

RECOMMENDED BY:

Public Safety Committee

SUBMITTED BY:

The Acting City Attorney

ORDINANCE NO. 13-81

AN ORDINANCE TO REGULATE TOWING AND VEHICLE IMMOBILIZATION SERVICES WITHIN THE CITY, TO CREATE LICENSING REQUIREMENTS, GENERAL OPERATING STANDARDS FOR TOWING AND VEHICLE IMMOBILIZATION SERVICES, AND LIMIT FEES CHARGED TO THE PUBLIC FOR NON-CONSENSUAL TOWING AND VEHICLE IMMOBILIZATION; TO REPEAL ORDINANCE NO. 04-96, CREATING TITLE 12 “LICENSING AND REGULATION,” CHAPTER 19, “VEHICLE IMMOBILIZATION SERVICES” AND TITLE 17, “WRECKER SERVICES”, ARTICLE B, “WRECKER PERMITS” AND ARTICLE C, “DRIVER’S PERMITS”, OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM, 1980, AND SUBSTITUTE IN LIEU THEREOF THE FOLLOWING ORDINANCE.

WHEREAS, the Council of the City of Birmingham adopted Ordinance No. 04-96 on September 7, 2004, providing for the licensing and regulation of vehicle immobilization (booting) companies operating in the City; and,

WHEREAS, the purpose of Ordinance No. 04-96 was to require that citizens have clear and adequate notice before parking at lots where booting is used to enforce parking terms; that booting occur only on parking lots in the business of providing paid parking services; that the business and financial interests of persons and companies providing booting services be separate from the business of providing parking services in order to prevent a conflict of interests and discourage predatory practices; that fees charged for boot removal would not be excessive; that businesses could not require cash only payments; and,

WHEREAS, the City receives numerous complaints of predatory booting and towing practices, including lack of clear, readable signs, parking lot confines that are not clearly defined, boots applied after a parking fee has been paid, unprofessional behavior on the part of the booting company personnel, unprofessional appearance of personnel and their vehicles, use of non-standard booting equipment, inconsistent policies for booting and towing, and other concerns affecting the safety and welfare of the public; and,

WHEREAS, the City receives complaints from property owners regarding trespassing vehicles and trash left behind on parking lots by unauthorized persons parking on lots; and,

WHEREAS, the City wishes to protect the interests of both property owners and members of the driving public and desires to present a good impression to visitors to the City with fair and reasonable parking, booting and towing regulations; and,

WHEREAS, the City intends to reinstate its tow truck and wrecker licensing safety-related requirements in accordance with the October 2002 decision by the Supreme Court in *Ours Garage and Wrecker Service, Inc. v. City of Columbus*;

WHEREAS, the City Council concludes that the regulations provided by this ordinance are necessary to protect the public health, safety and welfare generally and to eliminate predatory booting and towing practices.

NOW, THEREFORE BE IT ORDAINED by the Council of the City of Birmingham as follows:

SECTION 1.

That Ordinance No. 04-96, creating Title 12 “Licensing and Regulation,” Chapter 19, “Vehicle Immobilization Services” and Title 12, “Licensing and Regulation,” Chapter 17, “Wrecker Service”, Article B, “Wrecker Permits” and Article C, “Driver’s Permits”, of the General Code of the City of Birmingham, 1980, are hereby repealed and the following ordinance substituted in lieu thereof. Provisions of Title 12, Chapter 17, “Wrecker Service”, Article A, “General Provision”, shall remain in force and effect.

SECTION 2.

“ARTICLE A.

“General Provisions

“Sec. 12-19-1. Declaration of policy and findings of Council.

“It is the policy of the city to provide for the protection of the public safety and interest as it relates to the parking of vehicles on parking lots and to the impoundment of those vehicles by applying a boot to a vehicle or towing without the consent of the vehicle owner or operator. The council further declares that it is in the interest of public safety to provide for licensing and certain regulation of all towing services within the city. To this end, this ordinance provides for the regulation of vehicle immobilization service and towing services, to be administered in a manner that protects the public health and safety and promotes the public convenience and necessity.

“Sec. 12-19-2. Definitions.

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

“(1) *Barrier gate* means an automated gate at each entrance to a parking lot to regulate vehicular entry to the parking lot. Parking lots designed for employee parking shall not be required to provide a ticket or receipt and parking lots designed and/or operated for profit shall provide a ticket for entry or a receipt for payment of parking fees.

“(2) *Boot, booting or vehicle immobilization* means the act of placing on a parked motor vehicle a lockable vehicle wheel clamp or similar device that is designed to be placed on a parked vehicle to prevent the operation of the vehicle until the device is unlocked and removed. The term “boot” shall include the devices used for this purpose. Such devices shall be a high-visibility color, such as yellow, orange or red. No cables, chains, ropes or other similar means of vehicle immobilization shall be allowed.

“(3) *Chief of police* shall mean the chief of police of the City of Birmingham or his or her designee.

“(4) *Commercial parking motor parking services* shall mean private property that is used, wholly or in part, for storage or parking of motor vehicles for a fee or the provision of such services for a fee where payment for the parking is made:

“(a) at the time of parking and to a pay station or a uniformed parking lot attendant; or,

“(b) pursuant to a long-term (monthly or longer) parking agreement whereby a decal, hang-tag or other form of written authorization is issued to be displayed in or on the vehicle allowed to be parked on the property according to the terms of the agreement.

“Such lots must comply with all City of Birmingham zoning, business licensing and operating requirements for commercial parking lots.

“(5) *Consent of a parking lot owner* shall mean that the vehicle is authorized to park on the property through payment of the proper fee to a pay station or uniformed parking lot attendant, by contract or permit issued by the parking lot owner or through other direct permission of the parking lot owner.

“(6) *Day* shall mean a twenty-four (24) hour period commencing from the time a vehicle is booted.

“(7) *Director of finance* shall mean the director of the department of finance of the City of Birmingham or his or her designee.

“(8) *Immobilize* means to place a boot on a parked vehicle to prevent the operation of the vehicle until the boot is unlocked and removed. The term includes any installation or adjustment of a boot.

“(9) *Impound* shall mean any means to prohibit a motor vehicle's usual manner of movement or operation, either by the installation of vehicle immobilization device or by towing.

“(10) *Nonconsensual tow* shall mean any person who performs “Police Directed Tows” or “Private Property Impounds” as defined herein.

“(11) *Owner/operator* For the purposes of this section, an owner/operator is defined as a person other than the lien holder, possessing or holding title to a vehicle. The term includes a person entitled to the use and possession of a vehicle which can be subject to the business or commercial interest of another, permission, rental, lease, or security interest in another person or entity.

“(12) *Parking lot* means any commercial or private parking lot as defined herein.

“(13) *Parking attendant* means an individual who, on behalf of a parking lot general manager, collects a parking fee from motor vehicle operators as payment to park in a parking lot.

“(14) *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. The term includes an agent authorized to operate or manage the parking lot but does not include a vehicle immobilization service licensee or an employee or representative of a vehicle immobilization service licensee.

“(15) *Pay station* means a booth or box, whether attended or not, situated at or on a parking lot where payment of the hourly, daily, or monthly parking fee for that parking lot is made or deposited.

“(16) *Person* shall mean any natural person, firm, partnership, association, corporation or other entity of any kind whatsoever.

“(17) *Police directed tow* shall mean the removal and storage of wrecked or disabled vehicles at the direction of police/law enforcement from an accident scene.

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

“(19) *Private property impound* shall mean towing or removal of a vehicle without the consent of the vehicle's owner or operator, when the vehicle is parked on private real property.

“(20) *Reasonable notice* as used herein means at least 24 hours notice.

“(21) *Storage fee* means the compensation payable for the storage of a towed motor vehicle that has been stored at or in a facility owned, operated, leased or used by a tow truck service or any other business entity which owns or operates a tow truck.

“(22) *Towing fee* means the compensation payable for the towing of a motor vehicle.

“(23) *Tow, tows, or towing* means the act of removing, by tow truck, a motor vehicle from privately-owned property within the city where it is parked. The preparation, maneuvering, attachment and or loading onto the towing and recovery operator's tow truck for removal does, for purposes of this ordinance, constitute a "tow" or "towing."

“(24) *Towing and recovery service* means

(a) A person, business or any other entity engaged in the business of (1) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (2) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping (3) vehicles that have come to rest in places where they cannot be operated. The term includes any employee, authorized agent or legal representative of such individual or entity.

(b) Any person, business or any other entity who in any way advertises, portrays, acts, claims or holds themselves out to be a towing and recovery operator or in any way conveys the impression that they are engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.

(c) Any business, corporation, individual or any other person or entity who is not engaged in the primary business of towing vehicles but who either owns, rents or utilizes a tow truck, whether licensed by the city or not, for the purpose of removing or towing vehicles from private property, including their own and removing such vehicles to place or places owned, controlled, leased, rented by such individual, business or entity or by agreement with another.

“(25) *Towing service vehicle or wrecker*: A vehicle designed to be used for hauling or towing motor vehicles from one place to another, by use of a flatbed, tow-bar, dolly or other device, including any truck, automobile or other vehicle adapted to that purpose.

“(26) *Unauthorized vehicle* means a vehicle parked, stored, or located on a parking lot without the consent of the parking lot owner. (27) *Vehicle* shall mean an automobile, truck, bus, trailer, semitrailer, truck tractor semitrailer combination, recreational unit primarily designed as temporary living quarters which either has its own motive power or is mounted on or drawn by another vehicle, or any other mobile item using wheels and being operated on the roads of the City of Birmingham, Alabama, which is used to transport persons or property and is propelled by power other than muscular power; provided, however, that the term does not include bicycles, mopeds, traction engines, road rollers or vehicles which run only upon a track.

(27) *Vehicle Weight Classifications*:

(a) *Small vehicle* shall mean any motor vehicle with a gross vehicle weight of 10,000 pounds or less.

(b) *Large vehicle* shall mean any motor vehicle with a gross vehicle weight of more than 10,000 pounds.

“(28) *Vehicle immobilization operator* shall mean any person operating vehicle immobilization devices for a vehicle immobilization service or directing others to install or attach vehicle immobilization devices.

“(29) *Vehicle immobilization service or service* shall mean a person, including a sole proprietor, independent contractor, corporation, partnership or similar business entity, offering services anywhere in the territorial limits of the city whereby vehicles are immobilized by the installation of a vehicle immobilization device.

“Sec. 12-19-3. Applicability.

“This ordinance applies to:

“(a) the immobilization of vehicles without the consent of the vehicle owner or driver and the fees charged to remove vehicle immobilization devices;

“(b) the towing, by a towing and recovery operator, of motor vehicles from privately-owned property within the city without the consent of the vehicle owner or driver and the fees that are charged for:

(1) such towing of vehicles; and

(2) the storage and retrieval of such towed vehicles.

“(c) the licensing and general regulation of towing services for public safety concerns. The recordkeeping and fee limitations for towing services requirements of this ordinance do not apply to the consensual towing of motor vehicles; or to towing from public streets and other locations that is performed pursuant to a contract with the city; nor to towing for the lawful repossession of vehicles pledged as collateral for a security interest on a debt; nor to the storage of such vehicles.

“Sec. 12-19-4. Alteration, etc.

“It shall be unlawful for any person to change, alter, deface or destroy any license or permit issued under this chapter.

“Sec. 12-19-5. Transferability.

“No license or permit is transferable.

“12-19-6. Violations.

“Except as otherwise specifically provided, any violation of this ordinance is unlawful and punishable pursuant to section 1-1-6 of the General City Code.

“Sec. 12-19-7. Review by council.

- (a) The operation of this ordinance shall be reviewed by the public safety committee of the city council at six months and twelve months after its adoption to evaluate its effect in reducing the problems stated in the preamble to this ordinance. The public safety committee may designate an advisory committee consisting of representatives of other parties interested in the operation of the ordinance, including vehicle immobilization services and operators, parking service operators, merchants and property owners, citizens, the Birmingham Police Department, the Law Department and other city staff to assist in the evaluation.
- (b) The chief of police shall provide to the public safety committee a monthly summary of complaints, incidents, violations, citations and/or arrests generated from the operation of this ordinance.
- (c) After the second review, the public safety committee shall determine whether additional regular review of the operation of the ordinance is necessary. If the committee decides that additional routine review is not needed, additional review and amendment will be made as circumstances demand.

“12-19-8. Fee review.

“Any company or companies performing, either alone or together, performing, either alone or together, fifty (50) percent or more of the nonconsensual tows or vehicle immobilizations during the preceding calendar year may petition the council in writing to review the service fee limitation imposed by this ordinance. The request must identify the specific fees requested to be reviewed and shall include the recommended fee adjustments and all financial information necessary for review. The council may request additional information it deems necessary to review the request. The council shall set a public hearing on the request within 30 days of receipt of the request.

“Section 12-19-10 reserved.

“ARTICLE B – LICENSES AND PERMITS

“DIVISION 1 - General Provisions

“Sec. 12-19-11. Compliance with chapter; license required.

“(a) It shall be unlawful for any towing or vehicle immobilization service, tow truck driver, or vehicle immobilization service operator to operate within the city without first having obtained a license pursuant to this ordinance.

“(b) It shall be unlawful for any person to immobilize, boot or tow any vehicle within the territorial limits of the city without first complying with all applicable provisions of this ordinance.

“(c) Existing services:

(1) Any person issued a license by the council under Ord. No. 04-96 prior to the effective date of this ordinance to engage in the business of a vehicle immobilization service, which license was still in force and effect on such date, shall not be required to file a further application for a license to operate such business so long as such license is not terminated, annulled, canceled, revoked or suspended, but such license shall be subject to the provisions of this chapter and the licensed business shall be operated in all respects as if such license were granted hereunder by the council subsequent to the effective date of this ordinance, and shall be governed by the provisions of this ordinance. Any person licensed under Ord. No. 04-96 and acting as a vehicle immobilization service within the city on June 1, 2013 shall have a period of 60 days thereafter to comply with the general operating requirement provisions of this ordinance.

(2) Any person acting as a vehicle immobilization service within the city on June 1, 2013 but who has not been issued a license by the council under Ord. No. 04-96 shall have a period of 30 days thereafter to file an application as provided in this ordinance for such license and to comply with the general operating requirement provisions of this ordinance.

(3) Any person acting as a towing service within the city on June 1, 2013 shall have a period of 30 days thereafter to file an application for a license as provided in this ordinance.

(4) Any person acting as a vehicle immobilization operator or towing service driver on June 1, 2013 but who has not previously been issued a permit shall have a period of 30 days thereafter to file an application for a permit as provided in this ordinance.

“12-19-12 Compliance with state and municipal licensing requirements.

“All services, drivers and operators engaged in business in the city shall comply with licensing requirements imposed by the state and the city, and shall provide evidence of such upon request by any representative of the city authorized to enforce the provisions of this chapter.

‘Sections 12-19-13 – 12-19-20 reserved.

“DIVISION 2 - QUALIFICATIONS

“Sec. 12-19-21. General requirements for applicants for a license or permit

“(a) To qualify for a vehicle immobilization service license, towing service license, tow truck driver permit or vehicle immobilization operator permit an applicant must:

(1) Be at least 19 years of age;

(2) Possess a current, valid State of Alabama driver's license or state issued identification as provided by the laws of the state;

- (3) Be a citizen of the United States or an alien admitted for permanent residence or who has otherwise been granted employment authorization by the U.S. Immigration and Naturalization Service;
- (4) Be able to read, write and speak English and be familiar with the monetary system of the United States;
- (5) Not having been convicted, for a period of five (5) years prior to the date of application of:
 - a. any felony related to the operation of a motor vehicle;
 - b. any Class A felony;
 - c. any felony involving Danger to the Person (Alabama Code 13A-6-1 et seq.);
 - d. any misdemeanor or felony involving prostitution;
 - e. any felony in which the applicant herein was armed during the commission of the offense; or
 - f. any felony involving Controlled Substances (Alabama Code 13A-12-201 et seq.)
- (6) Not having been convicted of driving violations amounting to 12 or more points for a period of two years prior to the date of application; and
- (7) Be subject to no outstanding warrants of arrest; and,
- (8) 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) (5) above, for which the required time period has elapsed since the date of conviction, may qualify for a license or permit only if the council determines that the applicant, or the employee, is presently fit to engage in the business for which the application is made. In determining present fitness under this section, the council 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) All applicants shall furnish all data, information and records relevant to their application requested of them by the police chief or his/her designee. Failure to furnish requested data, information and records within 30 days from the date of the request shall automatically result in the dismissal, with prejudice, of the application. Applicants, by filing an application, agree to produce for oral interrogation any person who is under the applicants' control requested by the police chief or his/her designee or the city attorneys' office, who possesses or may possess knowledge of facts relevant to the application. The failure to produce a person within 30 days after being requested to do so shall result in an automatic dismissal of the application. Persons under an applicant's control are the partners of the applicant if the applicant is a partnership, the officers of the applicant if the applicant is a corporation, and/or employees, officers or agents of the applicant. It is the responsibility of the applicant, to the extent possible, to secure and provide to the police chief or his or her designee the evidence required to determine present fitness under Subsection (b) of this section.

“(d) Should any person with a license or permit obtained pursuant to this ordinance be charged with committing any crime as described in subsection (a) above, then such charge shall constitute the basis for suspension of the license pending resolution of the criminal charge. However, this section shall not deprive the council of the right to revoke any license for cause. A license issued pursuant to this chapter shall be revoked if the licensee has been convicted of any crime as described in subsection (a) above.

“(e) No license or permit shall be issued to any person who does not meet the qualifications set out in this section. Any applicant for a tow truck driver or vehicle immobilization service operator whose application is rejected by the chief of police under this subsection shall have the right to appeal that rejection to the city council as provided in this article.

“(f) It shall be unlawful for any person to procure a license or a permit as provided in this ordinance by fraudulent conduct or a false statement of a material fact.

“ **DIVISION 3 – Service Licenses**

“**Sec. 12-19-22. Towing service or vehicle immobilization service license application; generally; contents of application.**

“(a) Application for a license to be issued hereunder shall be submitted to the chief of police or his/her designee upon blank forms prepared and made available by the chief of police. The

application shall contain in writing:

- (1) The full name and address of the applicant if an individual proprietorship; full name and address of all partners if the applicant is partnership; full name and address of the corporation, LLP or LLC if the applicant is a corporation, LLP or LLC;
- (2) The business telephone number and mailing address (if different from the physical address) of the applicant;
- (3) The legal name of the company and the trade name of the company (name under which the service will be operated) if different than the legal name;
- (4) The full name of all company officials and the amount of stock, if any, held by such officials, and/or the full name of all persons having a proprietary or profit interest in the business that is the subject of the application, managers or other persons primarily responsible for the operation of the business;
- (5) Whether the applicant, manager or any company official has been convicted of any federal or state crime, or a violation of any city ordinance, the disposition of same and the place of conviction, if any and whether the applicant, manager or any company official has any felony charge pending at the time of application, the charge and the jurisdiction where the charge has been made;
- (6) A list, to be kept current of all parking lots where the applicant has been authorized to perform vehicle immobilization services or non-consensual towing. This list must be accompanied by a copy of the written contract or authorization by the owner or authorized agent of the parking lot allowing the applicant to tow or immobilize vehicles on the property. If no contracts are in place at the time of application, the information regarding lots where the applicant will operate shall be provided to the chief of police within 5 days of entering any contract to provide services;
- (7) The charges to be imposed for various services;
- (8) A list of what methods of payment the applicant will accept from a vehicle owner or operator to redeem a towed vehicle or for removal of a boot, including proof that the applicant is capable of accepting payment of service fees by major credit card;
- (9) Proof of the insurance coverage required by this chapter;
- (10) A list, to be kept current, of the number and type of boots utilized by the vehicle immobilization service, including the make, model, and identification number.
- (11) A list, to be kept current, of the owners and management personnel of the service, and of all employees who will participate in towing or vehicle immobilization, including names, dates of birth, state driver's license numbers, , and vehicle immobilization operator's permit

numbers.

(12) A signed form requesting that a criminal history information record maintained by the Alabama Criminal Justice Information Center by the current procedures required by the Alabama Legislature and the Alabama Criminal Justice Information Center Commission from the State of Alabama Bureau of Investigation be provided to the Birmingham Police Department along with a certified check or money order made payable to the Alabama Bureau of Investigation for the cost required by the State for such background check for the applicant, manager or any company official named in the application;

(13) A statement as to whether the applicant, manager or any company official who will be a vehicle immobilization service operator for the service has had any moving traffic violations in the past five years, the date and place of each violation;

(14) A list, to be kept current, of the vehicles to be used to assist in the vehicle immobilization service;

(15) A list, to be kept current, of the towing service vehicles or wreckers to be used by the service.

(16) Receipt from the director of finance showing payment of the application fees required by this chapter;

(17) Sample notice sticker or warning decal that the applicant intends to place upon a vehicle that has been immobilized by booting;

(18) Such other information as the chief of police shall find reasonably necessary to effectuate the purpose of this chapter and to arrive at a fair determination of whether the terms of this chapter have been complied with; and

(19) Shall be sworn by the applicant or authorized agent thereof.

“(b) A person or entity operating both vehicle immobilization and towing operations may file a single application for approval by the council; however an applicant wishing to pursue both vehicle immobilization and towing must purchase a separate license for each business activity. A person or entity that provides only vehicle immobilization or towing services may subsequently purchase a business license to engage in the other activity without a new application to the council, provided that the new license is purchased within a year of the council’s initial approval and there have been no material changes in the name, ownership of the business, location or criminal history provided in the original application and that information regarding the equipment used, employees and the locations where vehicle immobilization or non-consensual towing will be performed shall be provided to the chief of police before the new operations begin. A material change of ownership of a vehicle immobilization or towing service or addition of a second line of service more than one year after initial approval shall require the filing and approval of a new application by the council.

“Sec.12-19-23. Vehicle immobilization service license; investigation and recommendation of chief of police; hearing and action by council.

“(a) The chief of police shall conduct a review of each application for a service license. After reviewing all information provided, the chief of police shall recommend approval or disapproval, giving reasons therefore to the public safety committee of the city council not later than 30 days after the date of filing of the application. An application will not be considered as filed unless and until all information requested in Section 12-19-12 above has been received.

“(b) The public safety committee of the city council shall review the application and recommendation of the chief of police, and shall refer the matter to the full council for a public hearing within 21 days of receipt of the recommendations from the chief of police, recommending the grant or denial of such license.

“(c)After a public hearing on the application, the council may at such meeting or any other regular or special meeting, consider such application, the recommendations required to be submitted to it, relevant evidence offered by any party at the public hearing, including the applicant and such other information and knowledge it may have bearing upon such application. If the council determines that the applicant's business responsibility and qualifications are satisfactory and that all agents or officers of applicant, if any, who will take part in the operation of such business are qualified and capable of operating the business in a manner consistent with the public health, safety and welfare, and the operation of such business will be in accordance with and in compliance with the requirements of this chapter and all other applicable laws, ordinances, codes and regulations, then in such event it shall grant such application, otherwise the application shall be denied. In the granting or refusal of such application the council shall be deemed to act in a judicial capacity.

“Sec. 12-19-24. Insurance.

“No license shall be issued to any service applicant and no service operations shall commence until the applicant deposits with the city clerk a certificate of insurance, binder or a certified copy of a policy of insurance written by an insurance company qualified to do business in the state, providing coverage as follows:

“(a) 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.

“(b) General liability insurance providing liability coverage for property damage or personal injury in an amount not less than one hundred thousand dollars (\$100,000.00) covering damages caused by the client business, vehicle immobilization service, or any of their employees or agents in the course of conducting vehicle immobilization services for the client business.

“(c) Automobile liability insurance with minimum coverage of \$100,000 to any one (1) person,

\$300,000 for any one (1) accident and \$100,000 for property damage for each vehicle used in the service, provided that an applicant may comply with this subsection by providing a comprehensive automobile liability policy with a single limit of \$500,000.00 in addition to any other applicable insurance requirements of this section.

(d) In addition to the insurance required by subsection (c) of this section, any towing service that is for hire and tows vehicles not owned by said service shall also a garage keeper's legal liability policy covering vehicles stored by the applicant, for the perils of fire, theft, explosion, vandalism, malicious mischief and riots while in the care, custody or control of the applicant, in the minimum amount of \$45,000.00; in addition, garage keeper's legal liability policy collision coverage, subject to \$500.00 deductible, with a minimum limit of \$45,000.00, provided that an applicant may comply with this subsection by providing a comprehensive automobile liability policy with a single limit of \$500,000.00 in addition to the required garage keeper's legal liability policy.

“(d) The insurance required under this section must include a clause obligating the company issuing the same to give not less than thirty (30) days' written notice to the city clerk before canceling, failing to renew, or making a material change to the insurance policy. Notice of cancellation shall not relieve the company issuing such policy of liability for any injury or claim arising before the cancellation becomes effective.

“(e) The insurance shall cover all tow trucks, wrecker, boots and other immobilization equipment that are operated under the license. The policy shall state, in terms and with sufficient detail as required by the insurer, descriptions of the vehicles and equipment covered under the policy.

“(f) No license shall be granted in any case if the applicant has not filed the required proof of insurance with the city clerk within 30 days of council approval. The city clerk or his or her designee shall notify the chief of police and the director of finance if proof of insurance has not been filed within 30 days of council approval of the license.

“(g) Failure of a licensee to meet or maintain the insurance requirements of this section shall be grounds for suspension or revocation of the license. The city clerk shall place the matter of suspending or revoking the license on the city council agenda upon cancellation, lapse or failure to renew the required insurance. A person shall not operate a towing service or vehicle immobilization service while a license is suspended under this section whether or not the action is appealed.

“(h) Reinstatement on proof of insurance: A \$100 fee must be paid to the director of finance and proof of this payment and the required insurance provided to the city clerk before a license suspended or revoked under this section will be reinstated. The city clerk shall place the matter of rescinding the revocation or suspension on the next available council agenda following production of the proof of insurance and payment of the reinstatement fee. If the license remains suspended or revoked under this subsection for more than six months, a new application and investigation shall be required.

“Sec. 12-19-25. Standards for issuance.

“The chief of police or his/her designee shall recommend issuance of a license hereunder when he finds:

- (1) that insurance policies as required in this article have been procured;
- (2) that the applicant and all employees are qualified pursuant to the requirements of this chapter to conduct or work in the proposed business; and
- (3) that the requirements of this article and all other governing laws and ordinances have been met.

“Sec. 12-19-26. Registration of tow trucks and vehicles used by a vehicle immobilization service.

“It shall be unlawful for any person, either as principal, agent or employee, to use or to operate within the city any vehicle assisting in the operation of a vehicle immobilization service or tow truck without first having filed a registration for such vehicle with the city's police department upon forms to be furnished by the department. All registrations for each vehicle utilized shall expire on December 31st of each year and shall be renewed between December 1st and December 31st of each year. The information for registration shall contain the following:

- (1)The make, model and manufacturer's serial number of the vehicle;
- (2)Date the vehicle was put into service to assist in the operation of a vehicle immobilization service;
- (3)The driver's license numbers of operators of the vehicle;
- (4)The name of the insurance company with which the owner of the vehicle and all operators have liability insurance coverage with respect to the operation of the vehicle, as required by law;
- (5)The permit number of each operator who shall drive or operate the vehicle on behalf of the vehicle immobilization service; and,
- (7)Such other information related to the vehicle as may be required by the police chief.

“Sec. 12-19-27. Application and fees.

“(a) Upon the filing of a completed application, the non-refundable application processing fee for all applicants seeking a service license shall be \$200.00. This application fee shall be paid to the director of finance and proof of payment thereof submitted with the application to the chief of police.

“(b) Upon approval of an application for a service license, the annual renewal application fee shall be \$100.00.

“(c) A registration fee of \$15.00 for each tow truck, wrecker or vehicle assisting in the operation of a vehicle immobilization service to be operated by the applicant fee shall be paid to the director of finance and proof of payment thereof submitted with the application to the chief of police.

“(e) Any renewal license must be applied for not later than five (5) working days following the expiration date of an existing license, and for any such license applied for after such expiration date there shall be a late fee of \$5.00 in addition to the annual fees stated above.

“Sec. 12-19-28. Revocation; vehicle immobilization service license.

“The council shall revoke a license issued hereunder after due notice and public hearing when it finds any of the following grounds:

“(a) The license was procured by fraudulent conduct or false statement of a material fact or that a fact concerning the applicant was not disclosed at the time of his making application and such fact would have constituted just cause for refusal to issue such license.

“(b) The licensee has violated any of the requirements of this article or any of the rules and regulations as established or approved by the council.

“(c) The licensee, his agent, servant, or employee has operated the business in such a manner as to be detrimental to the public health, safety or welfare or so as to constitute a nuisance.

“(d) The chief of police may request the revocation or suspension of any vehicle immobilization service license for the following:

(1) Failure or refusal to comply with any provision of this chapter; or,

(2) Conviction for the commission of any crime or offense that would disqualify a licensee under the provisions of this chapter.

“Secs. 12-19-29 through 12-19-30 reserved.

“DIVISION 4. Operator’s Permits

“Sec. 12-19-31. Permit required.

“(a) It shall be unlawful for a person to immobilize a vehicle or drive a tow truck in the city unless such person shall have in force a valid vehicle immobilization operator’s or tow truck driver’s permit or provisional permit under the provisions of this ordinance.

“(b) It shall be unlawful for a licensee to employ or otherwise allow a person to immobilize a vehicle using a boot or other vehicle immobilization equipment owned, controlled, or operated by the licensee or to operate a tow truck owned by the licensee unless the person has in force a valid vehicle immobilization operator's permit or valid tow truck driver’s permit under the provisions of this ordinance.

(c) A driver or operator performing both towing and vehicle immobilization for the same business may apply

“Sec. 12-19-32.Application; provisional/conditional driver’s or operator’s permit.

“(a) Every tow truck driver or vehicle immobilization operator desiring to obtain a permit required by this article shall file an application with the chief of police or his or her designee upon blank forms prepared and made available by the chief of police. The application shall contain in writing:

- (1) Applicant's full name;
- (2) Current residence, giving street number, and telephone number;
- (3) Place of residence for two (2) years immediately preceding taking up residence at current address;
- (4) Age, sex, weight and race;
- (5) Color of eyes and hair;
- (7) Date of birth;
- (8) Place of citizenship and if not a U.S. citizen proof of permanent residence or employment authorization granted by the U.S. Immigration and Naturalization Service
- (9) All places of employment during the past five (5) years;
- (10) A statement of the true, correct and complete criminal court record of convictions, including both felonies and misdemeanors, within the past five (5) years, the nature of the crime or offense, and date and place of each conviction and any pending felony arrests;
- (11) Driver’s license number;
- (12) Whether the applicant has previously been licensed or permitted for any occupation and whether any such license or permit has been revoked, and for what cause;
- (13) The name of the towing service or immobilization service the applicant expects to work for, if known;
- (14) Character references from three (3) reputable persons not related to the applicant;
- (15) A signed form requesting that his/her criminal history information record maintained by the Alabama Criminal Justice Information Center by the current procedures required by the Alabama Legislature and the Alabama Criminal Justice

Information Center Commission from the State of Alabama Bureau of Investigation be provided to the Birmingham Police Department along with a certified check or money order made payable to the Alabama Bureau of Investigation for the cost required by the State for such background check;

- (16) A statement signed and notarized by the applicant that the applicant agrees that if he/she makes a false statement on the application or if the criminal history information record check returned from the Alabama Criminal Justice Information Center reveals a conviction that would disqualify the applicant, the permit shall be denied without a prior hearing;
- (17) A statement as to whether the applicant has had any moving traffic violations in the past five years, the date and place of each violation;
- (18) Receipt from the director of finance showing payment of the application fees required by this chapter;
- (19) Such other information as may be required by the police chief;
- (20) Statement as to which service or services (vehicle immobilization, towing, or both) the applicant will perform; and
- (21) Shall be sworn by the applicant.

“(b) Provisional/Conditional Driver’s or Operator’s Permit: The chief of police shall review and investigate each application for a tow truck driver’s or vehicle immobilization service operator’s permit and, pending the receipt of the criminal history record information being received from the state, a provisional permit may be issued to an applicant by the chief of police if the chief of police receives evidence sufficient to demonstrate that the applicant meets the qualifications described in sections 12-19-11 hereinabove and also receives information necessary to demonstrate compliance with criminal history requirements. Any criminal history information provided must be by a private agency which regularly provides background checks and shall be submitted directly from such agency to the police chief. In conducting such investigation, the investigator for the chief of police may consider any relevant evidence and such other information and knowledge he/she may have bearing on such application. Such provisional license shall be approved or disapproved not less than 15 days after all information necessary to evaluate a provisional license is received. The applicant and the permit holder stipulated in (a) (6) shall be notified in writing of such approval or disapproval within such 15-day period.

“A provisional permit shall be conditioned upon receipt of the correct criminal history information record for the applicant. The provisional permit will be valid until the police department receives the criminal history record of the applicant from the Alabama Bureau of Investigation or until it is revoked as provided herein below. Upon receipt of information from the Alabama Bureau of Investigation, the police chief will either (1) issue a regular permit to the applicant or (2) notify the operator and the licensed service with which he is affiliated that it is revoking the provisional tow

truck driver's or vehicle immobilization service operator's permit and denying the regular permit because the chief has determined that the applicant is not qualified to receive a regular permit.

"Any provisional permit granted by the Chief of Police may be revoked by the Chief for any of the following:

- (1) Failure or refusal to comply with any provision of this chapter;
- (2) Arrest or Conviction for the commission of any crime or offense listed in subsection ___ above;
- (3) If such permittee makes any false statement on his application or has failed to give full information to any question on the application;

"There is no appeal for revocation of a provisional operator's permit.

"Sec. 12-19-33. Appeals of regular driver's or operator's permit denial; suspension or revocation.

"(a) Any applicant who has been denied a tow truck driver's or vehicle immobilization service operator's permit may appeal such denial to the city council. Such appeal shall be made in writing to the chief of police within fourteen (14) days of the date of the written notice of denial.

"(b) The chief of police shall forward to the public safety committee any appeal of denial of the regular driver's or operator's permit, a copy of the application, all information in connection with such application, and the reasons for denial.

"(c) The public safety committee shall review the appeal of denial, the application and decision of the police chief, and shall refer the matter to the full council for a public hearing within 21 days of receipt of the appeal from the police chief.

"(d) The chief of police may request the revocation or suspension of any vehicle immobilization service operator's permit for the following:

- (1) Failure or refusal to comply with any provision of this ordinance;
- (2) Conviction for the commission of any crime or offense listed in Sec. 12-19-11 herein above;
- (3) If such permittee makes any false statement on his application or has failed to give full information to any question on the application.

"(e) The Chief of Police may suspend a driver's or operator's permit for any of the reasons listed hereinabove for a period not to exceed ten (10) days. Notice shall be given in writing to the driver or operator and the service license holder with which he is affiliated by U. S. mail to the address of record of the permit and license holders or by personal delivery. Such written notice shall set out the offense or violation giving rise to the suspension or revocation and request for suspension or

revocation and a date, time and location to appear before the public safety committee of the city council not less than 15 days from the date from the date of written notice to the permit holder. Appeals shall be conducted in the manner provided for appeals of the denial of a permit as provided in this section.

“(f) The council, in hearing appeals from denials of tow truck driver’s or vehicle immobilization operator’s permits and recommendations for suspension or revocation of said permits involving as cause criminal convictions, shall consider the relationship of the crime to the performance of the service of a vehicle immobilization service operator and the health, safety and welfare of the public, the date of the commission of the crime, and the extent of rehabilitation.

“(g) The council upon finding due cause, may uphold the denial or suspension of the permit or suspend or revoke the permit of the holder thereof.

“(h) No tow truck driver or vehicle immobilization service operator whose permit has been revoked or suspended shall operate in the City during such period of revocation or suspension.

“(i) Upon suspension or revocation of a permit, the permittee shall immediately turn in the permit and identification card to the chief of police; and such permit shall not be returned to the permittee until the expiration of the suspension period or the rescission of the revocation.

“(j) Two (2) suspensions within any 24-month period shall constitute cause for license revocation.

“(k) Following any appeal as provided in subsection (b) of this section, the council's decision shall be final, but an unsuccessful appellant may reapply for a permit after one (1) year. The permit of any successful appellant shall be restored to him forthwith.

“Sec. 12-19-34.Driver’s or operator’s permit; contents and display; renewal.

“(a) Upon approval of an application for a driver’s or operator’s permit, the chief of police shall, upon proof of payment of the application fee required in Section 12-19-26 (a), issue a permit identification card to the applicant. The identification card shall be in the format designated by the chief of police and shall contain the operator’s name and signature, the permit number, company name, issuance and expiration dates and a current color photo at least one by one and one-half inches in size, laminated in a suitable holder provided therefore in a location approved by the chief of police.

“(b) Once issued, permittees shall carry with them their permit at all times when they are towing, immobilizing or releasing vehicles and shall prominently display their identification cards on their person, clipped to the front pocket, shirt collar or the front of the shirt at chest level so that the identifying information is displayed to the public. In any event, the permittee shall identify him/herself upon request by any person.

“(c) Such permit shall be valid for one (1) year from the date of issuance, and for each renewal the applicant shall pay a fee of \$100.00.

“Sec. 12-19-35. Application, license and permit fees.

“(a) The non-refundable application fee for all applicants seeking a driver’s or operator's permit shall be \$50.00.

“(b) Any duplicate driver’s or operator’s permit may be issued upon payment of a fee of \$20 should a permit be lost or destroyed.

“(c) Any renewal permit must be applied for not later than five (5) working days following the expiration date of an existing operator’s permit, and for any such permit applied for after such expiration date there shall be a late fee of \$5.00 in addition to the annual fees stated above.

“Sections 12-19-36 through 12-19-40 reserved.

“ARTICLE C – OPERATING REGULATIONS

“DIVISION 1.

“General Licensee and Operator Regulations.

“Sec. 12-19-41. Licensee's and operator's duty to comply.

“(a) In the operation of a towing service or a vehicle immobilization service, a licensee shall comply with this chapter and all other laws, rules or regulations applicable to the operation of such service.

“(b) While on duty, a tow truck driver or vehicle immobilization operator shall comply with this chapter, all other laws, rules or regulations applicable to the operation of a towing service or vehicle immobilization service, and orders issued by the service employing the driver or operator in connection with the licensee's discharging of its duty under its permit and this ordinance.

“Sec. 12-19-42. 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 tow truck drivers or vehicle immobilization operators who are employed by the licensee.

“(b) A licensee shall not permit a tow truck driver or vehicle immobilization operator who is employed by the licensee to tow or immobilize a vehicle if the licensee knows or has reasonable cause to suspect that the operator has failed to comply with this chapter and all other laws, rules or regulations applicable to the operation of a vehicle immobilization service.

“Sec. 12-19-43. Information to be supplied upon request of police chief; semiannual reports.

“(a) Upon request of the chief of police, a licensee shall submit to the chief of police the following

information:

(1) For vehicle immobilization services:

- a. A current consolidated list of vehicle immobilization equipment.
- b. Names of current officers, owners, and managers.
- c. A list of current vehicle immobilization operators employed by the licensee, with their vehicle immobilization operator's permits indicated.
- d. 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.

(2) For tow services:

- a. A current consolidated list of tow trucks used by the service.
- b. Names of current officers, owners, and managers.
- c. A list of current tow truck drivers employed by the licensee, with their tow truck driver's permits indicated.
- d. A current list of parking lot owners with which the licensee has a written agreement to perform non-consensual tows and the parking lot locations where the non-consensual tows are authorized to be performed under the written agreement, if any.

“(b) The information enumerated in subsection (a) above shall, in any case, be provided to police chief on a semiannual basis. These reports shall be due on or before June 31 and December 31 of each calendar year.

“Sec. 12-19-44. Vehicle immobilization and non-consensual towing service records.

“(a) Vehicle immobilizations.

(1) For each vehicle immobilized, each operator or driver shall maintain a log that records, but is not limited to, the following information:

- a. A physical description of the vehicle, including the make, model, color, state license plate number, and vehicle identification number of the vehicle.
- b. The location at which the vehicle was immobilized.
- c. The date and time of immobilization.
- d. The reason for immobilization of the vehicle.

- e. The date and time at which the operator was called to release the vehicle;
- f. The date and time at which the vehicle was released.
- g. The number of the receipt issued for payment for release of the vehicle.

(2) A log shall be kept by the person(s) monitoring the 24-hour, 365-day a year phone number maintained for receiving calls to release vehicles from immobilization devices. Such log shall contain:

- a. The date and time that the call to remove the device was received.
- b. The location where the vehicle was immobilized.
- c. The description and license plate number provided by the person requesting release of the vehicle.
- d. The name of the operator dispatched to release the vehicle and the date and time at which the dispatch was made.

(3) The information for vehicle immobilizations required by subsections (a) and (b) of this section may be kept in a single combined log when the operator and the person monitoring the 24-hour, 365-day a year phone number are the same individual. Separate logs must be maintained if the operator and the person monitoring the phone are different individuals.

(4) Each operator while engaged in vehicle immobilization services shall maintain a binder in his vehicle containing:

- a. A copy of the vehicle immobilization service license;
- b. A copy of the operator's permit;
- c. A copy of the business license for each parking lot for which the vehicle immobilization service has a contract.

(5) It shall be unlawful for an operator to fail to produce the binder or required information upon the request of any police officer inspecting the service or investigating any complaint about the operation of the service.

“(b) Non-consensual towing.

Every towing service performing non-consensual tows in the city shall maintain a record of the following information for each motor vehicle that it has towed without the owner's consent from a location within the city:

- (1) A physical description of the vehicle, including the make, model, color, state license plate number, and vehicle identification number of the vehicle.
- (2) The date and time that the vehicle was towed.
- (3) The address of the property from which the vehicle was removed.
- (4) The reason for the tow, including the name and address of the person who authorized the tow.
- (5) The date and time the vehicle entered the facility at which it was placed for storage.
- (6) The towing and storage fees actually charged.
- (7) The date and time the vehicle was reclaimed.
- (8) The name and address of the person to whom the vehicle was released.

“(c) Licensees shall retain the applicable records required by subsections (a), (b) and (c) above, as well as:

- (1) Any photographs or video taken of the immobilized or non-consensually towed vehicle, whether taken by the operator or driver or by the owner of the property where the vehicle was parked.
- (2) A copy of the written authorization by the parking lot owner for the vehicle to be immobilized or towed by the licensee or a current written immobilization agreement between the parking lot owner and the licensee, as required by this ordinance.
- (3) A copy of the receipt issued by the licensee or permittee to a vehicle owner or operator upon removal of a release of the vehicle.
- (4) Log or report of maintenance and repair for the vehicles operated for the service for the prior calendar year.

“(d) The licensee shall retain the records required by subsections (a), (b) and (c) above, and any other records required by this chapter for not less than two years after the date of immobilization or non-consensual towing of the vehicle. The licensee shall make the records available for inspection by the police chief upon reasonable notice.

“(e) A service shall keep copies of permits issued to its operators or drivers under this chapter at their place of business so that they may be inspected by any law enforcement officer or licensing official for the city.

“Sec. 12-19-45. Apparel to be worn by tow truck drivers or 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 police chief 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 police chief and must include the following:

(1) While on duty, an operator 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. 12-19-46. Requirements for tow trucks and vehicles assisting in the operation of a vehicle immobilization service; lettering on vehicles.

“(a) The chief of police shall issue to each license holder a sticker for each tow truck or vehicle assisting in the operation of a vehicle immobilization service operated by such license holder, which sticker shall at all times be prominently displayed on the passenger side of the rear windshield of each tow truck or vehicle assisting in the operation of a vehicle immobilization service. Such sticker may be of any design or form as the chief of police may direct.

“(b) It shall be unlawful for any person, either as principal, agent or employee, to operate within the territorial limits of the city any tow truck or vehicle to assist in the operation of a vehicle immobilization service unless the vehicle shall have displayed on each side in plain view clear identification showing the name of the licensed service, the address from which the service is operating and the telephone number of the licensed service. The lettering shall be in a contrasting color to the color of the vehicle; the name of the service shall be in letters at least four inches high

and the other information shall be in letters at least two and one-half inches in height.

“(c) Each license holder shall notify the chief of police in writing of any changes in the number or description of tow trucks or vehicles assisting in the operation of a vehicle immobilization service operated by him, with a complete description and identification thereof. The chief of police shall issue a new sticker for any additional tow trucks or vehicles assisting in the operation of a vehicle immobilization service acquired by a license holder subsequent to the issuance of a license hereunder when a request in writing is received by him accompanied by the application fee of \$15.00 for each such vehicle.

“(d) Stickers shall be returned to the chief of police upon the removal of a vehicle from the operation of the licensed service.

“Sec. 12-19-47. Display of sticker by other than permittee.

“It shall be unlawful for any person to display any sticker issued by the chief of police on any vehicle assisting in the operation of a vehicle immobilization service unless the owner thereof is a license holder under the provisions of this chapter.

“Sections 12-19-47 through 12-19-50 reserved.

DIVISION 2. SIGNS REQUIRED.

“Sec. 12-19-51. Requirements for posting entrance signs.

“(a) It shall be unlawful for any person to immobilize or cause 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/or towing. Such signs must have been continuously maintained on the property for not less than 24 hours prior to the immobilization, towing or removal of any vehicles.

“(b) Except as otherwise provided in this chapter, at least one sign as described in subsection (d) below must be placed prominently and conspicuously on the right or left side of each driveway access, curb cut allowing access or other access to the parking lot within five (5) feet of the public right-of-way line. If curbs, access barriers, landscaping, or driveways do not establish definite vehicle entrances onto the parking lot from a public roadway, or if the width of an entrance exceeds 35 feet, signs must be placed at intervals along either the entrance or the boundary of the parking lot so that no entrance is farther than 25 feet from a sign. At least one additional sign as described in section 12-19-52 below must be placed on the interior or the boundary of the parking lot. Another additional sign as described in section 12-19-53 below must be posted at any commercial parking lot. The chief of police may require one additional interior sign as described in sections 12-19-52 and 12-19-53 to be posted for each 50 parking spaces over 150 contained on the lot.

“(c) For parking areas without clearly identifiable boundaries from the public-right-of way,

property owners shall consult with the Birmingham Police Department to determine appropriate locations for signage as described herein. If the parking area subject to booting or towing cannot be distinguished from public roads, alleys or parking spaces in the public right-of-way, or from spaces in an adjacent parking lot, public or private, a fence, barrier or other means of clearly defining the boundaries of the area subject to booting or towing must be provided. Fencing must be appropriate to the surrounding environment such as bollards, bollards and chains, plantings of a height to shield car bumpers but maintain visibility into and out of the parking area, low 'pipe' rails, etc. For corner lots, lots adjacent to public sidewalks, or lots in locations of high public visibility, the following must be met: landscaped perimeters not to exceed 3 feet in height; fencing appropriate to the surrounding environment such as decorative metal/ wrought iron fencing, which may include pillars/posts, bollards, bollards and chains; black vinyl coated chain link fencing or chain link fencing painted black may be permitted if used in conjunction with low plantings and do not exceed 5 feet in height.

“(d) Each sign required by Subsection (b) to be posted at the parking lot entrances must:

- (1) be approved by the chief of police or his or her designee;
- (2) be unobstructed by vegetation or any other obstruction;
- (3) use light reflective letters on a contrasting light reflective background. Letters shall be in Highway Gothic font. Lettering and background colors shall be as described below.
- (4) contain, at a minimum:
 - (A) the words “TOW AWAY ZONE” at the top in white letters at least four inches high on a bright red background;
 - (B) immediately below the words “TOW AWAY ZONE”, in black letters at least three inches high on a white background, the terms of parking stated sufficiently to inform the public of what is required for permission to park on the lot (for example, “PAID PARKING ONLY”; “PERMIT PARKING ONLY”; “TENANT PARKING ONLY”; etc.);
 - (C) immediately below the terms of parking, the words “VIOLATORS BOOTED OR TOWED AT OWNER’S EXPENSE” in black letters at least two inches high on a white background;
 - (D) the following information on the bottommost portion of the sign in black letters at least one inch high on a white background:
 - (i) the name of the vehicle immobilization service or towing 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 or obtain information on how to redeem a vehicle that has been towed;

(iii) if the vehicle immobilization service and towing service are different, the above information for both services must be included on the sign;

- (4) be no smaller than 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;
- (5) be light reflective and must be illuminated if out of headlight range;
- (6) be permanently mounted on a pole, post, permanent wall, or permanent barrier, but shall not be attached to utility poles or structures not owner of the parking lot property without the written permission of the owner of the pole or other structure;
- (7) be readable day and night;
- (8) 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
- (9) be posted at a height in accordance with the latest "Manual on Uniform Traffic Control Devices" standards.

“(d) 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 used for booting or more than one towing service used for towing services. This provision shall not apply to the listing of one company for vehicle immobilization services with a different company for towing services.

“(e) 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.

“(f) The requirements of this section are minimum standards; however, a minor variation of a required or minimum height of a sign or lettering is not a violation of this chapter. At lots where signs cannot be placed in strict conformity with subsections (b) or (c) of this section above, sign must be placed so as to provide adequate notice to anyone entering or intending to park on the lot

that they may booted or towed unless authorized to park on that lot. Where strict conformity with subsections (b) or (c) of this section cannot be achieved, the chief of police or his designee is authorized to review and approve the proposed placement of signs to carry out the purpose and intent of this section.

“(g) Upon discontinuation of booting or towing operations at a property, the signs required by this section shall be removed immediately. No person shall post or allow the presence of warning signs as described in this section on any property not covered by a booting or towing operation agreement. The licensee, the property owner and the property manager shall be jointly and severally responsible for compliance with this subsection.

“Sec. 12-19-52. Requirements for posting interior signs.

It shall be unlawful for either a vehicle immobilization service, an operator or a towing service to immobilize or tow vehicles at any parking lot unless, at the time the vehicle is to be immobilized and for at least 24 hours prior to immobilization a sign is posted and maintained on the parking lot that:

- (1) is conspicuous to any person parking on the lot (at commercial lots, at least one sign must be posted at the location on the lot where payment is made);
- (2) contains the following information:
 - (A) the name of the towing or vehicle immobilization service and the phone number to call to obtain information on boot removal or redeeming a towed vehicle;
 - (B) the fee for removal of a boot and/or to redeem a towed vehicle;
 - (C) if booted, the vehicle immobilization service operator must:
 - 1. arrive on site within 30 minutes of being contacted by the owner, driver or person in charge of the vehicle for removal of the boot;
 - 2. provide a signed receipt for payment of the fee for boot removal;
 - 3. a. accept payment for boot removal by cash, check, credit card, or debit card and cannot require cash-only payments;
 - b. accept payment for redeeming a towed vehicle by cash, traveler's check, money order, insurance company check, or debit, credit or charge card;
- (D) the following City of Birmingham phone numbers to call with

complaints regarding booting or towing at the parking lot:

1. BPD - (phone number to be provided by BPD)
 2. 311 – City of Birmingham 311 Call Center.
- (3) is unobstructed by vegetation or any other obstruction;
 - (4) uses light reflective letters on a contrasting light reflective background. Letters shall be in Highway Gothic font. The name and phone number of the service to contact to reclaim a booted or towed vehicle shall be in letters at least three inches high.
 - (5) be no smaller than 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;
 - (6) be light reflective and must be illuminated if out of headlight range;
 - (7) be permanently mounted on a pole, post, permanent wall, or permanent barrier, but shall not be attached to utility poles or structures not owner of the parking lot property without the written permission of the owner of the pole or other structure;
 - (8) be readable day and night.

“Sec. 12-19-53. Requirements for posting additional interior sign at commercial parking lots.

“It shall be unlawful for either a vehicle immobilization service, an operator or a towing service to immobilize or tow vehicles at any commercial parking lot unless, at the time the vehicle is to be immobilized and for at least 24 hours prior to immobilization:

- (1) a sign that is posted and maintained on the parking lot that:
 - (A) is located at the location on the lot where payment for parking is made and that is conspicuous to any person parking on the lot; and
 - (B) informs drivers of the terms and conditions of parking on the property by:
 - (i) displaying 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; and
 - (ii) stating how and where the parking fees are to be paid, whether to a pay station or attendant. If fees are to be paid to an attendant, that attendant must be attired in a uniform and display an identification badge that clearly indicates the person is employed by the parking lot

owner and is authorized to collect fees for parking at that lot.;

- (2) all numbered parking spaces in the parking lot are correctly numbered and easily readable both day and night and, if a pay station is used, correspond to numbered slots on the pay station; and
- (3) the parking lot is in compliance with all city ordinances applicable to parking lots.
- (4) Such sign shall:
 - (A) be unobstructed by vegetation or any other obstruction;
 - (B) use light reflective letters on a contrasting light reflective background. Letters shall be in Highway Gothic font.
 - (C) be no smaller than 24 inches tall and 18 inches wide and constructed of a rigid weather-resistant metal;
 - (D) be light reflective and must be illuminated if out of headlight range;
 - (E) be permanently mounted on a pole, post, permanent wall, or permanent barrier, but shall not be attached to utility poles or structures not owner of the parking lot property without the written permission of the owner of the pole or other structure;
 - (F) be readable day and night.

“Sec. 12-19-54. Requirements for notice of policies for tenant or resident parking.

“(q) Vehicle immobilization used at non-commercial lots for enforcement of employee or tenant/resident parking policies shall not be deemed a violation of this ordinance only if the following conditions are met:

- (1) the employer or property manager clearly communicates in writing the terms and restrictions of the parking policy, including the use of boots, to each person subject to complying with the policy;
- (2) a record of the written communication and the employee’s/tenant’s/resident’s acknowledgment of receipt and understanding of the policy is retained;
- (3) parking is gated with access limited only to persons with a card, key, combination code or other means to limit access only to authorized users or the policy restricts parking to a designated space or area and the authorized location in which the vehicle permitted to park is clearly identified by sticker, hangtag or other visible permit on the vehicle;
- (4) vehicle immobilization is not used against visitors to the property unless access to the

property is fully restricted by gated access limited to persons with key, card, combination or other means to limit access, authorized vehicles are clearly identified by sticker, hangtag or other visible permit, and notice is prominently posted at the gated entry stating that parking is limited to employees/tenants/residents and that unauthorized vehicles will be subject to vehicle immobilization/booting; and,

(5) the vehicle immobilization service and operators are properly licensed and permitted under the provisions of this ordinance.

“Sections 12-19-55 – 12-19-60 reserved.

“DIVISION 3. ADDITIONAL OPERATING STANDARDS FOR VEHICLE IMMOBILIZATION SERVICES AND OPERATORS.

“Sec. 12-19-61. 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.
- (3) Reasonable and necessary repairs to maintain a boot in safe and good working condition or to restore it from damage shall not be deemed to be modifications from the manufacturer’s design.

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

“(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 the requirements of this chapter.

“Sec. 12-19-62. Requirements for vehicle immobilization; removal of immobilization device.

“(a) It shall be unlawful for either a vehicle immobilization service or an operator to pay in the form of a gratuity any person who does not own or operate a parking lot for information as to illegally parked vehicles.

“(b) It shall be unlawful for either a vehicle immobilization service or an operator to immobilize any vehicle located on any portion of a public street within the city without the authorization of the mayor or chief of police.

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

- (1) engage in vehicle immobilization service on any property other than a parking lot, as defined by this chapter, within the city;
- (2) engage in vehicle immobilization service within the city without a valid vehicle immobilization service license approved by the council under this chapter;
- (3) cause a vehicle to be immobilized within the city by a vehicle immobilization service that does not hold a valid vehicle immobilization service license under this chapter; or
- (4) employ or contract with a vehicle immobilization service not licensed under this chapter for the purpose of having a vehicle immobilized within the city.

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

“(e) It shall be unlawful for either a vehicle immobilization service or an operator to immobilize vehicles at any parking lot as defined in this chapter without having a valid written contract specifically for such services entered into with the private property owner or lawful lessee thereof and a valid license to operate at said location. A licensee shall conduct booting operations exclusively on private property, and only pursuant to a written agreement with the owner or manager of the property. Said contract must indicate the length of the term of the contract, including the dates that services are to begin and end, and a copy must be available for the operator to produce at the request of any police officer when booting is occurring at the location.

“(f) A vehicle immobilization service must maintain a 24-hour a day, 365 days per year phone number that is staffed by a live operator to communicate immediately with a driver of vehicle that has been immobilized by the vehicle immobilization service.

“(g) Immediately after a vehicle is booted, the person booting such vehicle shall affix at the rear-most portion of the window adjacent to the driver's seat of such vehicle a sequentially numbered notice sticker or decal measuring no less than eight by four inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle, and stating the date and time the vehicle was booted; the name, business address and the permit number of the person who booted such vehicle; the business telephone number which will facilitate the dispatch of personnel responsible for removing the boot; the make, model, color and license tag number of the immobilized vehicle; the reason for immobilization; and the immobilization device number. Provided that the sticker may be affixed in a location that is immediately and reasonably visible to the operator of a motor vehicle if there is no window adjacent to the driver’s seat. Such sticker shall be a high-visibility color, such as yellow or orange and lettering shall be black. The chief of police may prescribe the basic design and format of the notice.

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

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

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

“(k) It shall be unlawful for either a vehicle immobilization service or an operator to charge fees in excess of those set out in section 12-19-49 of this article or to demand payment for any service or for any other reason than boot removal.

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

“(m) In the event that the owner or operator of a vehicle, to which an immobilization device has been applied, attempts to operate said vehicle or remove the device, then the vehicle immobilization service is not liable for any damage to that vehicle. Additionally, the driver or person in charge of the vehicle will be liable to the vehicle immobilization service for the cost of damage to the vehicle immobilization device where the device is rendered unusable; mere cosmetic damage to the device shall not impose liability for the purposes of this section. Any such damage must be reported to the chief of police. However, liability may not be imposed when the immobilization device is not readily visible to the driver of the vehicle and/or the sticker notice has not been properly affixed to the rear-most portion of the window adjacent to the driver's seat of the vehicle or other location where the sticker is immediately and reasonably visible to the operator of the vehicle. This subsection shall not be construed to create the right to collect for damage to any immobilization device at the time of the immobilization and it shall be unlawful to require payment for any such damage as a prerequisite to removal of the immobilization device

“(n) No release or waiver of any kind purporting to limit or avoid liability for damages to a vehicle

that has been booted shall be valid.

“(o) No person who is not an employee, manager or official of the vehicle immobilization service shall accompany the vehicle immobilization service operator or ride in the registered vehicle during immobilization operations.

“(p) A vehicle immobilization service that operates at more than one (1) parking lot within the city shall be required to have in effect a separate business license for each location in addition to the regulatory license required by this ordinance. It shall be unlawful for any officer, agent, or employee of the service to fail to immediately show proof of such license to any police officer or agent of the City’s Director of Finance upon being so requested by such agent or officer.

“Sec. 12-19-63. Financial interests of parking lot owner and licensee prohibited.

“(a) It shall be unlawful for a licensee or officer, shareholder, member or other person with a proprietary or profit interest in the licensed business to, either personally or through an employee or agent:

(1) make any payment to an owner, employee, agent or a person in possession of a commercial parking lot in excess of the reasonable and customary fee ordinarily charged by the owner or person in possession of the parking lot for parking thereon, such payment shall be considered a kickback; or

(2) have 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.

(3) It shall be unlawful for vehicle immobilization services or operators, to have means of access to move or remove money from any unmanned pay station in a parking lot.

“(b) It shall be unlawful for a parking lot owner to, either personally or through an employee or agent:

(1) accept any payment to an owner, employee, agent or a person in possession of a commercial parking lot in excess of the reasonable and customary fee ordinarily charged by the owner or person in possession of the parking lot for parking thereon, such payment shall be considered a kickback; or

(2) have 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 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 due, not including any fine or penalty, for unauthorized parking under the terms for use of the parking lot.

“(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 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 due for unauthorized parking under the terms for use of the parking lot, not including any fine or penalty, from the vehicle owner or operator.

“Sec. 12-19-64. Fees charged by vehicle immobilization service.

“(a) Any vehicle immobilization service engaged in the business of the immobilization of vehicles shall not charge the owner of any immobilized vehicle or personal property in excess of \$65.00 per day for the removal of the vehicle immobilization device or devices. The \$65.00 fee shall be all-inclusive; no additional fees may be charged for using other equipment or for any other reason.

“(b) Fees may be paid by cash, check, credit card, or debit card at no additional charge and the vehicle immobilization service may not require that fees be paid only in cash. Proof of the ability to accept these forms of payment must be submitted prior to obtaining a license. At each and every location where a booting operation is conducted, the licensee shall have available means of collecting any fees via cash, check, credit card and debit card.

“(c) If the means to accept any one form of payment is unavailable at the time of immobilization or release of the vehicle, any immobilized vehicles must be released without charge.

“Sec. 12-19-65. Service calls.

“It shall be unlawful for any vehicle immobilization service, or the vehicle immobilization service's agent, representative, employee or operator to go to any place and immobilize a vehicle unless the vehicle immobilization service has a written contract to immobilize illegally parked cars at a specific parking lot.

“Sec. 12-19-66. City employees soliciting business.

It shall be unlawful for any city employee to solicit business for any vehicle immobilization service owner or operator.

“Sec. 12-19-67.Solicitation of vehicle immobilization work.

It shall be unlawful to drive along any street within the city and solicit vehicle immobilization work. Solicitation of work by the operator or the occupant of a vehicle used to carry on the business of a vehicle immobilization service is prohibited. An operator shall not proceed to a specific parking lot without complying with Section 12-19-23 of this article.

“Sec. 12-19-68. Vehicle not immobilized upon operator of vehicle returning.

- (a) The operator of any vehicle immobilization service shall not immobilize a vehicle and shall not charge a fee if the driver of the vehicle returns before the installation of the vehicle immobilization device or tow device is complete.
- (b) It shall be unlawful to immobilize any motor vehicle occupied by a live person. However, the person occupying the unauthorized vehicle shall either pay the appropriate fee for the privilege of parking at the location or immediately remove the vehicle from the lot. Payment must be made to the pay station or uniformed parking lot attendant. The vehicle immobilization service operator shall not be authorized to accept payment of the parking fee.
- (c) The operator shall immediately notify the Birmingham Police Department of the immobilization of any vehicle occupied by an incapacitated person or a live animal.

“Sec. 12-19-69.Properly parked vehicles.

“It shall be unlawful to place an immobilization device upon any motor vehicle parked in accordance with the terms of use for the subject property. Provided that vehicles may be immobilized by a vehicle immobilization service with a current contract for services including, but not limited to, the enforcement of valid laws for the prevention of driving under the influence/driving while intoxicated and for the prevention of theft by the owner of the vehicle.

Section 12-19-70 reserved.

“DIVISION 4. ADDITIONAL REQUIREMENTS FOR NONCONSENSUAL TOWING SERVICES.

“12-19-71. Removal of trespassing motor vehicles.

“(a) The owner, operator, or lessee, or authorized agent thereof, of any property, may have any vehicle occupying the property without the permission of its owner, operator, lessee, or authorized agent thereof, removed by towing to a storage facility until reclaimed by the owner or his agent provided the provisions of state law and this article are complied with, as well as the following:

“(1) Signs shall be posted and affixed on the property as required by Sec. 12-19-50 through 12-19-52 above.

“(2) The foregoing requirement for signs shall not apply on any parcel of property used at the time of removal for one single-family residence or one two-family residence;

“12-19-72. Authorization for Non-Consensual Tow

“The towing and recovery operator performing the tow shall comply with the following:

“(a) Authorization of the owner, operator, or lessee of the property from which the vehicle is towed, or the authorized agent thereof. For the purposes of this subsection, “authorized agent” shall not include a representative of the towing and recovery operator. This subsection shall not apply to parking lots for the exclusive use of residents or tenants of the property served by the parking lot where authorized vehicles are clearly identified by decal, hangtag or other visible permit. This exception shall not apply to commercial parking lots as defined in this chapter.

- (1) “The tow operator shall receive a signed authorization from the property owner or their agent prior to the towing of the vehicle and the property owner or their agent must also be present when the vehicle is towed.
- (2) The towing and recovery operator, and the owner, operator, or lessee of the property, shall maintain for inspection by the police chief or other city official at its business offices, and at the property, respectively, copies of all documents which authorized the operator to tow any motor vehicle from the property.

(b) For the purposes of this subsection, “authorized agent” may include a representative of the towing and recovery operator. The owner, operator, lessee or authorized agent of the property shall obtain and retain the following:

- (1) Photographs or videos of the vehicle in the location from which the vehicle is being towed;
- (2) Photographs or videos of the condition of the vehicle prior to the tow; and
- (3) To the extent available, other documentary evidence substantiating the reason for the removal.

(c) The tow truck used to perform the tow shall include the name, street address, and telephone number of the towing and recovery operator in a conspicuous location on the exterior of the truck.

(d) Immediately subsequent to a trespassing vehicle being removed or towed as permitted by this ordinance, notice of this action shall be provided by telephone call by the towing and recovery operator to the non-emergency phone number designated by the Birmingham Police Department to receive such information. Such notice shall include the following information:

- (1) The name of the towing and recovery operator removing vehicle;

- (2) A description of the vehicle towed including year, make, model, color and if visible and present on the vehicle the vehicle identification number (VIN), license plate number, decal number and year; the location of trespassing vehicle and the date and time of the tow;
- (3) The location of the storage facility to which the vehicle was towed; and
- (4) The name and address of the individual and/or entity that authorized the tow.

(e) Within 24 hours of the tow, mail written notice by regular mail to the last known address of the registered owner, if ascertainable. The notice shall include the information required above for notice to the police subsequent to the tow. Additionally, the notice to the owner shall provide the schedule of fees for reclaiming the vehicle at the listed storage facility.

(f) Failure by a towing and recovery operator to report such tow as required by this section shall be punishable by a fine of not more than one hundred dollars (\$100.00). Such failure to report shall limit the amount which may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping.

“12-19-73. Storage facilities.

“(a) All towing and recovery operators engaged in towing vehicles without the consent of their owners shall conspicuously display at their main place of business and at any other storage facilities where towed vehicles may be reclaimed, in locations readily visible to those reclaiming vehicles, signs that clearly and legibly provide the following information:

- (1) A comprehensive list of all their fees for towing, recovery, and storage services as related to the charges allowed by this ordinance. Charges in excess of those posted shall not be collectable from any motor vehicle owner whose vehicle is towed or stored without his consent;
- (2) The maximum fees permitted to be charged by this chapter [article];
- (3) That payment may be made by cash, traveler's check, money order, insurance company check, or debit, credit or charge card;
- (4) That a receipt shall be provided;
- (5) That the vehicle owner shall have the opportunity to inspect the exterior of the vehicle for damage prior to leaving the premises and a tow company or tow truck operator shall not require a vehicle owner to sign any waiver of the owner's right to receive compensation for damages to the owner's vehicle as a condition of the vehicle's release.
- (6) The non-emergency telephone number of the police for reporting towing complaints; and

(7) The non-emergency 311 complaint call center number.

“(b) The fees authorized by this ordinance shall be the maximum allowed and an additional fee for use of a debit, credit or charge card, or other form of payment, other than a normal convenience fee required by a credit company, shall not be permitted.

“(c) Towing and recovery operators shall make change, up to one hundred dollars (\$100.00), for those who pay in cash for towing and storage charges applicable to vehicles towed under the provisions of this ordinance.

“(d) Storage facilities to which vehicles are towed under the provisions of this ordinance shall provide for the release of any vehicle towed to said facility twenty-four (24) hours a day.

“(e) Storage facilities to which vehicles are towed under the provisions of this ordinance shall be located within the city and shall comply with all zoning regulations and other ordinances and regulations of the city.

“(f) In the event that a vehicle is towed from the city and stored in or released from a location in another locality, the provisions of this ordinance shall apply.

“12-19-74. Receipt required.

“At the time a vehicle owner or agent reclaims a towed vehicle, the towing and recovery operator shall provide a written receipt that contains the following information:

- (a) The name and address of the towing and recovery operator;
- (b) The address from which the vehicle was towed;
- (c) The date and time that the vehicle was towed;
- (d) The date and time that the vehicle entered the facility at which it was placed for storage;
- (e) An itemized list of all the fees that are being charged; and
- (f) A signature of an authorized representative of the towing and recovery operator.

“In addition to the required receipt, the towing and recovery operator shall provide to the vehicle owner or agent an information sheet or card supplied by the city regarding information about how to file a complaint with the city.

“12-19-75. Fees.

“(a) Charges imposed for the towing, storage, and safekeeping of any vehicle removed, towed, or stored without the consent of its owner shall not be in excess of the maximum charges provided for in this section.

“(b) The maximum fees that may be charged for the towing of motor vehicles and for the storage of such towed vehicles are as follows:

(1) For the towing of a small vehicle, as defined in Sec. 12-19-2 (27) (a), the maximum fee shall not exceed one hundred sixty dollars (\$160.00).

(2) For the towing of a large vehicle, as defined in Sec. 12-19-2 (27) (b), the maximum fee shall not exceed three hundred dollars (\$300.00).

(3) For the storage of a towed motor vehicle, the maximum fee for each twenty-four-hour period of storage or portion thereof shall be ten dollars (\$10.00); provided, that no storage fee may be charged for the first twenty-four (24) hours of storage, or any portion thereof, following the arrival of a towed vehicle at the tow operator's storage facility storage yard. The storage fee shall only apply if the vehicle has been located on the tow operator's storage yard at the address and location that is subject to the annual inspection by the police department and likewise listed on the tow operator's business license at its principal place of business for more than twenty-four (24) hours.

(4) If in the opinion of the tow operator and or its agent, the driver or the operator of the vehicle, whether the owner or agent thereof, appears to be impaired or potentially intoxicated to the extent that they may not be able to safely operate a vehicle, the tow operator and or its agent shall contact the Birmingham Police Department and the responding officers shall, upon investigation and observation of the driver, owner, agent of the owner or party seeking the release of the vehicle, determine if the vehicle is to be released to the driver, owner, agent of the owner or party seeking its release. In the event that the officer shall determine in their opinion that the driver, owner, agent of the owner or party seeking the vehicle's release is impaired to such an extent that they cannot safely operate a vehicle, the vehicle shall not be released and the officer shall document that the tow operator and or its agent complied with the requirements of this article. In such event the tow operator and or its agent may charge the ten dollar (\$10.00) storage fee provided that the vehicle has been stored for longer than twenty-four (24) hours at the storage yard at the address and location that is subject to the annual inspection by the police department and likewise listed on the tow operator's business license as its principal place of business.

(c) Except for fees authorized by this ordinance, no other fees or charges shall be imposed during the first twenty-four-hour period. No fee or other penalty shall be charged for parking on the lot from where the vehicle was towed once the trespassing vehicle has been towed. It shall be unlawful to use the threat of towing by blocking, lifting, loading or otherwise connecting the vehicle for towing in order to coerce the payment of a disputed parking fee.

(d) If the owner of a motor vehicle or agent thereof is present and capable of removing the vehicle before the towing of said vehicle has transpired, the vehicle shall not be towed and no fee shall be charged. However, if the owner of a motor vehicle or agent thereof is present after the owner's motor vehicle has been:

(1) Actually and physically moved and or maneuvered from its parking place by placing a vehicle or vehicles on two (2) or more go jacks, provided that the tow operator has a wrecker or tow truck located and present on scene that can immediately tow each such vehicle or vehicles. It shall be unlawful to place any vehicle or multiple vehicles on go jacks and hold or withhold the vehicle or vehicles from their owner or agent if each vehicle cannot be immediately towed by a tow truck or wrecker present on scene or until a tow truck or wrecker is available to tow them,

(2) Lifted by tow line or cable,

(3) Loaded onto the towing and recovery operator's tow truck,

One-half the rate of the maximum fee for the vehicle's weight classification allowed by subsection (b) of this section shall apply. However the mere arrival of the tow operator's truck or vehicle and or employee(s) shall not be considered as acts, circumstances or justification to tow the vehicle. The placement of obstacles either in front or the rear of the vehicle and or blocking the removal of the vehicle with the operator's tow truck or any other vehicle or blocking the removal of the vehicle by the tow operator, its officers, agents, servants or employees, shall not be considered as acts, circumstances or justification to tow the vehicle if the owner or operator is present and willing to remove the trespassing vehicle and the engagement or use of any such acts shall be unlawful.

(e) It shall be unlawful for any tow operator its officers, agents, servants or employees to disable or immobilize any vehicle prior to towing the vehicle to prevent the owner from removing the vehicle solely so that it can be towed. This subsection shall not apply if the vehicle was booted pursuant to the policy and notice for the parking lot and the owner has not returned or requested removal of the boot within two hours of the placement of the boot. If a booted vehicle has been towed without the owner's return or request for removal of the boot, no boot removal shall be charged in addition to the towing fees authorized by this ordinance.

(f) No storage fees shall be charged if the tow operator its officers, agents, servants or employees have entered into any agreement with any party to lease or to otherwise use any parcel of property or land for the purpose of towing vehicles to places or locations other than the tow operators storage yard as identified in section (b)(2) in order to temporarily store or park vehicles regardless of the hour of day or night. A tow operator may not use any public right-of-way for the purpose of temporarily storing or parking towed vehicles for the purpose of removing multiple vehicles from locations in an attempt to save time from towing vehicles to the tow operator's storage yard.

(g) Any vehicle towed pursuant to this article shall be released by the tow operator within one hour or less when contacted by the owner of any such vehicle towed and payment of the charges due pursuant to this section subject however to the provisions of section (b)(3).

“12-19-76 Manner of payment.

“Towing and recovery operators shall accept payment for towing fees, storage fees, retrieval fees and the "in lieu of towing" fee provided for in this chapter in each of the following ways:

- (a) Cash in United States currency,
- (b) Insurance company check,
- (c) Travelers' checks or money orders payable in United States currency, and
- (d) Any debit, credit or charge card that the towing and recovery operator is authorized by the issuing credit or charge card company to accept, and that is accepted by the towing and recovery operator in the ordinary course of business.

“Sections 12-19-77 through 12-19-80 reserved.

“ARTICLE D – REQUIREMENTS FOR PARKING LOTS THAT USE BOOTING OR TOWING TO ENFORCE AGAINST UNAUTHORIZED VEHICLES IN THE LOT.

“Sec. 12-19-81. - Application.

“The provisions of this article shall apply to parking lots that use booting or towing to enforce against unauthorized vehicles in the lot.

“Sec. 12-19-82 - Entry powers of city officials.

“It shall be the duty of any parking lot manager to allow immediate access by any police officer or building official to any portion of the premises of the parking lot for the purpose of inspection of such premises and vehicle immobilization services for compliance with this ordinance.

“Sec. 12-19-83. - Compliance with other laws.

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

“Sec. 12-19-84. - Enforcement.

“The director of the department of planning, engineering and permits or his designee or any police officer is authorized to enforce the provisions of this article.

“Sec. 12-19-85. - Registration of parking lot operating companies.

“(a) It shall be unlawful for any person to operate a parking lot for profit in the city that has not been issued a registration compliance certificate as required by this section.

“(b) A parking lot general manager may apply for a registration compliance certificate for each parking lot under his management by paying a fee of \$50.00 per lot to the police official and providing to such official the following information regarding each parking lot:

- (1) The name, telephone number, and business address of the parking lot operating company;
- (2) The name, telephone number, facsimile number, and business or residence address, including street name and number, city, state and zip code, of the parking lot general manager; and
- (3) The street address, days and hours of operation of the parking lot.

The use of a public or private post office box or other similar address shall not be sufficient for the purposes of complying with this subsection.

(c) Upon receipt of an application for a registration compliance certificate, the police official will provide a receipt to the applicant and perform an inspection of the parking lot to make a determination as to whether the lot is in violation of any requirements of this article. Upon completion of the inspection the police official shall either:

- (1) Provide to the parking lot general manager a registration compliance certificate and decal to be posted as instructed by the police official; or
- (2) Advise the parking lot general manager in writing that the parking lot is in violation of this article, pointing out the deficiencies and requiring that they be remedied within ten calendar days. The police official shall reinspect the parking lot pursuant to this subsection upon receipt of a written request for reinspection and payment of a reinspection fee of \$50.00.

(d) Any change in the information required in subsection (b) of this section shall require the new parking lot general manager to file updated registration information and to pay a registration update fee of \$10.00 to the police official within 30 days of the effective date of the change. A prior parking lot general manager shall advise the police official that he no longer manages the property.

(e) The parking lot general manager of a newly constructed or established parking lot shall comply with the provisions of this section not later than the thirtieth day following completion of construction or new opening of the parking lot, whichever occurs first.

(f) A parking lot general manager shall annually renew the registration for each parking lot under his management by paying a annual fee of \$50.00 per parking facility to the police official, who

shall verify that each parking facility is still in compliance with this article.

“Sec. 12-19-86.

“It shall be unlawful for a parking lot general manager to have a vehicle booted for any reason (e.g., being parked on or across the parking space lines, on or across areas marked with hash marks, in driving lanes or in other unauthorized areas on the parking lot) other than non-payment of a parking fee.

“Sec. 12-19-87. Attendant requirements.

It shall be the duty of any owner or manager of a parking lot to ensure that no individual at any time performs as a parking lot attendant unless the individual meets each of the requirements of this section. Each parking lot attendant shall:

- (1) Be 16 years of age or older;
- (2) Wear a picture ID, name tag with the employee's first name and employee identification number, and shirt, jacket or vest with the name and logo of the parking lot operating company;
- (3) If the parking lot general manager intends to have vehicles immobilized ("booted") or towed for non-payment of parking fees, provide a written receipt to the operator of a vehicle parked on the parking lot with the name and logo of the parking lot, the street address of the parking facility, the parking space number if the parking lot utilizes "pay by space," and the date and time parking fees were paid; and
- (4) Perform his duties in a courteous and professional manner.

“12-19-88- Closure of parking lot entrances.

- (a) The parking lot operator or manager of a parking lot operated for profit that is closed for business shall barricade all entrances to and exits from the parking lot by means of a barrier gate, chain, or other durable barrier equipment.
- (b) The use of caution tape, plastic tape, rope, or other such non-durable equipment to indicate the closure of entrances and exits is prohibited.
- (c) Barriers shall not be attached to signage, trees, or any such object in the public right-of-way.

“Sec. 12-19-89. Video audits; parking fee receipts.

This section shall apply to commercial parking lots where towing or vehicle immobilization is used to enforce payment of a fee to park.

- “(a) Video audits.

(1) Video audits shall be required when excessive complaints of booting or nonconsensual towing after payment has been made to unmanned pay stations are received by the Birmingham Police Department. For the purposes of this section, excessive complaints shall be three or more such complaints at a specific commercial parking lot within a thirty (30) day period.

(2) Upon receiving a second complaint of booting or nonconsensual towing after proper payment has been made at the same lot within a thirty (30) day period, the chief of police shall notify the parking lot owner, operator and the vehicle immobilization service licensee in writing that an additional complaint within the thirty (30) day period will require the use of a video audit procedure for a following thirty (30) day period.

(3) Upon receiving a third complaint of booting or nonconsensual towing after proper payment has been made at the same lot within a thirty (30) day period, the chief of police shall notify the parking lot owner or operator and the vehicle immobilization service licensee in writing that video audit procedures shall be required for a following thirty (30) day period. The notice shall state the date on which the audit procedures must be initiated and the ending date of the thirty (30) day period.

(4) The parking lot owner and operator, vehicle immobilization service licensee and permittee, and towing or recovery operator shall comply with the following minimum standards for the video audit procedure:

- a. The 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.
- b. The names and employers of the person conducting a video audit procedure and the permittee installing the boot or towing the vehicle (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 or the vehicle is towed, 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:
 1. the payment slot that corresponds to the parking space in which the

unauthorized vehicle is parked; and

2. 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.

“(b) Parking fee receipts.

- (1) Parking fee receipts shall be required when more than six (6) video audits have been required in a twelve (12) month period at a specific commercial parking lot. Upon notifying the parking lot owner or operator and the vehicle immobilization service licensee of the need for a sixth video audit in a twelve-month period, the chief of police shall notify the parking lot owner, operator and vehicle immobilization service licensee that triggering a seventh video audit within the twelve (12) month period will require the parking lot owner and operator to provide parking fee receipts to persons parking at the lot.
- (2) Commercial parking lots that voluntarily provide parking fee receipts shall not be subject to the video audit procedure in subsection (a) above.
- (3) If a parking lot owner or operator provides a parking fee receipt, voluntary or as required by this subsection, the parking lot owner or operator shall provide the receipt by either an electronic pay station or a uniformed parking lot attendant, and the receipt must indicate:
 - a. the amount paid to park the vehicle by the vehicle owner or operator;
 - b. the date and time the parking fee was received from the vehicle owner or operator;
 - c. the time when authorization for the vehicle to be parked on the parking lot expires; and
 - d. the location of the parking lot on which the vehicle is parked.

SECTION 2. That the provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts are held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 3. That this Ordinance shall become effective upon publication as required by statute.

SECTION 4. The use of numbering and captions in this ordinance shall not prevent renumbering or other non-substantive arrangement of the provisions of this ordinance for inclusion in the general code of the city.

SECTION 5. That nothing in this ordinance or the repeal of Ordinance No. 04-96 shall be construed to repeal or otherwise affect the validity of the enforcement action for any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this ordinance; provided that no contract right or arrangement may be renewed or entered after the effective date of this ordinance that would violate the provisions of this ordinance, as amended.

