

ORDINANCE NO. BG2010 - 39

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 22 (TRAFFIC AND MOTOR VEHICLES) OF THE CITY OF BOWLING GREEN CODE OF ORDINANCES TO AMEND LANGUAGE RELATED TO PARKING ENFORCEMENT

WHEREAS, the City of Bowling Green enforces parking violations through the issuance of civil citations with appeals to the Code Enforcement Board; and,

WHEREAS, various amendments to the applicable Code of Ordinances are recommended to revise the penalty provisions, to establish an administrative appeal fee and to make other administrative amendments related to parking enforcement; and,

WHEREAS, these proposed amendments are in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 22 (Traffic and Motor Vehicles) is hereby amended as follows:

22-6 PARKING ENFORCEMENT.

22-6.01 Enforcement Responsibilities.

Enforcement of Subchapters 22-4 and 22-6 shall be accomplished by police officers, cadets, volunteers or other individuals as assigned by the Chief of Police and as designated by the City Manager. ~~There is established in the Police Department, Field Operations Division, the Special Operations Unit which is placed under the control and made the responsibility of the Chief of Police, and is primarily responsible for the enforcement of Subchapters 22-4 and 22-6. The Chief of Police is~~ authorized to promulgate additional regulations related to the enforcement of Subchapters 22-4 and 22-6, including, but not limited to, the voiding of parking citations in extenuating circumstances.

22-6.02 Notice of Parking Violations.

A notice of violation of this Chapter shall be issued in the form of a citation by any police

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officer or other person authorized by the Chief of Police. The police officer or other individual designated shall note the vehicle's registration number and any other information concerning the vehicle which will identify it and, if the driver is not present, a copy of the citation shall be issued by conspicuously placing it on the windshield of an illegally parked vehicle in a secure manner or in a prominent place thereon. Such posting of the citation shall be deemed prima facie evidence that said violation occurred and that the owner of said vehicle was properly notified of said violation. In the event that the registered owner or operator of a vehicle drives the vehicle away from or in any manner leaves the site of the violation while the issuing officer is preparing the citation, this fact shall be noted on the citation and shall constitute prima facie evidence that the citation was issued and that an attempt was made to notify the owner of the vehicle of the violation in accordance with this Section.

b. The citation shall contain the following information:

1. The date and time the citation was issued;
2. The nature of the specific parking violation observed and the Section of the Chapter violated;
3. The state and license number, the registration number and the make of the vehicle in violation of this Chapter;
4. The name or an identifying number of the person issuing the citation;
5. Information advising the owner of the vehicle that he shall admit the violation and pay a civil penalty set forth hereinbelow; or ~~within seven (7) days~~ deny the violation and request a hearing before the City of Bowling Green Code Enforcement Board within fourteen (14) days;
6. The civil penalty that is imposed for the violation if the person does not contest the citation;
7. The maximum civil penalty that may be imposed by the Code Enforcement Board for the violation if the person contests the citation;

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8. A statement that if the person fails to request a hearing within ~~seven~~(7) fourteen (14) days, the person shall be deemed as having waived the right to a hearing before the Code Enforcement Board and the determination that a violation was committed shall be final;

9. The procedure for the person to follow in order to respond to the citation or to contest the citation; and,

10. A statement that a parking violation may result in impoundment of the vehicle for which the owner may be liable for a fine and towing, handling and storage charges or fees, or the installation of vehicle immobilization equipment or which the owner may be assessed additional fees.

22-6.03 Penalties.

a. Any person who violates any provisions of this Chapter related to parking regulations shall be subject to a civil penalty of \$25.00 per violation, except for parking in designated handicapped zones and the civil penalty for that violation shall be \$50.00 per violation. Each day a violation continues shall be a separate and distinct offense. All penalties shall be payable within fourteen (14) days from the date of the parking citation if the citation is not appealed. If the parking citation is not appealed to the Code Enforcement Board and the civil penalty is not paid within fourteen (14) days, the applicable civil penalty shall double. Any costs incurred by the City in the collection of the parking citation penalty shall also be added to the original fine amount. ~~The maximum civil penalties that the City of Bowling Green Code Enforcement Board may impose shall be as follows:~~

1. ~~Parking in excess of time allowed in any parking zone or parking space shall be \$30.00.~~

2. ~~Parking in violation of Subsections 22-4.04 (d) or (m) shall be \$100.00.~~

3. ~~Parking in violation of any other parking regulation shall be \$40.00.~~

b. The Code Enforcement Board may, in its discretion, increase the civil penalties for any parking citations appealed to the Board and which are upheld by the Board. The maximum civil

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~~penalty that the Code Enforcement Board may impose shall be \$50.00 per violation, except for parking in designated handicapped zones and the maximum civil penalty that the Code Enforcement Board may impose for that violation shall be \$100.00 per violation. If the owner of a vehicle in violation of this Chapter admits the violation and pays the civil penalty or does not request a hearing before the Code Enforcement Board, the civil penalty shall be as follows:~~

~~1. Parking in excess of time allowed in any parking zone or parking space shall be \$15.00; provided, however, that should the owner within seventy-two (72) hours from the receipt of the citation pay the citation, the penalty shall be reduced to \$10.00.~~

~~2. Parking in violation of Subsections 22-4.04 (d) or (m) shall be \$50.00.~~

~~3. Parking in violation of any other parking regulation shall be \$20.00.~~

c. All parking violation payments shall be made to the City of Bowling Green Finance Department ~~City Treasurer~~ or any other person designated by the Chief of Police.

22-6.04 Hearing.

a. Any person cited for a parking violation may contest the determination that a violation occurred by requesting in writing a hearing before the City of Bowling Green Code Enforcement Board. The request for a hearing shall be delivered to the Code Enforcement Board addressed to City Hall within the required ~~seven (7)~~ fourteen (14) day time limit from the date of issuance of the parking citation. When a hearing has been requested, the Board shall schedule a hearing for the next regular meeting of the Board that will permit adequate notification to be made to all parties. Not less than seven (7) days before the date of the hearing, the Board shall notify the requester of the date, time and place of the hearing. The notice may be given by certified mail, return receipt requested; by personal delivery; or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Any person requesting a hearing who fails to appear at the time and place set for the hearing shall be

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deemed to have waived the right to a hearing to contest the citation and shall be deemed to have refused to pay the fine levied by the citation. The Board shall enter a final order determining the violation was committed and shall impose the appropriate civil penalty. A copy of the order shall be served on the violator.

b. At the hearing after consideration of the evidence, the Board shall determine whether a violation was committed. Where it is not established that the violation was committed, an order dismissing the citation shall be entered. Where it is established that a violation was committed, the Board shall uphold the citation and order the owner to pay the citation within ~~seven (7)~~ fourteen (14) days from the date of the written order of the Board. A copy of such order shall be furnished to the owner. Any person ordered to pay the fine who fails to do so within ~~seven (7)~~ fourteen (14) days shall be deemed to have refused to pay the fine levied by the citation and a \$15.00 late fee and all costs incurred by the City in collecting the civil penalty shall be added to the original fine amount.

c. The Board may consider the parking citation and any other written report made under oath by the officer who issued the citation in lieu of the officer's personal appearance at the hearing. All other testimony shall be taken under oath and recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings.

d. An appeal from the Board's determination may be made to the Warren District Court within seven (7) ~~thirty (30)~~ days of the Board's written order. The appeal shall be initiated by the filing of a complaint and a copy of the Board's order in the same manner as any civil action under the Kentucky Rules of Civil Procedure and as set out in the applicable State statutes. ~~The appeal to the District Court shall be based on the record made before the Code Enforcement Board~~. If no appeal of the final order of the Board is filed within the time allowed, the Board's order shall be deemed final for all purposes.

22-6.05 Vehicle Impoundment or Immobilization without Notice.

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A vehicle may be impounded or vehicle immobilization equipment may be used without giving prior notice to its owner ~~only~~ under the following circumstances:

- a. The vehicle is impeding or likely to impede the normal flow of vehicular or pedestrian traffic;
- b. The vehicle poses an immediate danger to the public safety;
- c. The vehicle is illegally parked within ten (10) feet of a fire hydrant;
- d. The vehicle, without a valid designated plate or placard issued under State law, is parked in a space clearly marked and designated for use by disabled persons;
- e. A police officer reasonably believes that the vehicle is stolen;
- f. A police officer reasonably believes that the vehicle or its contents constitute evidence of an offense and such impoundment or immobilization is reasonably necessary to obtain or preserve such evidence; provided, however, that nothing in this Section shall be construed to authorize seizure of a vehicle without a warrant where a warrant would otherwise be required;
- g. The vehicle is parked in a public right-of-way or on other publicly owned or controlled property in violation of any law, ordinance or regulation, and there are three (3) ~~five (5)~~ or more outstanding parking citations issued against the vehicle that have not been responded to, appealed to the Code Enforcement Board or paid, or none of the final orders of the Code Enforcement Board have been appealed to Warren District Court; ~~or~~;
- h. The vehicle is abandoned or is a junk vehicle; or
- i. The vehicle is parked, stopped or standing upon a street or public way in violation of any City ordinance or State statute at the time the citation is issued.

22-6.06 Redemption of Impounded or Immobilized Vehicles.

Vehicles impounded or immobilized by the City shall be redeemed only under the following circumstances:

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a. Only the registered owner or other person entitled to possession based on proof of ownership or right to possession, ~~or a person authorized by the registered owner~~, may redeem an impounded or immobilized vehicle. A person redeeming an impounded or immobilized vehicle must produce a valid driver's license. A vehicle impounded or immobilized for reasons of unpaid parking citations can only be released upon proof that all penalties, fines or forfeitures currently owed by the registered owner have been satisfied by full payment.

b. Any person redeeming a vehicle impounded by the City shall pay the towing contractor for costs of towing and impoundment prior to redeeming the vehicle. Any person redeeming a vehicle immobilized by the City shall pay a removal fee of twenty-five dollars (\$25.00) prior to having the immobilization equipment removed. Any vehicle that has had immobilization equipment installed that has not been claimed within three (3) days shall be towed.

c. The owner or other person entitled to possession of a vehicle which has been impounded or immobilized may challenge the validity of such impoundment or immobilization by requesting in writing a hearing before the Code Enforcement Board. The City shall retain possession of the vehicle pending the hearing unless the owner or other person claiming right of possession posts a bond or other security in a form satisfactory to the City and in an amount equal to the fines and fees accrued as of the date of the hearing request or seventy-five dollars (\$75.00), whichever is less.

d. The hearing shall be conducted within ten (10) business days of the date of the request unless the owner or other person entitled to possession waives the limitation or the City shows good cause for such delay. If the owner or person claiming possession is unable to pay the amount of the bond, the hearing shall be held within seventy-two (72) hours of the date of the request for hearing is received, unless such person requests or agrees to a continuance. No less than five (5) seven (7) days prior to the date set for hearing, the Board shall notify the person requesting the hearing of the date, time and place of the hearing. In the case of a hearing required to be held within seventy-two (72)

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hours, the person requesting the hearing shall be informed at the time of his request or as soon thereafter as is practicable of the date and time of the hearing. Any person requesting a hearing who refuses or, except for good cause, fails to appear at the time and place set for the hearing shall be deemed to have conceded on his and the owner's behalf the validity of the impoundment or immobilization.

e. At the hearing after consideration of the evidence, the Board shall determine whether the impoundment or immobilization was valid and reasonable. Where it is not established that the impoundment or immobilization was justified, an order releasing the vehicle shall be entered. All fines and fees paid or amounts posted as bond because of the impoundment or immobilization shall be returned. Where it is established that the impoundment or immobilization was justified, the Board shall uphold the impoundment or immobilization and condition the release of the vehicle upon the payment of all fines and fees accruing thereto. If bond has been posted as security for release of the vehicle, the bond shall be forfeited to the City. Any fines or fees in excess of the amount of the bond posted shall be ordered to be paid by the owner of the vehicle to the City. A copy of such order shall be furnished to the owner or person appearing on behalf of the owner. The Board may consider the parking citation and any other written report made under oath by the officer who issued the citation in lieu of the officer's personal appearance at the hearing.

f. An appeal from the Board's determination may be made to the Warren District Court within seven (7) ~~thirty (30)~~ days of the Board's written order. The appeal shall be initiated by the filing of a complaint and a copy of the Board's order in the same manner as any civil action under the Rules of Civil Procedure. ~~The appeal shall be based on the record made before the Board.~~ If the Court finds that the impoundment or immobilization was justified, the owner shall be ordered to pay to the City all fines, fees and penalties occurring as of the date of the judgment.

g. The City shall possess a lien on a vehicle impounded for all fines, penalties and fees

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imposed thereon. Such lien shall be superior to and have priority over all other liens except the towing company for its towing charges and any person who claims a security interest on the vehicle. All vehicles towed at the request of the City for violations of this Chapter shall be towed by companies approved by the City and stored at the location of the towing company. ~~Should the towing company sell the vehicle for nonpayment of towing and storage charges, the money received from the sale shall first be used to pay the towing charges, second to pay the City's outstanding parking violation fines, fees and penalties and third to pay the towing company's storage fees. Any remaining funds shall be distributed pursuant to the Kentucky Revised Statutes.~~

h. If within ten (10) business days of impoundment a vehicle has not been claimed or a hearing has not been requested, a notice shall be mailed by certified mail to the registered owner, if known, and lienholders of record, affording such parties the right within ten (10) days from the date of the notice to claim the vehicle or request a hearing. The notice shall state that, if no hearing is requested, the vehicle shall be deemed abandoned unless the charges thereon are paid within forty-five (45) days of receipt of the notice. After forty-five (45) days from the date of the receipt of the notice, the vehicle shall be deemed abandoned and the vehicle escheat to the City. If the vehicle is judged suitable for use, the City may obtain a certificate of registration and ownership from the Warren County Clerk pursuant to KRS 186.020 and either use the vehicle for governmental purposes or sell the vehicle at public auction to the highest bidder. If the vehicle is not suitable for use, it may be sold for its scrap or junk value. Nothing in these provisions shall otherwise affect the rights or obligations between the owner of the motor vehicle and those persons who claim a security interest therein.

2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in

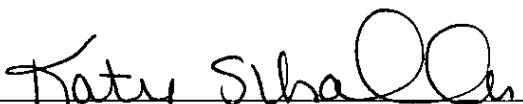
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conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on December 7, 2010, and given final reading on December 21, 2010, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: December 21, 2010

APPROVED: 
Mayor, Chairman of Board of Commissioners

ATTEST: 
City Clerk

SPONSORED BY: Kevin D. DeFebbo, City Manager, 11/30/2010, 9:00 a.m.