

# Memorandum



CITY OF DALLAS

DATE August 7, 2009

TO Members of the Transportation and Environment Committee:  
Linda L. Koop (Chair), Sheffie Kadane (Vice Chair), Jerry Allen, Carolyn R. Davis, Tennell Atkins, Angela Hunt, Pauline Medrano, Delia Jasso and Ron Natinsky

SUBJECT Regulation of Vehicle Immobilization (Booting) on Private Parking Lots Briefing

The staff proposal to regulate booting on private pay parking lots was presented to the Council's Transportation and Environment Committee originally on March 23, 2009 and again on June 1, 2009. The issue was subsequently discussed at the Council's Economic Development Committee on June 12, 2009 prior to being scheduled as a Council agenda item on June 24, 2009. Council directed the issue back to the Transportation and Environment Committee prior to the July break.

The primary point of contention regarding the proposed regulation is whether a parking lot operator that wants to utilize booting as an enforcement tool should be (1) required to provide a receipt for payment either from an attendant or an electronic pay station, or (2) allowed to use a video audit procedure as documentation when full payment has not been provided. Based on prior Committee discussion regarding this point, staff has prepared two draft versions of an ordinance implementing this regulation:

- Version 1 – Without Video Audit Expiration. This version requires either a parking fee receipt or a video audit procedure in order for a parking lot owner to use booting as an enforcement tool.
- Version 2 – With Video Audit Expiration. This version is identical to Version 1 except that it would cause the video audit procedure option to expire on April 15, 2010 (Section 48C-38(d) – Page 29). Therefore, after that date, the ordinance would require a parking fee receipt in order for a parking lot owner to use booting.

If the Committee makes a recommendation at the August 11<sup>th</sup> meeting, a Council agenda item will be scheduled for August 24, 2009.

Please contact me if you need additional information.

A handwritten signature in black ink, appearing to read 'Jill Jordan'.

Jill A. Jordan, P.E.  
Assistant City Manager

c: The Honorable Mayor and Members of the City Council  
Mary K. Suhm, City Manager  
Thomas P. Perkins, Jr., City Attorney  
Deborah Watkins, City Secretary  
Craig Kinton, City Auditor  
Judge C. Victor Lander, Administrative Judge  
Ryan S. Evans, First Assistant City Manager  
A.C. Gonzalez, Assistant City Manager  
Forest Turner, Assistant City Manager  
David Cook, Chief Financial Officer  
Jeanne Chipperfield, Director, Budget and Management Services  
Edward Scott, Director, Controller's Office  
Helena Stevens-Thompson, Assistant to the City Manager – Council Office  
Rick Galceran, P.E., Director, Public Works and Transportation  
Theresa O'Donnell, Director, Development Services

# **Version 1 – Without Video Audit Expiration**

8/5/2009 DRAFT  
(Without Video Audit Expiration)

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

An ordinance adding CHAPTER 48C, “VEHICLE IMMOBILIZATION SERVICE,” (consisting of Sections 48C-1 through 48C-51) to the Dallas City Code, as amended; authorizing the director to establish rules and regulations for vehicle immobilization service; defining terms; providing procedures, qualifications, requirements, and fees for vehicle immobilization service licenses and vehicle immobilization operator’s permits; establishing grounds for denial, suspension, revocation, and nonrenewal of vehicle immobilization service licenses and vehicle immobilization operator’s permits and providing for appeals; providing service and equipment standards for vehicle immobilization service; providing insurance, record keeping, signage, and notification requirements; restricting financial interests between a vehicle immobilization service and a parking lot owner; requiring either a receipt in exchange for payment of a parking fee or use of a video audit system prior to vehicle immobilization; establishing apparel requirements for parking lot attendants and vehicle immobilization operators; setting the maximum fee that may be charged by a vehicle immobilization service; providing a penalty not to exceed \$500; providing a severability clause; and providing an effective date.

WHEREAS, the city council believes that the proposed regulations for vehicle immobilization service would promote the public safety of both visitors and residents of the city of Dallas by contributing to a decrease in the potential for confrontation and violence between vehicle owners and the persons who immobilize their vehicles and a decrease in property damage caused by faulty vehicle immobilization equipment or by incompetent, negligent, and criminal actions of vehicle immobilization operators; and

WHEREAS, the city council further believes that it is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from providing vehicle immobilization service, either as a licensee or as a vehicle immobilization operator; and

WHEREAS the city council, in accordance with Chapter 53 of the Texas Occupations Code, has considered the following criteria:

- (1) the nature and seriousness of the crimes;
- (2) the relationship of the crimes to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
- (4) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and has determined that the crimes listed in Section 48C-7(a)(4) of CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of a licensee and that the crimes listed in Section 48C-14(a)(4) of CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of a vehicle immobilization operator, whose job is to immobilize unauthorized vehicles on parking lots. The city council has determined that the very nature of the occupation of a licensee brings the licensee into constant confrontational contact with the public which, though indirect, gives the licensee repeated opportunity to participate in crimes of violence or dishonesty, or crimes against the public health, safety, or morals should the licensee be so inclined. The city council further finds that the very nature of a vehicle immobilization operator brings the operator

into constant confrontational contact with the public thereby giving the operator repeated opportunities to commit crimes of violence or dishonesty or crimes against the public health, safety, or morals should the operator be so inclined. Thus, it is the opinion of the city council that the listed crimes render a person unable, incompetent, and unfit to perform the duties and responsibilities, respectively, of a licensee or an operator for a vehicle immobilization service in a manner that would promote the public safety and trust; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 48C-7(a)(4), as forth in this ordinance, is presently fit to engage in vehicle immobilization service as a licensee until the respective time period designated in that section has expired; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 48C-14(a)(4), as set forth in this ordinance, is presently fit to hold the occupation of a vehicle immobilization operator until the respective time period designated in that section has expired, unless the person can qualify for a probationary permit under Section 48C-20, as set forth in this ordinance; and

WHEREAS, it is the intent of the city council to disqualify a person from being issued by the city of Dallas a vehicle immobilization service license if the person has been convicted within the designated time period of any of the crimes listed in Section 48C-7(a)(4), as set forth in this ordinance, or a vehicle immobilization operator's permit if the person has been convicted within the designated time period of any crimes listed in Section 48C-14(a)(4), as set forth in this ordinance;

Now, Therefore,

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

SECTION 1. That the Dallas City Code, as amended, is amended by adding CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," to read as follows:

**"CHAPTER 48C**

**VEHICLE IMMOBILIZATION SERVICE**

**ARTICLE I.**

**GENERAL PROVISIONS.**

**SEC. 48C-1. STATEMENT OF POLICY.**

It is the policy of the city to provide for the protection of the public interest as it relates to the 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.

**SEC. 48C-2. GENERAL AUTHORITY AND DUTY OF DIRECTOR.**

The director shall implement and enforce this chapter and may by written order establish such rules and regulations, consistent with this chapter, as may be determined necessary to discharge the director's duty under, or to effect the policy of, this chapter.

**SEC. 48C-3. ESTABLISHMENT OF RULES AND REGULATIONS.**

(a) Before adopting, amending, or abolishing a rule or regulation, the director shall hold a public hearing on the proposal.

(b) The director shall fix the time and place of the hearing and, in addition to notice required under the Open Meetings Act (Chapter 551, Texas Government Code), as amended, shall notify each licensee and such other persons as the director determines are interested in the subject matter of the hearing.

(c) After the public hearing, the director shall notify the licensees and other interested persons of the action taken and shall post an order adopting, amending, or abolishing a rule or regulation on the official bulletin board in the city hall for a period of not fewer than 10 days. The order becomes effective immediately upon expiration of the posting period.

**SEC. 48C-4. EXCEPTIONS.**

This chapter does not apply to the immobilization of a vehicle by the city as authorized under Section 28-5.1 of this code.

**SEC. 48C-5. DEFINITIONS.**

In this chapter:

(1) BOOT means 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.

(2) CITY means the city of Dallas, Texas.

(3) CONVICTION means a conviction in a federal court or court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

(4) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, and includes representatives, agents, and department employees designated by the director.

(5) 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.

(6) LAWFUL ORDER means a verbal or written directive that:

(A) is issued by the director in the performance of official duties in the enforcement of this chapter and any rules and regulations promulgated under this chapter; and

(B) does not violate the United States Constitution or the Texas Constitution.

(7) 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.

(8) PARKING LOT means public or private property (other than public right-of-way) that is used, wholly or in part, for paid motor vehicle parking where payment for the parking is made:

(A) at the time of parking; and

(B) to a pay station or a uniformed parking lot attendant.

(9) 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.

(10) PERMITTEE means an individual who has been issued a vehicle immobilization operator's permit under this chapter.

(11) PERSON means an individual, assumed name entity, partnership, joint-venture, association, corporation, or other legal entity.

(12) POLICE DEPARTMENT means the police department of the city of Dallas.

(13) PROPERTY ENTRANCE means any point located on a parking lot that is designed to provide access by a vehicle to the parking lot.

(14) RECEIPT means a decal, emblem, badge, sticker, ticket, or other item given to a vehicle owner or operator as proof that the vehicle is authorized to park on the parking lot.

(15) STREET means any public street, alley, road, right-of-way, or other public way within the corporate limits of the city. The term includes all paved and unpaved portions of the right-of-way.

(16) UNAUTHORIZED VEHICLE means a vehicle that is parked, stored, or located on a parking lot without having paid the parking fee required by the parking lot owner for parking on the parking lot.

(17) 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.

(18) VEHICLE IMMOBILIZATION OPERATOR means any individual who installs, affixes, places, adjusts, or removes a boot on or from a vehicle.

(19) VEHICLE IMMOBILIZATION OPERATOR'S PERMIT means a permit issued under this chapter to an individual by the director authorizing that individual to immobilize vehicles for a vehicle immobilization service in the city.

(20) VEHICLE IMMOBILIZATION SERVICE means the business of immobilizing an unauthorized vehicle on a parking lot.

(21) 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.

(22) 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.

## ARTICLE II.

### VEHICLE IMMOBILIZATION SERVICE LICENSE.

#### SEC. 48C-6. LICENSE REQUIRED; APPLICATION.

(a) A person commits an offense if, within the city, he, or his agent or employee:

(1) engages in vehicle immobilization service on any property other than a parking lot;

(2) engages in vehicle immobilization service without a valid vehicle immobilization service license;

(3) causes a vehicle to be immobilized by a vehicle immobilization service that does not hold a valid vehicle immobilization service license; or

(4) employs or contracts with a vehicle immobilization service not licensed by the director under this article 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 upon a form provided for that purpose. The application must be signed by the person who will own, control, or operate the proposed vehicle immobilization service. The application must be verified and include the following information:

(1) The name, address, and telephone number of the applicant, the trade name under which the applicant does business, and the street address and telephone number of the vehicle immobilization service establishment.

(2) The number and type of boots utilized by the vehicle immobilization service, including the make, model, and identification number.

(3) Documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this chapter.

(4) A statement attesting that each boot and other vehicle immobilization equipment used by the vehicle immobilization service has been rendered for ad valorem taxation in the city and that the applicant is current on payment of those taxes.

(5) A list, to be kept current, of the owners and management personnel of the vehicle immobilization service, and of all employees who will participate in vehicle immobilization service, including names, dates of birth, state driver's license numbers, social security numbers, and vehicle immobilization operator's permit numbers.

(6) A list of what methods of payment the applicant will accept from a vehicle owner or operator for removal of a boot.

(7) Proof of a valid certificate of occupancy issued by the city in the name of the company and for the location of the vehicle immobilization service business.

(8) Any other information deemed necessary by the director.

(9) A nonrefundable application processing fee of \$50.

(c) A person desiring to engage in vehicle immobilization service shall register with the director a trade name that clearly differentiates the person's company from all other companies engaging in vehicle immobilization service and shall use no other trade name for the vehicle immobilization service.

#### **SEC. 48C-7. LICENSE QUALIFICATIONS.**

(a) To qualify for a vehicle immobilization service license, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) be able to communicate in the English language;

(4) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483, Texas Health and Safety Code), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Chapter 481, Texas Health and Safety Code), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (4)(A)(i) through (xiii) of this subsection; and

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(5) not be addicted to the use of alcohol or narcotics;

(6) be subject to no outstanding warrants of arrest; and

(7) not employ any person who is not qualified under this subsection.

(b) An applicant who has been convicted of, or who employs a person who has been convicted of, an offense listed in Subsection (a)(4), for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a vehicle immobilization service license only if the director determines that the applicant, or the employee, is presently fit to engage in the business of a vehicle immobilization service. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's, or employee's, past criminal activity;

(2) the age of the applicant, or employee, at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's, or employee's, last criminal activity;

(4) the conduct and work activity of the applicant, or employee, prior to and following the criminal activity;

(5) evidence of the applicant's, or employee's, rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's, or employee's, present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant, or employee; the sheriff and chief of police in the community where the applicant, or employee, resides; and any other persons in contact with the applicant, or employee.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section.

(d) A licensee shall maintain a permanent and established place of business at a location within the city where a vehicle immobilization service is not prohibited by the Dallas Development Code.

**SEC. 48C-8. LICENSE ISSUANCE; FEE; DISPLAY; TRANSFERABILITY; EXPIRATION.**

(a) The director shall, within 30 days after the date of application, issue a vehicle immobilization service license to an applicant who complies with the provisions of this article.

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

(c) The annual fee for a vehicle immobilization service license is \$900, prorated on the basis of whole months. The fee for issuing a duplicate license for one lost, destroyed, or mutilated is \$5. The fee is payable to the director upon issuance of a license. No refund of a license fee will be made.

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

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

(f) A vehicle immobilization service license expires June 30 of each year and may be renewed by applying in accordance with Section 48C-6. Application for renewal must be made not less than 30 days or more than 60 days before expiration of the license and must be accompanied by the annual license fee.

**SEC. 48C-9. REFUSAL TO ISSUE OR RENEW LICENSE.**

(a) The director shall refuse to issue or renew a vehicle immobilization service license if the applicant or licensee:

(1) intentionally or knowingly makes a false statement as to a material matter in an application for a license or license renewal, or in a hearing concerning the license;

(2) has been convicted twice within a 12-month period or three times within a 24-month period for violation of this chapter or has had a vehicle immobilization service license revoked within two years prior to the date of application;

(3) uses a trade name for the vehicle immobilization service other than the one registered with the director;

(4) has had a vehicle immobilization service license suspended on three occasions within 12 months for more than three days on each occasion;

(5) has been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the applicant to perform vehicle immobilization service.

(6) fails to meet the service standards in the rules and regulations established by the director;

(7) is not qualified under Section 48C-7 of this article; or

(8) uses a subcontractor to provide vehicle immobilization service.

(b) If the director determines that a license should be denied the applicant or licensee, the director shall notify the applicant or licensee in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant or licensee of the right to, and process for, appeal of the decision.

#### **SEC. 48C-10. SUSPENSION OF LICENSE.**

(a) The director may suspend a vehicle immobilization service license for a definite period of time not to exceed 30 days or, if the deficiency is detrimental to public safety, then for a period of time until the deficiency is corrected, for one or more of the following reasons:

(1) Failure of the licensee to maintain any vehicle immobilization equipment in a good and safe working condition.

(2) Violation by the licensee or an employee of the licensee of a provision of this chapter or of the rules and regulations established by the director under this chapter.

(3) Failure of the licensee's operator to arrive at a parking lot within 30 minutes after the time the licensee is notified to do so by the vehicle owner or operator or the owner or operator's representative.

(b) Written notice of the suspension must be served on the licensee and must include the reason for suspension, the date the suspension begins, the duration of the suspension, and a statement informing the licensee of the right of appeal.

(c) The period of suspension begins on the date specified in the notice of suspension or, in the case of an appeal, on the date ordered by the permit and license appeal board, whichever applies.

(d) A licensee whose vehicle immobilization service license is suspended shall not operate a vehicle immobilization service inside the city during the period of suspension.

#### **SEC. 48C-11. REVOCATION OF LICENSE.**

The director shall revoke a vehicle immobilization service license if the director determines that the licensee has:

(1) intentionally or knowingly made a false statement as to a material matter in the application or hearing concerning the license;

(2) intentionally or knowingly failed to comply with applicable provisions of this chapter or with the conditions and limitations of the license;

(3) operated a vehicle immobilization service not authorized by the license or other applicable law;

(4) been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the licensee to perform vehicle immobilization service;

(5) is under indictment for or has been convicted of any felony offense while holding a license;

(6) does not qualify for a license under Section 48C-7 of this chapter;

(7) failed to pay a license fee required under this chapter; or

(8) violated Section 48C-44(c)(1) or (2) of this chapter.

**SEC. 48C-12. APPEALS.**

Any person whose application for a license or license renewal is denied by the director, or a licensee whose license has been revoked or suspended by the director, may file an appeal with the permit and license appeal board in accordance with Section 2-96 of this code.

**ARTICLE III.**

**VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

**SEC. 48C-13. VEHICLE IMMOBILIZATION OPERATOR'S PERMIT REQUIRED.**

(a) A person commits an offense if he immobilizes a vehicle for a vehicle immobilization service in the city without a valid vehicle immobilization operator's permit.

(b) A licensee commits an offense if he employs or otherwise allows 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.

**SEC. 48C-14. QUALIFICATIONS FOR A VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) To qualify for a vehicle immobilization operator's permit, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) be able to communicate in the English language;

(4) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483, Texas Health and Safety Code), or of any comparable state or federal law, that is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Chapter 481, Texas Health and Safety Code), or of any comparable state or federal law, that is punishable as a felony under the applicable law; or

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (4)(A)(i) through (xiii) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(5) not be addicted to the use of alcohol or narcotics;

(6) be subject to no outstanding warrants of arrest;

(7) be sanitary and well-groomed in dress and person; and

(8) be employed by the licensee.

(b) An applicant who has been convicted of an offense listed in Subsection (a)(4) for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a vehicle immobilization operator's permit only if the director determines that the applicant is presently fit to engage in the occupation of vehicle immobilization. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age of the applicant at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's last criminal activity;

(4) the conduct and work activity of the applicant prior to and following the criminal activity;

(5) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section and under Section 48C-20 of this article.

**SEC. 48C-15. APPLICATION FOR VEHICLE IMMOBILIZATION OPERATOR'S PERMIT; FEE.**

To obtain a vehicle immobilization operator's permit, or renewal of a vehicle immobilization operator's permit, a person must file with the director a completed written application on a form provided for the purpose and a nonrefundable application fee of \$10. The director shall require each application to state such information as the director reasonably considers necessary to determine whether an applicant is qualified.

**SEC. 48C-16 INVESTIGATION OF APPLICATION.**

(a) The director shall obtain a current official criminal history report (issued by the Texas Department of Public Safety within the preceding 12 months) on each applicant to determine the applicant's qualification under Section 48C-14. The director shall obtain a list of any warrants of arrest for the applicant that might be outstanding.

(b) The director may conduct such other investigation as the director considers necessary to determine whether an applicant for a vehicle immobilization operator's permit is qualified.

(c) The director shall provide the applicant, upon written request, a copy of all materials contained in the applicant's file to the extent allowed under the Public Information Act (Chapter 552, Texas Government Code), as amended.

**SEC. 48C-17. ISSUANCE AND DENIAL OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) The director shall issue a vehicle immobilization operator's permit to an applicant, unless the director determines that the applicant is not qualified.

(b) The director shall delay until final adjudication the approval of the application of any applicant who is under indictment for or has charges pending for a felony offense involving a crime described in Section 48C-14(a)(4)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses.

(c) The director shall deny the application for a vehicle immobilization operator's permit if the applicant:

(1) is not qualified under Section 48C-14; or

(2) intentionally or knowingly makes a false statement of a material fact in an application for a vehicle immobilization operator's permit.

(d) If the director determines that a permit should be denied the applicant, the director shall notify the applicant in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant of the right to, and process for, appeal of the decision.

**SEC. 48C-18. EXPIRATION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

Except in the case of a probationary or provisional permit, a vehicle immobilization operator's permit expires one year after the date of issuance.

**SEC. 48C-19. PROVISIONAL PERMIT.**

(a) The director may issue a provisional vehicle immobilization operator's permit if the director determines that it is necessary pending completion of investigation of an applicant for a vehicle immobilization operator's permit.

(b) A provisional vehicle immobilization operator's permit expires on the date shown on the permit, which date shall not exceed 45 days after the date of issuance, or on the date the applicant is denied a vehicle immobilization operator's permit, whichever occurs first.

(c) The director shall not issue a provisional permit to a person who has been previously denied a vehicle immobilization operator's permit.

**SEC. 48C-20. PROBATIONARY PERMIT.**

(a) The director may issue a probationary vehicle immobilization operator's permit to an applicant who is not qualified for a vehicle immobilization operator's permit under Section 48C-14 if the applicant:

(1) could qualify under Section 48C-14 for a vehicle immobilization operator's permit within one year after the date of application; and

(2) is determined by the director, using the criteria listed in Section 48C-14(b) of this article, to be presently fit to engage in the occupation of a vehicle immobilization operator.

(b) A probationary vehicle immobilization operator's permit may be issued for a period not to exceed one year.

(c) The director may prescribe appropriate terms and conditions for a probationary vehicle immobilization operator's permit as the director determines are necessary.

#### **SEC. 48C-21. DUPLICATE PERMIT.**

If a vehicle immobilization operator's permit is lost or destroyed, the director shall issue the permittee a duplicate permit upon payment to the city of a duplicate permit fee of \$10.

#### **SEC. 48C-22. DISPLAY OF PERMIT.**

A vehicle immobilization operator shall at all times conspicuously display a vehicle immobilization operator's permit on the clothing of the driver's upper body. A vehicle immobilization operator shall allow the director or a peace officer to examine the vehicle immobilization operator's permit upon request.

#### **SEC. 48C-23. SUSPENSION BY A DESIGNATED REPRESENTATIVE.**

(a) If a duly authorized representative designated by the director to enforce this chapter determines that a permittee has failed to comply with this chapter (except Section 48C-14) or a regulation established under this chapter, the representative may suspend the vehicle immobilization operator's permit for a period of time not to exceed three days by personally serving the permittee with a written notice of the suspension. The written notice must include the reason for suspension, the date the suspension begins, the duration of the suspension, and a statement informing the permittee of the right of appeal.

(b) A suspension under this section may be appealed to the director or the director's assistant if the permittee requests an appeal at the time the representative serves notice of suspension or within 10 days after the notice of suspension is served. When an appeal is requested, the suspension may not take effect until a hearing is provided by the director or the director's assistant.

(c) The director may order an expedited hearing under this section, to be held as soon as possible after the permittee requests an appeal, but at least 10 days advance notice of the hearing must be given to the permittee. The director may affirm, reverse, or modify the order of the representative. The decision of the director is final.

**SEC. 48C-24. SUSPENSION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) If the director determines that a permittee has failed to comply with this chapter (except Section 48C-14) or any regulation established under this chapter, the director shall suspend the vehicle immobilization operator's permit for a definite period of time not to exceed 60 days.

(b) If at any time the director determines that a permittee is not qualified under Section 48C-14 or is under indictment or has charges pending for a felony offense involving a crime described in Section 48C-14(a)(4)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses, the director shall suspend the vehicle immobilization operator's permit until such time as the director determines that the permittee is qualified or that the charges against the permittee have been finally adjudicated.

(c) A permittee whose vehicle immobilization operator's permit is suspended shall not immobilize a vehicle inside the city during the period of suspension.

(d) The director shall notify the permittee in writing of a suspension under this section and include in the notice:

- (1) the reason for the suspension;
- (2) the date the suspension is to begin;
- (3) the duration of the suspension; and
- (4) a statement informing the permittee of the right of appeal.

(e) The period of suspension begins on the date specified by the director or, in the case of an appeal, on the date ordered by the appeal hearing officer.

**SEC. 48C-25. REVOCATION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) The director shall revoke a vehicle immobilization operator's permit if the director determines that a permittee:

- (1) immobilized a vehicle inside the city during a period when the vehicle immobilization operator's permit was suspended;
- (2) intentionally or knowingly made a false statement of a material fact in an application for a vehicle immobilization operator's permit;

(3) engaged in conduct that constitutes a ground for suspension under Section 48C-24(a), and, at least two times within the 12-month period preceding the conduct or three times within the 24-month period preceding the conduct, had received either a suspension in excess of three days or a conviction for violation of this chapter;

(4) engaged in conduct that could reasonably be determined to be detrimental to the public safety;

(5) failed to comply with a condition of a probationary permit; or

(6) is under indictment for or has been convicted of any felony offense while holding a vehicle immobilization operator's permit.

(b) A person whose vehicle immobilization operator's permit is revoked shall not:

(1) apply for another vehicle immobilization operator's permit before the expiration of 12 months after the date the director revokes the permit or, in the case of an appeal, the date the appeal hearing officer affirms the revocation; or

(2) immobilize a vehicle inside the city.

(c) The director shall notify the permittee and the licensee in writing of a revocation and include in the notice:

(1) the specific reason or reasons for the revocation;

(2) the date the director orders the revocation; and

(3) a statement informing the permittee of the right to, and process for, appeal of the decision.

**SEC. 48C-26. IMMOBILIZING A VEHICLE AFTER SUSPENSION OR REVOCATION.**

(a) After receipt of a notice of suspension, revocation, or denial of permit renewal, the permittee shall, on the date specified in the notice, surrender the vehicle immobilization operator's permit to the director and discontinue immobilizing vehicles inside the city.

(b) Notwithstanding Section 48C-24(c), Section 48C-25(b), and Subsection (a) of this section, if the permittee appeals a suspension or revocation under this section, the permittee may continue to immobilize vehicles for a vehicle immobilization service pending the appeal unless:

(1) the permittee's vehicle immobilization permit is suspended pursuant to Section 48C-24(b) or revoked pursuant to Section 48C-25(a)(6) of this article; or

(2) the director determines that continued operation by the permittee would impose a serious and imminent threat to the public safety.

**SEC. 48C-27. APPEAL FROM DENIAL, SUSPENSION, OR REVOCATION.**

(a) If the director denies, suspends, or revokes a vehicle immobilization operator's permit, the action is final unless the permittee files an appeal, in writing, with the city manager not more than 10 business days after notice of the director's action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of the evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or part of the action of the director being appealed. The decision of the hearing officer is final as to available administrative remedies.

**ARTICLE IV.**

**MISCELLANEOUS LICENSEE AND OPERATOR REGULATIONS.**

**SEC. 48C-28. LICENSEE'S AND OPERATOR'S DUTY TO COMPLY.**

(a) Licensee. In the operation of a vehicle immobilization service, a licensee shall comply with the terms and conditions of the vehicle immobilization service license and, except to the extent expressly provided otherwise by the license, shall comply with this chapter, rules and regulations established under this chapter, and other law applicable to the operation of a vehicle immobilization service.

(b) Operator. While on duty, a vehicle immobilization operator shall comply with this chapter, regulations established under this chapter, and orders issued by the licensee employing the vehicle immobilization operator in connection with the licensee's discharging of its duty under its vehicle immobilization service license and this chapter.

**SEC. 48C-29. LICENSEE'S DUTY TO ENFORCE COMPLIANCE BY OPERATORS.**

(a) A licensee shall establish policy and take action to discourage, prevent, or correct violations of this chapter by vehicle immobilization operators who are employed by the licensee.

(b) A licensee shall not permit a vehicle immobilization operator who is employed by the licensee to immobilize a vehicle if the licensee knows or has reasonable cause to suspect that the operator has failed to comply with this chapter, the rules and regulations established by the director, or other applicable law.

**SEC. 48C-30. INSURANCE.**

(a) A licensee shall procure and keep in full force and effect commercial general liability and business automobile liability insurance written by an insurance company that:

(1) is approved, licensed, or authorized by the State of Texas;

(2) is acceptable to the city; and

(3) does not violate the ownership/operational control prohibition described in Subsection (i) of this section.

(b) The insurance must be issued in the standard form approved by the Texas Department of Insurance, and all provisions of the policy must be acceptable to the city. The insured provisions of the policy must name the city and its officers and employees as additional insureds. 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.

(c) The commercial general liability insurance must be on a broad form and must provide coverage for, but is not limited to, premises/operations and personal and advertising injury with minimum combined bodily injury (including death) and property damage limits of not less than \$500,000 per occurrence and a general aggregate limit of not less than \$1,000,000 for all occurrences for each policy year.

(d) The business automobile liability insurance must provide a combined single limit of liability for bodily injury (including death) and property damage of not less than \$500,000 for each occurrence for each vehicle owned, hired, or otherwise used in the vehicle immobilization service by the licensee or the licensee's employees.

(e) Insurance required by this section may be obtained from an assigned risk pool if:

(1) all of the policies and coverages are managed by one agent; and

(2) one certificate of insurance is issued to the city.

(f) The insurance required under this section must include:

(1) a cancellation provision in which the insurance company is required to notify the director in writing not fewer than 30 days before canceling, failing to renew, or making a material change to the insurance policy;

(2) a provision to cover all boots and other immobilization equipment, whether owned or not owned by the licensee, that are operated under the license; and

(3) a provision requiring the insurance company to pay every claim on a first-dollar basis.

(g) A license will not be granted or renewed unless the applicant or licensee furnishes the director with such proof of insurance as the director considers necessary to determine whether the applicant or licensee is adequately insured under this section.

(h) If the insurance of a licensee lapses or is canceled and new insurance is not obtained, the director shall suspend the license until the licensee provides evidence that insurance coverage required by this section has been obtained. A person shall not operate a vehicle immobilization service while a license is suspended under this section whether or not the action is appealed. A \$100 fee must be paid before a license suspended under this section will be reinstated.

(i) No person with any direct or indirect ownership interest in the licensee's vehicle immobilization service may have any operational control, direct or indirect, in any insurance company that provides insurance required by this section to the vehicle immobilization service. For purposes of this subsection, "operational control" means holding any management position with the insurance company (including, but not limited to, the chief executive officer, the president, any vice-president, or any person in a decision-making position with respect to insurance claims) or having the right to control the actions or decisions of any person in such a management position in the insurance company.

**SEC. 48C-31. INFORMATION TO BE SUPPLIED UPON REQUEST OF DIRECTOR.**

Upon request of the director, a licensee shall submit to the director the following information:

(1) A current consolidated list of vehicle immobilization equipment.

(2) A current financial statement that includes a balance sheet and income statement.

(3) Names of current officers, owners, and managers.

(4) A list of current vehicle immobilization operators employed by the licensee, with their vehicle immobilization operator's permits indicated.

(5) The trade name of the vehicle immobilization service.

(6) A current list of parking lot owners with which the licensee has a written agreement to immobilize vehicles and the parking lot locations where vehicle immobilization is authorized to be performed under the written agreement.

**SEC. 48C-32. VEHICLE IMMOBILIZATION SERVICE RECORDS.**

(a) For each vehicle immobilized by a vehicle immobilization service, a licensee shall retain records including, but not limited to, the following information:

(1) A physical description of the immobilized vehicle, including the make, model, color, state license plate number, and vehicle identification number of the vehicle.

(2) The location at which the vehicle was immobilized and the date and time of immobilization.

(3) The reason for immobilization of the vehicle.

(4) Any photographs taken of the immobilized vehicle.

(5) A copy of the written authorization by the parking lot owner for the vehicle to be immobilized by the licensee or a current written immobilization agreement between the parking lot owner and the licensee, as required by Section 48C-41.

(6) A copy of the receipt issued by the licensee or permittee to a vehicle owner or operator upon removal of a boot in accordance with Section 48C-44 of this chapter.

(b) The licensee shall retain the records required under Subsection (a) and any other records required by this chapter for not less than three years after the date of immobilization of the vehicle. The licensee shall make the records available for inspection by the director or a peace officer upon reasonable notice and request.

**SEC. 48C-33. FAILURE TO PAY AD VALOREM TAXES.**

A licensee or an applicant for a vehicle immobilization service license shall not allow the payment of ad valorem taxes upon any vehicle, equipment, or property used directly or indirectly in connection with the vehicle immobilization service to become delinquent.

ARTICLE V.

SERVICE RULES AND REGULATIONS.

SEC. 48C-34. APPAREL TO BE WORN BY VEHICLE IMMOBILIZATION OPERATORS.

(a) A licensee shall specify and require an item of apparel or an item placed on the apparel to be worn by vehicle immobilization operators employed by the licensee, which item must be 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. The item specified by each licensee must be approved by the director to ensure that operators of one licensee may be easily distinguished from operators of another.

(b) While on duty, a vehicle immobilization operator shall wear the item specified by the licensee who employs the operator and shall comply with such other identification regulations prescribed by the vehicle immobilization service license.

(c) Every vehicle immobilization service shall have company dress standards for vehicle immobilization operators employed by the licensee. These standards must be kept on file with the director and must include the following:

(1) While on duty, a driver may not wear:

(A) apparel with offensive or suggestive language;

(B) cut offs; or

(C) tank tops or halter tops.

(2) Shoes must be worn at all times in the manner for which they were designed. A vehicle immobilization operator may not wear beach or shower thongs.

(3) 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.

SEC. 48C-35. IMMOBILIZATION OF VEHICLES ON PUBLIC RIGHTS-OF-WAY.

(a) A licensee commits an offense if he, either personally or through an employee or agent, immobilizes a vehicle on:

(1) a public street; or

(2) any area between the property line of private property abutting a public street and the center line of the street's drainage way or the curb of the street, whichever is farther from the property line of the private property.

(b) It is a defense to prosecution under Subsection (a) that:

(1) the vehicle was immobilized on a portion of public right-of-way leased by the city to the person requesting immobilization of the vehicle, if such immobilization was not prohibited by the lease and the immobilization was done:

(A) by a vehicle immobilization service currently licensed under this chapter; and

(B) in compliance with all the requirements of this chapter and any other applicable city ordinance or state or federal law; or

(2) the vehicle immobilization was authorized by a police officer or a traffic and parking controller under Section 28-5.1 of this code.

**SEC. 48C-36. IMMOBILIZATION OF AUTHORIZED VEHICLES PROHIBITED.**

A person commits an offense if he intentionally or knowingly immobilizes or causes the immobilization of a vehicle, other than an unauthorized vehicle, on a parking lot.

**SEC. 48C-37. FINANCIAL INTERESTS OF PARKING LOT OWNER AND LICENSEE PROHIBITED.**

(a) A licensee commits an offense if he, either personally or through an employee or agent:

(1) directly or indirectly gives anything of value, other than a sign or notice required to be posted under this chapter, to a parking lot owner in connection with the immobilization of a vehicle on the parking lot; or

(2) has a direct or indirect monetary interest in a parking lot on which the licensee, for compensation, immobilizes or causes the immobilization of an unauthorized vehicle.

(b) A parking lot owner commits an offense if he, either personally or through an employee or agent:

(1) accepts anything of value, other than a sign or notice required to be posted under this chapter, from a vehicle immobilization service in connection with the immobilization of a vehicle on the parking lot; or

(2) has a direct or indirect monetary interest in a vehicle immobilization service that, for compensation, immobilizes or causes the immobilization of an unauthorized vehicle on the parking lot.

(c) It is a defense to prosecution under Subsection (a)(2) that:

(1) the licensee is an owner or employee of the parking lot on which the vehicle is immobilized; and

(2) the licensee's vehicle immobilization service does not charge any vehicle immobilization fee authorized under Section 48C-44(a) of this chapter or any other fee, fine, or penalty to a vehicle owner or operator for removal of a boot; except that, the licensee may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator in accordance with Section 48C-44(b) of this chapter.

(d) It is a defense to prosecution under Subsection (b)(2) that:

(1) the parking lot owner is an owner or employee of a licensed vehicle immobilization service; and

(2) the vehicle immobilization service in which the parking lot owner has a financial interest does not charge any vehicle immobilization fee authorized under Section 48C-44(a) of this chapter or any other fee, fine, or penalty to a vehicle owner or operator for removal of the boot; except that, the parking lot owner may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator in accordance with Section 48C-44(b) of this chapter.

**SEC. 48C-38. REQUIREMENT FOR PARKING FEE RECEIPT OR VIDEO AUDIT PROCEDURE.**

(a) A parking lot owner commits an offense if he, either personally or through an employee or agent, immobilizes or causes the immobilization of a vehicle on a parking lot unless:

(1) at the time a vehicle is parked on the parking lot, the parking lot owner provides a receipt in accordance with Subsection (b) of this section to a vehicle owner or operator in exchange for payment of the parking fee; or

(2) at the time a vehicle is immobilized on a parking lot, the licensee or permittee authorized by the parking lot owner to immobilize a vehicle conducts a video audit procedure in accordance with Subsection (c) of this section.

(b) If a parking lot owner provides a receipt under Subsection (a)(1), the parking lot owner shall provide the receipt by either an electronic pay station or a uniformed parking lot attendant, and the receipt must indicate:

(1) the amount paid to park the vehicle by the vehicle owner or operator;

(2) the date and time the parking fee was received from the vehicle owner or operator;

(3) the time when authorization for the vehicle to be parked on the parking lot expires; and

(4) the location of the parking lot on which the vehicle is parked.

(c) If a video audit procedure is conducted under Subsection (a)(2), the parking lot owner, licensee, and permittee shall comply with the following minimum standards and any rules and regulations promulgated by the director governing video audit procedures:

(1) A video audit procedure must be conducted by a person who does not collect or otherwise have access to any money inside the parking lot pay station.

(2) The names and employers of the person conducting a video audit procedure and the permittee installing the boot (if different from the person conducting the video audit procedure) must be identified on each video recording made during the video audit procedure.

(3) Each video recording made during a video audit procedure must be a digital image of sufficient clarity, quality, and detail as to clearly depict:

(A) the parking lot location;

(B) the unauthorized vehicle both before and after the boot is installed, including the number of the parking space in which the vehicle is parked;

(C) the outside of the pay station showing that the payment slots are correctly and clearly numbered; and

(D) the inside of the pay station showing:

(i) the payment slot that corresponds to the parking space in which the unauthorized vehicle is parked; and

(ii) each payment slot adjacent to the slot that corresponds to the parking space in which the unauthorized vehicle is parked.

(4) Each video camera used in a video audit procedure must display the date and time of each video recording.

(5) Within a reasonable time after being requested, a copy of the video recording made during the video audit procedure must be provided to the owner or operator of the immobilized vehicle that is the subject of the recording.

**SEC. 48C-39. REQUIREMENTS FOR PARKING LOT ATTENDANTS.**

A parking lot owner that uses a parking lot attendant to collect the fee for parking on the parking lot and to provide a vehicle owner or operator with the parking fee receipt under Section 48C-38 shall specify and require an item of apparel to be worn by the parking lot attendant that is of such distinctive and uniform design as to readily identify the parking lot attendant as an employee or agent of the parking lot owner authorized to receive payment.

**SEC. 48C-40. REQUIREMENTS FOR POSTING SIGNS.**

(a) A person commits an offense if he immobilizes or causes the immobilization of a vehicle on a parking lot without signs being posted and maintained on the parking lot in accordance with this section at the time of immobilization and for at least 24 hours prior to immobilization of the vehicle.

(b) Except as otherwise provided by Section 48C-41 of this chapter, at least one sign must be placed on the right or left side of each driveway access or curb cut allowing access to the parking lot. If curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto the parking lot from a public roadway, other than an alley, or if the width of an entrance exceeds 35 feet, signs must be placed at intervals along the entrance so that no entrance is farther than 25 feet from a sign. At least two signs must be placed on the interior of the parking lot. The director may require one additional interior sign to be posted for each 50 parking spaces over 150 contained on the lot.

(c) Each sign required by Subsection (b) to be placed upon a parking lot must:

(1) be approved by the director;

(2) contain:

(A) the following information in white letters at least two inches high on a bright red background:

(i) the words "VEHICLE IMMOBILIZATION ENFORCED";  
and

(ii) a statement that payment for parking must be made to the pay station or uniformed parking attendant;

(B) the following information on the next lower portion of the sign in red letters at least one inch high on a white background:

(i) the words, “Unauthorized Vehicles Will Be Immobilized at Owner’s or Operator’s Expense. Failure to Pay Parking Rate is Deemed Owner’s or Operator’s Consent to Vehicle Immobilization”; and

(ii) the days and hours immobilization is enforced at the location, which may be satisfied by a statement that immobilization is enforced at all times; and

(C) the following information on the bottommost portion of the sign in white letters at least one inch high on a bright red background:

(i) the name, street address, and current telephone number, including area code, of the vehicle immobilization service; and

(ii) a telephone number answered 24 hours a day, seven days a week, at which a vehicle owner or operator may obtain information to have the boot removed from the vehicle, if different from the telephone number listed in Subparagraph (C)(i);

(3) be at least 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;

(4) be permanently mounted on a pole, post, permanent wall, or permanent barrier;

(5) be readable day and night;

(6) be permanently installed on the parking lot in a manner and location approved by the director so that the sign is facing and conspicuous to any person entering the lot; and

(7) be posted so that the bottom edge of the sign is not lower than five feet or higher than eight feet above ground level.

(d) In addition to the signs required to be posted under Subsection (b) of this section, the following two signs must be posted and maintained on the interior of the parking lot in a location and manner approved by the director:

(1) The first sign must meet all of the requirements of Subsection (c) of this section, except that all wording must be in Spanish instead of English and the translation must be approved by the director.

(2) The second sign must comply with form, size, color, and wording requirements established by rule or regulation of the director and must include the following information in both English and Spanish:

(A) the maximum vehicle immobilization fee that may be charged under this chapter; and

(B) a statement of how and to whom a complaint concerning a vehicle's immobilization or a violation of this chapter can be made, which information must be approved by the director.

(e) A person commits an offense if, on the same parking lot, he posts or allows the posting of a sign or signs indicating the name of more than one vehicle immobilization service.

(f) A person commits an offense if he removes or obstructs or allows the removal or obstruction of a sign required by this section to be posted on a parking lot. It is a defense to prosecution under this subsection that the removal or obstruction was caused by:

(1) a city employee in the performance of official duties; or

(2) the parking lot owner or vehicle immobilization service licensee or operator authorized by the parking lot owner for the purpose of:

(A) repairing or maintaining the sign;

(B) complying with this chapter or a rule or regulation promulgated under this chapter; or

(C) terminating a vehicle immobilization service agreement for the parking lot.

(g) A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

(h) It is a defense to prosecution under Subsection (a) of this section that the vehicle was immobilized by or under the direction of a police officer or traffic and parking controller of the city.

#### **SEC. 48C-41. REQUIREMENTS FOR IMMOBILIZATION.**

(a) A person commits an offense if he immobilizes or causes the immobilization of a vehicle on a parking lot unless:

(1) at the time the vehicle is to be immobilized:

(A) the parking lot owner signs written authorization for immobilization of the vehicle by the vehicle immobilization service, or

(B) a current written agreement exists between the parking lot owner and the vehicle immobilization service 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) a sign is posted and maintained on the parking lot that:

(i) is facing and conspicuous to any person entering the lot; and

(ii) displays all parking rates, including special event rates, charged by the parking lot owner, along with any corresponding day, time, and event for which the rates are charged;

(B) all numbered parking spaces in the parking lot are correctly numbered and easily readable both day and night; and

(C) the parking lot:

(i) is in compliance with all city, state, and federal laws applicable to parking lots; and

(ii) meets the requirements for surface parking lots set forth in Section 51A-4.124(a)(9)(E) and (F) of the Dallas City Code, as amended, regardless of where in the city the parking lot is located.

(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 owner.

(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 vehicle immobilization service 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 and whenever there is a change in ownership of the parking lot.

**SEC. 48C-42. REQUIREMENTS FOR INSTALLATION AND REMOVAL OF A BOOT.**

A licensee or permittee commits an offense if he, either personally or through an employee or agent:

(1) immobilizes a vehicle by installing a boot at a position other than the driver's side front or rear tire;

(2) fails to comply with the video audit procedure adopted by the director under Section 48C-2 of this chapter when immobilizing a vehicle on a parking lot for which the parking lot owner does not provide a receipt to the vehicle owner or operator under Section 48C-38 of this article;

(3) fails to arrive at a parking lot within 30 minutes after the time the licensee is notified to do so by the vehicle owner or operator or the owner or operator's representative; or

(4) fails to 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.

**SEC. 48C-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 director explaining how and to whom a complaint concerning the vehicle's immobilization or a violation of this chapter can be made.

(7) A statement that the vehicle owner or operator has a right to request a hearing under Subchapter J, Chapter 2308 of the Texas Occupations Code, as amended, 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 Subsection (a) of this section a notice that complies with the content requirements of Section 2308.455 of the Texas Occupations Code, as amended.

## ARTICLE VI.

### VEHICLE IMMOBILIZATION SERVICE FEES.

#### SEC. 48C-44. MAXIMUM FEE SCHEDULE; RECEIPT FOR PAYMENT OF IMMOBILIZATION FEE AND OUTSTANDING PARKING FEES.

(a) The maximum fee that a licensee or permittee may charge is \$100 for immobilization of an unauthorized vehicle.

(b) A licensee or permittee may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator on behalf of the parking lot owner.

(c) A licensee or permittee commits an offense if he, either personally or through an employee or agent, charges:

(1) more than the maximum fee allowed by this section for vehicle immobilization; or

(2) any fee in addition to the fees authorized in this section, including any fee to process a payment made by a vehicle owner or operator in the form of an electronic check, debit card, or major credit card.

(d) 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.

(e) 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 or 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 of the Texas Occupations Code, as amended.

(f) The receipt required under Subsection (e)(1) must indicate:

- (1) the name of the licensee or 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 of the Texas Occupations Code, as amended, regarding whether probable cause existed to immobilize the vehicle.

(g) 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 48A of the Dallas City Code, 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 Section 48A-43 of this code.

## ARTICLE VII.

### VEHICLE IMMOBILIZATION EQUIPMENT.

#### SEC. 48C-45. 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 director or a peace officer 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 commits an offense if he, either personally or through an employee or agent, immobilizes a vehicle with a boot that has not been reported to the city under Section 48C-6(b) or 48C-31.

**ARTICLE VIII.**  
**ENFORCEMENT.**

**SEC. 48C-46. AUTHORITY TO INSPECT.**

(a) The director or a peace officer may inspect any vehicle immobilization service to determine whether the licensee or permittee complies with this chapter, regulations established under this chapter, or other applicable law.

(b) A licensee or permittee, either personally or through an employee or agent, shall not attempt to interfere or refuse to cooperate with the director or a peace officer in the conduct of any investigation or discharge of any duty pursuant to this chapter.

**SEC. 48C-47. ENFORCEMENT BY POLICE DEPARTMENT.**

Officers of the police department shall assist in the enforcement of this chapter. A police officer upon observing a violation of this chapter, or of any regulation established by the director pursuant to this chapter, shall take necessary enforcement action to ensure effective regulation of vehicle immobilization service.

**SEC. 48C-48. CORRECTION ORDER.**

(a) If the director determines that a licensee, either personally or through an employee or agent, violates this code, the terms of its license, a regulation established by the director, or other law, the director may notify the licensee in writing of the violation and by written order direct the licensee to correct the violation within a reasonable period of time. In setting the time for correction, the director shall consider the degree of danger to the public health or safety and the nature of the violation. If the violation involves equipment that is unsafe or functioning improperly, the director shall order the licensee to immediately cease use of the equipment.

(b) If the director determines that a violation constitutes an imminent and serious threat to the public health or safety, the director shall order the licensee to correct the violation immediately, and, if the licensee fails to comply, the director shall promptly take or cause to be taken such action as the director considers necessary to enforce the order immediately.

(c) The director shall include in a notice issued under this section an identification of the specific violation, the date of issuance of the notice and the time period within which the violation must be corrected, a warning that failure to comply with the order may result in suspension or revocation of license or imposition of a fine or both, and a statement indicating that the order may be appealed to the city manager.

**SEC. 48C-49. SERVICE OF NOTICE.**

(a) A licensee shall designate and maintain a representative to receive service of notice required under this chapter to be given a licensee.

(b) Notice required under this chapter to be given to:

(1) a licensee must be personally served by the director on the licensee or the licensee's designated representative; or

(2) a permittee must be personally served or sent by certified United States Mail, five day return receipt requested, to the address, last known to the director, of the person to be notified.

(c) Notice required under this chapter to be given to a person other than a licensee or permittee may be served in the manner prescribed by Subsection (b)(2).

(d) Service executed in accordance with this section constitutes notice to the person to whom the notice is addressed. The date of service for notice that is mailed is the date received.

**SEC. 48C-50. APPEAL.**

(a) A licensee may appeal a correction order issued under Section 48C-48 if an appeal is requested in writing not more than 10 days after notice of the order or action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or a part of the order of the director. The decision of the hearing officer is final.

**SEC. 48C-51. OFFENSES.**

(a) A person commits an offense if he violates a provision of this chapter applicable to him. A separate offense is committed each day in which an offense occurs.

(b) An offense committed under this chapter is punishable by a fine of not less than \$200 or more than \$500. The minimum fine established in this subsection will be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time may the minimum fine exceed the maximum fine established in this subsection.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

(d) Prosecution for an offense under Subsection (a) does not prevent the use of other enforcement remedies or procedures applicable to the person charged with the conduct or involved in the offense.”

SECTION 2. That, not later than October 1, 2010, city staff shall report to the Dallas City Council’s Transportation and Environment Committee regarding vehicle immobilization complaints and the implementation of this ordinance.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect on October 1, 2009, and it is accordingly so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_

RM/DCC/0000016





## **Version 2 – With Video Audit Expiration**

8/5/2009 DRAFT  
(With Video Audit Expiration)

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

An ordinance adding CHAPTER 48C, “VEHICLE IMMOBILIZATION SERVICE,” (consisting of Sections 48C-1 through 48C-51) to the Dallas City Code, as amended; authorizing the director to establish rules and regulations for vehicle immobilization service; defining terms; providing procedures, qualifications, requirements, and fees for vehicle immobilization service licenses and vehicle immobilization operator’s permits; establishing grounds for denial, suspension, revocation, and nonrenewal of vehicle immobilization service licenses and vehicle immobilization operator’s permits and providing for appeals; providing service and equipment standards for vehicle immobilization service; providing insurance, record keeping, signage, and notification requirements; restricting financial interests between a vehicle immobilization service and a parking lot owner; requiring either a receipt in exchange for payment of a parking fee or use of a video audit system prior to vehicle immobilization; establishing apparel requirements for parking lot attendants and vehicle immobilization operators; setting the maximum fee that may be charged by a vehicle immobilization service; providing a penalty not to exceed \$500; providing a severability clause; and providing an effective date.

WHEREAS, the city council believes that the proposed regulations for vehicle immobilization service would promote the public safety of both visitors and residents of the city of Dallas by contributing to a decrease in the potential for confrontation and violence between vehicle owners and the persons who immobilize their vehicles and a decrease in property damage caused by faulty vehicle immobilization equipment or by incompetent, negligent, and criminal actions of vehicle immobilization operators; and

WHEREAS, the city council further believes that it is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from providing vehicle immobilization service, either as a licensee or as a vehicle immobilization operator; and

WHEREAS the city council, in accordance with Chapter 53 of the Texas Occupations Code, has considered the following criteria:

- (1) the nature and seriousness of the crimes;
- (2) the relationship of the crimes to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and
- (4) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and has determined that the crimes listed in Section 48C-7(a)(4) of CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of a licensee and that the crimes listed in Section 48C-14(a)(4) of CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," of the Dallas City Code, as set forth in this ordinance, are serious crimes that are directly related to the duties and responsibilities of a vehicle immobilization operator, whose job is to immobilize unauthorized vehicles on parking lots. The city council has determined that the very nature of the occupation of a licensee brings the licensee into constant confrontational contact with the public which, though indirect, gives the licensee repeated opportunity to participate in crimes of violence or dishonesty, or crimes against the public health, safety, or morals should the licensee be so inclined. The city council further finds that the very nature of a vehicle immobilization operator brings the operator

into constant confrontational contact with the public thereby giving the operator repeated opportunities to commit crimes of violence or dishonesty or crimes against the public health, safety, or morals should the operator be so inclined. Thus, it is the opinion of the city council that the listed crimes render a person unable, incompetent, and unfit to perform the duties and responsibilities, respectively, of a licensee or an operator for a vehicle immobilization service in a manner that would promote the public safety and trust; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 48C-7(a)(4), as forth in this ordinance, is presently fit to engage in vehicle immobilization service as a licensee until the respective time period designated in that section has expired; and

WHEREAS, the city council has determined that no person who has been convicted of a crime listed in Section 48C-14(a)(4), as set forth in this ordinance, is presently fit to hold the occupation of a vehicle immobilization operator until the respective time period designated in that section has expired, unless the person can qualify for a probationary permit under Section 48C-20, as set forth in this ordinance; and

WHEREAS, it is the intent of the city council to disqualify a person from being issued by the city of Dallas a vehicle immobilization service license if the person has been convicted within the designated time period of any of the crimes listed in Section 48C-7(a)(4), as set forth in this ordinance, or a vehicle immobilization operator's permit if the person has been convicted within the designated time period of any crimes listed in Section 48C-14(a)(4), as set forth in this ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That the Dallas City Code, as amended, is amended by adding CHAPTER 48C, "VEHICLE IMMOBILIZATION SERVICE," to read as follows:

**"CHAPTER 48C**

**VEHICLE IMMOBILIZATION SERVICE**

**ARTICLE I.**

**GENERAL PROVISIONS.**

**SEC. 48C-1. STATEMENT OF POLICY.**

It is the policy of the city to provide for the protection of the public interest as it relates to the 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.

**SEC. 48C-2. GENERAL AUTHORITY AND DUTY OF DIRECTOR.**

The director shall implement and enforce this chapter and may by written order establish such rules and regulations, consistent with this chapter, as may be determined necessary to discharge the director's duty under, or to effect the policy of, this chapter.

**SEC. 48C-3. ESTABLISHMENT OF RULES AND REGULATIONS.**

(a) Before adopting, amending, or abolishing a rule or regulation, the director shall hold a public hearing on the proposal.

(b) The director shall fix the time and place of the hearing and, in addition to notice required under the Open Meetings Act (Chapter 551, Texas Government Code), as amended, shall notify each licensee and such other persons as the director determines are interested in the subject matter of the hearing.

(c) After the public hearing, the director shall notify the licensees and other interested persons of the action taken and shall post an order adopting, amending, or abolishing a rule or regulation on the official bulletin board in the city hall for a period of not fewer than 10 days. The order becomes effective immediately upon expiration of the posting period.

**SEC. 48C-4. EXCEPTIONS.**

This chapter does not apply to the immobilization of a vehicle by the city as authorized under Section 28-5.1 of this code.

**SEC. 48C-5. DEFINITIONS.**

In this chapter:

(1) BOOT means 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.

(2) CITY means the city of Dallas, Texas.

(3) CONVICTION means a conviction in a federal court or court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.

(4) DIRECTOR means the director of the department designated by the city manager to enforce and administer this chapter, and includes representatives, agents, and department employees designated by the director.

(5) 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.

(6) LAWFUL ORDER means a verbal or written directive that:

(A) is issued by the director in the performance of official duties in the enforcement of this chapter and any rules and regulations promulgated under this chapter; and

(B) does not violate the United States Constitution or the Texas Constitution.

(7) 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.

(8) PARKING LOT means public or private property (other than public right-of-way) that is used, wholly or in part, for paid motor vehicle parking where payment for the parking is made:

(A) at the time of parking; and

(B) to a pay station or a uniformed parking lot attendant.

(9) 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.

(10) PERMITTEE means an individual who has been issued a vehicle immobilization operator's permit under this chapter.

(11) PERSON means an individual, assumed name entity, partnership, joint-venture, association, corporation, or other legal entity.

(12) POLICE DEPARTMENT means the police department of the city of Dallas.

(13) PROPERTY ENTRANCE means any point located on a parking lot that is designed to provide access by a vehicle to the parking lot.

(14) RECEIPT means a decal, emblem, badge, sticker, ticket, or other item given to a vehicle owner or operator as proof that the vehicle is authorized to park on the parking lot.

(15) STREET means any public street, alley, road, right-of-way, or other public way within the corporate limits of the city. The term includes all paved and unpaved portions of the right-of-way.

(16) UNAUTHORIZED VEHICLE means a vehicle that is parked, stored, or located on a parking lot without having paid the parking fee required by the parking lot owner for parking on the parking lot.

(17) 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.

(18) VEHICLE IMMOBILIZATION OPERATOR means any individual who installs, affixes, places, adjusts, or removes a boot on or from a vehicle.

(19) VEHICLE IMMOBILIZATION OPERATOR'S PERMIT means a permit issued under this chapter to an individual by the director authorizing that individual to immobilize vehicles for a vehicle immobilization service in the city.

(20) VEHICLE IMMOBILIZATION SERVICE means the business of immobilizing an unauthorized vehicle on a parking lot.

(21) 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.

(22) 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.

## ARTICLE II.

### VEHICLE IMMOBILIZATION SERVICE LICENSE.

#### SEC. 48C-6. LICENSE REQUIRED; APPLICATION.

(a) A person commits an offense if, within the city, he, or his agent or employee:

(1) engages in vehicle immobilization service on any property other than a parking lot;

(2) engages in vehicle immobilization service without a valid vehicle immobilization service license;

(3) causes a vehicle to be immobilized by a vehicle immobilization service that does not hold a valid vehicle immobilization service license; or

(4) employs or contracts with a vehicle immobilization service not licensed by the director under this article 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 upon a form provided for that purpose. The application must be signed by the person who will own, control, or operate the proposed vehicle immobilization service. The application must be verified and include the following information:

(1) The name, address, and telephone number of the applicant, the trade name under which the applicant does business, and the street address and telephone number of the vehicle immobilization service establishment.

(2) The number and type of boots utilized by the vehicle immobilization service, including the make, model, and identification number.

(3) Documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this chapter.

(4) A statement attesting that each boot and other vehicle immobilization equipment used by the vehicle immobilization service has been rendered for ad valorem taxation in the city and that the applicant is current on payment of those taxes.

(5) A list, to be kept current, of the owners and management personnel of the vehicle immobilization service, and of all employees who will participate in vehicle immobilization service, including names, dates of birth, state driver's license numbers, social security numbers, and vehicle immobilization operator's permit numbers.

(6) A list of what methods of payment the applicant will accept from a vehicle owner or operator for removal of a boot.

(7) Proof of a valid certificate of occupancy issued by the city in the name of the company and for the location of the vehicle immobilization service business.

(8) Any other information deemed necessary by the director.

(9) A nonrefundable application processing fee of \$50.

(c) A person desiring to engage in vehicle immobilization service shall register with the director a trade name that clearly differentiates the person's company from all other companies engaging in vehicle immobilization service and shall use no other trade name for the vehicle immobilization service.

#### SEC. 48C-7. LICENSE QUALIFICATIONS.

(a) To qualify for a vehicle immobilization service license, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) be able to communicate in the English language;

(4) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483, Texas Health and Safety Code), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Chapter 481, Texas Health and Safety Code), or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (4)(A)(i) through (xiii) of this subsection; and

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(5) not be addicted to the use of alcohol or narcotics;

(6) be subject to no outstanding warrants of arrest; and

(7) not employ any person who is not qualified under this subsection.

(b) An applicant who has been convicted of, or who employs a person who has been convicted of, an offense listed in Subsection (a)(4), for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a vehicle immobilization service license only if the director determines that the applicant, or the employee, is presently fit to engage in the business of a vehicle immobilization service. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's, or employee's, past criminal activity;

(2) the age of the applicant, or employee, at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's, or employee's, last criminal activity;

(4) the conduct and work activity of the applicant, or employee, prior to and following the criminal activity;

(5) evidence of the applicant's, or employee's, rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's, or employee's, present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant, or employee; the sheriff and chief of police in the community where the applicant, or employee, resides; and any other persons in contact with the applicant, or employee.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section.

(d) A licensee shall maintain a permanent and established place of business at a location within the city where a vehicle immobilization service is not prohibited by the Dallas Development Code.

**SEC. 48C-8. LICENSE ISSUANCE; FEE; DISPLAY; TRANSFERABILITY; EXPIRATION.**

(a) The director shall, within 30 days after the date of application, issue a vehicle immobilization service license to an applicant who complies with the provisions of this article.

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

(c) The annual fee for a vehicle immobilization service license is \$900, prorated on the basis of whole months. The fee for issuing a duplicate license for one lost, destroyed, or mutilated is \$5. The fee is payable to the director upon issuance of a license. No refund of a license fee will be made.

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

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

(f) A vehicle immobilization service license expires June 30 of each year and may be renewed by applying in accordance with Section 48C-6. Application for renewal must be made not less than 30 days or more than 60 days before expiration of the license and must be accompanied by the annual license fee.

**SEC. 48C-9. REFUSAL TO ISSUE OR RENEW LICENSE.**

(a) The director shall refuse to issue or renew a vehicle immobilization service license if the applicant or licensee:

(1) intentionally or knowingly makes a false statement as to a material matter in an application for a license or license renewal, or in a hearing concerning the license;

(2) has been convicted twice within a 12-month period or three times within a 24-month period for violation of this chapter or has had a vehicle immobilization service license revoked within two years prior to the date of application;

(3) uses a trade name for the vehicle immobilization service other than the one registered with the director;

(4) has had a vehicle immobilization service license suspended on three occasions within 12 months for more than three days on each occasion;

(5) has been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the applicant to perform vehicle immobilization service.

(6) fails to meet the service standards in the rules and regulations established by the director;

(7) is not qualified under Section 48C-7 of this article; or

(8) uses a subcontractor to provide vehicle immobilization service.

(b) If the director determines that a license should be denied the applicant or licensee, the director shall notify the applicant or licensee in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant or licensee of the right to, and process for, appeal of the decision.

#### **SEC. 48C-10. SUSPENSION OF LICENSE.**

(a) The director may suspend a vehicle immobilization service license for a definite period of time not to exceed 30 days or, if the deficiency is detrimental to public safety, then for a period of time until the deficiency is corrected, for one or more of the following reasons:

(1) Failure of the licensee to maintain any vehicle immobilization equipment in a good and safe working condition.

(2) Violation by the licensee or an employee of the licensee of a provision of this chapter or of the rules and regulations established by the director under this chapter.

(3) Failure of the licensee's operator to arrive at a parking lot within 30 minutes after the time the licensee is notified to do so by the vehicle owner or operator or the owner or operator's representative.

(b) Written notice of the suspension must be served on the licensee and must include the reason for suspension, the date the suspension begins, the duration of the suspension, and a statement informing the licensee of the right of appeal.

(c) The period of suspension begins on the date specified in the notice of suspension or, in the case of an appeal, on the date ordered by the permit and license appeal board, whichever applies.

(d) A licensee whose vehicle immobilization service license is suspended shall not operate a vehicle immobilization service inside the city during the period of suspension.

#### **SEC. 48C-11. REVOCATION OF LICENSE.**

The director shall revoke a vehicle immobilization service license if the director determines that the licensee has:

(1) intentionally or knowingly made a false statement as to a material matter in the application or hearing concerning the license;

(2) intentionally or knowingly failed to comply with applicable provisions of this chapter or with the conditions and limitations of the license;

(3) operated a vehicle immobilization service not authorized by the license or other applicable law;

(4) been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the licensee to perform vehicle immobilization service;

(5) is under indictment for or has been convicted of any felony offense while holding a license;

(6) does not qualify for a license under Section 48C-7 of this chapter;

(7) failed to pay a license fee required under this chapter; or

(8) violated Section 48C-44(c)(1) or (2) of this chapter.

**SEC. 48C-12. APPEALS.**

Any person whose application for a license or license renewal is denied by the director, or a licensee whose license has been revoked or suspended by the director, may file an appeal with the permit and license appeal board in accordance with Section 2-96 of this code.

**ARTICLE III.**

**VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

**SEC. 48C-13. VEHICLE IMMOBILIZATION OPERATOR'S PERMIT REQUIRED.**

(a) A person commits an offense if he immobilizes a vehicle for a vehicle immobilization service in the city without a valid vehicle immobilization operator's permit.

(b) A licensee commits an offense if he employs or otherwise allows 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.

**SEC. 48C-14. QUALIFICATIONS FOR A VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) To qualify for a vehicle immobilization operator's permit, an applicant must:

(1) be at least 19 years of age;

(2) be currently authorized to work full-time in the United States;

(3) be able to communicate in the English language;

(4) not have been convicted of a crime:

(A) involving:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(vii) theft as described in Chapter 31 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(viii) fraud as described in Chapter 32 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code, but only if the offense was committed against a person with whom the applicant came in contact while engaged in vehicle immobilization service;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law, but only if the violation is punishable as a felony under the applicable law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483, Texas Health and Safety Code), or of any comparable state or federal law, that is punishable as a felony under the applicable law;

(xiii) a violation of the Controlled Substances Act (Chapter 481, Texas Health and Safety Code), or of any comparable state or federal law, that is punishable as a felony under the applicable law; or

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (4)(A)(i) through (xiii) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(5) not be addicted to the use of alcohol or narcotics;

(6) be subject to no outstanding warrants of arrest;

(7) be sanitary and well-groomed in dress and person; and

(8) be employed by the licensee.

(b) An applicant who has been convicted of an offense listed in Subsection (a)(4) for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a vehicle immobilization operator's permit only if the director determines that the applicant is presently fit to engage in the occupation of vehicle immobilization. In determining present fitness under this section, the director shall consider the following:

(1) the extent and nature of the applicant's past criminal activity;

(2) the age of the applicant at the time of the commission of the crime;

(3) the amount of time that has elapsed since the applicant's last criminal activity;

(4) the conduct and work activity of the applicant prior to and following the criminal activity;

(5) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff and chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section and under Section 48C-20 of this article.

**SEC. 48C-15. APPLICATION FOR VEHICLE IMMOBILIZATION OPERATOR'S PERMIT; FEE.**

To obtain a vehicle immobilization operator's permit, or renewal of a vehicle immobilization operator's permit, a person must file with the director a completed written application on a form provided for the purpose and a nonrefundable application fee of \$10. The director shall require each application to state such information as the director reasonably considers necessary to determine whether an applicant is qualified.

**SEC. 48C-16 INVESTIGATION OF APPLICATION.**

(a) The director shall obtain a current official criminal history report (issued by the Texas Department of Public Safety within the preceding 12 months) on each applicant to determine the applicant's qualification under Section 48C-14. The director shall obtain a list of any warrants of arrest for the applicant that might be outstanding.

(b) The director may conduct such other investigation as the director considers necessary to determine whether an applicant for a vehicle immobilization operator's permit is qualified.

(c) The director shall provide the applicant, upon written request, a copy of all materials contained in the applicant's file to the extent allowed under the Public Information Act (Chapter 552, Texas Government Code), as amended.

**SEC. 48C-17. ISSUANCE AND DENIAL OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) The director shall issue a vehicle immobilization operator's permit to an applicant, unless the director determines that the applicant is not qualified.

(b) The director shall delay until final adjudication the approval of the application of any applicant who is under indictment for or has charges pending for a felony offense involving a crime described in Section 48C-14(a)(4)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses.

(c) The director shall deny the application for a vehicle immobilization operator's permit if the applicant:

(1) is not qualified under Section 48C-14; or

(2) intentionally or knowingly makes a false statement of a material fact in an application for a vehicle immobilization operator's permit.

(d) If the director determines that a permit should be denied the applicant, the director shall notify the applicant in writing that the application is denied and include in the notice the specific reason or reasons for denial and a statement informing the applicant of the right to, and process for, appeal of the decision.

**SEC. 48C-18. EXPIRATION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

Except in the case of a probationary or provisional permit, a vehicle immobilization operator's permit expires one year after the date of issuance.

**SEC. 48C-19. PROVISIONAL PERMIT.**

(a) The director may issue a provisional vehicle immobilization operator's permit if the director determines that it is necessary pending completion of investigation of an applicant for a vehicle immobilization operator's permit.

(b) A provisional vehicle immobilization operator's permit expires on the date shown on the permit, which date shall not exceed 45 days after the date of issuance, or on the date the applicant is denied a vehicle immobilization operator's permit, whichever occurs first.

(c) The director shall not issue a provisional permit to a person who has been previously denied a vehicle immobilization operator's permit.

**SEC. 48C-20. PROBATIONARY PERMIT.**

(a) The director may issue a probationary vehicle immobilization operator's permit to an applicant who is not qualified for a vehicle immobilization operator's permit under Section 48C-14 if the applicant:

(1) could qualify under Section 48C-14 for a vehicle immobilization operator's permit within one year after the date of application; and

(2) is determined by the director, using the criteria listed in Section 48C-14(b) of this article, to be presently fit to engage in the occupation of a vehicle immobilization operator.

(b) A probationary vehicle immobilization operator's permit may be issued for a period not to exceed one year.

(c) The director may prescribe appropriate terms and conditions for a probationary vehicle immobilization operator's permit as the director determines are necessary.

**SEC. 48C-21. DUPLICATE PERMIT.**

If a vehicle immobilization operator's permit is lost or destroyed, the director shall issue the permittee a duplicate permit upon payment to the city of a duplicate permit fee of \$10.

**SEC. 48C-22. DISPLAY OF PERMIT.**

A vehicle immobilization operator shall at all times conspicuously display a vehicle immobilization operator's permit on the clothing of the driver's upper body. A vehicle immobilization operator shall allow the director or a peace officer to examine the vehicle immobilization operator's permit upon request.

**SEC. 48C-23. SUSPENSION BY A DESIGNATED REPRESENTATIVE.**

(a) If a duly authorized representative designated by the director to enforce this chapter determines that a permittee has failed to comply with this chapter (except Section 48C-14) or a regulation established under this chapter, the representative may suspend the vehicle immobilization operator's permit for a period of time not to exceed three days by personally serving the permittee with a written notice of the suspension. The written notice must include the reason for suspension, the date the suspension begins, the duration of the suspension, and a statement informing the permittee of the right of appeal.

(b) A suspension under this section may be appealed to the director or the director's assistant if the permittee requests an appeal at the time the representative serves notice of suspension or within 10 days after the notice of suspension is served. When an appeal is requested, the suspension may not take effect until a hearing is provided by the director or the director's assistant.

(c) The director may order an expedited hearing under this section, to be held as soon as possible after the permittee requests an appeal, but at least 10 days advance notice of the hearing must be given to the permittee. The director may affirm, reverse, or modify the order of the representative. The decision of the director is final.

**SEC. 48C-24. SUSPENSION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) If the director determines that a permittee has failed to comply with this chapter (except Section 48C-14) or any regulation established under this chapter, the director shall suspend the vehicle immobilization operator's permit for a definite period of time not to exceed 60 days.

(b) If at any time the director determines that a permittee is not qualified under Section 48C-14 or is under indictment or has charges pending for a felony offense involving a crime described in Section 48C-14(a)(4)(A)(i), (ii), (iii), (iv), or (v) or criminal attempt to commit any of those offenses, the director shall suspend the vehicle immobilization operator's permit until such time as the director determines that the permittee is qualified or that the charges against the permittee have been finally adjudicated.

(c) A permittee whose vehicle immobilization operator's permit is suspended shall not immobilize a vehicle inside the city during the period of suspension.

(d) The director shall notify the permittee in writing of a suspension under this section and include in the notice:

- (1) the reason for the suspension;
- (2) the date the suspension is to begin;
- (3) the duration of the suspension; and
- (4) a statement informing the permittee of the right of appeal.

(e) The period of suspension begins on the date specified by the director or, in the case of an appeal, on the date ordered by the appeal hearing officer.

**SEC. 48C-25. REVOCATION OF VEHICLE IMMOBILIZATION OPERATOR'S PERMIT.**

(a) The director shall revoke a vehicle immobilization operator's permit if the director determines that a permittee:

- (1) immobilized a vehicle inside the city during a period when the vehicle immobilization operator's permit was suspended;
- (2) intentionally or knowingly made a false statement of a material fact in an application for a vehicle immobilization operator's permit;

(3) engaged in conduct that constitutes a ground for suspension under Section 48C-24(a), and, at least two times within the 12-month period preceding the conduct or three times within the 24-month period preceding the conduct, had received either a suspension in excess of three days or a conviction for violation of this chapter;

(4) engaged in conduct that could reasonably be determined to be detrimental to the public safety;

(5) failed to comply with a condition of a probationary permit; or

(6) is under indictment for or has been convicted of any felony offense while holding a vehicle immobilization operator's permit.

(b) A person whose vehicle immobilization operator's permit is revoked shall not:

(1) apply for another vehicle immobilization operator's permit before the expiration of 12 months after the date the director revokes the permit or, in the case of an appeal, the date the appeal hearing officer affirms the revocation; or

(2) immobilize a vehicle inside the city.

(c) The director shall notify the permittee and the licensee in writing of a revocation and include in the notice:

(1) the specific reason or reasons for the revocation;

(2) the date the director orders the revocation; and

(3) a statement informing the permittee of the right to, and process for, appeal of the decision.

**SEC. 48C-26. IMMOBILIZING A VEHICLE AFTER SUSPENSION OR REVOCATION.**

(a) After receipt of a notice of suspension, revocation, or denial of permit renewal, the permittee shall, on the date specified in the notice, surrender the vehicle immobilization operator's permit to the director and discontinue immobilizing vehicles inside the city.

(b) Notwithstanding Section 48C-24(c), Section 48C-25(b), and Subsection (a) of this section, if the permittee appeals a suspension or revocation under this section, the permittee may continue to immobilize vehicles for a vehicle immobilization service pending the appeal unless:

(1) the permittee's vehicle immobilization permit is suspended pursuant to Section 48C-24(b) or revoked pursuant to Section 48C-25(a)(6) of this article; or

(2) the director determines that continued operation by the permittee would impose a serious and imminent threat to the public safety.

**SEC. 48C-27. APPEAL FROM DENIAL, SUSPENSION, OR REVOCATION.**

(a) If the director denies, suspends, or revokes a vehicle immobilization operator's permit, the action is final unless the permittee files an appeal, in writing, with the city manager not more than 10 business days after notice of the director's action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of the evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or part of the action of the director being appealed. The decision of the hearing officer is final as to available administrative remedies.

**ARTICLE IV.**

**MISCELLANEOUS LICENSEE AND OPERATOR REGULATIONS.**

**SEC. 48C-28. LICENSEE'S AND OPERATOR'S DUTY TO COMPLY.**

(a) Licensee. In the operation of a vehicle immobilization service, a licensee shall comply with the terms and conditions of the vehicle immobilization service license and, except to the extent expressly provided otherwise by the license, shall comply with this chapter, rules and regulations established under this chapter, and other law applicable to the operation of a vehicle immobilization service.

(b) Operator. While on duty, a vehicle immobilization operator shall comply with this chapter, regulations established under this chapter, and orders issued by the licensee employing the vehicle immobilization operator in connection with the licensee's discharging of its duty under its vehicle immobilization service license and this chapter.

**SEC. 48C-29. LICENSEE'S DUTY TO ENFORCE COMPLIANCE BY OPERATORS.**

(a) A licensee shall establish policy and take action to discourage, prevent, or correct violations of this chapter by vehicle immobilization operators who are employed by the licensee.

(b) A licensee shall not permit a vehicle immobilization operator who is employed by the licensee to immobilize a vehicle if the licensee knows or has reasonable cause to suspect that the operator has failed to comply with this chapter, the rules and regulations established by the director, or other applicable law.

**SEC. 48C-30. INSURANCE.**

(a) A licensee shall procure and keep in full force and effect commercial general liability and business automobile liability insurance written by an insurance company that:

(1) is approved, licensed, or authorized by the State of Texas;

(2) is acceptable to the city; and

(3) does not violate the ownership/operational control prohibition described in Subsection (i) of this section.

(b) The insurance must be issued in the standard form approved by the Texas Department of Insurance, and all provisions of the policy must be acceptable to the city. The insured provisions of the policy must name the city and its officers and employees as additional insureds. 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.

(c) The commercial general liability insurance must be on a broad form and must provide coverage for, but is not limited to, premises/operations and personal and advertising injury with minimum combined bodily injury (including death) and property damage limits of not less than \$500,000 per occurrence and a general aggregate limit of not less than \$1,000,000 for all occurrences for each policy year.

(d) The business automobile liability insurance must provide a combined single limit of liability for bodily injury (including death) and property damage of not less than \$500,000 for each occurrence for each vehicle owned, hired, or otherwise used in the vehicle immobilization service by the licensee or the licensee's employees.

(e) Insurance required by this section may be obtained from an assigned risk pool if:

(1) all of the policies and coverages are managed by one agent; and

(2) one certificate of insurance is issued to the city.

(f) The insurance required under this section must include:

(1) a cancellation provision in which the insurance company is required to notify the director in writing not fewer than 30 days before canceling, failing to renew, or making a material change to the insurance policy;

(2) a provision to cover all boots and other immobilization equipment, whether owned or not owned by the licensee, that are operated under the license; and

(3) a provision requiring the insurance company to pay every claim on a first-dollar basis.

(g) A license will not be granted or renewed unless the applicant or licensee furnishes the director with such proof of insurance as the director considers necessary to determine whether the applicant or licensee is adequately insured under this section.

(h) If the insurance of a licensee lapses or is canceled and new insurance is not obtained, the director shall suspend the license until the licensee provides evidence that insurance coverage required by this section has been obtained. A person shall not operate a vehicle immobilization service while a license is suspended under this section whether or not the action is appealed. A \$100 fee must be paid before a license suspended under this section will be reinstated.

(i) No person with any direct or indirect ownership interest in the licensee's vehicle immobilization service may have any operational control, direct or indirect, in any insurance company that provides insurance required by this section to the vehicle immobilization service. For purposes of this subsection, "operational control" means holding any management position with the insurance company (including, but not limited to, the chief executive officer, the president, any vice-president, or any person in a decision-making position with respect to insurance claims) or having the right to control the actions or decisions of any person in such a management position in the insurance company.

**SEC. 48C-31. INFORMATION TO BE SUPPLIED UPON REQUEST OF DIRECTOR.**

Upon request of the director, a licensee shall submit to the director the following information:

(1) A current consolidated list of vehicle immobilization equipment.

(2) A current financial statement that includes a balance sheet and income statement.

(3) Names of current officers, owners, and managers.

(4) A list of current vehicle immobilization operators employed by the licensee, with their vehicle immobilization operator's permits indicated.

(5) The trade name of the vehicle immobilization service.

(6) A current list of parking lot owners with which the licensee has a written agreement to immobilize vehicles and the parking lot locations where vehicle immobilization is authorized to be performed under the written agreement.

**SEC. 48C-32. VEHICLE IMMOBILIZATION SERVICE RECORDS.**

(a) For each vehicle immobilized by a vehicle immobilization service, a licensee shall retain records including, but not limited to, the following information:

(1) A physical description of the immobilized vehicle, including the make, model, color, state license plate number, and vehicle identification number of the vehicle.

(2) The location at which the vehicle was immobilized and the date and time of immobilization.

(3) The reason for immobilization of the vehicle.

(4) Any photographs taken of the immobilized vehicle.

(5) A copy of the written authorization by the parking lot owner for the vehicle to be immobilized by the licensee or a current written immobilization agreement between the parking lot owner and the licensee, as required by Section 48C-41.

(6) A copy of the receipt issued by the licensee or permittee to a vehicle owner or operator upon removal of a boot in accordance with Section 48C-44 of this chapter.

(b) The licensee shall retain the records required under Subsection (a) and any other records required by this chapter for not less than three years after the date of immobilization of the vehicle. The licensee shall make the records available for inspection by the director or a peace officer upon reasonable notice and request.

**SEC. 48C-33. FAILURE TO PAY AD VALOREM TAXES.**

A licensee or an applicant for a vehicle immobilization service license shall not allow the payment of ad valorem taxes upon any vehicle, equipment, or property used directly or indirectly in connection with the vehicle immobilization service to become delinquent.

**ARTICLE V.**

**SERVICE RULES AND REGULATIONS.**

**SEC. 48C-34. APPAREL TO BE WORN BY VEHICLE IMMOBILIZATION OPERATORS.**

(a) A licensee shall specify and require an item of apparel or an item placed on the apparel to be worn by vehicle immobilization operators employed by the licensee, which item must be 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. The item specified by each licensee must be approved by the director to ensure that operators of one licensee may be easily distinguished from operators of another.

(b) While on duty, a vehicle immobilization operator shall wear the item specified by the licensee who employs the operator and shall comply with such other identification regulations prescribed by the vehicle immobilization service license.

(c) Every vehicle immobilization service shall have company dress standards for vehicle immobilization operators employed by the licensee. These standards must be kept on file with the director and must include the following:

(1) While on duty, a driver may not wear:

(A) apparel with offensive or suggestive language;

(B) cut offs; or

(C) tank tops or halter tops.

(2) Shoes must be worn at all times in the manner for which they were designed. A vehicle immobilization operator may not wear beach or shower thongs.

(3) 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.

**SEC. 48C-35. IMMOBILIZATION OF VEHICLES ON PUBLIC RIGHTS-OF-WAY.**

(a) A licensee commits an offense if he, either personally or through an employee or agent, immobilizes a vehicle on:

(1) a public street; or

(2) any area between the property line of private property abutting a public street and the center line of the street's drainage way or the curb of the street, whichever is farther from the property line of the private property.

(b) It is a defense to prosecution under Subsection (a) that:

(1) the vehicle was immobilized on a portion of public right-of-way leased by the city to the person requesting immobilization of the vehicle, if such immobilization was not prohibited by the lease and the immobilization was done:

(A) by a vehicle immobilization service currently licensed under this chapter; and

(B) in compliance with all the requirements of this chapter and any other applicable city ordinance or state or federal law; or

(2) the vehicle immobilization was authorized by a police officer or a traffic and parking controller under Section 28-5.1 of this code.

**SEC. 48C-36. IMMOBILIZATION OF AUTHORIZED VEHICLES PROHIBITED.**

A person commits an offense if he intentionally or knowingly immobilizes or causes the immobilization of a vehicle, other than an unauthorized vehicle, on a parking lot.

**SEC. 48C-37. FINANCIAL INTERESTS OF PARKING LOT OWNER AND LICENSEE PROHIBITED.**

(a) A licensee commits an offense if he, either personally or through an employee or agent:

(1) directly or indirectly gives anything of value, other than a sign or notice required to be posted under this chapter, to a parking lot owner in connection with the immobilization of a vehicle on the parking lot; or

(2) has a direct or indirect monetary interest in a parking lot on which the licensee, for compensation, immobilizes or causes the immobilization of an unauthorized vehicle.

(b) A parking lot owner commits an offense if he, either personally or through an employee or agent:

(1) accepts anything of value, other than a sign or notice required to be posted under this chapter, from a vehicle immobilization service in connection with the immobilization of a vehicle on the parking lot; or

(2) has a direct or indirect monetary interest in a vehicle immobilization service that, for compensation, immobilizes or causes the immobilization of an unauthorized vehicle on the parking lot.

(c) It is a defense to prosecution under Subsection (a)(2) that:

(1) the licensee is an owner or employee of the parking lot on which the vehicle is immobilized; and

(2) the licensee's vehicle immobilization service does not charge any vehicle immobilization fee authorized under Section 48C-44(a) of this chapter or any other fee, fine, or penalty to a vehicle owner or operator for removal of a boot; except that, the licensee may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator in accordance with Section 48C-44(b) of this chapter.

(d) It is a defense to prosecution under Subsection (b)(2) that:

(1) the parking lot owner is an owner or employee of a licensed vehicle immobilization service; and

(2) the vehicle immobilization service in which the parking lot owner has a financial interest does not charge any vehicle immobilization fee authorized under Section 48C-44(a) of this chapter or any other fee, fine, or penalty to a vehicle owner or operator for removal of the boot; except that, the parking lot owner may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator in accordance with Section 48C-44(b) of this chapter.

**SEC. 48C-38. REQUIREMENT FOR PARKING FEE RECEIPT OR VIDEO AUDIT PROCEDURE.**

(a) A parking lot owner commits an offense if he, either personally or through an employee or agent, immobilizes or causes the immobilization of a vehicle on a parking lot unless:

(1) at the time a vehicle is parked on the parking lot, the parking lot owner provides a receipt in accordance with Subsection (b) of this section to a vehicle owner or operator in exchange for payment of the parking fee; or

(2) at the time a vehicle is immobilized on a parking lot, the licensee or permittee authorized by the parking lot owner to immobilize a vehicle conducts a video audit procedure in accordance with Subsection (c) of this section.

(b) If a parking lot owner provides a receipt under Subsection (a)(1), the parking lot owner shall provide the receipt by either an electronic pay station or a uniformed parking lot attendant, and the receipt must indicate:

(1) the amount paid to park the vehicle by the vehicle owner or operator;

(2) the date and time the parking fee was received from the vehicle owner or operator;

(3) the time when authorization for the vehicle to be parked on the parking lot expires; and

(4) the location of the parking lot on which the vehicle is parked.

(c) If a video audit procedure is conducted under Subsection (a)(2), the parking lot owner, licensee, and permittee shall comply with the following minimum standards and any rules and regulations promulgated by the director governing video audit procedures:

(1) A video audit procedure must be conducted by a person who does not collect or otherwise have access to any money inside the parking lot pay station.

(2) The names and employers of the person conducting a video audit procedure and the permittee installing the boot (if different from the person conducting the video audit procedure) must be identified on each video recording made during the video audit procedure.

(3) Each video recording made during a video audit procedure must be a digital image of sufficient clarity, quality, and detail as to clearly depict:

(A) the parking lot location;

(B) the unauthorized vehicle both before and after the boot is installed, including the number of the parking space in which the vehicle is parked;

(C) the outside of the pay station showing that the payment slots are correctly and clearly numbered; and

(D) the inside of the pay station showing:

(i) the payment slot that corresponds to the parking space in which the unauthorized vehicle is parked; and

(ii) each payment slot adjacent to the slot that corresponds to the parking space in which the unauthorized vehicle is parked.

(4) Each video camera used in a video audit procedure must display the date and time of each video recording.

(5) Within a reasonable time after being requested, a copy of the video recording made during the video audit procedure must be provided to the owner or operator of the immobilized vehicle that is the subject of the recording.

(d) Subsections (a)(2) and (c) of this section expire on April 15, 2010, unless sooner terminated or extended by city council ordinance.

**SEC. 48C-39. REQUIREMENTS FOR PARKING LOT ATTENDANTS.**

A parking lot owner that uses a parking lot attendant to collect the fee for parking on the parking lot and to provide a vehicle owner or operator with the parking fee receipt under Section 48C-38 shall specify and require an item of apparel to be worn by the parking lot attendant that is of such distinctive and uniform design as to readily identify the parking lot attendant as an employee or agent of the parking lot owner authorized to receive payment.

**SEC. 48C-40. REQUIREMENTS FOR POSTING SIGNS.**

(a) A person commits an offense if he immobilizes or causes the immobilization of a vehicle on a parking lot without signs being posted and maintained on the parking lot in accordance with this section at the time of immobilization and for at least 24 hours prior to immobilization of the vehicle.

(b) Except as otherwise provided by Section 48C-41 of this chapter, at least one sign must be placed on the right or left side of each driveway access or curb cut allowing access to the parking lot. If curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto the parking lot from a public roadway, other than an alley, or if the width of an entrance exceeds 35 feet, signs must be placed at intervals along the entrance so that no entrance is farther than 25 feet from a sign. At least two signs must be placed on the interior of the parking lot. The director may require one additional interior sign to be posted for each 50 parking spaces over 150 contained on the lot.

(c) Each sign required by Subsection (b) to be placed upon a parking lot must:

(1) be approved by the director;

(2) contain:

(A) the following information in white letters at least two inches high on a bright red background:

(i) the words "VEHICLE IMMOBILIZATION ENFORCED";  
and

(ii) a statement that payment for parking must be made to the pay station or uniformed parking attendant;

(B) the following information on the next lower portion of the sign in red letters at least one inch high on a white background:

(i) the words, “Unauthorized Vehicles Will Be Immobilized at Owner’s or Operator’s Expense. Failure to Pay Parking Rate is Deemed Owner’s or Operator’s Consent to Vehicle Immobilization”; and

(ii) the days and hours immobilization is enforced at the location, which may be satisfied by a statement that immobilization is enforced at all times; and

(C) the following information on the bottommost portion of the sign in white letters at least one inch high on a bright red background:

(i) the name, street address, and current telephone number, including area code, of the vehicle immobilization service; and

(ii) a telephone number answered 24 hours a day, seven days a week, at which a vehicle owner or operator may obtain information to have the boot removed from the vehicle, if different from the telephone number listed in Subparagraph (C)(i);

(3) be at least 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;

(4) be permanently mounted on a pole, post, permanent wall, or permanent barrier;

(5) be readable day and night;

(6) be permanently installed on the parking lot in a manner and location approved by the director so that the sign is facing and conspicuous to any person entering the lot; and

(7) be posted so that the bottom edge of the sign is not lower than five feet or higher than eight feet above ground level.

(d) In addition to the signs required to be posted under Subsection (b) of this section, the following two signs must be posted and maintained on the interior of the parking lot in a location and manner approved by the director:

(1) The first sign must meet all of the requirements of Subsection (c) of this section, except that all wording must be in Spanish instead of English and the translation must be approved by the director.

(2) The second sign must comply with form, size, color, and wording requirements established by rule or regulation of the director and must include the following information in both English and Spanish:

(A) the maximum vehicle immobilization fee that may be charged under this chapter; and

(B) a statement of how and to whom a complaint concerning a vehicle's immobilization or a violation of this chapter can be made, which information must be approved by the director.

(e) A person commits an offense if, on the same parking lot, he posts or allows the posting of a sign or signs indicating the name of more than one vehicle immobilization service.

(f) A person commits an offense if he removes or obstructs or allows the removal or obstruction of a sign required by this section to be posted on a parking lot. It is a defense to prosecution under this subsection that the removal or obstruction was caused by:

(1) a city employee in the performance of official duties; or

(2) the parking lot owner or vehicle immobilization service licensee or operator authorized by the parking lot owner for the purpose of:

(A) repairing or maintaining the sign;

(B) complying with this chapter or a rule or regulation promulgated under this chapter; or

(C) terminating a vehicle immobilization service agreement for the parking lot.

(g) A minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter.

(h) It is a defense to prosecution under Subsection (a) of this section that the vehicle was immobilized by or under the direction of a police officer or traffic and parking controller of the city.

#### **SEC. 48C-41. REQUIREMENTS FOR IMMOBILIZATION.**

(a) A person commits an offense if he immobilizes or causes the immobilization of a vehicle on a parking lot unless:

(1) at the time the vehicle is to be immobilized:

(A) the parking lot owner signs written authorization for immobilization of the vehicle by the vehicle immobilization service, or

(B) a current written agreement exists between the parking lot owner and the vehicle immobilization service 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) a sign is posted and maintained on the parking lot that:

(i) is facing and conspicuous to any person entering the lot; and

(ii) displays all parking rates, including special event rates, charged by the parking lot owner, along with any corresponding day, time, and event for which the rates are charged;

(B) all numbered parking spaces in the parking lot are correctly numbered and easily readable both day and night; and

(C) the parking lot:

(i) is in compliance with all city, state, and federal laws applicable to parking lots; and

(ii) meets the requirements for surface parking lots set forth in Section 51A-4.124(a)(9)(E) and (F) of the Dallas City Code, as amended, regardless of where in the city the parking lot is located.

(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 owner.

(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 vehicle immobilization service 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 and whenever there is a change in ownership of the parking lot.

**SEC. 48C-42. REQUIREMENTS FOR INSTALLATION AND REMOVAL OF A BOOT.**

A licensee or permittee commits an offense if he, either personally or through an employee or agent:

(1) immobilizes a vehicle by installing a boot at a position other than the driver's side front or rear tire;

(2) fails to comply with the video audit procedure adopted by the director under Section 48C-2 of this chapter when immobilizing a vehicle on a parking lot for which the parking lot owner does not provide a receipt to the vehicle owner or operator under Section 48C-38 of this article;

(3) fails to arrive at a parking lot within 30 minutes after the time the licensee is notified to do so by the vehicle owner or operator or the owner or operator's representative; or

(4) fails to 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.

**SEC. 48C-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 director explaining how and to whom a complaint concerning the vehicle's immobilization or a violation of this chapter can be made.

(7) A statement that the vehicle owner or operator has a right to request a hearing under Subchapter J, Chapter 2308 of the Texas Occupations Code, as amended, 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 Subsection (a) of this section a notice that complies with the content requirements of Section 2308.455 of the Texas Occupations Code, as amended.

## ARTICLE VI.

### VEHICLE IMMOBILIZATION SERVICE FEES.

#### SEC. 48C-44. MAXIMUM FEE SCHEDULE; RECEIPT FOR PAYMENT OF IMMOBILIZATION FEE AND OUTSTANDING PARKING FEES.

(a) The maximum fee that a licensee or permittee may charge is \$100 for immobilization of an unauthorized vehicle.

(b) A licensee or permittee may collect any outstanding parking fee, not including any fine or penalty, from the vehicle owner or operator on behalf of the parking lot owner.

(c) A licensee or permittee commits an offense if he, either personally or through an employee or agent, charges:

(1) more than the maximum fee allowed by this section for vehicle immobilization; or

(2) any fee in addition to the fees authorized in this section, including any fee to process a payment made by a vehicle owner or operator in the form of an electronic check, debit card, or major credit card.

(d) 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.

(e) 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 or 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 of the Texas Occupations Code, as amended.

(f) The receipt required under Subsection (e)(1) must indicate:

- (1) the name of the licensee or 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 of the Texas Occupations Code, as amended, regarding whether probable cause existed to immobilize the vehicle.

(g) 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 48A of the Dallas City Code, 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 Section 48A-43 of this code.

## ARTICLE VII.

### VEHICLE IMMOBILIZATION EQUIPMENT.

#### SEC. 48C-45. 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 director or a peace officer 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 commits an offense if he, either personally or through an employee or agent, immobilizes a vehicle with a boot that has not been reported to the city under Section 48C-6(b) or 48C-31.

**ARTICLE VIII.**

**ENFORCEMENT.**

**SEC. 48C-46. AUTHORITY TO INSPECT.**

(a) The director or a peace officer may inspect any vehicle immobilization service to determine whether the licensee or permittee complies with this chapter, regulations established under this chapter, or other applicable law.

(b) A licensee or permittee, either personally or through an employee or agent, shall not attempt to interfere or refuse to cooperate with the director or a peace officer in the conduct of any investigation or discharge of any duty pursuant to this chapter.

**SEC. 48C-47. ENFORCEMENT BY POLICE DEPARTMENT.**

Officers of the police department shall assist in the enforcement of this chapter. A police officer upon observing a violation of this chapter, or of any regulation established by the director pursuant to this chapter, shall take necessary enforcement action to ensure effective regulation of vehicle immobilization service.

**SEC. 48C-48. CORRECTION ORDER.**

(a) If the director determines that a licensee, either personally or through an employee or agent, violates this code, the terms of its license, a regulation established by the director, or other law, the director may notify the licensee in writing of the violation and by written order direct the licensee to correct the violation within a reasonable period of time. In setting the time for correction, the director shall consider the degree of danger to the public health or safety and the nature of the violation. If the violation involves equipment that is unsafe or functioning improperly, the director shall order the licensee to immediately cease use of the equipment.

(b) If the director determines that a violation constitutes an imminent and serious threat to the public health or safety, the director shall order the licensee to correct the violation immediately, and, if the licensee fails to comply, the director shall promptly take or cause to be taken such action as the director considers necessary to enforce the order immediately.

(c) The director shall include in a notice issued under this section an identification of the specific violation, the date of issuance of the notice and the time period within which the violation must be corrected, a warning that failure to comply with the order may result in suspension or revocation of license or imposition of a fine or both, and a statement indicating that the order may be appealed to the city manager.

**SEC. 48C-49. SERVICE OF NOTICE.**

(a) A licensee shall designate and maintain a representative to receive service of notice required under this chapter to be given a licensee.

(b) Notice required under this chapter to be given to:

(1) a licensee must be personally served by the director on the licensee or the licensee's designated representative; or

(2) a permittee must be personally served or sent by certified United States Mail, five day return receipt requested, to the address, last known to the director, of the person to be notified.

(c) Notice required under this chapter to be given to a person other than a licensee or permittee may be served in the manner prescribed by Subsection (b)(2).

(d) Service executed in accordance with this section constitutes notice to the person to whom the notice is addressed. The date of service for notice that is mailed is the date received.

**SEC. 48C-50. APPEAL.**

(a) A licensee may appeal a correction order issued under Section 48C-48 if an appeal is requested in writing not more than 10 days after notice of the order or action is received.

(b) The city manager or a designated representative shall act as the appeal hearing officer in an appeal hearing under this section. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this section, and the hearing officer shall make a ruling on the basis of a preponderance of evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or a part of the order of the director. The decision of the hearing officer is final.

**SEC. 48C-51. OFFENSES.**

(a) A person commits an offense if he violates a provision of this chapter applicable to him. A separate offense is committed each day in which an offense occurs.

(b) An offense committed under this chapter is punishable by a fine of not less than \$200 or more than \$500. The minimum fine established in this subsection will be doubled for the second conviction of the same offense within any 24-month period and trebled for the third and subsequent convictions of the same offense within any 24-month period. At no time may the minimum fine exceed the maximum fine established in this subsection.

(c) The culpable mental state required for the commission of an offense under this chapter is governed by Section 1-5.1 of this code.

(d) Prosecution for an offense under Subsection (a) does not prevent the use of other enforcement remedies or procedures applicable to the person charged with the conduct or involved in the offense.”

SECTION 2. That, not later than October 1, 2010, city staff shall report to the Dallas City Council’s Transportation and Environment Committee regarding vehicle immobilization complaints and the implementation of this ordinance.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect on October 1, 2009, and it is accordingly so ordained.

APPROVED AS TO FORM:

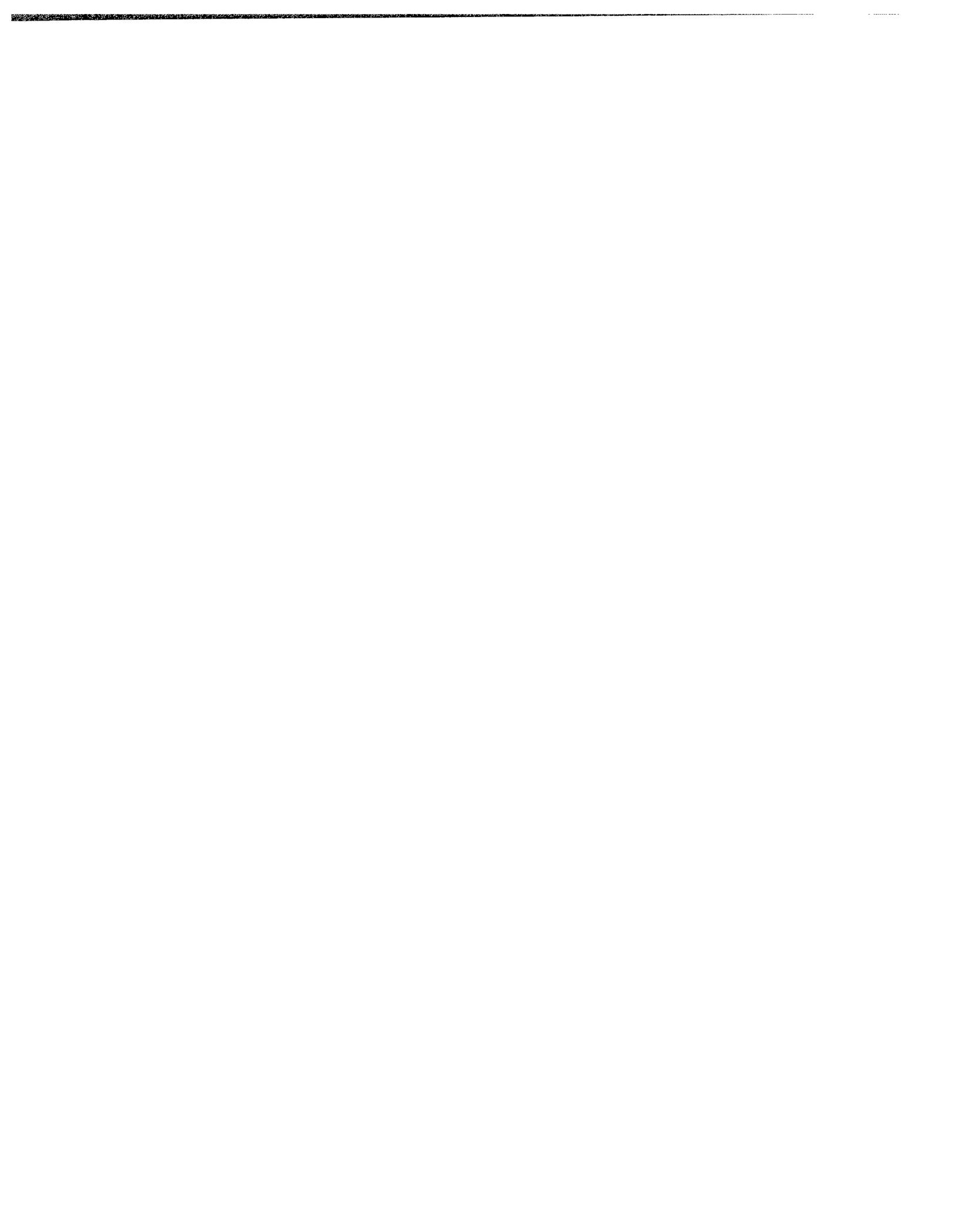
THOMAS P. PERKINS, JR., City Attorney

By \_\_\_\_\_  
Assistant City Attorney

Passed \_\_\_\_\_

RM/DCC/0000016





## Dallas Vehicle Immobilization (Booting) Ordinance

Chapter 48C of the Dallas City Code

### Briefing to the Transportation and Environment Committee

Prepared by  
Transportation Regulation Program  
Public Works and Transportation  
June 1, 2009



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## Purpose of Briefing

- Proposal was originally briefed to the Committee on 3-23-09; staff was instructed to meet with stakeholders and bring back a final recommendation
- Brief the Committee on the proposed ordinance adding new Chapter 48C to the Dallas City Code – Vehicle Immobilization (Booting) Service Ordinance
- Obtain a Committee recommendation to take the recommendation forward for full Council consideration on 6-10-09

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## Background

- Use of immobilization, or “booting,” is a relatively new practice being employed by private pay parking lot operators to enforce payment in their lots
- Booting is being used as an alternative, or in addition, to the use of paper notices and nonconsent towing
- Booting is not currently regulated by the state or the City of Dallas – Houston passed an ordinance in September 2008 regulating booting in response to citizen complaints

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## Background

- There has been a rise in complaints from patrons of pay parking lots and businesses near these lots regarding the use of vehicle immobilization devices
- Without state or local regulation, there is an increased opportunity for fraudulent and predatory practices that negatively impact the public
- Staff is drafting a new Chapter 48C of the Dallas City Code to regulate vehicle immobilization (booting) service companies and operators on privately operated pay parking lots

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## Public Meeting

- Public meeting was held on 4-20-09 from 3-5 pm at City Hall (L1FN)
- Meeting notice:
  - Posted on City website
  - Advertised in the Dallas Morning News
  - Invitation issued via email or phone to known interested parties – industry representatives; Deep Ellum, West End, and downtown businesses

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## Public Meeting

- About 25 people attended
- 13 speakers included:
  - Parking lot operators – 2
  - Parking enforcement companies – 3
  - Business representatives – 6
  - Citizens – 3
- Notes from meeting included as an attachment

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## Public Meeting Comments

- General agreement that there was a problem that the City needed to address through regulation of the booting industry

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## Public Meeting Comments

- Businesses and citizens
  - Customers are blaming the restaurants and local businesses for the boots and not returning to patronize those businesses
  - Primary request was for a payment receipt so that there would be proof that someone had paid or not paid for the parking
  - Concern also expressed that \$100 fee was too high for nonpayment of a single parking charge (\$2 to \$10)

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## Public Meeting Comments

- Parking lot operators and enforcement companies
  - Want to continue to use an audit system in lieu of a requirement to provide a receipt
  - Electronic pay station would be too expensive for smaller parking lots
  - Star Parking wanted ability to continue to use in-house staff for booting

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## The Problem

- Before booting, parking lot operators primarily used paper notices with towing used as a last resort
- Booting has provided a tool for more aggressive enforcement of payment because the consequences of an error are less harsh than towing
- Unfortunately, no person is on-site to verify payment, so there is opportunity for both errors and fraudulent behavior that result in unjustified boots
- Audit procedures have been developed in an effort to overcome this deficiency, but complaints indicate that the procedures are not foolproof
- Requirement for a receipt from an electronic pay station or attendant resolves this key issue

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## Types of Complaints

- Patron paid
- Spaces are not well marked on the pavement and/or pay box, so patron may have put payment in the wrong slot
- Patron went to get change
- Patron was only parked there for short period of time
- Medical emergency

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## Parking Lot Players

- Parking patron
- Property owner
- Parking lot operator company
- Parking enforcement company
  - Booting company
  - Towing company

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## Examples of Parking Lot Enforcement Operations

- Does not use booting as an enforcement tool
- Uses in-house staff to do booting on a limited basis
- Contracts with a booting company to boot all first-time offenders

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## Does not use Booting

- Uses a paper notice to enforce nonpayment
- \$50 fee amount – reduced to \$35 if paid within three days
- Company reports that most of the paper notices are paid
- Towing is used as a last resort

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## Limited Booting with In-house Staff

- Uses a paper notice to enforce nonpayment
- \$50 fee amount – reduced to \$20 if paid within seven days
- Company reports that most of the paper notices are paid
- In-house staff boots vehicles for first offense on lots with electronic pay station and for second offense (first offense is unpaid) on surface lot with pay box -- \$50 boot fee plus unpaid notice fees
- Towing is used as a last resort

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## Contracts with Independent Boot Company

- No longer use paper notices on lots where booting is employed
- Independent booting company boots vehicles on first offense – \$100 boot fee

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## Parking Patron Cost Related to Enforcement Options

- Paper Notice – \$20 to \$50
- Booting – \$50 to \$100
- Towing – \$148 including storage fees and transportation costs to the storage yard

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## In-house Booting versus Independent Booting Company

- Proposed ordinance would not allow in-house booting for compensation
- With in-house booting, the parking operator has less incentive to be concerned about customer service – he may choose to boot as much as possible because he makes more money
- With independent booting company, the parking operator does not receive any portion of the booting fees – without the increased profit motive, he should be more concerned about customer service
- Without the controls that come thru regulation, either scenario could result in predatory practices

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## Electronic Pay Station is not Feasible for Small Lots

- Need for proof of payment through pay station or attendant is critical to community acceptance of booting as an enforcement tool
- Parking lot operator with multiple lots of different sizes could subsidize the installation of pay stations on smaller lots
- Customer may be willing to pay higher parking rates for the peace of mind of having a receipt for payment
- If not financially feasible, parking companies may have to limit enforcement on small lots to paper notices and/or towing

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## Benefits of Electronic Pay Stations

- Receipt provides patron with proof of payment
- Additional payment options: credit cards, debit cards, cash, pay by phone
- Potential for variable rates could enhance revenues
- Theft and vandalism are minimized
- Modular components make maintenance simple

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## 30-Day Cancellation on Parking Lot Operator Lease

- Parking lot operators often have a 30-day cancellation clause on leases for properties that they don't own
- Concern was expressed that high cost of electronic pay station was a risky investment given cancellation clause
- There are options that would allow an operator to manage this risk:
  - Electronic pay stations can be leased with terms that allow for a machine to be taken back by the vendor
  - Electronic pay stations that are owned can be moved to another lot

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## Licensing of Companies

Proposed New Chapter 48C of the Dallas City Code

- Allow for the licensing of companies that provide vehicle booting services:
  - Review company ownership – check for any conflicts with parking lot operators
  - Check for any delinquent taxes
  - Perform criminal background checks
  - Ensure that proper amounts of commercial general liability insurance are maintained
  - Authority provided to suspend or revoke the license
  - Annual application fee – fee study is being conducted
  - Annual renewal each year prior to June 30th

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## Permitting of Operators

Proposed New Chapter 48C of the Dallas City Code

- Allow for the permitting of operators – individuals who place booting devices on vehicles:
  - Perform criminal background checks
  - Require operator to be employed by a licensed vehicle immobilization service company
  - Requirement that operator conspicuously display City-issued permit on the clothing of their upper body
  - Authority provided to suspend or revoke the permit
  - Annual application fee of \$15
  - Annual renewal prior to date of issuance

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## Service Requirements

Proposed New Chapter 48C of the Dallas City Code

- Identify service requirements for companies that provide vehicle immobilization:
  - Establish maximum rates that may be charged – \$100 fee for boot removal
  - Establish requirements for posting of signs – visible at driveway entrances and posted for at least 24 hours prior to booting
  - Must accept credit cards
  - Must be available 24 hours-a-day and 7 days-a-week to remove the immobilization device
  - Must arrive at the location within 30 minutes after notice to remove the immobilization device

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## Service Requirements

Proposed New Chapter 48C of the Dallas City Code

- Identify service requirements for companies that provide vehicle immobilization:
  - Prohibit vehicle immobilization except on pay parking lots where a patron is issued a receipt (showing the date, time, location, amount paid, and amount of parking time purchased) to be displayed on the dash of the parked vehicle – receipts must be dispensed by electronic pay stations installed on the parking lot and/or by a uniformed parking attendant wearing a badge or insignia issued by the parking lot
  - Written notice must be adhered to the windshield and driver-side window at time of immobilization
  - Parking lot operators would be allowed to tow or boot; if a vehicle is booted first and then towed, only the tow fee can be collected

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## What has Changed?

Proposed New Chapter 48C of the Dallas City Code

- Both booting and towing would be allowed
- Response time reduced from 60 minutes to 30 minutes to remove a boot
- Boot company would be able to collect outstanding parking fees for the operator
- In-house booting would be permitted provided that only outstanding parking fees are collected
- Booting notice must be adhered to the driver-side window as well as the windshield
- Amount paid and parking time purchased must be included on receipt in addition to date, time and location

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## State Legislative Action

- S.B. 2153 was introduced by Senator Whitmire representing the 15th Senatorial District comprised of north Houston and north Harris County
- Bill adds booting to Chapter 2308 of the Texas Occupations Code that regulates vehicle towing
- Senate: Passed out of Transportation and Homeland Security Committee on a 8-0 vote on 4-17-09 and passed by the Senate on a 31-0 vote on 4-30-09
- House: Passed out of House Transportation Committee on a 7-0 vote on 5-21-09 and passed by the House on 5-27-09
- If not vetoed by the Governor, this bill would become law and take effect on 9-1-09

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## Recommendation

- Committee endorsement of the proposed ordinance regulating booting on private pay parking lots; schedule for full Council consideration on 6-10-09
- Provide direction to staff to review the ordinance, develop recommendations for any needed changes, and report back to the Committee by 6-30-11 (2 years)

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## Appendices

- Notes from Public Meeting held on 4-20-2009
- Hawkeye Parking Audit Procedure
- Senate Bill 2153 approved by the 81<sup>st</sup> Legislature Regular Session on May 27, 2009

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