

AN ORDINANCE AMENDING CHAPTER 18 OF THE CODE OF THE CITY OF ABILENE, TEXAS, DECLARING THE VIOLATION OF CITY ORDINANCES RELATING TO PARKING, STOPPING, OR STANDING VEHICLES TO BE CIVIL OFFENSES; RELATING TO THE ADMINISTRATIVE ADJUDICATION PROCESS FOR VIOLATION OF CITY ORDINANCES CONCERNING THE PARKING, STOPPING, OR STANDING OF VEHICLES AND THE ENFORCEMENT OF SAME; MAKING UNLAWFUL CERTAIN CONDUCT RELATING TO TAMPERING WITH A BOOTING DEVICE, TOWING OF A BOOTED VEHICLE BY UNAUTHORIZED PERSON, AND REMOVING OR RELOCATING NOTICE PLACED ON A BOOTED VEHICLE; PROVIDING A SEVERABILITY CLAUSE; REPEALING CONFLICTING ORDINANCES; PROVIDING A PENALTY CLAUSE; DELETING CERTAIN SECTIONS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 18, "Motor Vehicles & Traffic," of the Abilene City Code be amended as set out in EXHIBIT A, attached hereto and made a part of this ordinance for all purposes.

PART 2: That Sections 18-37, 18-51, and 18-52 of Chapter 18 of the Code of the City of Abilene, Texas, are hereby repealed.

PART 3: That Section 18-44 is hereby amended by replacing all references to the Chief of Police with that of Municipal Court Clerk.

PART 4: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect. That any ordinance in conflict herewith, be, and the same is hereby repealed to the extent of any conflict.

PART 5: That any person, firm, or corporation violating Section 18.62 shall be deemed guilty of a Class C misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00). Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON FIRST READING THIS 10 day of February, A.D., 1994.

PASSED ON SECOND AND FINAL READING THIS 24 day of February,
A.D., 1994.

ATTEST:




City Secretary



Mayor

APPROVED:



City Attorney

EXHIBIT A

ORDINANCE NO. 5-1994

Chapter 18, "Motor Vehicles & Traffic," is hereby amended to read as follows:

DIVISION 4. PARKING VIOLATIONS BUREAU

Sec. 18-55. Created.

There is hereby created a parking violations bureau in and for the City of Abilene which shall have original jurisdiction over cases involving violations of city ordinances relating to the parking, stopping, or standing of vehicles as contained in Chapter 18 of the Code of the City of Abilene.

Sec. 18-56. Hearing officers.

(a) The parking violations bureau shall be composed of one (1) or more hearing officers who shall be appointed by the Municipal Court Clerk.

(b) Hearing officers shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents.

(c) An order compelling the attendance of witnesses or the production of documents may be enforced by the municipal court.

Sec. 18-57. Parking citations.

(a) Violations of city ordinances relating to parking, stopping, or standing are declared to be civil offenses. The administrative adjudication process for parking, stopping, or standing violations shall be initiated by the issuance of a parking citation which may be issued by a peace officer or other authorized parking enforcement agent. Authorized parking enforcement agents shall include any police officer, parking control officer, city marshal, or other employee of the city designated by the chief of police, city marshal, or the city manager to enforce the provisions of this code in regard to the parking, stopping, or standing of vehicles.

(b) If the owner or operator of the vehicle is not present at the time of issuance of the citation, the citation may be issued by affixing the citation to the vehicle in a conspicuous place.

(c) The citation shall provide that the person charged with a parking, stopping, or standing offense shall have the right of hearing to determine the issue of liability for the

charged offense. Such right to a hearing shall be exercised by mail or by appearing in person before a hearing officer within ten (10) days from the date of the citation.

(d) The original or any copy of the citation or summons is a record kept in the ordinary course of business in the city and is rebuttable proof of the facts it contains.

Sec. 18-58. Presumption of ownership.

(a) In any prosecution charging a violation of any law or regulation governing the standing or parking of a vehicle, proof that the particular vehicle described in the complaint was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint was at the time of such parking the registered owner of such vehicle, shall constitute in evidence a prima facie presumption that the registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

In the event such vehicle was, at the time of such parking, registered in the name of, or owned by, a corporation, partnership, association, governmental body or any entity other than an individual, proof that the particular vehicle in question was parked in violation of any such law or regulation, together with proof that the defendant named in the complaint did, at the time of such parking, have custody or control of such vehicle, shall constitute in evidence a prima facie presumption that such person having custody or control of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(b) A state department of transportation computer-generated record of the registered vehicle is prima facie evidence of its contents in an administrative adjudication hearing under this article.

Sec. 18-59.1. Hearings.

(a) At the hearing before the hearing officer, the defendant may either admit, admit with explanation, or deny the alleged infraction.

(b) The issuing peace officer or other authorized parking enforcement agent shall not be required to attend the hearing.

(c) It is not required that the city's prosecuting attorney attend the hearing. Provided, however, that if the defendant is represented by legal counsel at the hearing, the hearing officer shall notify the prosecuting attorney who shall have a right to appear on behalf of the city at said hearing.

(d) No formal or sworn complaint shall be necessary. The hearing officer shall examine the contents of the citation and the evidence related to ownership of the vehicle in question, and shall hear and review the testimony and evidence presented by the

defendant. If the hearing officer determines by the preponderance of the evidence that the violation was committed by the defendant, he shall find the defendant liable therefor.

(e) At the conclusion of the hearing, the hearing officer shall issue an order stating whether or not the person charged is liable for violation of the parking, stopping, or standing ordinance and the amount of any civil fines, costs, or fees assessed against him. The order shall be filed with the clerk of the municipal court. All such orders shall be kept in a separate index or file by the municipal court clerk using appropriate data processing techniques.

(f) Failure of a person charged with the offense to appear at a hearing within the aforesaid ten (10) day period shall be considered an admission of liability for the charged offense.

Section 18-59.2. Appeal.

(a) A person determined by the hearing officer to be in violation of a parking, stopping, or standing ordinance may appeal this determination to the municipal court clerk or a deputy so designated.

(b) The appeal must be instituted by filing, not later than the thirtieth (30th) day after the filing of the hearing officer's order, a petition with the clerk of the municipal court along with payment of a non-refundable administrative appeal filing fee in the amount of five dollars (\$5.00), as well as payment of any other costs required by law for municipal courts.

(c) After filing a petition for appeal, the municipal clerk shall schedule a hearing and notify all parties of the date, time, and place of the hearing.

(d) The appeal hearing shall be a de novo review. The municipal court clerk shall examine the evidence presented at the appellate hearing and if the court clerk determines by the preponderance of the evidence that the violation was committed by the defendant, the court clerk shall find the defendant liable therefor.

(e) Service of notice of appeal under this section does not stay the enforcement and collection of the judgment unless the person who files the appeal posts a cash bond before filing notice of appeal with the clerk of the municipal court. Said cash bond shall be in the amount of all fines, costs, and fees assessed by the hearing officer.

Sec. 18-59.3. Enforcement.

(a) An order filed by a hearing officer under this article, or a final judgment of the municipal court clerk or a deputy so designated after appeal, may be enforced by:

- (1) Impounding the vehicle;

- (2) Immobilizing by the placing of a device ("boot") that prohibits the movement of a motor vehicle on the vehicle that is the subject of the order filed;
- (3) An additional fine if not paid within the specified time; or
- (4) Denial of parking permits.

(b) Provided, however, that no vehicle shall be impounded or immobilized under this article unless:

- (1) The offender has three (3) or more delinquent unpaid citations in a calendar year; and
- (2) Written notice is mailed to the registered owner of the vehicle at least ten (10) days before the vehicle is impounded or immobilized, said notice to inform the registered owner of the vehicle's eligibility of immobilization or impoundment. Said notice shall also inform the owner of his right to submit information to the hearing officer regarding the propriety of the immobilization or impoundment of the vehicle.

Sec. 18-60. Procedures for immobilization and/or impoundment.

(a) When a vehicle is found parked, whether legally or illegally, at any time upon a public street or public property in the city, and such vehicle has met the criteria for immobilization or impoundment as provided in Section 18-59.3, any authorized parking enforcement agent of the city may immobilize the vehicle by the installation on or attachment to the vehicle of a device, or boot, designed to prohibit the movement of the vehicle. In the alternative, such vehicle may be towed and impounded, provided that the towing and impoundment is authorized at the direction of a peace officer.

(b) At the time of immobilization, the agent shall also conspicuously attach to the vehicle a written notice on a form provided by the city, said notice to contain the following information:

- (1) Notice that the vehicle has been immobilized pursuant to this article, and that attempted movement may cause damage to the vehicle;
- (2) That release of the vehicle may be obtained at a designated place;
- (3) That the owner may request a hearing regarding the immobilization; and
- (4) That the vehicle may be towed and impounded after a designated period of time.

(c) Any vehicle which remains immobilized at 4:00 p.m. may be towed and impounded.

(d) In the event that a vehicle is towed and impounded, the owner thereof shall be responsible for payment of applicable fees for towing, impoundment, and storage in addition to the fines, costs, and fees provided for herein. Towed vehicles that are not redeemed within thirty (30) days shall be subject to disposition in the manner provided by State law.

(e) This section is to be cumulative of existing law, and nothing herein shall be construed to restrict or limit the right to tow and impound vehicles under other applicable law.

Sec. 18-60.1. Boot removal.

(a) The registered owner of an immobilized or impounded vehicle, or other authorized person, may secure the release of the vehicle upon:

- (1) Payment of or posting of a cash bond which may be in the amount of the fine and late fees, if any, for each delinquent parking citation plus the applicable boot fee; or
- (2) Entering into a pay agreement wherein the initial payment shall not be less than the boot fee amount and which must be paid prior to release of vehicle; or
- (3) Establishing that he was not the registered owner at the times in question or that he did not receive notice as required by law.

If vehicle has been towed, the owner or authorized person shall be responsible to the towing company for all towing and storage fees.

(b) Payment of the fines, late fees, boot fee, and any towing and storage fees shall constitute a waiver of the right to contest such fines and fees.

Sec. 18-61. Fines and fees.

(a) Any person, firm, or corporation who violates any provision of this Code related to the parking, stopping, or standing of vehicles shall be fined in an amount not exceeding five hundred dollars (\$500.00) for each offense, the amount to be determined by the hearing officer in his reasonable discretion, subject to review on appeal to the municipal court clerk.

(b) Unless higher amounts are required by state law or a lesser amount is determined by the hearing officer or municipal court clerk or so designated deputy, the minimum fines for parking violations shall be as follows:

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|-----|---|---------|
| (1) | Exceeding posted time limit, first offense within a thirty-day period | \$5.00 |
| (2) | Exceeding posted time limit, all subsequent offenses within a thirty-day period | \$10.00 |
| (3) | On an expired meter | \$5.00 |
| (4) | In disregard to parking stall markers | \$5.00 |
| (5) | In a reserved space | \$5.00 |
| (6) | In a designated disabled, or handicap space | \$50.00 |
| (7) | All other parking violations | \$10.00 |

Any person to whom a parking citation has been issued shall have ten (10) days from the date of issuance of said citation in which to answer the charges in a manner specified on the citation. Any citation which remains unanswered after ten (10) days shall be deemed to be delinquent and the minimum fine amount shall become twice the amount specified above.

(c) The payment of a fine to the bureau shall be deemed an acknowledgment of conviction of the alleged offense, and the bureau, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof.

(d) The boot fee shall be twenty-five dollars (\$25.00). In addition to the boot fee, charges for towing and/or storage of impounded vehicles shall be as provided by the law applicable to abandoned vehicles.

(e) If three (3) or more parking citations have not been answered within ten (10) days after date of issuance of the citations, the parking violations bureau shall send to the registered owner of the vehicle to which the citations had been affixed a letter informing the owner that the citations are delinquent and that the following action may be taken if the citations have not been answered within ten (10) days of the date of the letter:

The vehicle may be impounded in place by means of an immobilization device or, at the option of the city, towed away to a secure area of impoundment. If the vehicle is towed to a secure impoundment, the owner shall be responsible for towing and storage charges.

(f) All fines, costs, and fees shall be deposited in the proper account of the general fund of the city, unless otherwise directed by resolution of the city council.

Sec. 18-62. Certain conduct unlawful.

(a) It shall be unlawful for any person, other than an officer or employee of the city acting in the course and scope of his duties under this article, to remove or attempt to remove or to tamper in any manner with an immobilization device (boot) installed on any vehicle pursuant to this article.

(b) It shall be unlawful for any person, except under the direction of a peace officer, to tow or move or to cause to be towed or moved any vehicle on which a boot is then installed pursuant to this article from the place where it was booted.

(c) It shall be unlawful for any person, other than an officer or employee of the city acting in the course and scope of his duties or the owner or operator of a booted vehicle, to remove or relocate any notice placed upon a booted vehicle pursuant to this article.