

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1995**

No. 24

Introduced by Council Members Leffler, Dear, Eisland and Warden; also Council Members Stabile, Albanese, Weiner, Malave-Dilan, McCaffrey and Marshall.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to the licensing of booting companies.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. It is hereby found and declared that the booting of motor vehicles by private persons should be regulated in order to alleviate some of the problems motorists have experienced and to give motorists a forum in which to have their complaints heard and addressed. In 1994, the Department of Consumer Affairs received complaints from consumers who maintained that their vehicles had been legally parked when the boots were applied, that no signs had been posted indicating that vehicles would be booted if they were improperly parked or that the booting personnel were abusive and unresponsive. By far, the largest portion of these complaints concerned the booting of motor vehicles on private parking lots serving stores and other business establishments where motorists were forced not only to pay high booting charges to have their vehicles released, but also to pay charges for both the booting and the subsequent towing of their vehicles. Since booting is currently an unlicensed activity, the Department of Consumer Affairs has been unable to mediate any of these consumer complaints and to award restitution to consumers where appropriate. This local law would authorize the Department of Consumer Affairs to license private persons who boot motor vehicles and thereby hear and respond to complaints and impose sanctions for any violation of this law. It would also establish certain standards that would govern booting activities, thereby helping to ensure that licensed companies do not wrongfully boot motor vehicles or engage in booting in such a manner as to endanger the public safety. The Council further finds that the licensing of booting companies will protect the public from undue inconvenience and potential damage to vehicles.

§2. Title 19 of the administrative code of the city of New York is amended by adding a new section 19-169.2 to read as follows:

§19-169.2 Booting of improperly parked motor vehicles.

a. Definitions. For the purposes of this section, the following terms shall have the following meanings:

1. "Boot" or "booting" shall mean the act of placing on a parked motor vehicle a mechanical device that is designed to be attached to the wheel or tire or other part of such vehicle so as to prohibit its usual manner of movement;

2. "Person" shall mean any individual, partnership, corporation, association, firm or other business entity; and

3. "Private street" shall mean every way or place in private ownership that is used for vehicular travel by the owner and those having express or implied permission of the owner or that may be used by the public for vehicular travel.

b. Except as provided in paragraph two of subdivision a of section 20-531 of this code, no person shall engage in booting unless such person is licensed by the department of consumer affairs pursuant to subchapter 32 of chapter 2 of title 20 of this code and any rules promulgated pursuant thereto.

c. 1. No motor vehicle may be booted unless a sufficient number of signs is conspicuously posted and maintained by the owner of the property in the form, manner and location prescribed by rule of the commissioner of consumer affairs. Such signs shall contain such information as the commissioner of consumer affairs shall prescribe in such rule including, but not limited to, the name, business address, business telephone number and license number of the person authorized by the property owner to boot the vehicle, the hours during which and the circumstances under which vehicles are prohibited from parking on such property and are subject to booting, the fees to be charged for booting and the telephone number of the office within the department of consumer affairs responsible for receiving complaints regarding booting.

2. Notwithstanding paragraph one of this subdivision, the provisions of this subdivision shall be satisfied with respect to a private street if (i) a sign containing the information required by this subdivision is posted and maintained by the owner of such private street at each place where such private street intersects a public street and such signs are situated in such a manner as to be readily visible and readable by the operator of a motor vehicle traveling from a public street onto such private street, and (ii) there are also a sufficient number of signs on every other private street that is in the same ownership stating that vehicles parked on such street without the permission of such owner may be booted and containing the business telephone number of the person authorized by the owner to boot the vehicle, which signs are readily visible and readable by an operator of a motor vehicle traveling on such street.

3. No charge for the release of a vehicle that has been booted in excess of that which is contained in the signs required by this subdivision may be imposed.

d. In addition to the provisions of subdivision c of this section, no motor vehicle may be booted (1) unless such vehicle is unlawfully parked; (2) where such vehicle is occupied by any person or live animal; (3) when such vehicle is parked on the roadway side of a vehicle stopped, standing or parked at the curb; (4) where such vehicle is parked in a fire lane, or in front of or immediately adjacent to a fire hydrant, fire connection or building emergency exit; (5) unless the express written authorization of the owner of a private driveway blocked by such vehicle has been obtained, which authorization includes the location, make, model, color and license plate number of such vehicle; (6) if such vehicle is an ambulance, correction vehicle, police vehicle, fire vehicle, civil defense emergency vehicle, emergency ambulance service vehicle, environmental emergency response vehicle, sanitation patrol vehicle, hazardous materials emergency vehicle, ordnance disposal vehicle of the armed forces of the United States; and (7) where such

vehicle bears a special vehicle identification parking permit issued in accordance with the provisions of paragraph 15 of subdivision a of section 2903 of the New York city charter or issued in accordance with the provisions of section 1203-a of the vehicle and traffic law, or "MD" New York registration plates.

e. Immediately after a vehicle is booted, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall affix at the rear-most portion of the window adjacent to the driver's seat of such vehicle a sticker measuring eight and one-half inches by eleven inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle, and stating the time the vehicle was booted and the name, business address and the license number of the person who booted such vehicle as well as a business telephone number which will facilitate the dispatch of personnel responsible for removing the boot.

f. 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. In addition, any person who booted a vehicle, or other person authorized to accept payment of any charges for such booting, shall provide a signed receipt to the individual paying the booting charges at the time such charges are paid. Such receipt shall 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, and such receipt shall also include a telephone number for the office within the department of consumer affairs responsible for receiving complaints with respect to booting.

g. No charge shall be imposed for the booting of a vehicle in violation of this section, and any such unlawful charge shall be reimbursed by any person found to have violated this section.

h. Any person who has booted a motor vehicle shall release such vehicle within thirty minutes of receiving a request for such vehicle's release; provided, however, that payment of any charge for booting is made at or prior to the time of such vehicle's release. The owner or person in control of a vehicle which has been booted by a licensee or such licensee's employee or agent shall be permitted to pay any charge for booting at the location where such vehicle was booted and the licensee, or other person authorized to accept payment, shall accept such payment in person by credit card in accordance with generally accepted business practices.

i. Any person who violates any provision of this section or any rule promulgated pursuant thereto shall be liable for a civil penalty of not less than five hundred nor more than one thousand dollars.

j. Authorized employees of the department, or the department of consumer affairs, or any police officer, shall have the power to enforce the provisions of this section and any rules promulgated pursuant thereto and the department of consumer affairs shall be authorized to impose the civil penalties provided for in this section, may arrange for the redress of any injuries caused by violations of this section and may otherwise provide for compliance with the provisions and purposes of this section.

k. The commissioner of consumer affairs is authorized to promulgate such rules as the commissioner deems necessary to effectuate the provisions of this section.

l. The provisions of this section shall not apply to the booting of a motor vehicle by:

1. The city, any other governmental entity, or a person acting under the direction of the city or such governmental entity, where such booting is authorized by any other provision of law or any rule or regulation promulgated pursuant thereto; or

2. Any person who has a lien pursuant to section 184 of the lien law and who detains such motor vehicle in his or her lawful possession.

§3. Subdivision a of section 20-509 of the administrative code of the city of New York, as amended by local law number 21 for the year 1991, is amended to read as follows:

a. Except as otherwise provided, charges for the towing of a vehicle shall not exceed fifty dollars for the first mile or fraction thereof and three dollars and fifty cents for each additional mile or fraction thereof; provided, however, that where a motor vehicle has been booted by a person licensed pursuant to subchapter 32 of this chapter in a private parking lot as defined in paragraph 3 of subdivision b of section 20-531 of such subchapter and such vehicle is subsequently towed, no additional charge may be imposed for the towing of such vehicle.

§4. Chapter 2 of title 20 of the administrative code of the city of New York is amended by adding a new subchapter 32 to read as follows:

*Subchapter 32
Booting of motor vehicles*

§20-531	<i>License required; definitions.</i>
§20-532	<i>Application; fingerprinting; fee; term.</i>
§20-533	<i>Suspension, revocation and renewal of licenses.</i>
§20-534	<i>Records.</i>
§20-535	<i>Charges and release of vehicles.</i>
§20-536	<i>Enforcement and penalties.</i>
§20-537	<i>Rules.</i>
§20-538	<i>Applicability.</i>

§20-531 License required; definitions. a. 1. No person shall engage in booting without having first obtained a license therefor pursuant to this subchapter.

2. Notwithstanding the provisions of paragraph one of this subdivision, an individual shall not require a license issued pursuant to this subchapter where such individual is an employee of and is authorized or directed to engage in booting by a person required to be licensed by this subchapter.

b. For the purposes of this subchapter, the following terms shall have the following meanings:

1. "Boot" or "booting" shall mean the act of placing on a parked motor vehicle a mechanical device that is designed to be attached to the wheel or tire or other part of such vehicle so as to prohibit its usual manner of movement;

2. "Person" shall mean any individual, partnership, corporation, association, firm or other business entity; and

3. "Private parking lot" shall mean any area of private property near or contiguous to premises having one or more stores or business establishments which is used for the parking of motor vehicles of customers or patrons or any one who frequents such stores

and business establishments, but shall be limited to such areas as are provided to the public without charge.

c. No licensee shall boot, permit or authorize booting in violation of the provisions of this subchapter or section 19-169.2 of this code or any rule promulgated pursuant to this subchapter or section 19-169.2 of this code.

d. A licensee shall be liable for any violation by such licensee's employees or agents of this subchapter, section 19-169.2 of this code or any rule promulgated pursuant to this subchapter or section 19-169.2 of this code.

§20-532 Application; fingerprinting; fee; term. a. An application for any license required under this subchapter or for any renewal thereof shall be made to the commissioner in such form and manner as the commissioner shall prescribe by rule. An applicant for any such license shall be fingerprinted by the department for the purpose of securing criminal history records from the state division of criminal justice services and shall pay a processing fee as required by the state division of criminal justice services. Where the applicant is a sole proprietorship, fingerprints shall be taken of the owner thereof; where the applicant is a partnership, fingerprints shall be taken of the general partners thereof; where the applicant is a corporation, association, firm or other business, fingerprints shall be taken of the officers, principals, directors, and stockholders of more than ten percent of the outstanding stock. Any person required to be fingerprinted hereunder shall furnish to the department three current passport size photographs of such persons. Notwithstanding the foregoing, the commissioner need not require applicants for licenses required under this subchapter to be fingerprinted if criminal history records concerning such applicants are not available from the state division of criminal justice services.

b. There shall be a biennial fee for a license pursuant to this subchapter which shall be three hundred and forty dollars.

c. All licenses issued pursuant to this subchapter shall expire on December thirty-first, in odd-numbered years, unless sooner suspended or revoked.

d. The commissioner may refuse to issue any license required under this subchapter if such applicant or any employee or agent of such applicant has engaged in conduct which would constitute a basis for license suspension or revocation under this title.

§20-533. Suspension, revocation and renewal of licenses. After due notice and opportunity to be heard, the commissioner may suspend, revoke or refuse to renew any license required by this subchapter upon a determination that the licensee or any employee or agent of such licensee has violated any provision of this subchapter, section 19-169.2 of this code or any rule promulgated pursuant to this subchapter or section 19-169.2 of this code.

§20-534 Records. Every person licensed to engage in booting shall maintain books, records, ledgers, receipts, bills and such other written records as the commissioner may prescribe by rule. Such records shall be made available for inspection by the commissioner at his or her request at either the licensee's place of business or at the offices of the department.

§20-535 Charges and release of vehicles. a. The charge to release a motor vehicle that has been booted on a private parking lot shall be no more than one hundred dollars. Notwithstanding the provisions of any other law, where a motor vehicle has been booted on a private parking lot and subsequently towed from such parking lot, no additional charge may be imposed for the towing of such vehicle.

b. Any person who has booted a motor vehicle shall release such vehicle within thirty minutes of receiving a request for such vehicle's release; provided, however, that payment of any charge for booting is made at or prior to the time of such vehicle's release.

c. The owner or person in control of a vehicle which has been booted by a licensee or such licensee's employee or agent shall be permitted to pay any charge for booting at the location where such vehicle was booted and the licensee, or other person authorized to accept payment, shall accept such payment, in person by credit card in accordance with generally accepted business practices.

§20-536 Enforcement and penalties. Authorized employees of the department, or the department of transportation, or any police officer, shall have the power to enforce any provision of this subchapter or any rule promulgated pursuant thereto. Any person who violates any provision of this subchapter or any rule promulgated pursuant thereto shall be liable for a civil penalty of not less than five hundred nor more than one thousand dollars.

§20-537 Rules. The commissioner shall promulgate such rules as the commissioner deems necessary to effectuate the provisions of this subchapter.

§20-538 Applicability. The provisions of this subchapter shall not apply to the booting of a motor vehicle by:

a. The city, any other governmental entity, or a person acting under the direction of the city or such governmental entity, when such booting is authorized by any other provision of law or any rule or regulation promulgated pursuant thereto; or

b. Any person who has a lien pursuant to section 184 of the lien law and who detains such motor vehicle in his or her lawful possession.

§5. This local law shall take effect ninety days after its enactment into law.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on March 21, 1995, and approved by the Mayor on April 10, 1995.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 24 of 1995, Council Int. No. 88-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on March 21, 1995: 49 for, 0 against.

Was approved by the Mayor on April 10, 1995.

Was returned to the City Clerk on April 11, 1995.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel