

## ARTICLE X. IMMOBILIZATION ("BOOTING") OF VEHICLES

### DIVISION 1. GENERALLY

#### Sec. 26-641. Definitions.

(a) *Terms defined.* As used in this article, the following terms shall have the meanings ascribed in this section unless the context of their usage clearly indicates another meaning:

*Barrier gate* has the meaning ascribed in section 26-601 of this Code.

*Boot* (noun) means a vehicle immobilization device.

*Boot* (verb) means to install a vehicle immobilization device.

*Booting* means the act of installing a vehicle immobilization device.

*Parking lot* has the meaning ascribed in section 26-601 of this Code.

*Parking lot general manager* has the meaning ascribed in section 26-601 of this Code.

*Parking lot operating company* has the meaning ascribed in section 26-601 of this Code.

*Permittee* means a person who holds a vehicle immobilization service permit.

*Police official* has the meaning ascribed in section 26-601 of this Code.

*Special event parking fee* has the meaning ascribed in section 26-601 of this Code.

*Unauthorized vehicle* has the meaning ascribed in section 26-601 of this Code.

*Vehicle immobilization* means installing a boot.

*Vehicle immobilization device* means a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its operation until the device is unlocked or removed.

*Vehicle immobilization operator* means any individual who installs, affixes or places or removes a vehicle immobilization device on or from a motor vehicle.

*Vehicle immobilization service* means a person who at the request of a parking lot operating company or parking lot general manager engages in the act of booting vehicles that are in a parking lot without permission, without paying a parking fee, or in violation of any parking restriction posted in accordance with the signage requirements of section 26-616 of this Code.

*Vehicle immobilization service permit* means a current and valid permit issued to a vehicle immobilization service pursuant to section 26-652 of this Code.

(b) *Interchangeable terms.* The terms "boot" (verb) and "immobilize," in reference to a vehicle, are used interchangeably in this article. The terms "booting" and "vehicle immobilization" are used interchangeably in this article. The terms "boot" (noun), "boot device" and "vehicle immobilization device" are used interchangeably in this article.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-642. Scope.**

- (a) This article applies only to parking lots within the central business district access to which is not regulated by barrier gates.
- (b) This article does not apply to the booting of vehicles in relation to delinquent municipal parking citations pursuant to article V of this chapter.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-643. Compliance with other laws.**

Compliance with the requirements of this article does not excuse compliance with any other provisions of state law or this Code relating to parking regulations or parking facilities.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-644. Prohibited activities.**

- (a) It is unlawful for any person to immobilize a vehicle without a vehicle immobilization service permit issued by the city.
- (b) It shall be unlawful for any vehicle immobilization operator to boot a vehicle:
  - (1) In a parking lot that is not in compliance with the signage requirements of section 26-616 of this Code.
  - (2) Without complying with the operating requirements of section 26-662 of this Code.
  - (3) In a parking lot used wholly or partly for paid motor vehicle parking that is accessible to the public and does not provide a receipt for payment of parking fees as required by section 26-617 of this Code.
- (c) It is unlawful for a permittee to operate or cause to be operated a vehicle immobilization service in violation of any term of a permit.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-645. Beneficial interests and rebates prohibited.**

- (a) A parking lot operating company or general manager may not have a direct or indirect monetary or ownership interest in a vehicle immobilization service that for compensation immobilizes unauthorized vehicles in a parking lot in which the parking lot operating company or general manager has an interest.
- (b) A parking lot operating company or general manager of a parking lot in which vehicles are immobilized may not accept any rebate, compensation or other valuable consideration, directly or indirectly, from a vehicle immobilization operator in connection with the immobilization of vehicles.

(Ord. No. 08-847, § 2, 9-24-08)

Secs. 26-646--26-650. Reserved.

**DIVISION 2. VEHICLE IMMOBILIZATION SERVICE PERMITS**

**Sec. 26-651. Vehicle immobilization service permit application.**

(a) Any person who desires to operate a vehicle immobilization service in the city shall submit an application for a permit to the police official in a form promulgated by the police official for that purpose, which shall include the following:

- (1) The applicant's name, telephone number, mailing address, street address, federal employee identification number, corporate charter number, and Texas driver's license number (if applicable);
- (2) The name and mailing address of each principal of the applicant, copies of the assumed-name registration if the vehicle immobilization service will be operated under an assumed name, the partnership registration, if any, and the names and addresses of all general partners if the applicant is a partnership, and a certificate of good standing from the Texas Secretary of State for a Texas domestic corporation or certificate of authority to do business in Texas if a foreign corporation, along with the names and addresses of all officers and the corporation's registered agent;
- (3) The location of all parking lots at which applicant intends to immobilize vehicles and a copy of the agreement with the parking lot operating company or general manager for vehicle immobilization at each location;
- (4) The indemnity and release form provisions that are specified in subsection (b) of this section;
- (5) Proof of insurance required by section 26-661 of this Code;
- (6) Criminal history information for every principal for whom information is provided in item (2) of this subsection as required by the police official to determine compliance with section 1-10 of this Code; and
- (7) Any other information reasonably required by the police official for the purpose of processing the application under the requirements of this article.

(b) An application shall contain the following indemnity and release, which shall be a condition of each vehicle immobilization service permit:

'THE PERMITTEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO ANY PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

1. THE PERMITTEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN LETTERED PARAGRAPHS 1--3, "PERMITTEE'S") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
2. THE CITY'S AND THE PERMITTEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER THE PERMITTEE IS IMMUNE FROM LIABILITY OR NOT; AND
3. THE CITY'S AND THE PERMITTEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER THE PERMITTEE IS IMMUNE FROM LIABILITY OR NOT.

THE PERMITTEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING

THE TERM OF THE PERMIT AND FOR TWO YEARS AFTER THE PERMIT EXPIRES. THE PERMITTEE'S INDEMNIFICATION IS LIMITED TO \$500,000.00 PER OCCURRENCE.

THE PERMITTEE AGREES TO AND SHALL RELEASE THE CITY FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE.'

(c) The application shall be signed by an owner if the applicant is a sole proprietorship, an authorized officer if the applicant is a corporation, or a general partner if the applicant is a partnership, acknowledging that the person signing has read the application, agrees to all of its terms and provisions, affirms the correctness and accuracy of the information given on the application, and affirms that he has the authority to bind the applicant to all of the terms, provisions, and requirements of the application.

(Ord. No. 08-847, § 2, 9-24-08)

### **Sec. 26-652. Permit issuance; denial; fee.**

(a) An application that contains all of the information required by section 26-651 of this Code and is duly and properly signed shall be a complete application. A complete application shall be approved and the vehicle immobilization service permit issued upon payment of the fee specified by subsection (c) of this section unless:

- (1) The information provided in the application is materially false or incorrect or the applicant has failed in any material way to comply with this article;
- (2) The applicant or an entity owned or controlled by the applicant or any of the principals of the applicant has had a vehicle immobilization service permit revoked during the preceding one year period;
- (3) The police official determines that proof of insurance provided by the applicant does not meet the requirements of section 26-661 of this Code;
- (4) The parking official determines that there exist one or more unresolved parking citations, as defined in section 26-261 of this Code, for any vehicle owned by the applicant or any of its principals; or
- (5) The applicant or any of its principals is not in compliance with the criminal history provisions of section 1-10 of this Code.

(b) In the event that an application is denied, the police official shall promptly inform the applicant in writing of the reasons for the denial. The applicant, upon written request, shall be afforded an opportunity for a hearing regarding the denial before a hearing officer appointed by the chief of police. The appeal process shall be conducted in accordance with rules promulgated by the police official and approved by the police chief for that purpose. If the denial is based in whole or in part upon section 1-10 of this Code, then the notice and hearing procedures shall also include any requirements to comply with section 1-9 of this Code and applicable state laws. The determination of the hearing examiner with respect to the application shall be final.

(c) The initial fee for a vehicle immobilization service permit shall be \$300.00. The fee for annual renewal of a vehicle immobilization service permit shall be \$200.00. The police official shall review the fees annually and may increase the fees to fully recover the city's costs, taking into account permit issuance and renewal costs, inspection and oversight services that may be required, and equipment and resource utilization, provided that no fee increase in excess of five percent per year shall be implemented without prior approval of the city council. No portion of the fee shall be refundable. Current fee information shall be maintained in the office of the police department's auto

dealers detail.

(Ord. No. 08-847, § 2, 9-24-08)

### **Sec. 26-653. Vehicle immobilization service permit conditions.**

Each vehicle immobilization service permit shall specify the following terms, which shall be the conditions under which the vehicle immobilization service permittee is authorized to conduct vehicle immobilization:

- (1) Name of the permitted vehicle immobilization operator;
- (2) That the permittee must comply with all applicable requirements of this article; and
- (3) Any other reasonable conditions specified by the police official at the time of issuance of the permit.

(Ord. No. 08-847, § 2, 9-24-08)

### **Sec. 26-654. Term.**

A vehicle immobilization service permit shall be valid for one year from its date of issuance and shall not be transferrable. A permit may be renewed by filing an application pursuant to section 26-651 of this Code at least 30 days prior to the expiration of the permit. A renewal permit application shall be reviewed and approved pursuant to section 26-652 of this Code.

(Ord. No. 08-847, § 2, 9-24-08)

Secs. 26-655--26-660. Reserved.

## **DIVISION 3. REQUIREMENTS FOR OPERATING A VEHICLE IMMOBILIZATION SERVICE**

### **Sec. 26-661. Insurance.**

(a) The vehicle immobilization service shall obtain and maintain in effect during the term of a permit issued pursuant to section 26-652 of this Code insurance coverage as set out below and shall furnish certificates of insurance prior to the beginning of the term of such permit. All such policies shall be primary to any other insurance. Claims made policies shall have an extended reporting period (tail coverage) in place for two years after such policies expire. All liability policies shall be issued by a carrier that is authorized or deemed eligible by the Texas Department of Insurance to do business in the State of Texas. The vehicle immobilization service shall maintain at least the following insurance coverage in the following amounts:

- (1) *Commercial General Liability*, including Broad Form Coverage: Bodily Injury and Property Damage, Combined Single Limits of \$500,000 each Occurrence and \$500,000 Annual Aggregate; and
- (2) *Automobile Liability Insurance*, including owned, hired, or non-owned vehicles or any automobile: \$500,000 Combined Single Limit per Accident.

(b) The insurance policy must state that it may not be canceled, materially modified, or non-renewed unless the insurance company gives the police official 30 days' advance written notice. Defense costs are outside the limit of liability. Aggregate coverage limits are per 12-month

policy period unless otherwise indicated. Proof of insurance required by this section shall be on the authorized form approved for this purpose by the police official. A permit shall be automatically suspended without any requirement for action by the city or notice to the permittee for any period of time that any of the insurance required by this section is not in effect. In addition, the police official may cause the permit to be revoked for cause pursuant to section 26-666 of this Code for failure to maintain insurance.

(Ord. No. 08-847, § 2, 9-24-08)

### **Sec. 26-662. Vehicle immobilization service operations.**

A vehicle immobilization service shall operate in accordance with the following requirements:

- (1) Vehicles shall be booted only in off-street parking lots and only pursuant to a written agreement with the parking lot operating company or general manager;
- (2) Upon affixing a boot device to a vehicle, a vehicle immobilization operator shall place an adhesive notice on the driver's side window and a non-adhesive notice under the driver's side windshield wiper advising the owner or operator that the vehicle is immobilized and that damage may occur to the vehicle if moved; the date and time the vehicle was booted; the name, address and telephone number of the vehicle immobilization service; information about how to obtain release of the boot device from the vehicle; the amount of the fee for release; the possibility that the vehicle may be towed after 24 hours, the telephone number for the police department's auto dealers detail and any additional text reasonably required by the police official;
- (3) No person shall charge more than \$100.00 for the removal or release of a boot device, provided, however, the failure of a vehicle operator to properly display a parking fee receipt on the vehicle dashboard resulting in the booting of such vehicle, shall entitle the vehicle immobilization service to collect only an administrative fee of \$25.00 for the removal of such boot upon display of such receipt by the vehicle operator to the vehicle immobilization service;
- (4) Except as provided in the previous item, no person shall be obligated to pay any fees, other than the booting fee, the unpaid parking fee for the immediately preceding 24-hour period and any past due fees for contract parking, in connection with the installation or removal of a boot device;
- (5) Payment for removal of boot devices shall be accepted in any of the following forms: cash, credit card, debit card, cashier's check, certified check, money order, or Western Union check, provided, however, that the vehicle immobilization service may elect to accept personal and business checks as well;
- (6) The vehicle immobilization operator shall remove the boot device within one hour after the owner or operator of the vehicle has paid the removal fee or the administrative fee provided in item (3) of this section; provided, however, that in the case of a boot device that may be removed by a vehicle owner or operator who has paid the boot removal fee or the administrative fee, the information necessary to unlock the device shall be provided immediately after payment is made;
- (7) The vehicle immobilization operator shall ensure that the act of booting a vehicle does not unreasonably interfere with safe traffic operations in parking lots and entrances to and exits from such lots;
- (8) A vehicle immobilization service shall maintain an office readily accessible to the public by telephone or in person, open and manned 24 hours a day, 7 days a week, 365 days a year for the purpose of accepting payment and releasing vehicles from immobilization;

(9) A permittee shall display, upon request, a true and correct copy of the vehicle immobilization service permit required by this article and a vehicle immobilization sales tax permit at each location where vehicle immobilization is provided;

(10) In addition to the notice required in item (2) of this section, the vehicle immobilization operator shall prepare a multiple-copy form that states:

- a. The name, business address, and phone number of the vehicle immobilization operator and the vehicle immobilization service;
- b. The name of the owner, operating company or general manager of the parking lot on which the boot device was installed;
- c. The name of the individual(s) authorizing and performing the immobilization;
- d. The date, time and location the boot device was installed;
- e. A description of the booted vehicle, including the make, model, and license plate number;
- f. The amount of the fee for removal of a boot device; and
- g. The name of the person who removed the boot device, the date and time the device was removed, the name of the person to whom the vehicle was released, and the amount of fees paid for removal of the device and parking fees.

A copy of the form must be given to the individual who reclaims the vehicle, and in the event that the boot device is removed by the vehicle owner or operator after payment of applicable fees, a copy of the form must be provided to the individual who returns the boot device to the vehicle immobilization service. The vehicle immobilization service shall maintain the original form at its place of business for a period of three years. Any peace officer shall have the right, upon request, to inspect and copy such records to determine compliance with the requirements of this section;

(11) The vehicle immobilization operator shall comply with all applicable traffic control laws, devices, signs, and markings.

(Ord. No. 08-847, § 2, 9-24-08)

### **Sec. 26-663. Duty of vehicle immobilization service.**

(a) It shall be the duty of every vehicle immobilization service permittee to cause each of its employees to comply with the requirements of this article and any permit issued hereunder.

(b) It shall be the duty of every vehicle immobilization service permittee to provide information and applicable fees to the police official to obtain criminal history information for each of its employees before the employee is allowed to perform any vehicle immobilization and to keep a record of the background check.

(c) It shall be the duty of every vehicle immobilization service permittee to notify the police official before he commences immobilization service on any parking lot not previously listed on its application.

(d) It shall be the duty of every vehicle immobilization service permittee to respond in writing to any complaints received by the police official concerning misconduct on the part of the permittee or permittee's employees or agents such as excessive charges, poor business practices, discourteous service, damage to vehicles, or failure to give notice as required by this article. Permittee shall provide such response to the complainant, copy to the police official, within five days from receipt of the complaint.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-664. Operator requirements.**

It is the duty of the vehicle immobilization service permittee to ensure that no individual at any time performs as a vehicle immobilization operator unless the individual meets each of the criteria of this section. Each vehicle immobilization operator shall:

- (1) Be 18 years of age or older;
- (2) Wear a picture ID, name tag with the employee's first name and employee identification number, and shirt, jacket or vest with the name and logo of the vehicle immobilization service; and
- (3) Perform his duties in a courteous and professional manner.

If the vehicle immobilization service permittee, or any principal of a permittee, performs as a vehicle immobilization operator, the permittee or principal must satisfy each of these requirements.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-665. Vehicle immobilization service operations subject to police regulation.**

All vehicle immobilization service operations are subject to temporary suspension when the police official determines that the continued operation of the service constitutes a hazard to the public safety and welfare, including but not limited to, conducting vehicle immobilization services:

- (1) That are in violation of section 26-616 of this Code pertaining to required signage;
- (2) That are in violation of section 26-662 of this Code pertaining to vehicle immobilization service operations requirements; or
- (3) In a parking lot used wholly or partly for paid motor vehicle parking that is accessible by motor vehicles but in which patrons are unable to make payment due to the absence of a parking lot attendant, operable pay station, or other method of paying to park in the lot.

(Ord. No. 08-847, § 2, 9-24-08)

**Sec. 26-666. Revocation.**

(a) A vehicle immobilization service permit may be revoked without refund of any portion of the permit application or renewal fee if:

- (1) Any information supplied in the permit application was materially false or incorrect;
- (2) The permit was issued through error;
- (3) The permittee has failed to operate in compliance with the requirements for operating a vehicle immobilization service as set forth in section 26-662 of this Code;
- (4) The permittee has failed to comply with any applicable provision of the permit or this article;
- (5) The permittee has failed to renew the permit in accordance with section 26-654 of this Code;
- (6) The permittee has failed to perform under the release and indemnity requirements of section 26-651 of this Code; or
- (7) The permittee or any of its principals are not in compliance with the criminal history provisions of section 1-10 of this Code.

(b) Notice of revocation shall be provided to the vehicle immobilization service permittee by depositing the same in the United States mail, first class, certified, return receipt requested, addressed to the address of the permittee shown in the permit application. The notice shall set forth the alleged grounds for the revocation and the opportunity to request a hearing regarding the revocation. If the revocation is based in whole or in part upon section 1-10 of this Code, then the notice and hearing procedures shall also include any requirements to comply with section 1-9 of this Code and applicable state laws.

(c) If the permittee wishes to request a hearing, such request must be made in writing and provided to the police official within 20 days of the date of the police official's notice of revocation. Pending the hearing, the police official may suspend the vehicle immobilization service permit when the police official determines that continued operation of the vehicle immobilization service constitutes a hazard to public safety and welfare. At the hearing, the burden of demonstrating that a permit should be revoked shall be upon the city. The permittee may also present evidence and cross examine witnesses. The hearing shall be conducted by a hearing officer appointed by the police official, who shall revoke the permit if he determines by a preponderance of the evidence that grounds exist for revocation. The decision of the hearing officer to revoke a permit shall be made in writing and shall set forth the grounds therefor. The hearing officer's determination shall be final.

(Ord. No. 08-847, § 2, 9-24-08)