

PROPOSED
ORDINANCE NO. 16-22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE CREATING CHAPTER 7-12 OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA; PROVIDING DEFINITIONS; REQUIRING OCCUPATIONAL BUSINESS LICENSE; PROVIDING REQUIREMENTS FOR BOOTING; PROVIDING SIGN NOTICE REQUIREMENTS; ESTABLISHING BOOTING RATES; ENFORCEMENT AND PENALTIES OF BOOTING; PROVIDING A PROCESS FOR CITIZEN COMPLAINTS; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Section 7-12-1 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-1. – Definitions.

Boot shall mean a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

City shall mean the City of Pensacola.

Immobilize shall mean 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 installment, adjustment, or removal of a boot.

Motor vehicle shall mean an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power.

Parking facility authorized agent shall mean an employee or agent of a parking facility owner with the authority to:

- (3) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and

(b) accept service on behalf of the parking facility owner of a notice of hearing requested under this chapter.

Parking facility owner shall mean an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility.

Parking lot shall mean private property that is used, wholly or in part, for restricted or paid motor vehicle parking.

Unauthorized vehicle shall mean a vehicle that is parked, stored, or located on a parking lot, 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.

Vehicle immobilization company shall mean any business that provides booting service as part of its operations, to include immobilizing an unauthorized vehicle on a parking lot.

Vehicle immobilization operator shall mean any individual who installs, affixes, places, adjusts, or removes a boot on or from a vehicle in a parking lot.

Vehicle owner shall mean the actual owner of the vehicle booted or any driver of the vehicle who reasonably appears to have authority to operate the vehicle.

SECTION 2. Section 7-12-2 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-2. – Occupational business license required.

Every vehicle immobilization company or vehicle immobilization operator must obtain an occupational business license pursuant to Chapter 7-2 Local Business Taxes, of the Code of Ordinances of the City of Pensacola.

SECTION 3. Section 7-12-3 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-3. – Vehicles parked on private property; booting.

Except as otherwise limited herein, a private property owner may cause any vehicle parked on his/her/its property without permission to be booted by a person or business licensed pursuant to the requirements of this chapter without the permission or authority from the vehicle owner or duly authorized driver of the vehicle and avoid liability for the costs of such booting, provided that the following requirements are satisfied:

- (a) The vehicle is unlawfully parked at a location where signage gives such notice, in the form specified herein ("Notice Sign"), which shall be prominently posted on the property on which the vehicle is booted on each side of each driveway access or curb cut allowing vehicle access to the property and of each entrance to a parking structure serving a property, if any. The notice sign shall be permanently installed, oriented for drivers, with the bottom of the sign not less than four (4) feet above ground level, the top of the sign not more than six (6) feet above ground level, and shall be continuously maintained on the property for not fewer than twenty-four (24) hours before the towing or removal of vehicles. Additional notice signs shall be posted in the corresponding parking lot and/or parking garage at regular intervals throughout said parking lot and/or parking garage with minimum separation between signs not to exceed fifty (50) feet.
- (b) The vehicle is not occupied by a person or animal;
- (c) The vehicle may not be a police, fire fighting, rescue squad, ambulance or other emergency vehicle marked as such;
- (d) Any property engaged in the booting of vehicles shall have a designated employee, representative, or security personnel on site and/or immediately available by phone at all times, with the location and/or telephone posted as specified above.
- (e) Immediately after a vehicle is booted, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall affix to the front windshield of the booted vehicle notice measuring eight and one-half by eleven inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle and stating the name and business address of the person who booted such vehicles, as well as a business telephone number which will immediately facilitate the dispatch of personnel responsible for removing the boot.
- (f) No release or waiver of any kind purporting to limit or avoid liability for damages to a vehicle or reasonable attorney's fees incurred by the vehicle owner that has been booted shall be valid. In addition, any person who booted a vehicle, or other person authorized to accept payment of any charges for such booting, shall provide a signed receipt to the individual paying the booting charges at the time such charges are paid. Such receipt shall state the name, business address, and business telephone number of the person or company who has booted such vehicle, and such receipt shall include a telephone number of the office within the City of Pensacola 311 system "Pensacola 311" as the City Department responsible for receiving complaints with respect to booting.

- (g) No charge shall be imposed for the booting of a vehicle unless and until the requirements of this section have been met, and any such unlawful charge shall be reimbursed by any person found to have violated this section.
- (h) Any person who has booted a vehicle shall release such vehicle as soon as practical, but not to exceed thirty (30) minutes after receiving a request for such vehicle's release; provided, however, that payment of any charge for booting is made at or prior to the time of such vehicle's release. The owner or person in control of a vehicle which has been booted shall be permitted to pay any charge for booting at the location where such vehicle was booted and the person receiving payment for booting services shall accept payment for charges from the owner or duly authorized representative that must include but is not limited to cash, debit card, and credit card.
- (i) A booted vehicle shall not remain immobilized on private property for more than twenty-four (24) hours. After such period of time has expired, the vehicle shall be released from the boot and may be towed or removed pursuant to this article, and no fee shall be assessed for release of the booting device.
- (j) A person may not charge more than the maximum fee established by resolution by the City Council.
- (k) The receipt, rebate, or repayment of money or any other valuable consideration directly or indirectly from the individual or firm booting vehicles to the owners or operators of the premises from which the vehicles are booted, for the privilege of or the actual booting of those vehicles, is prohibited.
- (l) Each person who performs booting must enter into a written contract with every owner of private property that authorizes the person to boot vehicles on their property. Each contract that is in effect or that was terminated within the previous twelve (12) months must be kept on file by the parking facility authorized agent or owner, as well as the vehicle immobilization company or vehicle immobilization operator. Any code enforcement officer, law enforcement officer, and the owner of the vehicle that was booted may inspect and copy such contract during business hours.
- (m) Any person who improperly causes a vehicle to be booted shall be liable to the vehicle owner or his authorized representative for the cost of the services provided, any damages resulting from the booting, the booting release fee and reasonable attorney's fees made necessary to obtain the release of the vehicle, if any.

- (n) The business providing the booting service shall first obtain and maintain a current and valid license issued by the City pursuant to Chapter 7-2 of this Code.
- (o) The individual person who is employed to perform the booting service has first obtained and maintains a permit issued by the City in accordance with Chapter 7-2 of this code.
- (p) The business providing the booting service carries a minimum of at least twenty-five thousand (\$25,000.00) in liability insurance which will cover any damage to the vehicle.
- (q) Persons who provide services pursuant to this section shall maintain a place of business. The place of business shall have a sign that clearly and conspicuously identifies the business to the public.
- (r) Towing of any vehicle pursuant to this section must be done in accordance with existing Florida Statute laws and the Code of the City of Pensacola.

SECTION 4. Section 7-12-4 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-4. - Sign - Notice Requirement.

The text of the notice signs shall clearly display, in reflective letters on a contrasting background or lit by flood lighting, the following information:

- (1) In letters not less than four (4) inches high, the words "booting zone";
- (2) In letters at least two (2) inches high, notice that private property is being entered, providing the development name or property address, and advising that parking is private;
- (3) In letters at least two (2) inches high, notice that unauthorized vehicles will be booted or towed away at the owner's expense;
- (4) In letters at least two (2) inches high, the days of the week and hours of the day during which vehicles will be booted;
- (5) In letters at least one (1) inch high, the fee to unboot the vehicle;
- (6) In letters at least one (1) inch high, the name and address of the person performing the booting service;
- (7) In letters at least two (2) inches high, the 24-hour a day telephone number to call and the 24-hour on-site location (if applicable) where a person can go to request the immediate unbooting of the vehicle; and
- (8) In letters at least three-fourths of an inch high, PROPERTY REPRESENTATIVE: (insert on-property location or current telephone number).

The property owner shall provide access to the mayor or designee in order to inspect the required signs on premises where booting is used to enforce parking restrictions.

The notice sign shall read substantially as follows (with the designated information to be inserted at the indicated spaces):

BOOTING ZONE; ENTERING PRIVATE PROPERTY. PARKING PERMITTED FOR (insert name of property owner) CUSTOMERS ONLY. IF YOU PARK YOUR VEHICLE AND LEAVE THE PREMISES, YOUR VEHICLE WILL BE IMMEDIATELY BOOTED SUBJECT TO A \$75.00 FEE TO RELEASE VEHICLE OR TOWED AT YOUR EXPENSE. BOOTING PERFORMED BY: (insert name, address and telephone number to call to request removal of the immobilization device); and PROPERTY REPRESENTATIVE: (insert on-property location or current telephone number)

SECTION 5. Section 7-12-5 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-5. – Maximum booting rates.

- (a) The City Council resolution shall establish maximum rates for providing booting at the request of a police agency or a property owner or authorized representative, without the prior consent of a vehicle owner or other authorized person in control of the vehicle. The rates established shall be uniform throughout the City. The maximum rates established by the City Council may be altered, revised, increased or decreased from time to time.
- (b) Persons or businesses who provide booting services shall not charge in excess of the maximum allowable rates established by the City Council. No person providing services pursuant to this section shall charge any type of fee other than the fees for which the City Council has established specific rates.

SECTION 6. Section 7-12-6 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-6. – Enforcement; penalties.

- (a) If at any time a property owner or booting contractor shall fail or refuse to comply with, or otherwise violates, any of the provisions of this section, such property owner engaging the services of the booting contractor shall be subject to prosecution under the City's code enforcement system, in accordance with Chapter 13-2 and this section.

- (b) If a code enforcement officer finds a violation of this section, the code enforcement officer shall issue a notice of violation to the violator as provided in section 13-2-5. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing.
- (c) Violations shall be issued as follows:
- (1) Fines:
- | | | |
|----|--------------------------------------|----------------------|
| a. | <u>First offense:</u> | <u>\$100.00;</u> |
| b. | <u>Second offense:</u> | <u>\$250.00; and</u> |
| c. | <u>Third and subsequent offense:</u> | <u>\$500.00.</u> |
- (d) As an additional means for enforcement/collection and supplemental to above, when a notice or record of any past due penalties which became due and payable to the City after the effective date of this section is recorded in the public records of Escambia County, said notice shall constitute a special assessment lien upon all real and personal property of the contractor owing such penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.
- (e) Additionally, the City may seek injunctive relief and/or follow procedures to revoke and/or suspend the occupational license where there are repeated violations of this article.

The foregoing does not preclude or otherwise limit the City and/or other law enforcement agencies from any action as necessary to assure compliance with all applicable laws.

SECTION 7. Section 7-12-7 of Chapter 7-12 of the Code of the City of Pensacola, Florida, is hereby created to read as follows:

Sec. 7-12-7. - Citizen complaints.

The vehicle immobilization operator, vehicle immobilization company, parking facility authorized agent and parking facility owner shall respond in writing to any complaints received by the Mayor or designee concerning misconduct on the part of the contractor or its employees or agents, such as excessive charges, poor business

practices, discourteous service, damage to vehicles, or failure to give notice as required by this ordinance. The Mayor or designee shall notify contractor of any complaints within five business days from receipt of the citizen complaint. The vehicle immobilization operator, vehicle immobilization company, parking facility authorized agent and parking facility owner shall provide any additional explanation or information with respect to the particular complaint within five days upon notification. A written disposition of the complaint will be forwarded to the contractor and the citizen complainant upon completion of the investigation.

SECTION 8. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 9. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 10. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk