



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE: January 15, 2019**

**AGENDA TITLE**

Fourth reading and consideration of a motion to adopt Ordinance 8295 amending Chapter 7-7, "Towing and Impoundment," B.R.C. 1981, to adopt additional regulations on nonconsensual towing and setting forth related details.

**PRESENTERS**

Jane S. Brautigam, City Manager  
Thomas A. Carr, City Attorney

**EXECUTIVE SUMMARY**

Over the last several months council members have heard concerns from the community regarding towing. The ability to tow illegally parked vehicles is an important means to make sure that limited parking is available for those who need it. Nevertheless, when a vehicle is towed it can have a significant financial impact on the owner. Towing and storage fees can impose a substantial burden on some of the most vulnerable families in the community. Council asked staff to draft an ordinance that would provide some protection. Staff learned that the state already regulates in many of the areas in which council expressed an interest in adopting new regulations. At the initial second reading on November 8, 2018 council considered potential amendments. Council directed the city attorney to draft a revised version of the ordinance to include amendments for consideration at a continued second reading. On December 4, 2018 at the continued second reading, council passed the proposed ordinance with amendments. On December 18, 2018 at third reading, council amended the ordinance. Fourth reading is necessary to adopt the ordinance.

## **STAFF RECOMMENDATION**

### **Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt on fourth reading, Ordinance 8295 amending Chapter 7-7, "Towing and Impoundment," B.R.C. 1981, to adopt additional regulations on nonconsensual towing and setting forth related details.

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

- Economic – Parking enforcement promotes economic vitality by providing parking for workers and customers for city businesses.
- Environmental – Lack of available parking can cause drivers to circulate looking for parking, increasing the carbon impact from their driving.
- Social – Unfair towing practices can have a significant financial impact on vulnerable members of the community. Regulating those activities as proposed could limit those effects.

## **OTHER IMPACTS**

- Fiscal – No additional resources are expected at this time. If enforcement of the ordinance requires extensive police resources, this may need to be addressed in future budgets.
- Staff time – Staff time is expected to be included in existing work plans.

## **BOARD AND COMMISSION FEEDBACK**

None.

## **PUBLIC FEEDBACK**

Council considered the proposed ordinance at a public hearing on November 8, 2018 at which three people spoke. Staff and council members have met with interested members of the industry and the community.

## **BACKGROUND**

Council directed the city attorney to prepare a revised ordinance including amendments, which council adopted on second reading. The amendments were as follows:

1. Remove the one-hour rule.

2. Phase in a requirement for signs in English and Spanish with a symbol.
3. Allow for the release of tools of the trade.
4. Eliminate the trust requirement for proceeds of sale.
5. Eliminate the 10-mile towing limit.
6. Add a provision for reimbursement of mileage for any tow longer than 12 miles.
7. Require notice to the owners of towed vehicles within 72 hours.

On December 4, 2018 at the continued second reading, council considered additional proposed amendments. Council amended the ordinance to include the following provisions:

1. A requirement that tow companies return any personal property to its owner.
2. Eliminate the requirement that signs include Spanish language.
3. Require all signs on residential properties with more than 5 tows a year include symbols by April 1, 2019 unless there is a change of ownership, external remodel or new construction.

On December 18, 2018 at third reading, council considered an additional proposed amendment. Council amended the ordinance passed on second reading to include the following provision:

1. Include a time requirement for the required notification that towing companies are required to make to the police department to be within 30 minutes of any vehicle towed without the owner's consent.

### **Next Steps**

During council's consideration of the proposed ordinance, several ideas arose that council considered worthy of additional work to develop for a potential future ordinance. Council directed the city attorney to explore these ideas and potentially bring back a new ordinance in 2019. The ideas to be explored are as follows:

1. Prowling tow trucks.

Both the proposed ordinance and state law require that the property owner provide authorization to tow a vehicle. Under state law a property owner can designate a tow company as the owner's agent. Rule 6508(a)(I). Thus, the towing company can authorize itself to tow a vehicle as the agent for the property owner. This provides a level of convenience for property owners, but also results in towing companies making the decision whether to tow.

2. Booting.

Temporarily immobilizing a vehicle can impose a similar impact to towing. Council would like to explore regulating this activity. The Town of Avon currently regulates booting. Avon Municipal Code Chapter 5-12.

### 3. Licensing of towing companies by Boulder.

Local licensing would allow the city to have more oversight over towing company activities. It would also provide an added incentive for compliance if license revocation or suspension is considered as a sanction for violation of the city's towing regulations. The City and County of Denver licenses towing companies if they are not licensed by the PUC. Denver Municipal Code § 55-186. The Town of Avon licenses towing companies. Avon Municipal Code § 5.12.020.

### 4. Addressing financial hardship.

Council Member Young has asked the city attorney to explore ways to address the challenge faced by members of our community who simply do not have the funds to retrieve a vehicle. This could include requiring release on proof of hardship.

## **ATTACHMENTS**

Attachment A – Proposed Ordinance 8295

ORDINANCE 8295

AN ORDINANCE AMENDING CHAPTER 7-7, "TOWING AND IMPOUNDMENT," B.R.C. 1981, TO ADOPT ADDITIONAL REGULATIONS ON NONCONSENSUAL TOWING AND SETTING FORTH RELATED DETAILS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. Section 7-7-5, "Private Towing and Impounding of Vehicle Parked Without Authorization on Private Property," B.R.C. 1981, is amended to read as follows:

**7-7-5. - Private Towing and Impounding of Vehicle Parked Without Authorization on Private Property.**

(a) The owner or lessee of real property or an agent authorized by the owner or lessee may cause any motor vehicle, parked on such property without the permission of the owner, lessee or occupant of the property, to be removed or impounded by a towing carrier, but, except on property used as a single-family residence, only if any applicable requirements of subsection 7-6-14(b), B.R.C. 1981, and subsection (b) of this section have been met. It is not necessary that a citation be issued for violation of Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, for a vehicle to be removed or impounded pursuant to this section.

(b) Except on property used as a single-family residence, the owner, lessee or occupant of real property or an agent thereof, prior to causing the removal and impoundment of a motor vehicle from any area set aside for motor vehicle parking on such person's property, shall:

(1) Provide clear notice on signs or pavement markings meeting the requirements of paragraph 7-6-14(b)(3), B.R.C. 1981, that unauthorized vehicles will be towed away at the owner's expense, including the name and telephone number of each towing company authorized to remove any vehicle;

(A) Provided however, after April 1, 2019, all such signs shall include a symbol depicting a tow truck towing a car as set forth in regulations adopted by the city manager; and

(B) The requirements of subsection (A) above shall not apply to commercial non-residential properties except for external remodel, change of ownership and new construction; and

(C) The requirements of subsection (A) shall not apply to residential properties unless there are more than 5 tows in any twelve-month period or there is an external remodel, change of ownership or new construction.

(2) Not receive any payment monetary or otherwise from any towing company.

- (c) A vehicle parked on private property in violation of Section 7-6-14, "Unauthorized Parking Prohibited," B.R.C. 1981, is subject to immediate towing under state law as an abandoned vehicle on private property if the provisions of subsection (b) of this section are also met. Furthermore, any motor vehicle left unattended on private property for a period of twenty-four hours or longer without the consent of the owner or lessee of such property or the owner's or lessee's legally authorized agent is also subject to immediate towing under state law as an abandoned vehicle on private property.
- (d) Vehicles towed pursuant to this section are privately impounded. All actions by the towing carrier and others shall be in accordance with and pursuant to the state statutes and regulations governing private tows of abandoned vehicles and pursuant to Section 7-7-11, "Towing Regulations," B.R.C. 1981.
- (e) Disputes concerning the propriety of impoundments under this section shall be settled by the parties involved in the civil courts, and the city shall not be a proper party defendant in any such suit.

Section 2. A new Section 7-7-11, "Towing Regulations," B.R.C. 1981, is added as follows:

**7-7-11. – Towing Regulations.**

- (a) The provisions herein are intended to compliment and not supersede the provision of state law and regulations governing towing. If there is a conflict between state law and the provisions in this section, state law will control.
- (b) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner appears in person to retrieve the motor vehicle after a tow truck is present and either backed up in alignment with such motor vehicle or tow equipment has come into contact with such motor vehicle, but before its removal from the property the operator shall release the vehicle without charge.
- (c) A towing carrier shall not tow any motor vehicle, unless one of the following conditions is met:
- (1) The towing carrier is directed to perform a tow by a law enforcement officer;
  - (2) The towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of a motor vehicle; or
  - (3) The towing carrier is requested to perform a tow upon the property owner's authorization, in form sufficient under state law.
- (d) A towing company shall not require cash payment for release of a vehicle.
- (e) If a storage facility is not open during normal business hours or a representative does not respond within one hour to a request outside of normal business hours, then no towing or storage fee may be charged.
- (f) The gate fee, or maximum hourly charge for releasing a vehicle after normal business hours, shall not exceed the amount permitted by state law or one-half of the state-permitted tow rate, whichever is less.

- 1 (g) If a vehicle is towed for storage more than twelve miles from where the vehicle was parked  
2 the towing company shall apply a credit to any invoice in an amount equal to the Internal  
3 Revenue Service Mileage Rate multiplied by the miles between the place where the vehicle  
4 was parked and the place of storage.  
5 (h) No towing company shall operate in the city without a valid motor carrier permit.  
6 (i) When towing a vehicle, the operator shall record the reason for the tow, the location, the time  
7 that the vehicle was identified as being parked illegally, the time of the tow, and the make and  
8 model of the vehicle.  
9 (j) When towing a vehicle, the operator shall photograph the vehicle in a manner that accurately  
10 represents the vehicle's condition prior to towing.  
11 (k) An operator shall provide notice via certified mail to the registered owner of any towed  
12 vehicle within the later of 72 hours of the initiation of the tow or the next business day after  
13 the initiation of the tow.  
14 (l) An operator shall provide notice to the Boulder Police Department within 30 minutes of any  
15 vehicle towed without the owner's consent. Such notice shall include the date, time and place  
16 of the tow as well as the make, model and license plate of the vehicle.  
17 (m) Whether on the private property where the tow originates or at the towing carrier's storage  
18 lot, a towing company shall not refuse to relinquish personal property. The towing company  
19 shall immediately relinquish such items upon demand, without requiring payment and without  
20 additional charge.

21 Section 3. This ordinance is necessary to protect the public health, safety, and welfare of  
22 the residents of the city, and covers matters of local concern.

23 Section 4. The city council deems it appropriate that this ordinance be published by title  
24 only and orders that copies of this ordinance be made available in the office of the city clerk for  
25 public inspection and acquisition.

1 INTRODUCTION, READ ON FIRST READING, AMENDED, AND ORDERED  
2 PUBLISHED BY TITLE ONLY this 16<sup>th</sup> day of October 2018.

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4 \_\_\_\_\_  
Suzanne Jones  
Mayor

5  
6 Attest:

7 \_\_\_\_\_  
Lynnette Beck  
City Clerk

9 READ ON SECOND READING, AMENDED AND PASSED this 4<sup>th</sup> day of December  
10 2018.

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12 \_\_\_\_\_  
Suzanne Jones  
Mayor

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14 Attest:

15 \_\_\_\_\_  
Lynnette Beck  
City Clerk

17 READ ON THIRD READING, AMENDED AND PASSED this 18<sup>th</sup> day of December  
18 2018.

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20 \_\_\_\_\_  
Suzanne Jones  
Mayor

21  
22 Attest:

23 \_\_\_\_\_  
Lynnette Beck  
City Clerk



Suzanne Jones  
Mayor

Lynnette Beck  
City Clerk