

ORDINANCE NO. 2018-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING CHAPTER 82, ARTICLE 4 OF THE SAN MARCOS CITY CODE BY ADDING A NEW DIVISION 3 REGULATING VEHICLE BOOTING ACTIVITIES ON PRIVATE PARKING FACILITIES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF ANY CONFLICTING PROVISIONS; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. The City Council hereby finds and determines that the adoption of regulations governing the booting of vehicles in private parking facilities by booting companies and boot operators is in the interest of the public health, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. Chapter 82, Traffic and Vehicles, Article 4, Stopping, Standing, Parking, of the San Marcos City Code is amended by adding a new Division 3, Regulation of Vehicle Booting Activities, as set forth below. Added text is indicated by underlining.

DIVISION 3. REGULATION OF VEHICLE BOOTING ACTIVITIES

Sec. 82.190. Definitions.

In this division:

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

Booting company means a person that controls, installs, or directs the installation and removal of one or more boots.

Boot operator means an individual who installs or removes a boot on or from a vehicle.

Parking facility means public or private property used, wholly or partly, for restricted or paid vehicle parking. The term includes:

- (1) a restricted space on a portion of an otherwise unrestricted parking facility; and
- (2) a commercial parking lot, a parking garage, and a parking area

serving or adjacent to a business, church, school, home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person, including:

- a. a portion of the right-of-way of a public roadway that is leased by a governmental entity to the parking facility owner; and
- b. the area between the facility's property line abutting a county or municipal public roadway and the center line of the roadway's drainage way or the curb of the roadway, whichever is farther from the facility's property line.

Parking facility authorized agent means an employee or agent of a parking facility owner with the authority to:

- (1) authorize the removal of a vehicle from the parking facility on behalf of the parking facility owner; and
- (2) accept service on behalf of the parking facility owner of a notice of hearing requested under Subchapter J, Chapter 2308 of the Texas Occupations Code (*Rights of Owners and Operators of Stored or Booted Vehicles*), regarding whether probable cause existed to immobilize the vehicle.

Parking facility owner means:

- (3) an individual, corporation, partnership, limited partnership, limited liability company, association, trust, or other legal entity owning or operating a parking facility;
- (4) a property owners' association having control under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, over assigned or unassigned parking areas; or
- (5) a property owner having an exclusive right under a dedicatory instrument, as that term is defined in Section 202.001, Property Code, to use a parking space.

Peace officer means a person who is a peace officer under Article 2.12, Code of Criminal Procedure.

Police chief means the chief of the San Marcos Police Department, and includes representatives, agents, and department employees designated by the police chief.

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

Vehicle means a device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

Vehicle owner means a person:

- (1) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;
- (2) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;
- (3) who holds the vehicle through a lease agreement;
- (4) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or
- (5) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

Sec. 82.191. Booting of unauthorized vehicle.

(a) A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause a boot to be installed on the vehicle in the parking facility if the parking facility owner has posted the signs in the parking facility required by Subchapter G, Chapter 2308, Texas Occupations Code (*Signs Prohibiting Unauthorized Vehicles and Designating Restricted Areas*).

(b) A boot operator that installs a boot on a vehicle must affix a conspicuous notice to the vehicle's front windshield or driver's side window stating:

- (1) that the vehicle has been booted and damage may occur if the vehicle is moved;
- (2) the date and time the boot was installed;
- (3) the name, address, and telephone number of the booting company;
- (4) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;

- (5) the amount of the fee for removal of the boot and any associated parking fees;
 - (6) notice of the right of a vehicle owner or vehicle operator to a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (*Rights of Owners and Operators of Stored or Booted Vehicles*), regarding whether probable cause existed to immobilize the vehicle.; and
 - (7) notice of the right to file a complaint with the police chief for violation of this division by a booting company or a boot operator.
- (c) On removal of a boot, the boot operator shall provide a receipt to the vehicle owner or operator stating:
- (1) the name of the person who removed the boot;
 - (2) the date and time the boot was removed;
 - (3) the name of the person to whom the vehicle was released;
 - (4) the amount of fees paid for removal of the boot and any associated parking fees; and
 - (5) the right of the vehicle owner or operator to a hearing under Subchapter J, Chapter 2308, Texas Occupations Code (*Rights of Owners and Operators of Stored or Booted Vehicles*), regarding whether probable cause existed to immobilize the vehicle.
- (d) The booting company shall maintain a copy of the receipt at its place of business for a period of three years. A peace officer has the right, on request, to inspect and copy the records to determine compliance with the requirements of this section.
- (e) A booting company shall accept payment by cash, ~~an~~ electronic check, debit card, or credit card for any fee or charge associated with the removal of a boot. A booting company may not collect a fee for any charge associated with the removal of a boot from a person who offers to pay the charge with an electronic check, debit card, or credit card form of payment that the booting company is not equipped to accept.

Sec. 82.192. Boot Removal.

- (a) A booting company responsible for the installation of a boot on a vehicle shall remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.

(b) A booting company shall waive the amount of the fee for removal of a boot, excluding any associated parking fees, if the company fails to have the boot removed within the time prescribed by Subsection (a).

(c) A booting company responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Sec. 82.193. Maximum fee for boot removal.

The maximum fee that may be charged for removal of a boot is \$50.00 or such other amount as otherwise approved by the city council from time to time.

Sec. 82.194. Booting company registration.

(a) A booting company may not authorize the installation of a boot on a parked vehicle in a parking facility without first having registered with the police chief under this section.

(b) To register, a person must complete a form provided by the police chief for that purpose.

(c) The person completing the form shall indicate the name, address, telephone number and email address of the owner and any authorized officers or agents of the owner having authority with regard to booting of vehicles, all parking facilities for which the booting company may perform vehicle booting activities for a parking facility owner, and the names and cellular telephone numbers of all boot operators who will be carrying out such activities.

(d) The registration form must be completed and signed by any person who will own, control, or operate or the booting company, or such person's duly authorized agent.

(e) A booting company on whose behalf a registration form has been completed shall promptly update the form with any changes regarding ownership, business location, contact information, contracted parking facilities or boot operators acting on behalf of the booting company.

(f) The registration form must include all information required by the form provided by the police chief to be deemed complete.

(g) The registrant must submit a registration fee in the amount of \$25.00 or such other amount as may be set by the city council from time to time. The fee is non-refundable.

Sec. 82.195. Violation; penalties.

(a) A person is prohibited from booting, or causing to be booted, a vehicle in a parking facility except as provided in this division.

(b) A person commits an offense if the person:

- (1) performs an act prohibited by this division;
- (2) fails to perform an act required by this division; or
- (3) violates a rule adopted under this division.

(c) A violation of this division is a Class C misdemeanor punishable by a fine not to exceed \$500.00 as provided in section 1.015(b) of the San Marcos City Code.

(d) Proof of a culpable mental state is not required for the prosecution of a violation of this division.

Sec. 82.196. Exemptions.

This division does not apply to the booting of a vehicle by:

- (1) a governmental entity; or
- (2) a person exercising a statutory or contractual lien right with regard to the vehicle.

SECTION 2. In codifying the changes authorized by this ordinance, paragraphs, sections and subsections may be renumbered and reformatted as appropriate consistent with the numbering and formatting of the San Marcos City Code.

SECTION 3. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 4. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 5. This ordinance will take effect after its passage, approval and adoption on second reading.

PASSED AND APPROVED on first reading on December 12, 2018.

PASSED, APPROVED AND ADOPTED on second reading on January 15, 2019.

Jane Hughson
Mayor

Attest:

Approved:

Jamie Lee Case
City Clerk

Michael J. Cosentino
City Attorney