

Ord. # 5654

AN ORDINANCE TO CREATE A NEW CHAPTER 41.5, CODE OF ORDINANCES, CITY OF MEMPHIS,
BY ADDING THE FOLLOWING REGULATIONS DEALING WITH IMMOBILIZATIONS OF MOTOR VEHICLES BY
BOOTING

WHEREAS, the City Council of the City of Memphis (Memphis), finds and declares that the immobilization of motor vehicles by booting in the City of Memphis vitally affects the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police power, it is necessary to regulate those who operate motor vehicle booting businesses in Memphis, in order to prevent frauds, impositions, and other abuses upon its citizens and visitors; and

WHEREAS, the City finds that as the practice of immobilizing motor vehicles by booting on private property has become more common, complaints have surfaced regarding the conduct of some of the persons engaged in this business, including complaints of employees engaging in strong-arm tactics to intimidate motorists. The City finds it necessary to establish minimum consumer protection standards as well as remedies for motorists who suffer property damage as a result of having their motor vehicles booted or claim to have been wrongfully booted; and

WHEREAS, the Permits Office of the City of Memphis has also heard numerous complaints from individuals over the past several years, including recent complaints regarding the removal of vehicles without following proper procedures, owners/operators not being able to timely procure their vehicles, and unreasonable charging; and

WHEREAS, the ordinance will not prohibit the lawful immobilization of motor vehicles;

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS,

That Chapter 41.5 – Immobilization of Motor vehicles by Booting, is adopted

Section 41.5-1 Definitions.

As used in this Chapter, the following words and phrases shall have the meaning ascribed to them in this Section, except as otherwise may be provided or unless a different meaning is plainly required by the context:

"Attended commercial parking lot" means a lot or garage used for the temporary storage of passenger cars or trucks for a fee, and that is staffed by an attendant at all times vehicles are parked. Attended commercial parking lots do not include residential parking areas.

"Booting" means the attachment of any device to a vehicle that prevents the vehicle from being driven.

"Booting license" means a license issued by the transportation licensing commission authorizing the holder thereof to engage in the business of booting within the area of the metropolitan government.

"Booting service" means a person, business, or firm engaged in the practice of booting for a fee or other compensation within the area of the metropolitan government, provided that the vehicle's owner/lien holder, a metropolitan police officer in the performance of his/her official duty, or a parking patrol officer for a college or university engaging in the practice of booting shall not be considered a booting service.

"Business parking lot" means a parking lot or garage for use by patrons of a particular business or businesses for which no parking fee is charged.

"Unattended commercial parking lot" means a lot or garage used for the temporary storage of passenger cars or trucks for a fee, and that is not staffed by an attendant. Unattended commercial parking lots do not include residential parking areas.

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Section 41.5-2 Licenses

No person shall engage in the business of providing booting services, neither installing nor removing, within the City of Memphis without first obtaining and keeping in force a Booting License issued by the Permits Office. An applicant for a Booting License must be at least eighteen (18) years of age.

Section 41.5-3 Application Requirements for a Booting License

a. Every application for, and renewal of, a license under this ordinance, shall, at a minimum, contain, or in the case of license renewal confirm, the following information:

1. If the applicant is an individual:

- i. The applicant's full name, residence address, business address, business, home and cellular telephone numbers, and e-mail address;
- ii. The name and telephone number of an emergency contact person;
- iii. The applicant's date of birth and social security number;
- iv. Proof that the applicant is at least 18 years of age;

2. If the applicant is a corporation:

- i. The applicant's name, the name under which the applicant is doing business, the applicant's address, the business' address, the applicant's telephone number and the business location's telephone number;
- ii. The date and state of incorporation;
- iii. The name, residence address and residence telephone number of all controlling persons;
- iv. The date of birth and social security number of all controlling persons;
- v. The name and telephone number of an emergency contact person;
- vi. Proof that all controlling persons are at least 18 years of age;
- vii. Proof that the corporation is in good standing under the laws of the State of Tennessee.
- viii. A current background check (no more than ninety days old) based upon Fair Credit Reporting Act standards on all persons owning five 5 per cent (5%) or greater of all outstanding stock. The City of Memphis, through the Permits Office, reserves the right to deny a permit based on the content of the report which can be appealed to the Memphis Transportation Commission within ten (10) days of such denial.

3. If the applicant is a partnership or limited liability company:

- i. The applicant's name, the name under which the applicant is doing business, the applicant's address, the business' address, the applicant's telephone number and the business location's telephone number;
- ii. The name, residence address, residence telephone number, date of birth and social security number of all partners, if a general partnership; of all general and limited partners, if a limited

partnership; of all managers, managing members and members, if a limited liability company; and of all controlling persons;

- iii. The name and telephone number of an emergency contact person;
 - iv. Proof that all controlling persons are at least 18 years of age;
 - v. A current background check (no more than ninety days old) based upon Fair Credit Reporting Act standards on all controlling persons. The City of Memphis, through the Permits Office, reserves the right to deny a permit based on the content of the report which can be appealed to the Memphis Transportation Commission within ten (10) days of such denial.
4. If the applicant seeks to do business under an assumed name, proof of compliance with State of Tennessee relevant laws;
 5. A description of the activities and services, as applicable, that the applicant will carry on or provide at the licensed premises;
 6. Whether the business activity at the location meets the requirements of the City of Memphis Zoning Ordinance;
 7. The license fee; and
 8. Any other information or requirements that the Permits Office and/or the Memphis Transportation Commission may reasonably require in connection with issuance or renewal of a license.
- b. It is a condition of the license that all information in the license application is kept current. The licensee shall report to the Permits Office any change in the above required information within ten business days of such change.
- c. The Permits Office shall be responsible for issuing any required license shall promulgate rules and regulations to provide for situations where any of the information required in subsection (a) of this section or in a specific license in the case of license renewal confirm, the following information:
1. If the applicant is sole proprietor :
 - i. The applicant's full name, residence address, business address, business, home and cellular telephone numbers, and e-mail address;
 - ii. The name and telephone number of an emergency contact person;
 - iii. The applicant's date of birth and social security number;
 - iv. Proof that the applicant is at least 18 years of age
 2. If the applicant is a corporation:
 - i. The applicant's name, the name under which the applicant is doing business, the applicant's address, the business' address, the applicant's telephone number and the business location's telephone number;
 - ii. The date and state of incorporation;
 - iii. The name, residence address and residence telephone number of all controlling persons;
 - iv. The date of birth and social security number of all controlling persons;

- v. the name and telephone number of an emergency contact person;
 - vi. Proof that all controlling persons are at least 18 years of age;
 - vii. Proof that the corporation is in good standing under the laws of the State of Tennessee;
3. If the applicant is a partnership or limited liability company:
- i. The applicant's name, the name under which the applicant is doing business, the applicant's address, the business' address, the applicant's telephone number and the business location's telephone number;
 - ii. The name, residence address, residence telephone number, date of birth and social security number of all partners, if a general partnership; of all general and limited partners, if a limited partnership; of all managers, managing members and members, if a limited liability company; and of all controlling persons.
- e. No license to operate a booting service shall be issued, become effective, or continue in force or effect unless all insurance requirements, as determined by the Risk Management Office of the City of Memphis, and proof thereof are submitted in a form prescribed by the City of Memphis prior to the issuance of a license.
 - f. The fee for a Booting License shall be five hundred dollars (\$500.00). Booting licenses expire annually on December 31 and the renewal fee shall be two hundred-fifty hundred dollars (\$250.00).

Section 41.5-4 Booting Permit required for employees; Permit Fee; Identification Badge

- a. An employee of a booting service that engages in the practice of installing and removing booting devices from vehicles shall possess a permit issued by the Permits Office and meet the same requirement, qualifications and training deemed necessary by the Memphis Transportation Commission.
- b. Every application for, and renewal of, a permit under this ordinance, shall, at a minimum, contain, or in the case of permit renewal confirm, the following information:
 - 1. The applicant's full name, residence address, business address, business, home and cellular telephone numbers, and e-mail address;
 - 2. The name and telephone number of an emergency contact person;
 - 3. The applicant's date of birth and social security number.
 - 4. A current background check (no more than ninety days old) than based upon Fair Credit Reporting Act standards. The City of Memphis, through the Permits Office, reserves the right to deny a permit based on the content of the report which may be appealed to the Memphis Transportation Commission within ten (10) days of such denial.
- c. The fee for a booting permit shall be ten dollars (\$10.00) per employee. Booting permits shall expire annually on December 31 and the renewal fee shall be ten dollars (\$10.00)
- d. All person engaged in the act of booting shall wear an identification badge including the person's first and last name, the name of the company, and the permit number of the employee.

Section 41.5-5 Licensee responsibilities-Compliance Required

- a. No licensee shall permit any of its employees while engaged in the practice of booting to engage in activities or practices contrary to the public safety or welfare or contrary to the proper discharge of their duties in the course of their employment.

- b. Licensee shall be responsible for its employees complying with the ordinances of the City of Memphis, the State of Tennessee, the United States and rules and regulations of the Memphis Transportation Commission and the Permits Office which reflect on the fitness of such employees to be employed in the operation of a booting service, and violations by the employees of a licensee shall be cause for revocation, suspension, probation or failure to renew the licensee of the licensee and the permits of the employees.

Section 41.5-6 Notices at time boot device is installed

- a. A notice must be affixed using temporary adhesive to the driver side window of every vehicle for which a booting device is installed.
- b. Such notice shall measure not less than five inches in width and seven inches in height, and shall include the following information:
1. A warning not to move the vehicle. Such warning shall expressly state that movement of the vehicle may cause damage to the vehicle.
 2. The reason for and date and time of immobilization.
 3. The name of the booting service and a twenty-four hour telephone number at which the booting service can be reached.
 4. The fee required for removal of the booting device.
 5. A reference to Chapter 41.5 of the City of Memphis Ordinance regulating booting of vehicles.
 6. "If you believe you have been booted improperly, please contact the City of Memphis Permits Office at (901) 636-6711".

Section 41.5-7 Booting Fees

- a. Booting company licensees shall maintain twenty-four (24) hour telephones and wheel locking device removal services, and shall respond to a request to remove a wheel locking device within thirty (30) minutes. If a licensee or permittee does not appear to remove the wheel locking device within one (1) hour of a request from the owner or operator of the vehicle, the locking device shall be removed at no charge.
- b. If the owner or operator of a motor vehicle that is parked without authorization on private property attempts to retrieve said vehicle before booting actually occurs there shall be no fee and the vehicle owner shall be allowed to remove the vehicle without further delay.
- c. The maximum fee which may be charged for boot removal shall not exceed fifty dollars (\$50.00) and there shall be no other fees charged related to removal of the boot.
- d. A Booting Licensee must accept payment by at least three (3) of the following means:
- (1) Check
 - (2) Cash
 - (3) VISA
 - (4) MasterCard
 - (5) American Express
- e. There shall be no additional fee charged for the use of credit cards.

Section 41.5-8 Signage-unpaid parking violations

- a. No boot shall be placed on a vehicle parked at a commercial parking lot unless there is a permanently placed sign affixed measuring not less than twenty-four inches in height and eighteen inches in width is placed at all points of vehicular ingress to the lot, which sign shall include the following information in red lettering no less than 4 inches in size on a white background, as follows:

Parking Policy Strictly Enforced
Violators will be Booted or Towed at Owner's Expense
\$50.00 Maximum Booting fee
(Name and 24 hour phone number of booting and/or towing company)
Complaints? Contact the City of Memphis Permits Office (901) 636-6711

- b. Such signs shall be not less than forty-two and not more than seventy-two inches from the ground.
- c. If a boot is placed on a vehicle parked at an unattended commercial parking lot for failure to pay the required parking charge, the owner or operator of the unattended commercial parking lot may require the owner of the vehicle to pay the applicable booting removal fee plus all unpaid parking fines, which shall be based on the applicable rates during the time the vehicle was parked.
- d. If a vehicle is towed as a result of a property owner's request and the property owner has not complied with the requirements of subsection (a) above, the property owner shall be guilty of a misdemeanor and may, in the discretion of the municipal judge, subject to a fine.

Section 41.5-9 Prohibited Acts

It is declared that the following acts are prohibited and unlawful and the license or permit of any person doing such acts may be revoked, suspended, placed on probation or not renewed:

- a. No vehicle affixed with a boot may be towed unless the owner of the vehicle fails to contact the booting company within 24 hours of the notice. All towed vehicles are subject to compliance with local ordinances.
- b. No vehicle may be immobilized without proof that the vehicle was illegally parked.
- c. Failure to remove a booting device within one hour of being contacted by the owner or operator of the vehicle that has been booted.
- d. For a booting service to make any payment to an owner, employee, agent, or person in possession of a commercial parking lot in excess of the reasonable and customary parking fee ordinarily charged by the parking lot thereon.
- e. For any vehicle immobilization service to be licensed hereunder if that vehicle immobilization service is also engaged in the business of a parking lot or property where booting services are being performed.
- f. For any vehicle immobilization service and owner of a parking lot or property where booting services are being performed to have any financial arrangement which result in a financial benefit related to the booting services.
- g. Any failure to comply with the requirements of Section 41.5.

Section 41.5-10 Hearings

- a. Prior to the issuance of any license provided per this chapter, the Memphis Transportation Commission shall hold a hearing for the applicant after giving the applicant at least a fifteen-day notice of the time and place of such hearing.

b. The Memphis Transportation Commission is empowered to make all such rules and regulations which it considers necessary and proper for any hearings provided for by this chapter.

Section 41.5-11 Hearing for suspension, revocation or probation and after refusal to renew license or permit

The Rules and Regulations of the Memphis Transportation Commission otherwise adopted shall apply for hearings for suspensions, revocation or probation and after the refusal to renew license or permit including but not limited to establishing fines.

Section 41.5-12 Making False Statement-Power not to Grant Application

Any person making a false statement in any application required by the Permits Office shall forfeit his permit and shall not be eligible to receive or hold a permit from Permits Office for a period of five (5) years. The Memphis Transportation Commission shall have the power not to issue any permit when it finds that such issuance would interfere with the public health, safety, and welfare of the residents of the City of Memphis.

Section 41.5-13 Severability

If any section, subsection, sentence, clause, phrase, word or any other part of this article shall be declared unconstitutional or invalid by a court of competent authority, then the remainder of this ordinance shall not be affected and shall remain in full force and effect.

THE FOREGOING ORDINANCE
5654 PASSED
1st Reading 5-23-2017
2nd Reading 6-06-2017
3rd Reading 7-25-2017

Approved: [Signature]
Chairman of Council

Date Signed: 8/8/17

Approved: [Signature]
Mayor, City of Memphis

Date Signed: 8/9/17

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Sipes
Comptroller