

FILED

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CITY CLERK

**GENERAL ORDINANCE NO. 22, 2012  
As Amended**

AN ORDINANCE TO AMEND THE *TERRE HAUTE CITY CODE*, CHAPTER 4, TO INCLUDE PROVISIONS TO LICENSE AND REGULATE NON-CONSENSUAL TOW BUSINESSES.

WHEREAS, it is the desire of the Common Council for the City of Terre Haute to adopt an ordinance to license and regulate the conduct of tow businesses that engage in the non-consensual towing of vehicles from parking lots, and to place requirements and restrictions on the manner in which such non-consensual towing may be performed.

THEREFORE, BE IT ORDAINED by the Common Council for the City of Terre Haute, Indiana as follows:

SECTION 1. That *Terre Haute City Code* Chapter 4, is hereby amended by the insertion of Article 23 as follows:

**ARTICLE 23. NON-CONSENSUAL TOW BUSINESSES.**

**Sec. 4-340 Purpose.**

The purpose of this Article is to protect the public from unconscionable practices associated with non-consensual towing of vehicles from parking lots, by means of the licensure of businesses engaged in this activity together with restrictions and requirements on the manner in which non-consensual towing may be performed.

**Sec. 4-341 Authority To Promulgate Regulations.**

The Board is authorized to make and promulgate additional reasonable and necessary regulations to carry out the provisions of this Article.

**Sec. 4-342 Application.**

The provisions of this Article apply only to non-consensual tows that originate within the City limits.

**Sec. 4-343 Definitions.**

As used in this Article, the following terms shall have the meanings ascribed to them in this Section unless otherwise indicated clearly by text.

- a. Board. City of Terre Haute Board of Public Works and Safety.

b.     Non-consensual Tow. The towing, by a tow business or tow truck operator, of a vehicle trespassing on a parking lot, made at the request of the property owner or the owner's authorized agent, without prior consent or authorization by the vehicle's owner.

Notwithstanding the foregoing, the following are not included within the definition of a non-consensual tow:

- (1)     A tow initiated from a parking lot, as a result of a vehicular accident or law enforcement investigation, by a representative of the City or by any law enforcement officer; or
- (2)     A tow initiated from a parking lot by a college or university, provided that the college or university is accredited by the North Central Association, and further provided that the governing board of the college or university has adopted regulations applicable to vehicular parking on its parking lots.

c.     Parking Lot. Includes:

- (1)     A vehicular parking lot built for, or provided to, patrons or staff of a business or other organization;
- (2)     A parking area as defined in Sec.10-92 of this *Code*, also to include non-surfaced areas designated for emergency or overflow parking;
- (3)     A vehicular parking lot provided for tenants of multi-family dwellings; or
- (4)     Vehicular parking provided by the property owner of a vacant or undeveloped lot.

d.     Property Owner. A person who exercises dominion and control over real property, including, but not limited to, the legal title holder, lessee, resident manager, property manager, or other agent who has legal authority to bind the owner.

e.     Tow or Towing. The act of attaching, lifting, pulling, or dragging any vehicle behind or on a tow truck that is doing such attaching, lifting, pulling, or dragging.

f.     Tow Business. A person or commercial entity that is engaged in, or offers, the service of towing or otherwise removing vehicles from one place to another by the use of a tow truck.

g.     Tow Business License. A license issued by the Board to a business engaged in non-consensual towing of vehicles which originate within the City limits.

h.     Tow Truck or Tow Vehicle. Any motor vehicle used for the purpose of towing or removal of vehicles.

i.     Tow Truck Operator. The driver or operator of any tow truck.

j.        **Vehicle.** A machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and shall include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, buggies, wagons, and watercraft of any type designed to transport one or more persons.

k.        **Vehicle Owner.** The vehicle's registered owner, an authorized agent of the registered owner, or the driver of the vehicle.

**Sec. 4-344      License Required; Exception; Transfer; Fee.**

a.        It shall be unlawful for a tow business that performs non-consensual towing to perform a towing service originating within the City limits without first having been issued a license by the Board. The requirement for this license is made without regard to whether or not the towing business is physically headquartered within the corporate limits of the City.

b.        Notwithstanding the provisions of subsection a. of this Section, a tow truck business that merely transports a vehicle through the City is exempt from this licensing requirement, provided that the tow does not originate within the City limits.

c.        A tow business license issued pursuant to this Article is not transferable.

d.        The annual fee for a tow business license shall be \$150.00 plus an annual fee of \$25.00 for every two (2) two operators over two (2) employed or contracted by the tow business.

**Sec. 4-345      Emergency Waiver.**

In the event of an emergency that requires the utilization of a greater number of tow businesses than are licensed, the Mayor by executive order may waive all tow business license requirements for a period of time not to exceed seven (7) days during which such emergency exists.

**Sec. 4-346      License application.**

a.        *In general.* Upon application for a tow business license, a tow business shall provide the following information to the Board:

- (1)      The name of the applicant, address, social security number, and all aliases and business names used by the applicant to conduct business;
- (2)      The tow business's taxpayer identification number;
- (3)      The telephone number, address, and e-mail address of the primary place of business;

- (4) The address, telephone number, and hours of operation of any vehicle storage facility where towed vehicles will be towed and stored;
- (5) A telephone number where the principal owner(s) of the tow business can be reached in the event of an emergency;
- (6) A copy of the vehicle registration for all tow vehicles owned, operated or otherwise controlled by the tow business; and
- (7) The name of each person employed or contracted by the tow business as a tow truck operator.

b. *Insurance.* Upon application for the tow business license, a tow business shall provide proof of insurance, as evidenced by a certificate of insurance that shows the following insurance coverage:

- (1) General liability insurance ("occurrence" based policy): Coverage shall not be less than Seven Hundred Thousand Dollars (\$700,000) for injury or death for each person per incident and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person per incident;
- (2) Automotive liability: Coverage shall not be less than Seven Hundred Thousand Dollars (\$700,000) for injury or death for each person per incident and Two Million Dollars (\$2,000,000) for injury or death to more than one (1) person per incident;
- (3) Garage keeper's insurance: Fifty Thousand Dollars (\$50,000) for damage to vehicles or loss of personal property from vehicles towed or stored; and
- (4) Worker's compensation insurance that meets Indiana statutory requirements.

c. The Board must be provided notice in the event of cancellation or non-renewal of any of the above policies of insurance. The Board must also be provided notice regarding any changes, amendments, or endorsements in the above policies. A copy of all new or amended policies must be provided to the Board within fifteen (15) days of the issuance of any new policies or amendments to any existing policies.

d. *Tow truck operators.* Upon application for the tow business license, a tow business shall provide a copy of the state-issued valid driver's license of each person employed or contracted by the tow business to work as a tow truck operator. No tow truck operator may commence non-consensual towing of vehicle until such operator has made application to and received a license from the Board.

e. *Vehicle storage facilities.* The issuance of a tow business license is contingent upon the Board approval of any proof submitted by the tow business that its vehicle storage facilities are secure and compliant with any and all zoning regulations. All towed vehicles must

be stored within the confines of the licensed storage facility. The parking of towed vehicles on public streets or alleys or on private parking lots not identified as the tow operator business storage lot is strictly prohibited.

f. *Amendment.* In the event that information provided to the Board under this Article changes during the term of the license, the tow business shall give written notice of such changes to the Board within fifteen (15) days of the occurrence of the change.

#### **Sec. 4-347 Tow Truck Operator Identification.**

Upon the issuance of a tow business license, the Board shall issue identification to each of the licensee's tow truck operators that have been approved by the Board. Such identification shall be in a form approved by the Board, and must be in the possession of the tow truck operator at all times while operating a tow truck, in addition to any required identification issued by state or federal rules and regulations. In the event that a tow truck operator's state-issued driver's license is suspended or revoked, the Board issued identification must be surrendered immediately to the Board.

#### **Sec. 4-348 Tow Business Fees & Schedule.**

a. It shall be unlawful to charge any fee associated in any way with the towing and storage of a vehicle under this Article, except as follows:

- (1) For the towing of a vehicle, the maximum fee shall be limited to no more than twenty five percent (25%) more than the fee permitted for tow rotation contractors;
- (2) For the storage of a towed vehicle, the maximum fee for each twenty-four (24) hour period of storage shall be limited to no more than twenty five percent (25%) more than the fee permitted for City tow rotation contractors; provided, however, that a storage fee shall be accrued on a twenty-four (24) hour basis from the time the towed vehicle is delivered to the tow storage facility; or
- (3) A tow business is permitted to require proof of insurance for the vehicle if the owner wishes to drive the vehicle from the storage facility. Tow business is prohibited from denying release of the vehicle based on proof of insurance but may charge a set out fee not to exceed Twenty Five Dollars (\$25.00) for removing the vehicle from the storage facility.

b. This fee limitation does not restrict fees being charged for other services that may be requested by the vehicle's owner. Upon request, a tow truck operator shall present a comprehensive schedule of fees for examination by the vehicle owner, including the fees associated with the services requested.

c. The Board may review and adjust the fee limitations in this Section by the promulgation of a regulation.

d. Notwithstanding the provisions of Subsection a. of this Section, the fee limitation does not apply to a towed vehicle having a gross weight of 11,000 lbs. or greater.

e. If it is determined that a vehicle is towed in violation of this Article, towing and storage fees which have been paid may be recovered by the vehicle's owner. Liability for damage to a towed vehicle is not limited by the provisions of this Article.

f. It is unlawful for a person, including a tow business or tow truck operator to offer, pay, or rebate money or other valuable consideration to the owner of a parking lot for the authority to tow vehicles from that owner's parking lot.

g. When the vehicle's owner is present and desires to remove the vehicle from a parking lot before it is towed, the vehicle shall not be towed nor a fee charged; however, if a tow truck is attached to the offending vehicle and at least two (2) tires have been lifted off the ground at the time the vehicle's owner arrives, the vehicle shall not be towed but shall be released to the owner upon receipted payment of a reasonable fee set forth in the schedule of fees submitted to the Board, not to exceed one half of the regular towing fee in lieu of towing the vehicle.

#### **Sec. 4-349 Display of Business Name and Proof of Licensure.**

A tow business licensee shall clearly display the name, address, and telephone number of the business on each of its tow trucks. Each tow truck must also clearly display, in a size and manner equivalent to the DOT marking requirements, the tow operator business' City-issued permit number on each vehicle authorized to conduct non-consensual tows. Tow business operator must comply with any and all Federal DOT or State of Indiana requirements relating to display of information on the tow truck vehicle.

#### **Sec. 4-350 Tows from a Parking Lot.**

a. It shall be unlawful for a licensed tow business or tow truck operator to tow a vehicle from a parking lot unless the parking lot owner or the owner's authorized agent, present at the time of the tow, signs a contemporaneous specific written authorization for the tow of a vehicle.

b. The written authorization shall include the following information:

- (1) The make, model, year, vehicle identification number, and license plate number of the vehicle to be towed;
- (2) The address of the parking lot from which the vehicle is to be towed;
- (3) The signature and printed name of the person authorizing the tow;

- (4) A written statement indicating the date and time of the authorization, that the person authorizing the tow is the owner of the parking lot or the owner's authorized agent;
- (5) A written statement describing why the vehicle was subject to tow; the statement shall describe how the vehicle was parked in a manner inconsistent with posted instructions; how the vehicle interfered physically with the conduct of normal business operations of the person who owns or controls the parking lot; or how the vehicle posed a threat to the safety or security of persons or property; and
- (6) Any other information deemed necessary by the Board.

c. For purposes of subsection a. of this Section, a tow business owner or employee, or tow truck operator, may not act as the parking lot owner's authorized agent.

d. Notwithstanding the provisions of subsection c. of this Section, a tow business owner or employee, or tow truck operator, may act as the parking lot owner's authorized agent if:

- (1) The parking lot is for multi-family rental dwelling which provides permit parking twenty-four (24) hours a day, seven (7) days a week for its tenants or guests;
- (2) Parking permits, to be placed in vehicles, are provided to tenants at lease signing; a tow business shall obtain an affidavit from the property owner so stating, and it shall be kept pursuant to the provisions of Sec. 4-355.
- (3) The parking permits are made to be easily identifiable and observable from outside the vehicle and;
- (4) Video or photographic documentation to attest to the propriety of the tow is made and kept as part of the authorization required under subsection b. above. Such documentation shall include time and date stamped photographs of the vehicle depicting the manner in which it is illegally parked. A photograph shall be taken and maintained depicting the license plate. Such documentation must be stored and maintained in a digital format that is accessible upon demand of law enforcement tasked with enforcement of this Article.

#### **Sec. 4-351 Signs Required To Be Posted on Parking Lot; Exception.**

a. It shall be unlawful for any tow business or tow truck operator to tow a vehicle unless the parking lot in which the vehicle is parked has signage, posted in plain view at each entrance and exit, and that such sign has been permanently installed for a minimum of twenty-four (24) hours prior to any vehicle being removed. The Board shall prepare and prescribe, and if necessary amend from time to time, additional specifications for the construction, size, placement, content, lettering, and number of required signs.

- if:
- b. Notwithstanding the provisions of Subsection a., a vehicle may be lawfully towed
- (1) The vehicle's owner is notified that the vehicle is unauthorized to park and is subject to being towed at the expense of vehicle's owner;
  - (2) A vehicle is parked in such a manner that it restricts normal operations of a business during its business hours; or
  - (3) A vehicle is otherwise unlawfully parked pursuant to this Code, state statute, or other law.

**Sec. 4-352 Additional Requirements.**

a. A tow business and a tow truck operator must comply with all applicable federal, state, and local law. It shall be unlawful to commit an act in violation of the provisions of this Section.

b. The practice of booting a vehicle to hold it for towing is prohibited.

c. All vehicles that are towed under this Article shall be towed directly and continuously to a vehicle storage facility leased or owned by the tow business, and shall not be placed or kept in any temporary holding area.

d. All vehicles towed must be stored within the county or within a fifteen (15) mile radius of where the tow originated.

e. The vehicle shall be released promptly upon payment of fees.

f. A tow business and tow truck operator shall allow the vehicle's owner a reasonable amount of time to remove or retrieve personal property or possessions that are not affixed, from a vehicle. The retrieval of possessions may be at the scene of the tow or at the vehicle storage facility prior to payment. A tow business or tow truck operator is prohibited from charging a fee for this retrieval or to refuse to allow retrieval of such possessions. The retrieval of personal items not retrieved at the time of the tow may be limited to normal business hours with the exception of emergencies in which items must be immediately retrieved (i.e. medications). Tow business may charge a fee, in compliance with the fee schedule provided to the Board, for such retrievals that occur outside normal business hours.

g. A release or waiver of liability of any kind is prohibited as a condition of release of the vehicle. A tow business may require proof of identification of the person retrieving a vehicle. The person retrieving the vehicle is not required to be the owner of the vehicle.

h. Upon completion of a non-consensual tow, tow operator must notify Vigo County Central Dispatch, within sixty (60) minutes of removal of the vehicle, and provide the following information regarding the non-consensual tow:



- (1) Exact location of vehicle at time of tow;
- (2) Specific reason for tow;
- (3) Name of Company/Business requesting tow;
- (4) Name and telephone number of individual authorizing tow;
- (5) Vehicle make, model, color, & Vehicle Identification Number; and
- (6) License plate number and state.

**Sec. 4-355 Vehicle Storage Facility Requirements; Method of Payment; Receipt.**

a. It shall be a violation of this Code to commit any act within the City limits that is not in compliance with the provisions of this Section.

b. A tow business that tows a vehicle under this Article shall provide:

- (1) At the vehicle storage facility either an attendant who is on site twenty-four (24) hours per day, seven (7) days per week excluding holidays, to return any vehicle claimed by the vehicle's owner, upon the payment of towing and storage charges; or
- (2) A conspicuously located and well lighted sign at the vehicle storage facility that states the telephone number where the owner, manager, or attendant of the vehicle storage facility may be reached at any time twenty-four (24) hours per day, seven (7) days per week, excluding holidays, so that a towed vehicle may be claimed in a minimum amount of time, not to exceed sixty (60) minutes, except between the hours of 12:00 a.m. and 7:00 a.m.

c. A tow business that tows a vehicle twenty-four (24) hours before a holiday or during a holiday must adhere to the provisions of this section to allow a vehicle to be retrieved on a holiday.

~~d. Storage fees shall not accrue for any day in which a storage facility is not open for vehicle redemption.~~ (9)

e. A tow business that tows a vehicle under this Article shall accept payment for towing and storage fees by any of the following forms of payment:

- (1) Cash in United States currency;
- (2) Traveler's checks or money orders payable in United States currency; or
- (3) Debit cards and all major credit cards including Visa, MasterCard, and Discover. An additional charge shall not be imposed for the use of a debit or credit card.

f. Upon payment of authorized towing and storage fees, a tow business that tows a vehicle under this Article shall provide a receipt to the vehicle's owner that contains the following information:

- (1) The name and address of the tow service business;
- (2) The address from which the vehicle was towed;
- (3) The date and time that the vehicle was towed;
- (4) The date and time that the vehicle entered the facility at which it was placed for storage; and
- (5) An itemized listing of all fees that are being charged.

**Sec. 4-356 Records Required To Be Kept.**

a. A tow business shall be required to submit information, in a format acceptable to Board, pertaining to towed vehicles pursuant to regulations established under this Article.

b. A tow business shall maintain a copy of any agreement with a parking lot owner that authorizes the towing of vehicles.

c. A tow business shall maintain a legible record, in a written or electronic form approved by the Board, including the photographs required by Sec. 4-350 d.(4) which shall show the following information for each vehicle that it towed under the provisions of this Article:

- (1) The written authorization for the tow described in Sec. 4-350;
- (2) The date and time that the vehicle was towed;
- (3) The date and time that the vehicle entered the facility at which it was placed for storage; and
- (4) The towing and storage fees actually charged.

d. Records under Subsection b. and c. above shall be maintained for a period of two (2) years from the date of each tow, and shall be made available for inspection by the City during normal business hours. Such records must be maintained in a computer format readily accessible upon request from designated enforcement agents.

**Sec. 4-357 Suspension or Revocation of License.**

a. The City may suspend or revoke an issued license for any violation of the provisions of this Article. In addition, the City may suspend or revoke an issued license if any of the following conditions are determined or found:

- (1) The tow business owner or a tow truck operator made any materially false statement of fact on his application;

(2) The tow truck business or tow truck operator acted fraudulently or with deceit in his relationship with other persons, partnerships or corporations;

b. In the event a license is suspended or revoked for a violation stated herein, no refund of license fee shall be made to tow truck business owner.

c. If a tow business license or tow operator license is revoked by the Board, the applicant must wait one (1) year before reapplication for said license.

**Sec. 4-358 Appeal; Denial, Revocation or Suspension of License.**

a. Any person who is denied a license or whose license is suspended or revoked may seek reconsideration of the denial, suspension, or revocation by the full Board within ten (10) days of the date of the denial, suspension, or revocation of the license.

b. All requests for appeals must be in writing and addressed to the Board. The Board shall set the appeal for hearing within thirty (30) days of the receipt of the written request.

**Sec. 4-359 Enforcement and Penalties.**

a. The Board designates officers of the City of Terre Haute Police Department and City Code Enforcement Officers to inspect and enforce the provisions of this Article.

b. Each licensed tow business, tow business records related to non-consensual tows, and each licensed operator's vehicle is subject to random law enforcement inspection to ensure compliance with the provisions contained within this Article and any other applicable federal, state, or local regulations

c. Any license holder found to be in violation of any provision of this Article shall, in addition to the possible suspension or revocation of the license, be subject to a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) for each separate violation.

d. The fine(s) imposed for violation(s) of the provisions of this Article, shall be deposited in the Police Continuing Education Fund (See: *Terre Haute City Code* Sec. 2-118).

SECTION 2. That *Terre Haute City Code* Chapter 2, is hereby amended by the insertion of the underlined text as follows:

**Sec. 2-118 Police Continuing Education Fund.**

a. There is established a fund known as the Law Enforcement Continuing Education Fund for the purpose of purchases made by the Terre Haute City Police Department for equipment, supplies, continuing education, and law enforcement training for the Police Department.

b. This fund shall be comprised of fees collected by the Terre Haute City Police Department from the following activities:

1. Vehicle inspections;
2. Accident reports;
3. Hand gun licenses and transfer; and
4. Law Enforcement Education (LEE) fees from city court cases. (Gen. Ord. No. 2, 1996, 8-8-96)
5. Moped Registration Fees. See Sec. 8-101. (Gen. Ord. No. 9, 2011, 6-9-11)
6. Tow Release Fees. See Sec. 6-184 (Gen. Ord. No. 2, 2012)
7. Fine(s) resulting from violation(s) of Chapter 4, Article 23, Non-consensual tow business.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

WHEREAS, this Ordinance shall be in effect <sup>forty-five (45) days (42)</sup> ~~thirty (30)~~ days from and after its passage by the Common Council of Terre Haute, Indiana and its approval by the Mayor and publication as required by law.

Introduced by: John Mullican John Mullican, Councilman  
Passed in open Council this 10<sup>th</sup> day of January, 2013.  
Norman Loudermilk, Norman Loudermilk, President

ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk  
Presented by me to the Mayor this 17<sup>th</sup> day of January, 2013.

Charles P. Hanley Charles P. Hanley, City Clerk  
Approved by me, the Mayor, this 11<sup>th</sup> day of JANUARY, 2013.

Duke A. Bennett Duke A. Bennett, Mayor  
ATTEST: Charles P. Hanley Charles P. Hanley, City Clerk