

Offered by Councilors Liz Breadon and Lydia Edwards



## CITY OF BOSTON IN CITY COUNCIL

### ORDINANCE REGULATING PREDATORY TOWING PRACTICES AND ESTABLISHING A TOWING BILL OF RIGHTS

- WHEREAS,** According to data by the Center on Budget and Policy Priorities, one-third of U.S. adults report difficulty amid the COVID-19 pandemic of covering everyday costs such as food, rent, or car payments, and studies conducted by consumer financial service agencies have found that just 39% of U.S. adults could afford a \$1,000 unexpected expense; *and,*
- WHEREAS,** Losing a car, even temporarily, can have devastating impacts on an individual and their family’s livelihood and economic stability, transportation and access to work, education, healthcare, and social services – particularly for residents displaced and forced by gentrification to move further from urban centers with reliable public transit, increasing commute time and car dependency; *and,*
- WHEREAS,** Reports have shown that towing and related policies disproportionately affect low-income people, especially people of color and immigrants; *and,*
- WHEREAS,** Vehicular homelessness represents the growing population of unsheltered people, and the impact of a towed car is heightened, possibly leading to loss of shelter, possessions, mobility, and further hindering financial and social recovery – Cities across the country are piloting Safe Parking Programs to provide a safe, legal place to park for people experiencing homelessness and living out of their vehicles, and research has shown evidence that such programs are effective in leading participants to finding or being placed in housing; *and,*
- WHEREAS,** A May 2021 report of the Massachusetts Public Interest Research Group (MASSPIRG) outlines recommendations for consumer protections from predatory towing practices, raising that Massachusetts only provided 6 of the 14 common sense towing protections that should be available to consumers; *and,*
- WHEREAS,** The MASSPIRG report identified needed improvements to statewide towing law, including requiring towing companies to display their rates, accept payment via credit card, take photographs of a vehicle’s position before it is towed, provide itemized bills, reimbursement for damage to the vehicle, and guidelines for “tow-away” signs on private property; *and,*
- WHEREAS,** Predatory towing practices include charging unwarranted or excessive fees, particularly in towing vehicles from private parking lots which do not display any warnings to the vehicle owners, or overcharging consumers for towing services

provided under circumstances where the consumer has no meaningful opportunity to withhold consent; *and*,

**WHEREAS**, While the majority of tow truck operators are reputable service providers, some operators are engaged in predatory practices victimizing consumers whose vehicles are parked on public streets and private property; *and*,

**WHEREAS**, The legitimate business interests of tow truck operators and the needs of private property owners for relief from unauthorized parking must be balanced with the interest in providing appropriate protection to consumers from predatory and unlawful practices; *and*,

**WHEREAS**, The preservation of a consumer's rights and protections is in the duty and interest of the City of Boston and of the public good; ***NOW THEREFORE***

*Be it ordained by the Boston City Council as follows:*

**SECTION 1.** The City of Boston Code, Ordinances, Chapter 6 is hereby amended by adding after Section 6-6.10, the following Section 6-6.11:

Section 6-6.11 Regulation of Predatory Towing Practices and Establishment of a Towing Bill of Rights

- A. ***Purpose.*** The unexpected loss of a vehicle, even temporarily, and costs of recovery can have devastating impacts on an individual and their family's livelihood and economic stability, transportation and access to work, education, healthcare, and social services. This is especially evident particularly for residents displaced and forced by gentrification to move further from urban centers with reliable public transit, increasing commute time and car dependency. Providing common sense consumer protections from predatory towing practices and outlining standard regulations for operations of towing companies are in the public interest.
- B. ***Exemptions.*** This section shall not apply to the towing of vehicles which occurs by or at the direction of a public agency pursuant to ordinance or state law, including the involuntarily tow or transport pursuant to order of the police or other public authority, including but not limited to an accident on a public way, vehicles that have been stolen or misappropriated and their removal has been ordered by police or other public authority, including but not limited to abandoned to stolen vehicles per MGL c. 90, § 24H, or in any other situation where motor vehicles have been involuntarily towed or transported by order of police or other public authority.
- C. ***Definitions.*** For purposes of this section the following definitions apply:  
"Involuntary towing," or "Non-consensual towing" means the towing of a motor vehicle without the consent of the owner or operator of the vehicle, from the moment the unauthorized vehicle is hooked by the operator.

“Predatory tow,” means the practice of cruising, patrolling, scanning, or otherwise searching or relying on unauthorized parked cars on private property prior to an explicit request for such removal by a private property owner.

“Private property owner” means a person, company, or other business entity in lawful control of the private property, who exercises dominion and control over the real property, including but not limited to the legal titleholder, lessee, resident manager, property manager, or other agent who has legal authority to bind the owner, who is directing that the tow be conducted at the expense of the vehicle’s owner.

“Private property towing” or “Trespass towing,” means the involuntary, non-consensual towing, recovery, removal, or storage of a vehicle parked during a time or place at which such parking is not permitted, or otherwise parked without authorization, from private property or other property by a tow truck company upon order of the private property owner or person in lawful control of that property per MGL Ch. 266 § 120D. This term shall not include the towing of a motor vehicle that has been deemed abandoned on private property.

“Private tow company” means companies certified by the Transportation Oversight Division of the Massachusetts Department of Public Utilities (DPU) which regulates the involuntary towing operations of towing companies in Massachusetts.

“Storage site” means any lot, parcel, or place where a vehicle is stored or kept by a private tow company for retrieval by the vehicle owner for compensation.

“Tow” or “Towing” means to haul, carry, pull along, or otherwise transport or remove a motor vehicle, or hook a motor vehicle to begin to transport or remove such a vehicle.

“Tow truck” or “Service vehicle” means any truck or other vehicle which is used to carry, tow, or otherwise transport another vehicle and which is equipped for that purpose with a boom, winch, car carrier, or similar equipment.

“Tow truck operator,” “Relocator,” or “Operator” means any person, business, or their agent who owns, operates, drives, or controls a tow truck for the purpose of impounding motor vehicles.

“Unauthorized vehicle” means any vehicle parked or abandoned on private property without the consent of the property owner or his authorized agent, or any vehicle parked or abandoned on private property in violation of any provision of this Code.

D. Reports.

1. The copy of the same report set forth per MGL c. 159B, § 6B for every person engaged in the towing away of motor vehicles to submit to the Commonwealth of Massachusetts on or before March the thirty-first of each year a financial statement reflecting the net profits for the preceding year of such towing operation shall also be submitted to the Transportation Department of the City of Boston.
2. The Police Commissioner shall transmit annual data on reports of involuntary tows from private property owners and private tow companies to the Transportation Department on or before March the thirty-first of each year. Such data shall include

all information and details as recorded at the time of the report, including but not limited to the information per subsection E(3) of this ordinance.

3. The Transportation Department shall collect and receive such reports and data for analysis on the number of involuntary tows of vehicles from private property and shall submit an annual report on involuntary tows from private property to the City Council through the City Clerk on or before April the thirtieth of each year.

E. Standards for Private Tow Companies.

1. Prohibition of predatory practices. It shall be unlawful for any private towing company, their agent, operator, contractor, or for any other individual that provides involuntary, non-consensual trespass tow services at the request and direction of a private property owner:
  - a. To cruise, monitor, patrol, scan, search, or otherwise surveil without cause a private or commercial property for the purposes of identifying vehicles parked for unauthorized purposes, and to tow a motor vehicle parked for an unauthorized purpose from such private or commercial property without having been first requested to tow such vehicle by the owner of the property;
  - b. To give any benefit or advantage, including a pecuniary benefit, to any person for providing information about motor vehicles parked for unauthorized purposes on private or commercial property or otherwise in connection with private property towing of motor vehicles parked without authorization or during a time at which such parking is not permitted;
  - c. To fail, when so requested by the owner or operator of a vehicle subject to involuntary towing, to release a vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the vehicle owner or operator returns to the vehicle, as further described in subsection E(6) of this ordinance for Unconditional Release and Fee for Incomplete Tow.
2. Display rates schedule. Private tow companies shall print and make available to the public all authorized rates and charges for towing or for otherwise moving and storing vehicles in connection with the removal of unauthorized vehicles from private property. Such rates shall adhere to regulations for maximum charges per 220 CMR 272.00 and MGL c. 159B, § 6B, and any additional fees shall be displayed where reasonably accessible, including on “tow away” signs on private property, at storage facilities, on webpages, and on the backside of bills and receipts.

If the appropriate fees are paid within the initial 24 hours of relocation and storage, and the storage facility fails to comply or is not open during normal business hours, then only one day’s storage fee may be charged to the vehicle owner.

3. Proper notice. Pursuant to the requirements per MGL c. 266, § 120D for the removal of motor vehicles from private ways or property, proper notice of removal of a motor vehicle shall be as follows:

No vehicle in the City of Boston shall be removed from such private way or property without the consent of the owner of such vehicle unless and until the person who has

lawful control of such way or property shall have notified the police commissioner or his or her designee, that such vehicle is to be removed by calling the police department's non-emergency telephone number or tow line.

Such notification to the police commissioner of an involuntary trespass tow on private property shall be made before any vehicle shall be removed and include:

- a. The name and address of the person, property owner, company, or other business entity in lawful control of the private way or property who is directing that the tow be conducted at the expense of the vehicle's owner,
  - b. The address from which the vehicle is to be removed,
  - c. The name and address of the tow truck company and name or employee number of the tow truck operator,
  - d. The address and telephone number of the storage facility to which the vehicle is to be removed,
  - e. The vehicle description, to include registration tag and state, make, model and color,
  - f. The means by which the operator was advised that parking was prohibited on this private property; i.e. verbally or by prominently posted sign,
  - g. Whether entry was required into the vehicle's interior for the safe towing of said vehicle, and if not, the reason for that intrusion,
4. Acceptable payment methods. Private tow companies shall not solely accept cash as a method of payment, and may accept any of the following methods of payment for lawful fees and charges: United States currency, commonly recognized traveler's checks, money orders, cashier's checks, certified checks, and all commonly accepted major credit cards and debit cards.

Relocators and operators shall carry reasonably sufficient change should any fees, including incomplete tow fees as described in Subsection 6, be paid in cash.

5. Pre-tow photographs and on-board cameras.

- a. Prior to relocating any unauthorized vehicle, the relocater or operator shall take at least one photograph of the unauthorized vehicle which clearly shows:
  - i. The date and time the photograph was taken;
  - ii. The entire vehicle and its location on the date and time the photograph was taken; and
  - iii. The vehicle's license plate.

The relocater shall maintain the photographs, in electronic or print format, for a period of two years from the date on which it was taken. The relocater shall provide the photographs, without charge, to the vehicle owner, their insurance company, or their agent, of the relocated vehicle, upon request.

- b. Relocators may install on-board cameras on all vehicles used by the relocator to relocate unauthorized vehicles. Such cameras shall clearly document:
  - i. Views of the unauthorized vehicle and the vehicle's license plate from the front and rear of the relocator's vehicle;
  - ii. Audio from inside the relocator's vehicle; and
  - iii. The date and time the video and audio are captured.

Any relocator that so installs on-board cameras shall: (1) maintain the video records, in electronic format, for a period of one year from the date on which it was captured; and (2) upon request by the relocated vehicle's owner, provide an electronic copy of the video records, without charge, to such owner, their insurance company, or their agent; and (3) upon request, make such video records available for inspection by the Inspectional Services Department, Transportation Department, Parking Clerk, and Police Department.

6. Unconditional release and fee for incomplete tow.

No such vehicle shall be relocated if: (i) the owner of the vehicle, the owner's agent, or other person entitled to possession of the vehicle is present or arrives on the scene and attempts or intends to remove such vehicle voluntarily before the relocator or operator is able to remove the vehicle from the premises of the private property, and (ii) such owner of the vehicle, the owner's agent, or other person entitled to possession of the vehicle can produce the ignition key or other ignition device for the vehicle, and (iii) such owner or agent is able to remove and immediately does remove the vehicle from the private property, even if the tow truck operator has already hooked or otherwise engaged the vehicle to be towed.

Relocator or operator shall release the vehicle to be impounded at no charge or for a smaller "drop fee," set as one-half of the fee usually charged for such towing per MGL c. 266B, § 120D if the owner or operator of said vehicle returns before it has been completely removed from the property.

Operators and tow companies may opt to voluntarily waive all such fees for incomplete tows. The same identification that is required to retrieve a vehicle from a tow facility, if any, is required for drop fees to be waived.

7. Hours for vehicle recovery. The hours in which vehicle owners are permitted to retrieve their impounded vehicles from storage facilities shall be posted and made available to the public. In no case may a tow operator delay the return of a vehicle without delay, provided all applicable storage and towing fees have been paid.
8. Access to personal items. Prior to paying any towing, recovery, or storage related fees, a vehicle owner or his or her agent or a licensed repossessor shall, at any facility where the vehicle is being stored, have the right to access and retrieve any of his or her personal property and belongings, including but not limited to personal medical supplies, at no charge, during normal business hours. The relocator is permitted to accompany the owner to the vehicle while the owner removes his or her belongings.

9. Reimbursement for unauthorized tow. Private tow companies must reimburse owners of a private vehicle if the vehicle owner is able to prove their vehicle was involuntarily towed without proper cause or authorization. The owner or driver is entitled to recover from the towing authority the greater of \$100 or two times the actual damages sustained as a result of the violation. Damages recoverable under this subsection include but are not limited to costs of recovering the vehicle, including time spent and transportation costs.
10. Reimbursement for damages. Tow truck companies and operators are responsible to ensure that vehicles towed under the provisions of this policy and procedure are not damaged and that due care is made to prevent damage and theft of and from the vehicle in their care. Such companies must reimburse vehicle owners should the vehicle be damaged during the towing or storage process.
11. Itemized bill. Private tow companies shall provide itemized bills and receipts. After an owner or insurance company has completed a request for release of a vehicle and before payment is made for the release of that vehicle, the private towing company shall provide to the owner or insurance company, at no cost, a detailed written statement of all charges for towing, storage, and related fees. The itemized charges shall include charges for the day of the request and the daily rate to be charged if the vehicle is to be released on a later date.

The information to be recorded on the itemized bill for an involuntary trespass tow shall include information and charges per 220 CMR 272.00, including:

- a. Tow Rate, maximum amount per MGL Ch.159B §6B.
  - b. Storage rate per number of days,
  - c. Service or Waiting time beyond the first hour,
  - d. Starting and ending date and time on tow slip
  - e. Additional Service Vehicle charge, if applicable
  - f. Total miles towed and surcharge per excess mile, if applicable
  - g. Additional labor per hour, or any fraction thereof, if applicable
  - h. Fuel price surcharge, if applicable
  - i. Charges for any additional services
- F. Private property "No Parking" signs. The Boston Transportation Department shall establish guidelines for "No Parking" signs to be posted on private property where involuntary towing is enforced.
- G. Additional involuntary tow requirements.
1. No vehicle may be towed by any relocater from private property if the vehicle contains one or more passengers or domestic animals. In instances where a domestic animal is present in the vehicle for a prolonged period of time, the Animal Control Commission may be called during that unit's ordinary duty hours.

2. Persons who provide involuntary trespass towing services shall inform any person experiencing homelessness inhabiting the vehicle that the vehicle has been requested to be moved. If such a person is unable to move the vehicle, then the person instructed to tow the vehicle may offer information for emergency overnight shelters or contact the relevant bureau of the Public Health Commission. No vehicle shall be towed when there is a living natural person occupying the vehicle.
- H. Complaints. Vehicle owners who allege that their vehicle was towed in violation of statute or this Section should submit a written complaint to the Commonwealth of Massachusetts Department Energy and Environmental Affairs Transportation Division. The written complaint should include the complainant's name, address, daytime phone number, a complete description of the complaint, and any actions taken to resolve it thus far. Copies of all pertinent documents such as tow slips, bills, claim forms, and correspondence relating to the complaint should be submitted to the Department of Public Utilities Transportation Oversight Division, or applicable agency.
- I. Boston Towing Bill of Rights. The Transportation Department shall publish a consumer bill of rights to be distributed and made accessible by the Transportation Department, Parking Clerk, the Police Department, and private tow companies. The Boston Towing Bill of Rights shall inform consumers of their rights when their vehicle is towed, how to recognize predatory towing practices and an unlawful tow, how to retrieve their vehicle and who to contact, and how to file a complaint of an unlawful practice.
- J. Violation - Penalties
1. In accordance with MGL c. 159B, § 6B, any person or company engaged in the towing away of motor vehicles, fails to submit to the Transportation Department a financial statement reflecting the net profits as outlined in subsection D(1) of this section within the time therein provided, shall be punished by a fine of twenty-five dollars for each day after March thirty-first that said return is not so filed.
  2. In accordance with MGL c. 266B, § 120D, any person, or any officer of any corporation, or any partner of any partnership, who, without notifying the chief of police or his designee, or the police commissioner or his designee, or without obtaining the consent of the owner, removes a vehicle from a private way or from improved or enclosed property as aforesaid, shall, in addition to any other penalty of law, be punished by a fine of one hundred dollars. The employer of such person, if any, shall also be punished by a fine of one hundred dollars.
  3. Each violation shall be considered a separate and distinct offense.
- K. Severability. If any section, subsection, sentence, clause, phrase, word or any other part of this ordinance shall be declared invalid by a court of competent authority, then the remainder of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 2. Effective Date

This ordinance shall take effect on the 30th day upon passage.

Filed on: August 13, 2021