

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE CREATING CITY CODE CHAPTER 13-7 TO ENACT REGULATIONS FOR VEHICLE IMMOBILIZATION SERVICES; AUTHORIZING RELATED FEES; AND CREATING OFFENSES**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Council finds that it is the policy of the city to provide for the protection of the public interest as it relates to the unauthorized parking of vehicles on parking lots and to the immobilization of those vehicles by applying a boot to a vehicle without the consent of the vehicle owner or operator. To this end, this chapter provides for the regulation of vehicle immobilization service, to be administered in a manner that protects the public health and safety and promotes the public convenience and necessity.

**PART 2.** A new Chapter 13-7 (*Vehicle Immobilization Services*) of the City Code is adopted to provide as follows:

**Article 1. General Provisions**

**§ 13-7-1 DEFINITIONS.**

In this chapter:

- (1) **BOOT** means a lockable vehicle wheel clamp, a lockable device that covers a vehicle's windshield, or a similar device that is designed to be placed on a parked vehicle to prevent the operation of the vehicle until the device is unlocked and removed.
- (2) **DEPARTMENT** means the department designated by the city manager.
- (3) **DIRECTOR** means the department director designated by the city manager, and includes representatives, agents, and department employees designated by the director.
- (4) **IMMOBILIZE** means to place a boot on a parked vehicle to prevent the operation of the vehicle until the boot is unlocked and removed. The term includes any installation, adjustment, or removal of a boot.
- (5) **LICENSEE** means a person licensed under this chapter to engage in vehicle immobilization service. The term includes any owner or operator of the licensed business.

- (6) **PARKING LOT** means public or private property (other than public right-of-way) that is used, wholly or in part, for restricted or paid motor vehicle parking, including:
- (a) a restricted space on a portion of an otherwise unrestricted parking lot; and
  - (b) a commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owner's association, or government-owned property leased to a private person for parking vehicles.
- (7) **PARKING LOT OWNER** means a person, or the person's agent or lessee, who holds legal title, deed, or right of occupancy to a parking lot, but does not include a vehicle immobilization service licensee or an employee or representative of a vehicle immobilization service licensee.
- (8) **PERMITTEE** means an individual who has been issued a vehicle immobilization operator's permit under this chapter.
- (9) **POLICE CHIEF** means the Chief of the Austin Police Department, and includes representatives, agents, and department employees designated by the police chief.
- (10) **UNAUTHORIZED VEHICLE** means a vehicle that is parked, stored, or located on a parking lot or in a restricted space on a parking lot without having paid the parking fee required by the parking lot owner for parking on the parking lot or without permission from the parking lot owner to use the restricted space on the parking lot.
- (11) **VEHICLE** means a device in, on, or by which a person or property may be transported on a public street. The term includes, but is not limited to, an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer, but does not include a device moved by human power or used exclusively on a stationary rail or track.
- (12) **VEHICLE IMMOBILIZATION OPERATOR** means any individual who installs, affixes, places, adjusts, or removes a boot on or from a vehicle in a parking lot.
- (13) **VEHICLE IMMOBILIZATION OPERATOR'S PERMIT** means a permit issued under this chapter to an individual by the police chief authorizing that individual to immobilize vehicles for a vehicle immobilization service in the city.

- (14) VEHICLE IMMOBILIZATION SERVICE means the business of immobilizing an unauthorized vehicle on a parking lot.
- (15) VEHICLE IMMOBILIZATION SERVICE LICENSE means a license issued under this chapter to a person by the director authorizing that person to operate a vehicle immobilization service in the city.
- (16) VEHICLE OWNER or OPERATOR means a person, or the designated agent of a person, who:
  - (a) holds legal title to a vehicle, including any lienholder of record; or
  - (b) has legal right of possession or legal control of a vehicle.

**§ 13-7-2 ADMINISTRATION.**

(A) The police chief has the authority to administer and enforce articles 1, 3, 4 and 5 of this chapter.

(B) The director has the authority to administer and enforce articles 1, 2, 4, and 5 of this chapter.

(C) The police chief and the director have the authority to adopt rules for the administration and enforcement of this chapter, under the procedure prescribed in Chapter 1-2 (*Adoption of Rules*). The rules must be reasonably designed to promote public health and safety and ensure that:

- (1) vehicle immobilization services and vehicle immobilization operators are able to perform their responsibilities under this chapter and carry adequate liability insurance;
- (2) the director and the police chief are able to determine the correct identity and qualifications of vehicle immobilization services and vehicle immobilization operators licensed or permitted under this chapter;
- (3) vehicle immobilization services promptly notify vehicle owners that it has placed a boot on a vehicle and promptly respond to requests from the vehicle owner or operator to remove a boot; and
- (4) vehicle immobilization services and vehicle immobilization operators use vehicle immobilization equipment that is safe and in good working condition.

**§ 13-7-3 COMPLIANCE REQUIRED.**

(A) A person commits an offense if the person:

- (1) performs an act prohibited by this chapter;
- (2) fails to perform an act required by this chapter; or
- (3) violates a rule adopted under this chapter.

(B) A violation of this chapter is a Class C misdemeanor punishable as provided in § 1-1-99 (*Offenses; General Penalty*).

(C) Proof of a culpable mental state is not required for the prosecution of a violation of this chapter.

(D) An exception to an offense under this chapter may be used as an affirmative defense.

#### **§ 13-7-4 ENTITIES EXCLUDED.**

This chapter does not apply to the immobilization of a vehicle by:

- (1) a governmental entity;
- (2) a person exercising a statutory or contractual lien right with regard to the vehicle; or
- (3) a commercial office building owner or manager who installs or removes a boot in the building's parking lot.

#### **§ 13-7-5 FEE SCHEDULE.**

The council shall establish the fees required or authorized under this chapter by separate ordinance.

#### **§ 13-7-6 RECEIPT FOR PAYMENT OF IMMOBILIZATION FEE, AND OUTSTANDING PARKING FEES.**

(A) In addition to the vehicle immobilization fee, a licensee or permittee may also collect any outstanding parking lot fee, not including any fine or penalty, from the vehicle owner or operator on behalf of the parking lot owner.

(B) A licensee or permittee, either personally or through an employee or agent, is prohibited from charging:

- (1) more than the maximum fee allowed by this chapter for vehicle immobilization; or
- (2) any fee in addition to the fees authorized in this chapter, including any fee to process a payment made by a vehicle owner or operator in the form of an electronic check, debit card, other electronic payment platform, or major credit card.

(C) A licensee or permittee shall provide a vehicle owner or operator the option of paying the fee for vehicle immobilization by cash, electronic check, debit card, or major credit card.

(D) Upon removal of a boot, a licensee or permittee shall provide to the vehicle owner or operator:

- (1) a receipt in exchange for payment of the vehicle immobilization fee and, if applicable, any outstanding parking fees; and
- (2) notice of the right of the vehicle owner or operator to request a hearing regarding whether probable cause existed to immobilize the vehicle, which notice shall comply with Section 2308.455, Texas Occupations Code (*Contents of Notice*).

(E) The receipt required under Subsection (D)(1) must state:

- (1) the name of the licensee and permittee that removed the boot;
- (2) the date and time the boot was removed from the vehicle;
- (3) the name of the vehicle owner or operator;
- (4) the amount paid by the vehicle owner or operator for the vehicle immobilization fee and any outstanding parking fees; and
- (5) the right of the vehicle owner or operator to request a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (*Rights of Owners and Operators of Stored or Booted Vehicles*), regarding whether probable cause existed to immobilize the vehicle.

(F) If a parking lot owner removes or causes the removal of a boot from a vehicle that has been immobilized on a parking lot in order to have that vehicle towed from the parking lot under Chapter 13-6 (*Vehicle Towing Services*), the licensee or permittee who removes the boot may not charge the vehicle owner or operator the vehicle immobilization fee or any other fee, fine, or penalty for immobilization of the vehicle. The vehicle tow service that tows the vehicle from the parking lot may charge the vehicle owner or operator the vehicle tow service fee authorized under Chapter 13-6 (*Vehicle Towing Services*).

#### **§ 13-7-7 COMPLIANCE WITH STATE LAW.**

(A) Licensees and permittees shall comply with all applicable state laws related to the immobilization of vehicles with a boot or similar device.

(B) A licensee or permittee that violates a state law related to vehicle immobilization commits an offense under this chapter.

**Article 2. VEHICLE IMMOBILIZATION SERVICE LICENSE.**

**§ 13-7-21 LICENSE REQUIRED; APPLICATION.**

(A) A person, or the person's agent or employee, acting within the city, is prohibited from:

- (1) engaging in vehicle immobilization service on any property other than a parking lot;
- (2) engaging in vehicle immobilization service without a valid vehicle immobilization service license;
- (3) causing a vehicle to be immobilized by a vehicle immobilization service that does not hold a valid vehicle immobilization service license; and
- (4) employing or contracting with a vehicle immobilization service not licensed by the director under this chapter for the purpose of having a vehicle immobilized.

(B) To obtain a vehicle immobilization service license, a person must make written application to the director on a form provided for that purpose.

(C) To obtain a vehicle immobilization service license, a person must submit evidence to the director that the vehicle immobilization service is covered by:

- (1) a general liability insurance policy on a broad form with:
  - (A) a combined single limit for bodily injury and property damage for each occurrence of at least \$500,000; and
  - (B) an aggregate limit for all occurrences for each policy year of at least \$500,000
- (2) an automobile liability insurance policy covering the person and the person's employees for vehicles, owned, hired, or otherwise used in the applicant's business, with a combined single for each occurrence of at least \$500,000.

(D) The application for a vehicle immobilization service license must be completed and signed by any person who will own, control, or operate the proposed vehicle immobilization service.

(E) An application for a vehicle immobilization service license must include all information required by rule adopted under this chapter.

(F) A vehicle immobilization service license applicant must submit the prescribed fee with the application. The fee is non-refundable.

**§ 13-7-22 LICENSE ISSUANCE; DISPLAY; TRANSFERABILITY.**

(A) The director shall, within 30 days after the date an application is received with a fee, issue a vehicle immobilization service license to an applicant who complies with the provisions of this article and the applicable rules established by the police chief.

(B) A license issued to a vehicle immobilization service authorizes the licensee and any bona fide employee to engage in vehicle immobilization service.

(C) A vehicle immobilization service license issued pursuant to this article must be conspicuously displayed in the vehicle immobilization service establishment.

(D) A vehicle immobilization service license, or any accompanying permit, badge, sticker, ticket, or emblem, is not assignable or transferable.

**§ 13-7-23 LICENSE TERM AND RENEWAL**

(A) Unless revoked or suspended, a vehicle immobilization service license expires two years after the date of issuance.

(B) To renew the license, a vehicle immobilization service licensee must complete a new application.

**§ 13-7-24 DUPLICATE LICENSE.**

(A) A vehicle immobilization licensee may obtain a duplicate vehicle immobilization service license to replace a lost or destroyed license.

(B) The licensee must pay the required fee.

**§ 13-7-25 APPLICATION AFTER REVOCATION OR DENIAL.**

If the director revokes a vehicle immobilization service license, or if the director denies a person's application for a vehicle immobilization service license, that person may not reapply for a license for six months after the date of revocation or denial.

**Article 3. VEHICLE IMMOBILIZATION OPERATOR'S PERMIT**

**§ 13-7-31 PERMIT REQUIRED FOR VEHICLE IMMOBILIZATION OPERATORS.**

(A) A person is prohibited from immobilizing a vehicle for a vehicle immobilization service in the city without a valid vehicle immobilization operator's permit.

(B) A licensee is prohibited from employing or otherwise allowing a person to immobilize a vehicle using a boot or other vehicle immobilization equipment owned, controlled, or operated by the licensee unless the person has a valid vehicle immobilization operator's permit.

(C) A vehicle immobilization operator permitted under this article must conspicuously wear or display the operator's permit while performing a vehicle immobilization.

### **§ 13-7-32 OPERATION WHILE FIRST APPLICATION PENDING.**

(A) An applicant whose first application for a vehicle immobilization operator's permit under this article is pending may:

- (1) perform vehicle immobilizations in the city if the applicant has a valid vehicle immobilization operator's permit issued by another city; or
- (2) accompany and assist a vehicle immobilization operator permitted under this chapter.

(B) A person commits an offense if the person performs vehicle immobilizations or provides assistance under this section after the police chief denies the person's application.

### **§ 13-7-33 APPLICATION FOR PERMIT; FEES; PERMIT ISSUANCE; TRANSFERABILITY.**

(A) An applicant for a vehicle immobilization operator's permit must file an application with the police chief on a form prescribed by the police chief and signed by the applicant and the vehicle immobilization service licensee sponsoring the applicant.

(B) An application must include all information required by rule adopted under this chapter.

(C) An applicant must submit the prescribed fee with the application. The fee is non-refundable.

(D) The police chief shall, within 30 days after the date of application, issue a vehicle immobilization operator's permit to an applicant who complies with the provisions of this article and the applicable rules established by the police chief.

(E) A vehicle immobilization operator's permit, or any accompanying permit, badge, sticker, ticket, or emblem, is not assignable or transferable.

### **§ 13-7-34 PERMIT TERM AND RENEWAL.**

(A) Unless revoked or suspended, a vehicle immobilization operator's permit expires two years after the date of issuance.

(B) To renew a permit, a permittee must complete a new application and pay the prescribed non-refundable fee.

**§ 13-7-35 DUPLICATE PERMIT.**

(A) A permittee may obtain a duplicate vehicle immobilization operator's permit to replace a lost or destroyed permit.

(B) The permittee must pay the required fee.

**§ 13-7-36 CHANGE IN APPLICATION INFORMATION; EMPLOYMENT STATUS.**

A permittee shall notify the police chief not later than the 30th day after:

- (1) a material change in the permittee's application information; or
- (2) the permittee's employment by a particular vehicle immobilization service ends.

**§ 13-7-37 APPLICATION AFTER REVOCATION OR DENIAL.**

If the police chief revokes a person's vehicle immobilization operator's permit, or if the police chief denies a person's application for a vehicle immobilization operator's permit, that person may not reapply for a permit for six months after the date of revocation or denial.

**Article 4 VEHICLE IMMOBILIZATION REGULATIONS**

**§ 13-7-41 REQUIREMENTS FOR IMMOBILIZATION.**

(A) A person is prohibited from immobilizing, or causing to be immobilized, a vehicle on a parking lot, unless:

- (1) at the time the vehicle is immobilized:
  - (a) the parking lot owner signs written authorization for immobilization of the vehicle by the licensee, or
  - (b) a current written agreement exists between the parking lot owner and the licensee authorizing immobilization of unauthorized vehicles on the parking lot and a photograph is taken reasonably showing that the immobilized vehicle was unauthorized on the parking lot; and
- (2) at the time the vehicle is to be immobilized and for at least 24 hours prior to immobilization:

- (a) the parking lot has posted the signs required by Subchapter G, Chapter 2308, Texas Occupations Code (*Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas*);
  - (b) all numbered parking spaces in the parking lot are correctly numbered and easily readable both day and night; and
- (B) The written authorization for immobilization required by Subsection (A)(1)(a) must contain:
- (1) a description of the vehicle to be immobilized including the make, model, color, state license plate number, and vehicle identification number of the vehicle;
  - (2) the date and time of the vehicle's immobilization;
  - (3) the location at which the vehicle is immobilized;
  - (4) the reasons for immobilizing the vehicle; and
  - (5) the signature of the parking lot's owner or agent.
- (C) The written agreement required by subsection (A)(1)(b) must:
- (1) contain a clear election, signed by the parking lot owner or the parking lot owner's duly authorized agent, as to whether the licensee is authorized to immobilize unauthorized vehicles on the parking lot 24 hours a day, seven days a week, or only during the normal business hours of the parking lot owner; and
  - (2) be renewed at least every two years or whenever there is a change in ownership of the parking lot.

**§13-7-42 REQUIREMENTS FOR INSTALLATION AND REMOVAL OF A BOOT.**

- (A) A licensee or permittee, either personally or through an employee or agent, is required to:
- (1) install at least one boot on a tire located on the driver's side of the vehicle when immobilizing a vehicle;
  - (2) remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the licensee responsible for installation of the boot to request removal of the boot;

- (3) waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the licensee fails to have the boot removed within the time prescribed by subsection (A)(2);
  - (4) remove a boot without charge to the vehicle owner or operator, or to the parking lot owner, if the removal is requested before the boot is completely installed;
  - (5) remove a boot upon the order of a peace officer; and
  - (6) wear high-visibility safety apparel when installing or removing a boot.
- (B) A licensee responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

**§13-7-43 NOTIFICATION OF VEHICLE OWNER.**

(A) A licensee or permittee shall provide the owner of any vehicle immobilized on a parking lot by the licensee with written notice containing the following information:

- (1) The company name, address, telephone number, and vehicle immobilization service license number of the licensee;
- (2) A statement that the vehicle has been immobilized and damage may occur if the vehicle is moved;
- (3) The date and time the vehicle was immobilized;
- (4) An explanation of how to request removal of the boot from the vehicle, including a telephone number, answered 24 hours a day, at which a vehicle owner or operator may obtain information to have the boot removed from the vehicle;
- (5) The amount of the immobilization fee and any outstanding parking fees;
- (6) A statement approved by the police chief explaining how and to whom a complaint concerning the vehicle's immobilization or a violation of this chapter can be made; and
- (7) A statement that the vehicle owner or operator has a right to request a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (*Rights of Owners and Operators of Stored or Booted Vehicles*), regarding whether probable cause existed to immobilize the vehicle.

(B) The notice must be adhered to the front windshield and driver's side window of the vehicle at the time of immobilization.

(C) The licensee shall include with the notice required under this section, a notice that complies with the content requirements of Section 2308.455, Texas Occupations Code (*Contents of Notice*).

## **Article 5. VEHICLE IMMOBILIZATION EQUIPMENT.**

### **§13-7-51 VEHICLE IMMOBILIZATION EQUIPMENT.**

(A) Each boot used by a vehicle immobilization service must:

- (1) not be modified from the manufacturer's design; and
- (2) be maintained in a safe and good working condition.

(B) The police chief, a peace officer, or the director, may, at any time, inspect a boot or other equipment used by a licensee for vehicle immobilization service to determine whether the equipment complies with this section.

(C) A licensee or permittee, either personally or through an employee or agent, shall not immobilize a vehicle with a boot that has not been reported to the city as prescribed in rules adopted by the police chief and the director.

## **Article 6. ENFORCEMENT**

### **§ 13-7-61 DENIAL, SUSPENSION, AND REVOCATION OF LICENSE.**

The director may deny a person's application for a vehicle immobilization service license and suspend or revoke a vehicle immobilization service license issued under this chapter, as prescribed in rules adopted by the police chief and the director.

### **§ 13-7-62 DENIAL, SUSPENSION, AND REVOCATION OF PERMIT.**

The police chief may deny a person's application for a vehicle immobilization service permit and suspend or revoke a vehicle immobilization service permit issued under this chapter, as prescribed in rules adopted by the police chief and the director.

### **§ 13-7-63 NOTICE REQUIRED.**

(A) Before taking adverse action under this article, the police chief or the director, as applicable, shall notify the applicant, licensee, or permittee, of the intended action.

(B) The police chief or the director shall send the notice by certified mail, return receipt requested to the mailing address listed on the person's application, permit, or license, as applicable.

(C) The notice is presumed to have been received on the 10th working day after mailing, unless an earlier date is shown on the return receipt.

(D) Except for actions that are authorized to take effect without advance notice, a denial, suspension, revocation, or removal is effective on the 20th day after the notice is mailed.

(E) If the police chief or the director takes action without advance notice, the police chief or the director shall send a notice to the person or company affected by the action that includes the factual basis for the action.

#### **§ 13-7-64 HEARING.**

(A) The person to whom the notice is sent may request a hearing.

(B) The request must be in writing and received by the police chief or the director, as applicable, not later than the 15th day after the notice was sent. If the person fails to submit to the police chief or director a request for hearing not later than the 15th day after the notice is sent, the suspension, revocation or denial of the license or certificate, or the removal from the list or program, becomes final on expiration of the time specified in the notice.

(C) The police chief or director, as applicable, shall hold an informal hearing not later than the 15th day after the request for a hearing is received. At the hearing the formal rules of evidence do not apply. The police chief or director shall decide the appeal on the basis of the preponderance of the evidence presented.

(D) The police chief or director, as applicable, shall make a determination on the appeal not later than the 10th day after the hearing. The police chief or director may affirm, reverse, or modify the previous determination.

#### **§ 13-7-65 APPEAL.**

(A) A person may appeal the police chief's or director's decision in writing to the city manager not later than the 10th day after the effective date of the decision. The person must include a statement of the grounds for the appeal.

(B) The notice of appeal does not stay the police chief's or director's decision.

(C) The city manager shall schedule a public hearing not later than the 15th day after receipt of the notice of appeal. The city manager shall give notice of the time and place set for the hearing to the police chief or director, as applicable, and the appellant not less than five days before the hearing.

**§ 13-7-66 APPEAL PROCEDURE.**

- (A) At an appeal hearing under Section 13-7-65 (*Appeal*), the police chief or director, as applicable, and the appellant may present evidence, testimony, and argument.
- (B) The city manager may designate a hearing officer to conduct an appeal hearing under Section 13-7-65 (*Appeal*).
- (C) The decision of the city manager or designated hearing officer is final.

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