Subsection;
- (ii) discloses in writing to each tenant of the property when the tenant first occupies the property:
- (A) the rules which govern the use of parking areas;
- (B) that parking a vehicle in violation of such rules may subject the vehicle to a towing or parking enforcement operation; and
- (C) that the tenant may contest a towing or parking enforcement operation as provided in this Chapter;
- (b) the towing or parking enforcement business conducting the operation:
- (i) except as otherwise provided in Subsection 9.31.110(7), receives from the property owner or the owner's agent, who shall not be affiliated in any way with the towing or parking enforcement business, a ~~signed~~ written or telephonic request for each towing or parking enforcement of a particular vehicle; ~~provided, however, that a homeowners association or a property owner who has a contract with a Provo City Certified towing or parking enforcement business shall not be required to sign~~ make such a request before a vehicle is towed or booted;
- (ii) posts a copy of the towing or parking enforcement business's fee schedule in a prominent place at the location where vehicles are released from storage ~~and~~; and
- (iii) maintains personnel authorized to release any vehicle to its owner twenty-four (24) hours each day and who can respond within one (1) hour of a request for release of a vehicle;
- (c) the towing or parking enforcement business employee who conducts, or attempts to conduct, a towing or parking enforcement operation:

- (i) wears either:
- (A) a readily identifiable shirt, blouse, or other top article of clothing with the name of the business and the first name of the employee contained thereon and readable from a distance of six (6) feet; or
 - (B) a prominently visible identification badge on the front of employee's clothing with the name of the business and the first name of the employee contained thereon and readable from a distance of six (6) feet;
- (ii) possesses evidence of:
- (A) either (I) a written or telephonic~~signed~~ towing or parking enforcement request from the property owner or the owner's agent, or (II) the contract agreement required by Subsection 9.31.110(76)(b)(i) and certification as a Provo City Certified Towing or Parking Enforcement Business, and
 - (B) the fee schedule required by Subsection (6)(b)(ii) of this Subsection;
- (iii) upon request, provides the name and telephone number of the property owner or owner's agent, and shows the evidence ~~of the signed request or agreement and the fee schedule~~ required by Subsections (6)(~~cb~~)(i) and (ii) to:
- (A) a person whose vehicle is subject to the towing or parking enforcement operation; and
 - (B) any law enforcement officer;
- (iv) prior to mechanically connecting a vehicle to a tow truck or booting a vehicle, documents, 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; and
- (v) upon booting a vehicle, places a notice on the driver's door window which
- indicates:
- (A) in large letters, "This vehicle has been booted";
 - (B) the name and telephone number of the towing or parking enforcement business and the name of the person that immobilized the vehicle;
 - (C) a telephone number, staffed twenty-four (24) hours a day, which the vehicle owner may call to arrange for release of the vehicle;
 - (D) applicable fees; and
 - (E) the following statement: "A person who tows or boots a vehicle unlawfully may be subject to criminal and civil penalties as provided in Section 9.321.11401 of the Provo City Code. A Brigham Young University (BYU) student who believes an unlawful tow or boot occurred from a BYU approved housing facility may contact the BYU Student Housing Office to request mediation of the matter. A person whose vehicle is towed or booted shall be entitled, upon request, to the name and telephone number of the owner of the property or owner's agent where the tow or boot occurred."
- (vi) upon towing a vehicle, takes the vehicle directly to a storage lot that complies with the requirements of state law and this Section. Once the vehicle is mechanically connected to the tow truck the tow operator may only disconnect the vehicle (A) upon arrival at the storage lot, (B) to release the vehicle to the driver,

owner, or owner's agent, or (C) to abandon the tow and leave the vehicle where the tow operator originally found it.

(d) Any person conducting a towing or parking enforcement operation of a vehicle located on private property shall:

- (i) maintain the documentation required under subsection 6(c)(iv) for no less than one year;
- (ii) make available, prior to taking payment for the towing or parking enforcement operation, a copy of the documentation required under subsection 6(c)(iv), upon request by any of the following:
 - (A) the driver or owner of the vehicle that was subject to the towing or parking enforcement operation, or the owner's agent; and
 - (B) any law enforcement officer; and
- (iii) prior to taking any payment related to a towing or parking enforcement operation, provide the driver or owner of the towed or booted vehicle, or the owner's authorized agent, with a statement of the owner's rights regarding towing and parking enforcement operations that has been approved by the Provo City Mayor's Office.

(7) The written or telephonic request required under Subsection 9.31.110(6)(b)(i) prior to initiating a towing or parking enforcement operation is not required if all of the following requirements are met:

- (a) the towing or parking enforcement business conducting the towing or parking enforcement operation has been designated as a Provo City Certified Towing or Parking Enforcement Business by the Mayor, or the Mayor's designee;
 - (i) A licensed towing or parking enforcement business may seek this designation by completing and signing a written application on a form provided by the City.
 - (ii) The licensed applicant business shall be granted this designation upon satisfying the Mayor, or the Mayor's designee, that the applicant's business operations comply with all of the contractual obligations required under Subsection 9.31.110(7)(c).
- (b) the owner of the property where the towing or parking enforcement operation takes place complies with all the contractual obligations required under Subsection 9.31.110(7)(c); and
- (c) the towing and parking enforcement business and the private property owner must have, and comply with, a contract that contains provisions documenting and requiring all of the following:
 - (i) a right of appeal to the property owner by the owner or operator of the vehicle booted or towed;
 - (ii) the right of the property owner to grant the appeal and waive part or all of the fees and charges incurred by the appellant;
 - (iii) a documented plan for providing adequate visitor parking;
 - (iv) reasonable, as determined by the Mayor or the Mayor's designee, temporary permit parking on a 24/7 availability basis for any property where the owner requires permit parking;
 - (v) signage that, in the Mayor or Mayor's designee's reasonable opinion, provides fair notice to all persons of all limitations on parking on the property; and

(vi) a limitation of the towing or parking enforcement operator's total maximum fees and charges for booting or otherwise immobilizing a vehicle to Sixty Dollars (\$60) and the total maximum fees and charges for towing a vehicle to One Hundred Seventy-five Dollars (\$175), including the first day of storage (subsequent days of storage may be charged in accordance with the rules and rates set forth in Rule R909-19-13, Utah Administrative Code).

(d) it is a violation of this Section 9.31.110 to conduct a towing or parking enforcement operation without a written or telephonic request pursuant to this Subsection (7) if either party to a contract described in subsection (c) fails to comply with a contract provision required under subsection (c).

(e) appeals by towing or parking enforcement operators or property owners of decisions by the Mayor, or the Mayor's designee, made under this Subsection (7) may be appealed to a hearing examiner to be appointed by the Mayor in accordance with Provo City Code 3.06.010.

(87) A booted vehicle may not be removed from the site sooner than two (2) hours after the time of booting.

(98) Except as otherwise provided in this Section, a towing or parking enforcement ~~or tow truck service~~ business conducting a towing or parking enforcement operation pursuant to this Section shall release the subject vehicle to its owner or agent immediately upon payment of applicable fees authorized by this section or by Rule R909-19, Utah Administrative Code, as amended.

(a) The towing or parking enforcement ~~or towing~~ business shall accept payment offered in cash or by major credit card, but 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).

(b) Every towing or parking enforcement ~~and towing~~ business providing services pursuant to this Subsection shall post in a conspicuous place upon its business premises a true copy of this Section.

(c) A parking enforcement business shall be limited to a maximum booting fee, per vehicle, of fifty per cent (50%) of the maximum towing rate for non-consent tows as provided in Rule R909-19-12, Utah Administrative Code, and may not charge any other fee for a parking enforcement operation. If an immobilized vehicle is towed, no fee of any kind relating to booting may be charged in addition to towing, storage, or other applicable fees. If a vehicle is towed or booted unlawfully, no fee shall be payable.

(d) (i) If the vehicle owner or agent arrives at the vehicle before the towing or parking enforcement ~~operator or towing business~~ has mechanically connected the vehicle to a tow truck or booting device ~~or a tow truck~~, the towing or parking enforcement ~~operator or towing business~~ shall:

(A) not continue to tow or boot the vehicle, and

(B) not be entitled to tow or boot the vehicle or to charge any fee whatsoever if the vehicle is promptly removed from the premises.

(ii) If a tow truck is mechanically connected to a vehicle, the tow truck shall be in possession of the vehicle. If the vehicle owner or agent attempts to retrieve the vehicle before the vehicle is removed from the property, the maximum towing or parking enforcement fee shall not exceed fifty percent (50%) of the posted rate schedule.

(e) No parking enforcement fee, other than fees authorized by this subsection, shall be charged as a condition of releasing a booted vehicle.

(f) A vehicle shall be released immediately upon payment of any required fees authorized by this section.

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

(110) Any person acting to remove or otherwise disturb any 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, owner's agent, operator or driver of a vehicle, or each of them, for consequential and incidental damages arising from any interference with the ownership or use of such vehicle which does not comply with the requirements of this section.

(124) (a) It shall be unlawful to tamper with or remove from a vehicle a lawfully installed boot without the authorization of the towing or parking enforcement operator who applied the boot, which authorization shall not be withheld in violation of state or local law.

(b) It shall be unlawful to disconnect a vehicle mechanically connected to a tow truck without the authorization of the towing or parking enforcement operator lawfully in possession of the vehicle, which authorization shall not be withheld in violation of state or local law.

(c) Violation of this subsection or any subsection or provision of this Section 9.32.1.140 is a Class B misdemeanor.

(132) In addition to any other penalty, a civil action for damages or to abate a violation of this Chapter may be brought by any aggrieved person.

(a) A person who authorizes, tows, or immobilizes a vehicle from private property in violation of the provisions of this Section is liable in a civil action for a penalty of up to five hundred dollars (\$500.00) as the court may determine. A civil action under this subsection may not be commenced later than one hundred eighty (180) days after occurrence of the violation.

(b) Lack of compliance with the requirements of Subsections (5), (6) and ~~(67)~~ of this Section shall be prima facie evidence of a violation of this Section.

(c) The remedies provided for in this Subsection shall be cumulative and not exclusive.

(d) Nothing in this Section shall preclude prosecution of any crime, including but not limited to, criminal mischief, fraud, and theft.

(143) An entity which employs state-certified law enforcement officers may conduct towing and parking enforcement ~~operations and towing services~~ on the entity's property using the entity's own equipment and personnel so long as the entity certifies annually in writing to the Provo City business license office that:

(a) restricted parking lots on the entity's property are marked and posted in a manner that notifies parking lot users, in summary form, of parking restrictions and penalties for improper parking;

(b) rules which govern parking lot use, including parking restrictions, parking fees, and penalties for improper parking, are regularly distributed to occupants and users of the property, and made readily available to visitors to the property;

- (c) such rules include appeal and dispute resolution provisions;
- (d) a person is available twenty-four (24) hours per day who can release an immobilized vehicle; and,
- (e) a notice is affixed to each immobilized vehicle indicating how an immobilized vehicle may be released.

(154) Any vehicle located within the City which is subject to non-consensual towing shall be towed to a lot that:

- (a) is located within City limits, and
- (b) complies with state law.

PART II:

A. If a provision of this ordinance conflicts with a provision of a previously adopted ordinance, this ordinance shall prevail.

B. This ordinance and its various sections, clauses and paragraphs are hereby declared to be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the remainder of the ordinance shall not be affected thereby.

C. The Municipal Council hereby directs that the official copy of the Provo City Code be updated to reflect the provisions enacted by this ordinance.

D. Except as otherwise provided in this paragraph, this ordinance shall take effect immediately upon being posted or published as required by law. Notwithstanding the foregoing, the amendments to 9.31.110(6)(b)(i), 6(c)(ii), and (7) contained herein shall take effect on February 1, 2014. Furthermore, the amendments to 9.31.110(6)(b), 6(c)(ii), and (7) contained herein shall not apply to any towing company that, on or before January 31, 2014, has submitted an application to be designated as a Provo City Certified Towing and Parking Enforcement Business until either the application has been granted or denied by the Mayor's Office or until May 1, 2014, whichever is earlier.

END OF ORDINANCE.