

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEE CAVE, TEXAS, AMENDING THE BEE CAVE CODE OF ORDINANCES, CHAPTER 18, "TRAFFIC AND VEHICLES," BY ADOPTING A NEW SECTION 18.04.004, TO BE ENTITLED "TOWING OF VEHICLES FOR FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY"; GRANTING POLICE OFFICERS DISCRETIONARY AUTHORITY TO TOW VEHICLES WHEN DRIVERS ARE FOUND TO BE OPERATING MOTOR VEHICLES WITHOUT PROOF OF FINANCIAL RESPONSIBILITY, AS REQUIRED UNDER TEXAS TRANSPORTATION CODE, CHAPTER 601; PROVIDING FINDINGS OF FACT, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING.

WHEREAS, the Motor Vehicle Safety Responsibility Act, found in Chapter 601 of the Texas Transportation Code, requires a person operating a motor vehicle in this state to establish financial responsibility for the vehicle; and

WHEREAS, a person operating a vehicle in this state shall on request provide to a peace officer, as defined by Article 2.12, Code of Criminal Procedure, or a person involved in an accident with the operator, evidence of financial responsibility; and

WHEREAS, the Texas Constitution, Article I, Section 9 provides that "[t]he people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures and searches"; and

WHEREAS, under *Mayberry v. State*, 830 S.W.2d 176, 179-80 (Tex.App.—Dallas 1992, pet. ref'd), the reasonableness of an impoundment involves various factors, including (1) the availability of someone at the scene of the arrest to whom the police could have given possession of the vehicle; (2) whether the vehicle was impeding the flow of traffic or was a danger to public safety; (3) whether the vehicle was locked; (4) whether the detention of the arrestee would likely be of such duration to require the police to take protective measures; (5) whether there was some reasonable connection between the arrest and the vehicle; and (6) whether the vehicle was used in the commission of a crime; and

WHEREAS, the City Council finds that, prior to towing a vehicle for an operator's failure to present financial responsibility, officers shall consider the preceding factors in good faith, in addition to whether towing the vehicle is necessary to protect public safety; and

WHEREAS, in *Maricle v. Biggerstaff*, 10 F. Supp. 2d 705, 706-08 (N.D. Tex. 1998), applying the reasonableness test to a driver who is unable to drive the vehicle for failure to provide evidence of financial responsibility, failure to establish financial responsibility may result in probable cause for a warrantless seizure, and

WHEREAS, in Opinion No. KP-0034 (2015), the Texas Attorney General found that, under constitutionally reasonable circumstances, peace officers of the state, including those

working for local law enforcement agencies and municipalities, may impound a vehicle to protect the public safety when the driver fails to provide evidence of financial responsibility; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEE CAVE, TEXAS:

SECTION ONE: LEGISLATIVE INTENT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City Council and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION TWO: AMENDMENT

The Code of Ordinances of the City of Bee Cave, Chapter 18, "Traffic and Vehicles," Article 18.04, "Towing of Unauthorized Vehicles," is hereby retitled "**Towing of Vehicles**," and amended by adding a new Section 18.04.004, to be entitled "Towing of Vehicles for Failure to Maintain Financial Responsibility," which shall read as follows:

Sec. 18.04.004 Towing of Vehicles for Failure to Maintain Financial Responsibility

A police officer is authorized to remove or cause the removal of a vehicle from a street or public right-of-way to a vehicle storage facility designated by the chief of police, when the officer determines, in good faith, that removing the vehicle is necessary for public safety and:

- (1) the vehicle is in an accident and the vehicle's owner or operator fails to show evidence of financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended; or
- (2) the vehicle is stopped by a police officer for an alleged violation of a city or state traffic law or other law applicable to the operation of a vehicle on the roadway and the vehicle's owner or operator fails to show evidence of financial responsibility as required under Chapter 601 of the Texas Transportation Code, as amended.

SECTION THREE: SEVERABILITY.

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsection, clauses, phrases and provisions of this Ordinance, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION FOUR: EFFECTIVE DATE.

This Ordinance shall be and become effective immediately upon and after its passage and publication as provided by law.

SECTION FIVE: REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance becomes effective that are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed to the extent of such conflict.

SECTION SIX: PROPER NOTICE AND MEETING

The City Council hereby finds and determines that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED by the City Council of the City of Bee Cave, Texas, on the ____ day of _____, 201_.

CITY OF BEE CAVE, TEXAS

Caroline Murphy, Mayor

ATTEST:

Kaylynn Holloway, City Secretary

APPROVED AS TO FORM:

Patty L. Akers, City Attorney