

First Reading: _____
Second Reading: _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II, CHAPTER 24, SECTION 24-337, AND CREATE A NEW ORDINANCE RELATIVE TO BOOTING AND IMMOBILIZATION OF VEHICLES.

Section 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 24, Section 24-337(a) be and is hereby amended by deleting the first sentence of such section and replacing it with the following:

(a) If a vehicle has a record of three (3) or more currently delinquent parking citations which have been outstanding for more than sixty (60) days and that are not under appeal to any court above the Chattanooga City Court, and if the Parking Authority is in compliance with the procedural requirements of this Section and of Part II, Chapter 24, Sections 24-311 through 24-312, the Parking Authority may immobilize or impound a motor vehicle parked, stopped or standing upon a street, public way, parking lot, garage or other areas where the Parking Authority has been granted enforcement authority.

Section 2. BE IT FURTHER ORDAINED, That Chattanooga City Code, Part II, Chapter 24, is hereby amended by adding the following new Division 10 as follows:

DIVISION 10. IMMOBILIZATION OF VEHICLES

Sec. 24-511. Title.

The City of Chattanooga hereby elects to adopt an ordinance pursuant to the Tenn. Code Ann. § 55-31-101 *et seq.*, commonly known as the Motion Act, and specifically in compliance with Tenn. Code Ann. § 55-31-201(c) of the Motion Act. In addition to the powers granted in Part II Chapter, Chapter 24, Division 2, the Parking Authority, as a public body, corporate and politic, and constituted authority of the City of Chattanooga, shall be and is hereby vested with the powers and obligations described in this part.

Sec. 24-512. Purpose.

It is declared to be the purpose and intent of this chapter that all Contracted Property and Commercial Parking lot owners in the City of Chattanooga be licensed and bonded and meet the minimum requirements as set out in this chapter for the protection and welfare of the public. The provisions of this chapter shall regulate the use of Boots and Booting within the City of Chattanooga.

Sec. 24-513. Definitions.

As used in this chapter, the following definitions shall apply:

(1) “Boot” or “Booting” means the act of installing a vehicle immobilization device on a parked motor vehicle;

(2) “Commercial Parking Lot” means:

(A) A privately owned parking lot or parking garage used for the temporary storage of motor vehicles, either for a fee or for use by customers of the owner of the parking lot or parking garage; and

(B) Does not include:

(i) A public street;

(ii) A public right-of-way;

(iii) A publicly owned parking lot or parking garage;

(iv) A motor vehicle storage facility; or

(v) An establishment for the servicing, repair, or maintenance of motor vehicles;

(3) “Commercial Parking Lot Owner” means the owner or operator of a Commercial Parking Lot as defined in Tenn. Code Ann. § 55-31-102;

(4) “Contracted Property” means private or public property, including but not limited to, a Commercial Parking Lot or property owned by a public institution of higher education within the City, and for which the owner or lessee of the property has entered into a contract with a Licensed Parking Enforcement Vendor for the enforcement of parking rules or restrictions on the property or a designated portion of the property;

(5) “Employee” means a natural person who is required to file a federal form W-2, wage and tax statement, with the federal internal revenue service for the compensation the natural person receives for work performed;

- (6) “Law Enforcement Agency” means:
- (A) The Tennessee highway patrol;
 - (B) The sheriff’s department of Hamilton County;
 - (C) The Chattanooga Police Department; or
 - (D) Any department, board, or commission designated by the legislative body of any county with a metropolitan form of government to perform the duties of a law enforcement agency specified in this chapter;
- (7) “Licensed Booting Operator” means a natural person who:
- (A) Is an employee of a Licensed Parking Enforcement Vendor;
 - (B) Holds a valid license issued by the Parking Authority pursuant to this ordinance, and whose license has not expired, been suspended, or revoked; and
 - (C) Is employed to enforce parking rules or restrictions on Contracted Property;
- (8) “Licensed Parking Enforcement Vendor” means a Person, including other than a natural person, who:
- (A) Holds a valid license issued by the Parking Authority pursuant to this ordinance, and whose license has not expired, been suspended, or revoked;
 - (B) Is contracted to engage in parking enforcement activities on Contracted Property; and
 - (C) Has recorded the required surety bond with the Register of Deeds in Hamilton County, Tennessee;
- (9) “Motor vehicle” has the same meaning as defined in Tenn. Code Ann. § 55-8-101 and includes a tractor or trailer as those terms are defined in Tenn. Code Ann. § 55-8-101;
- (10) “Motor vehicle portal” means the electronic database or online platform established by the department of revenue pursuant to Tenn. Code Ann. § 55-31-104;
- (11) “Person” includes a natural person, firm, association, corporation, or partnership;
- (12) “Self-releasing device” means a vehicle immobilization device that:
- (A) Allows the vehicle owner or vehicle operator to remove the device without third-party assistance;

(B) Is equipped with an automated or electronic release mechanism that enables removal of the device immediately upon payment of the fees described in 201(b)(5) of the Motion Act;

(C) Permits the electronic processing of payment of the fees listed in 201(b)(5) of the Motion Act by credit card or debit card;

(D) Provides clear, written, and visual instructions for how to make payment of fees and for device removal; and

(E) Ensures the device can be safely removed by the vehicle owner or vehicle operator without damaging the vehicle or presenting a hazard;

(13) “Third-party service provider” means an entity that is approved by the department of revenue to create and implement the motor vehicle portal in compliance with Section 104 of the Motion Act;

(14) “Vehicle immobilization device” means a device that is designed or adapted to be attached to a parked motor vehicle to prohibit the motor vehicle's usual manner of movement or operation.

Sec. 24-514. Booting.

(1) No person shall engage in booting motor vehicles within the City of Chattanooga without first obtaining and keeping in force a license from the Parking Authority pursuant to this chapter.

(2) It is an offense for any Person to Boot a motor vehicle, including, but not limited to, a tractor or trailer, if the motor vehicle is clearly identifiable by:

(A) A United States department of transportation (USDOT) number issued by the federal motor carrier safety administration (FMCSA);

(B) A registration plate issued and attached to the motor vehicle described in Tenn. Code Ann. § 55-4-113(a)(2); or

(C) A registration plate issued and attached to a trailer described in Tenn. Code Ann. § 55-4-113(a)(5).

(3) It is an offense for any Person to Boot any other motor vehicle not described above unless:

(A) The vehicle immobilization device is a self-releasing device;

(B) The motor vehicle is located on a Commercial Parking Lot or on Contracted Property;

(C) The person attaching the vehicle immobilization device is an employee of a Commercial Parking Lot Owner or is a Licensed Booting Operator;

(D) The Commercial Parking Lot or Contracted Property posts signage in conspicuous locations on the Commercial Parking Lot or Contracted Property bearing notice that:

- (i) Any motor vehicle not authorized to park on the lot or property is subject to Booting;
- (ii) Is designed and placed in a manner that ensures clear visibility and readability by consumers parking on the lot or property;
- (iii) Is located at each designated entrance and exit of the lot or property;
- (iv) Contains:
 - a. The phone number that a consumer can call for support with removing the vehicle immobilization device and that is monitored by a natural person twenty-four (24) hours per day, seven (7) days per week; and
 - b. The license number issued by the Parking Authority to the Licensed Parking Enforcement Vendor contracted to Boot on the lot or property, if any; and
 - c. This chapter protects consumers from Booting violations and that violations may be reported to the attorney general and reporter;

(E) The cost to remove the vehicle immobilization device is not greater than the actual cost of the delinquent parking fees owed by the vehicle owner that led to the attachment of the vehicle immobilization device, if any, plus a vehicle immobilization device removal fee of not greater than seventy-five dollars (\$75.00); and

(F) A fee is not charged to remove a vehicle immobilization device to any person who had paid to park and who was improperly Booted.

(4) Licensed Booting Operators and Licensed Parking Enforcement Vendors shall be required to renew their license annually by the Parking Authority;

(5) Licensed Booting Operators shall ensure that a person attaching a vehicle immobilization device to motor vehicles can be clearly identified as licensed pursuant to this ordinance;

(6) Each Licensed Booting Operator and each Licensed Parking Enforcement Vendor shall have their own unique license number issued by the Parking Authority;

(7) Consumers may file and track complaints against a Licensed Booting Operator or Licensed Parking Enforcement vendor by contacting the Parking Authority at 1362 Market Street, Chattanooga, TN 37402, or calling (423) 629-1411;

(8) Any license granted under this chapter may be revoked or suspended by the Parking Authority for good cause following a hearing, including, but not limited to, a violation of this chapter;

(9) The Parking Authority shall timely investigate consumer complaints and provide quarterly reports of all such complaints to the Chattanooga City Council;

(10) The Parking Authority shall ensure that each Commercial Parking Lot or Contracted Property complies with the signage requirements of Section (3)(D)(i)-(iv) above;

(11) Any suspected violation of this chapter by any licensee shall be referred to the attorney general and reporter, a Law Enforcement Agency, or both.

(12) The Parking Authority shall maintain a publicly accessible registry of all Licensed Booting Operators and Licensed Parking Enforcement Vendors, including license number, license status, and contact information.

(13) The Parking Authority is hereby authorized to establish program requirements for the purpose of licensing Licensed Parking Enforcement Vendor and Licensed Booting Operator for public benefit. As a condition of licensure, each Licensed Parking Enforcement Vendor and Licensed Booting Operator must:

(A) file a surety bond in an amount of no less than two hundred fifty thousand dollars (\$250,000.00) with the Treasurer's Office of the City of Chattanooga, which must be recorded with the Office of the Register of Deeds of Hamilton County, Tennessee;

(B) provide and maintain a contact phone number that with 24/7 answering services to assist parking customers, which phone number shall be visible on all parking citations;

(C) clearly describe the appeal procedure on all parking citations; and

(D) comply with other such licensing requirements adopted from time to time by the Parking Authority for public benefit.

(14) Notwithstanding anything contained herein to the contrary, if a vehicle owner or operator intentionally damages a vehicle immobilization device or fails to return the vehicle immobilization device to a clearly designated on-site storage location, the vehicle owner or operator may be subject to an additional fee not to exceed one hundred dollars (\$100.00).

(15) If an employee of a Commercial Parking Lot Owner or a Licensed Booting Operator removes or causes the removal of a vehicle immobilization device from a vehicle that has been immobilized on the Commercial Parking Lot or Contracted Property for the purpose of having the motor vehicle towed from the Commercial Parking Lot or Contracted Property, then the motor vehicle owner or operator will not be assessed the vehicle immobilization device removal fee permitted in Section 24-514 (E).

(16) A person injured as a result of any violation of this section by a Licensed Booting Operator or Licensed Parking Enforcement Vendor may file a claim against the surety bond required hereunder to recover actual damages incurred as a result of the violation. The surety must be liable up to the amount of the bond for any damages shown to have been caused by a licensee's unlawful or negligent conduct while acting within the scope of parking enforcement activities on a Commercial Parking Lot or Contracted Property.

Sec. 24-515. License Application.

(1) Applications—Conditions.

(2) Any Person desiring to engage in Licensed Booting Operator or Licensed Parking Enforcement Vendor services within the City of Chattanooga shall make application to the Parking Authority, which application shall be upon forms to be adopted and provided by the Parking Authority. The completed application must contain all the information required by such form and must be verified under oath.

(3) The application form to be adopted and provided by the Parking Authority shall require such information as the Parking Authority determines to be necessary and proper, including, but not limited to, the following:

(4) The full name and address of the Commercial Parking Lot Owner or Contracted Property Owner desiring to obtain a license and full name of a natural Person to serve as the agent for such entity;

(5) The location and description of the place and premises from which the applicant requests the right to Boot;

(6) The parking rates, citation rates, and escalation rates for the intended Commercial Parking Lot(s) and/or Contracted Property(ies).

(7) That the applicant is of good moral character and is ready, willing and able to comply with all the laws of the City of Chattanooga, the State of Tennessee, and the United States;

(8) The full name and address of the agent for the applicant, if an entity, or a sworn statement that the applicant, if a natural Person, will be at least twenty-one years of age.

(9) A sworn statement that the applicant provides proof that it has filed the required surety bond with the Register's Office of Hamilton County, Tennessee.

(10) The applicant agrees to promptly respond to and assist with any investigation conducted by the Parking Authority in response to any complaint filed against the Commercial Parking Lot Owner or Contracted Property Owner.

(11) Upon denial of an application for a license for the failure to meet the conditions of this section, no new application shall be considered by the Parking Authority for a period of three (3) months.

Sec. 24-516. Parking Fees.

The following provisions shall apply to all Licensed Commercial Parking Lot Owners. The following provisions shall not apply to the Parking Authority, which is separately governed by Section 24-321 and 24-325.

(1) A Commercial Parking Lot Owner shall not charge a penalty for nonpayment of parking fees **unless:**

(A) The Commercial Parking Lot Owner posts signage that:

- (i) Is designed and placed in a manner that ensures clear visibility and readability by consumers parking in the Commercial Parking Lot;
- (ii) Provides notice that motor vehicle owners who leave the Commercial Parking Lot without paying parking fees will be subject to a penalty if the parking fees are not paid within seventy-two (72) hours from the time of the Commercial Parking Lot Owner's discovery of the nonpayment of parking fees; and
- (iii) Is located at each designated entrance and exit of the Commercial Parking Lot;

(2) The actual cost of parking fees owed remains unpaid after seventy-two (72) hours from the time of the Commercial Parking Lot Owner's discovery of the nonpayment of parking fees; and

(3) (A) If the actual cost of parking fees owed remains unpaid for thirty (30) days or less from the date of the Commercial Parking Lot Owner's discovery of the nonpayment of parking fees, the fee is not greater than fifty dollars (\$50.00); or

(B) If the actual cost of parking fees owed remains unpaid for greater than thirty (30) days from the date of the Commercial Parking Lot Owner's discovery of the nonpayment of parking fees, the fee is not greater than seventy-five dollars (\$75.00).

(4) If an entity requires on-site payment from a consumer for the parking of a motor vehicle on the entity's property, and the entity only accepts payment by use of a quick response (QR) code or a credit or debit card machine, then, in the event the QR code or the credit or debit card machine fails to operate correctly to process the payment transaction, the entity must:

(A) (i) Accept payment from the consumer by cash or check, or through a system that allows the consumer to provide the consumer's credit or debit card information over the phone; or

(ii) Allow the consumer to leave the property without providing payment at the time; and

(B) Not charge a penalty or late fee for nonpayment until at least seven (7) business days have passed from the date that the QR machine failed to operate and the individual left the property without paying.

(C) (i) The entity may provide information to a consumer enabling the consumer to mail payment to the entity, or provide the consumer's credit or debit card information over the phone for payment of the services at a later date.

(ii) If the entity does not provide the information described herein, then the consumer is not required to provide payment at a later date for the service.

(D) For a Commercial Parking Lot that is temporarily or continuously unattended, the Entity shall provide notice of the alternative forms of payment accepted on a prominent sign located at each site on the Entity's property where payment is taken.

(E) As used in this section:

(i) "Entity" includes a Person, Commercial Parking Lot Owner, and this state or a political subdivision of this state; and

(ii) "On-site" means on an Entity's property where parking services are provided.

Sec. 24-517. Penalties.

(A) Except as otherwise provided herein, any person injured as a result of a violation of this chapter is entitled to maintain a private right of action for injunctive relief and to recover actual damages, compensatory damages, punitive damages, and reasonable attorneys' fees against a Licensed Booting Operator or Licensed Parking Enforcement Vendor for an alleged violation.

(B) The violation of any of any licensing requirements or requirements of this chapter or the Act, as determined by the Parking Authority in its commercially reasonable discretion, could result in the immediate revocation of a Booting Operator or Parking Enforcement Vendor license.

Section 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect two (2) weeks from and after its passage.

Passed on second and final reading: _____

CHAIRPERSON

APPROVED: _____ DISAPPROVED: _____

MAYOR

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