

AN ORDINANCE TO AMEND THE CODE OF ATHENS-CLARKE COUNTY, GEORGIA WITH RESPECT TO **BOOTING/IMMOBILIZATION OF VEHICLES IN PRIVATE PARKING LOTS**; AND FOR OTHER PURPOSES.

The Commission of Athens-Clarke County, Georgia hereby ordains as follows:

SECTION 1. Chapter 3-3 of the Code of Ordinances of Athens-Clarke County, entitled "Parking, Motor Vehicles and Traffic," is hereby amended by adding new code sections 3-3-67, to-wit:

**"Sec. 3-3-67. - BOOTING/IMMOBILIZATION OF VEHICLES IN PRIVATE PARKING LOTS**

(a) Purpose.

The Mayor and Commission of Athens-Clarke County hereby establish the ordinance set forth in this section to provide for the protection of the public health and safety as it relates to the parking of vehicles on private property and to the immobilization of those vehicles by applying an immobilization device, commonly referred to as a "boot," to a vehicle. To this end, this section provides for the regulation of private vehicle immobilization services to be administered in a manner that protects the public health and safety and promotes the public convenience and necessity. Nothing herein shall be interpreted as authorizing or condoning immobilization of vehicles on private property, but this ordinance serves as a regulation of persons as herein defined who elect to engage in booting on private property to prevent or discourage unauthorized cars from parking where prohibited or in violation of published notices.

(b) Definitions.

For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them by this subsection:

*Boot, booting or vehicle immobilization* means the act of placing on a parked motor vehicle a lockable vehicle wheel clamp or 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. The term "boot" shall include the devices used for this purpose. Such devices shall be a high-visibility color, such as yellow, orange or red. No cables, chains, ropes or other similar means of vehicle immobilization shall be allowed.

*Chief of police* shall mean the chief of police of Athens-Clarke County or his or her designee.

*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 or adjustment of a boot.

*Owner/operator* For the purposes of this section, an owner/operator is defined as a person other than a lienholder, possessing or holding title to a vehicle. The term includes a person authorized to use, operate and possess a vehicle which may be subject to the business or commercial interest of another, permission, rental, lease, or security interest in another person or entity.

*Private property owner* means a person, or the person's agent or lessee, who holds legal title or the right to occupy or possess private property. The term includes an agent authorized to operate or manage the property but does not include a vehicle immobilization service licensee or an employee or representative of a vehicle immobilization service licensee.

*Person* shall mean any natural person, firm, partnership, association, company, corporation or other entity of any kind whatsoever.

*Private parking lot* means private property that is used, wholly or in part, for parking or storing motor vehicles for the residents, tenants, employees, customers, members or guests of an establishment such as, but not limited to, a multi-family dwelling complex, business, or church.

*Unauthorized vehicle* means a vehicle parked, stored, or located on a parking lot without the consent of the parking lot owner.

*Vehicle* shall mean an automobile, truck, bus, trailer, semitrailer, truck tractor semitrailer combination, recreational vehicle, camper, motorcycle, moped, golf cart, off road vehicle or any other device used to transport persons or property; provided, however, that the term does not include bicycles.

*Vehicle immobilization service or service* shall mean a person, including a sole proprietor, independent contractor, corporation, partnership, limited liability company, or similar business entity, offering services anywhere in the territorial limits of Athens-Clarke County whereby vehicles are immobilized by the installation of a vehicle immobilization device. Such term shall not include Athens-Clarke County or any other government entity authorized to enforce parking ordinances or laws.

*Vehicle immobilization service operator or service operator* shall mean an employee, agent or contractor acting on behalf of a vehicle immobilization service to immobilize vehicles.

(c) Applicability.

This section applies to the process for the immobilization of unauthorized vehicles parked on private property and the fees charged to remove vehicle immobilization devices.

(d) Compliance with article; license or permit required.

(1) It shall be unlawful for any vehicle immobilization service or vehicle immobilization service operator to operate within Athens-Clarke County without first having obtained a vehicle immobilization service license or a service operator license pursuant to this section.

(2) It shall be unlawful for any person to immobilize or boot any vehicle within Athens-Clarke County or to impose or collect a fee for release of a boot without first complying with all applicable provisions of this section.

(3) All services and operators engaged in business in Athens-Clarke County shall comply with licensing requirements imposed by the state or Athens-Clarke County, and shall provide evidence of such upon request by any representative of Athens-Clarke County authorized to enforce the provisions of this section.

(4) No license under this section shall be issued to any person who has been convicted in this or any other state, prior to the application for a license, of any violent crime, crime involving moral turpitude, or any sexual offense as defined by O.C.G.A. § 16-6. Violent crime is defined as murder, nonnegligent manslaughter, forcible rape, robbery and aggravated assault. If at any time during the application process the applicant is charged with any violent crime, consideration of the application shall be suspended until entry of a judgement on or dismissal of the charge.

(5) Vehicle immobilization service license or service operator license application.

a. Every person desiring to obtain a vehicle immobilization service license or service operator license required by this section shall file an application with the Athens-Clarke County police department on forms to be prepared and approved by the department. The application shall state the name, address and telephone number of the applicant; name and telephone number of the owner and/or manager of the vehicle immobilization service; driver's license number or state issued identification number of the applicant; the telephone number that will be used for responding to requests to remove boots; and such other information as may be required by the chief of police or his or her designee.

b. It shall be the responsibility of the chief of police or his or her designee to cause an investigation to be made of the applicant's character, reputation, driving record, record of arrests and convictions, if any, and to secure such information as may be required to insure compliance with the requirement of this section.

c. It shall be the responsibility of the chief of police or his or her designee to issue and receive payment for the vehicle immobilization service license and the service operator's license. The cost of the vehicle immobilization service license shall be \$30.00 plus the actual cost of obtaining necessary state and federal background checks, and the cost of the service operator license shall be \$30.00 plus the actual cost of obtaining necessary state and federal background checks.

d. No vehicle immobilization license referred to in this section shall be issued or continued in effect unless the applicant for or holder of said license has paid for an Athens-Clarke County occupation tax certificate pursuant to the requirements of chapter 6-1 of the Code of Athens-Clarke County. Such occupation tax certificate and vehicle immobilization license shall be for the calendar year and must be renewed prior to the expiration date.

e. Any person aggrieved by the action of the chief of police, in refusing to issue a license may appeal to Athens-Clarke County administrative hearing officer by filing

notice of such appeal within five (5) days after receiving notification that such person's vehicle immobilization service license application or service operator's license application has been refused. The administrative hearing officer may issue a license, reissue a license, or affirm the decision of the chief of police.

f. Any change in the information furnished in the application for a license pursuant to this section must be reported to the police department in writing within ten (10) days of the change(s) in business license information. Failure to so report shall be cause for suspension or revocation of the license.

g. It shall be unlawful for any person to procure a vehicle immobilization license by fraudulent conduct or a false statement of material fact and shall be grounds for suspension or revocation of the license.

h. Once issued, service operators shall carry with them and display their license, which shall include a photo of the service operator thereon, at all times when they are in the process of installing or removing a vehicle immobilization device.

(e) Insurance.

- (1) No license shall be issued to any vehicle immobilization service applicant and no service operations shall commence until the applicant deposits with the chief of police on the Acord form certificates of insurance written by an insurance company qualified to do business in the state and having an A.M. Best rating not less than A and Financial Size Category not less than Class VII, providing coverage as required by this subsection.
- (2) The insured must add Athens-Clarke County and its officers and employees as additional insureds to be endorsed on the policies. The coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a vehicle immobilization service by the licensee, including but not limited to damage to an immobilized vehicle caused directly or indirectly by improper installation or removal of a boot.
- (3) Commercial general liability insurance providing liability coverage for property damage or personal injury in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) annual aggregate covering damages caused by the private property owner, vehicle immobilization service, or any of their employees or agents in the course of conducting vehicle immobilization services for the private property owner.
- (4) Automobile liability insurance with a minimum combined single limit of one million dollars (\$1,000,000.00)
- (5) Umbrella liability insurance with minimum coverage of one million dollars (\$1,000,000.00).
- (6) Worker's compensation insurance in the minimum coverage required by Georgia law, with Employer's Liability limits of no less than one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

(7) Failure of a licensee to meet or maintain the insurance requirements of this section, including providing the above-described insurance coverage from the private property owner shall be grounds for suspension or revocation of the license.

(f) Requirements for posting signs.

(1) It shall be unlawful for any person to immobilize or cause the immobilization of a vehicle on private property without signs being posted and maintained on the private property in accordance with this section at the time of immobilization and/or towing. Such signs must have been continuously maintained on the property for not less than twenty-four (24) hours prior to the immobilization, towing or removal of any vehicles.

(2) Signs shall be located at each designated entrance to a parking lot or parking area where parking prohibitions are to be effective. Where there is no designated entrance, such signs shall be erected so as to be clearly visible from each and every parking space. There shall be no fewer than one sign erected for every seven (7) parking spaces in the parking lot or parking area.

(3) Such signs shall be a minimum of seven and one-half square feet in area (two and one half feet by three feet).

(4) Such signs located at a designated entrance to a parking lot shall be at least four feet above the site grade. Where there is no designated entrance, such signs shall be six feet above site grade.

(5) Such signs shall state in letters at least three inches high that "Unauthorized vehicles may be impounded (towed or booted) at owner's risk and expense." Such signs shall also include the following language in letters at least two and one-half inches high:

a. Cost to remove boot \$50.00 per day;

b. Fee payable by cash, check, and credit or debit card.

c. Boot Removal—Call 000-000-0000.

d. Tow information—Call 000-000-0000.

e. Vehicle may not be impounded if owner/operator returns before boot or tow is attached.

f. Booted vehicles may be towed after 24 hours.

g. Private booting regulated by the Code of Athens-Clarke County.

h. Complaints may be made to: Parking Company 000-000-0000 or Athens-Clarke County Police Department 000-000-0000

i. This lot is owned and operated by (Name of legal entity owning parking lot/area) and can be reached at 000-000-0000 for resolution of any disputes.

(g) - Vehicle immobilization equipment.

(1) Each boot used by a vehicle immobilization service must be maintained in a safe and good working condition.

(2) The chief of police or his or her designee may, at any reasonable time, inspect a boot or other equipment used by a licensee for vehicle immobilization to determine whether the equipment complies with this section.

(h) - Apparel to be worn by vehicle immobilization operators.

- (1) Vehicle immobilization operators must wear apparel of such distinctive and uniform design as to readily identify the licensee's vehicle immobilization service and must bear the name of the licensee's vehicle immobilization service.
- (2) While on duty, an operator may not wear: apparel with offensive or suggestive language; cut offs; tank tops or halter tops.
- (3) Shoes must be worn at all times which shall not include sandals or flip flops.
- (4) A vehicle immobilization operator and the operator's clothing must conform to basic standards of hygiene and be neat, clean, and sanitary at all times.

(i) Fees charged by vehicle immobilization service.

- (1) Any vehicle immobilization service engaged in the business of the immobilization of vehicles shall not charge the owner of any immobilized vehicle or personal property in excess of fifty dollars (\$50.00) per day for the removal of the vehicle immobilization device or devices. The fifty dollars (\$50.00) fee shall be all inclusive; no additional fees may be charged for using other equipment or for any other reason.
- (2) Fees may be paid by cash, check, credit card, or debit card at no additional charge, and the vehicle immobilization service may not require that fees be paid only in cash. Proof of the ability to accept these forms of payment must be submitted prior to obtaining a license. At each and every location where a booting operation is conducted, the licensee shall have available means of collecting any fees via cash, check, credit card and debit card.
- (3) If the means to accept any one form of payment is unavailable at the time of immobilization or release of the vehicle, any immobilized vehicles must be released without charge.

(j) Vehicle not immobilized upon operator of vehicle returning.

- (1) The operator of any vehicle immobilization service shall not immobilize a vehicle and shall not charge a fee if the driver of the vehicle returns before the installation of the vehicle immobilization device is complete.
- (2) It shall be unlawful to immobilize any motor vehicle occupied by a person without giving the person, if a licensed driver, the opportunity to remove the vehicle from the lot or if requested to do so pay the appropriate fee to park if a pay to park lot.
- (3) The operator shall immediately notify the Athens-Clarke County police department of the immobilization of any vehicle occupied by an incapacitated person or a live animal.

(k) Vehicle immobilization generally

(1) It shall be unlawful for any person, his agent or employee, to:

a. engage in vehicle immobilization service within Athens-Clarke County without a valid vehicle immobilization service license or engage as a service operator without a service operator license;

b. Cause a vehicle to be immobilized within Athens-Clarke County by a vehicle immobilization service that does not hold a valid vehicle immobilization service license under this section; or

c. Employ or contact with a vehicle immobilization service not licensed under this section for the purpose of having a vehicle immobilized within Athens-Clarke County.

(2) It shall be unlawful for any person to immobilize a vehicle unless the boot is installed on a tire located on the driver's side of the vehicle.

(3) It shall be unlawful for either a vehicle immobilization service or its service operator, agent or employee to immobilize vehicles on any private property without having a valid written contract specifically for such services entered into with the private property owner or lawful lessee thereof and valid license to operate at said location. A licensee shall conduct booting operations exclusively on private property, and only pursuant to a written agreement with the owner or manager of the property. Said contract must indicate the length of the term of the contract, including the dates that services are to begin and end, and a copy must be deposited with the Athens-Clarke County police department.

(4) A vehicle immobilization service must maintain a twenty-four (24) hour a day, three hundred sixty-five (365) days per year phone number that is staffed by a live operator to communicate immediately with a driver of any vehicle that has been immobilized by the vehicle immobilization service.

(5) Immediately after a vehicle is booted, the person booting such vehicle shall affix at the rearmost portion of the window adjacent to the driver's seat of such vehicle a sequentially numbered notice sticker or decal measuring no less than eight (8) by four (4) inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle, and stating the date and time the vehicle was booted; the name, business address and the permit number of the person who booted such vehicle; the business telephone number which will facilitate the dispatch of personnel responsible for removing the boot; the make, model, color and license tag number of the immobilized vehicle; the reason for immobilization; and the immobilization device number. Provided that the sticker may be affixed in a location that is immediately and reasonably visible to the operator of a motor vehicle if there is no window adjacent to the driver's seat. Such

sticker shall be a high-visibility color, such as yellow or orange, and lettering shall be black. The chief of police may prescribe the basic design and format of the notice.

(6) It shall be unlawful for a vehicle immobilization service or service operator to fail to arrive on the site where the vehicle was immobilized within thirty (30) minutes of being contacted by the owner, driver or person in charge of the vehicle.

(7) It shall also be unlawful for either a vehicle immobilization service or a service operator to fail to immediately release vehicles from immobilization after receipt of payment of the fee for removal from the owner, driver or person in charge of a vehicle that has been immobilized by a vehicle immobilization device. It shall be a defense to this subsection if the immediate release cannot be achieved due to a mechanical failure of the device that is outside the control of the vehicle immobilization service or service operator.

(8) It shall be unlawful for a vehicle immobilization service or service operator to fail to provide a signed receipt of payment of the booting fee to the owner, driver or person in charge of a vehicle. Such receipt shall be individually and sequentially numbered and state the name, business address, business telephone number and license number of the person who has booted such vehicle as such information appears on the license to engage in booting, the amount of money received, the method of payment, the location, time of release and identifying information for the vehicle booted, the name of the person from whom the payment was received and shall be signed by the operator receiving such payment. Such receipt shall also include a telephone number for the office within the Athens-Clarke County police department responsible for receiving complaints with respect to booting licensees. The chief of police may prescribe the basic design and format of the receipt. A copy of the signed receipt shall be retained by the vehicle immobilization service.

(9) It shall be unlawful for either a vehicle immobilization service to charge fees in excess of those set out in section 3-3-65(h)(1) or to demand payment for any service or for any other reason than boot removal.

(10) In the event that the application of a vehicle immobilization device damages a vehicle, then the vehicle immobilization service is responsible for the cost of repairs for that damage as well as any damages arising out of said immobilization. Any damage done to a vehicle by a vehicle immobilization device shall be reported to the chief of police or his/her designee and returned to the file of the operator which will be maintained by the chief of police or his/her designee.

(11) In the event that the owner or operator of a vehicle, to which an immobilization device has been applied, attempts to operate said vehicle or remove the device, then the vehicle immobilization service is not liable for any damage to that vehicle. Additionally, the driver or person in charge of the vehicle will be liable to the vehicle immobilization service for the cost of damage to the vehicle immobilization device where the device is rendered unusable; mere

cosmetic damage to the device shall not impose liability for the purposes of this section. However, liability may not be imposed when the immobilization device is not readily visible to the driver of the vehicle and/or the sticker notice has not been properly affixed to the rear-most portion of the window adjacent to the driver's seat of the vehicle or other location where the sticker is immediately and reasonably visible to the operator of the vehicle. This subsection shall not be construed to create the right to collect for damage to any immobilization device at the time of the immobilization, and it shall be unlawful to require payment for any such damage as a prerequisite to removal of the immobilization device

(12) No release or waiver of any kind purporting to limit or avoid liability for damages to a vehicle that has been booted shall be valid.

(l) Activity Reports

A vehicle immobilization service shall electronically provide a monthly activity report to the Athens-Clarke County Police Department which shall contain a record of the following for each vehicle immobilization device installed within the calendar month:

- (1) the date, time and location of installation;
- (2) the reason for the installation;
- (3) the date and time of removal; and
- (4) the name of the operator installing and removing the device

(m) Compliance; violations; penalties

(1) *Violations; penalties.* It shall be unlawful for any person to violate the provisions of this section. Upon conviction for the violation thereof each person shall be subject to the punishment allowed under section 1-1-5, after hearing before the judge of municipal court. In addition, upon conviction for the violation thereof by a licensee, the licensee's agents or employees, any license may be revoked, suspended or put on probation under conditions.

(2) *Civil fines; probation, suspension, revocation of license.* Any person holding any license issued pursuant to this section or any employee or agent of such person who violates any provision of this section, or directs, consents to, permits, or acquiesces in such activity either directly or indirectly shall, by such conduct, subject the license to suspension, revocation or probation upon conditions. In addition, a maximum civil fine of \$1,000.00 may be imposed on the licensee for each violation. In considering the amount of the civil fine, if any, the administrative hearing officer shall consider the following factors:

- a. the gravity of the violation;
- b. any previous violations within a two-year period;

- c. the cost to Athens-Clarke County related to compliance or enforcement efforts undertaken by Athens-Clarke County in pursuing the case;
- d. Actions of the licensee, its employees, subcontractors or agents in connection with the violation.

The imposition of a civil fine under the provisions of this section shall not prevent the suspension, revocation, or non-renewal of any license issued hereunder or the taking of punitive or remedial action for any other violation of the ordinances of Athens-Clarke County or for subsequent violations of this section. No license shall be renewed if any civil fines imposed pursuant to this section have not been paid by the licensee prior to renewal.

For purposes of administering and enforcing this section, any act committed by an employee, agent or representative of a licensee shall be deemed to be an act of such licensee.”

SECTION 2. This ordinance shall become effective on February 1, 2019.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.