

69-0-08

AN ORDINANCE

**Updating the City Code by
Deleting and Amending Portions thereof
Related to the Immobilization of Vehicles ("Booting")**

WHEREAS, the City Council enacted Sections 10-6-14 through 10-6-21 of the Evanston City Code of 1979, as amended (the "City Code"), collectively attached hereto and made part hereof as Exhibit A, which authorized the City to immobilize vehicles and established regulations, administrative procedures, and fees related to such immobilizations; and

WHEREAS, the City Council thereafter enacted Section 11-2-11 of the City Code, "Immobilization Program," attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the terms of Sections 10-6-14 through 10-6-21 of the City Code and the terms of Section 11-2-11 of the City Code, are in part redundant with, and in part in conflict with, one another; and

WHEREAS, the terms of Section 11-2-11 of the City Code accurately represent the City of Evanston's current policy regarding the immobilization of vehicles; and

WHEREAS, at their June 25, 2008 meeting, the Parking Committee reviewed this Ordinance and recommended City Council approval of the same,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Code is hereby further amended by deleting Sections 10-6-14, 10-6-15, 10-6-16, 10-6-17, 10-6-18, 10-6-19, 10-6-20, and 10-6-21, attached hereto as Exhibit A, in their entirety.

SECTION 2: That Subsection 11-2-11 (B) of the City Code is hereby further amended to read as follows:

- (B) When the registered owner of a vehicle has accumulated five (5) or more final determinations of parking violation liability, in any combination, for which the fines and applicable penalties, if applicable, have not been paid in full, the Director of Administrative Adjudication shall cause a notice of impending vehicle immobilization to be sent by regular mail to the owner of such vehicle or placed on the owner's vehicle when the owner cannot be reached by mail. Such notice shall indicate that the owner's vehicle is subject to being immobilized unless the owner of said vehicle, within twenty-one (21) days of the date of notice, pays the amount of the fine or penalty for each violation for which there is an outstanding or otherwise unsettled parking violation and/or wheel tax violation. The notice of impending vehicle immobilization shall state the name and address of the registered owner, the state registration number of the vehicle or vehicles registered to such owner, and the serial numbers of parking violation notices which have resulted in final determination of liability for which fines and/or penalties remain unpaid. Failure to pay the fines and penalties owed within twenty-one (21) days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would disprove liability within twenty-one (21) days of the date of the notice. Documentary evidence which disproves liability shall be based on the following grounds:

1. That all fines and penalties for the violations cited in the notice have been paid in full; or
2. That the registered owner has not accumulated five (5) or more final determinations of parking violation liability which were unpaid at the time the notice of impending vehicle immobilization was issued.

SECTION 3: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: That if any provision of this Ordinance 69-O-08 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

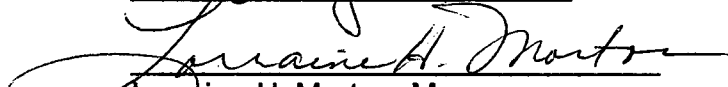
SECTION 5: That this Ordinance 69-O-08 shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Introduced: July 14, 2008

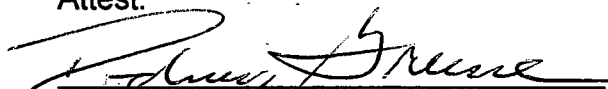
Approved:

Adopted: July 28, 2008

August 1, 2008


Lorraine H. Morton, Mayor

Attest:


Rodney Greene, City Clerk

Approved as to form:


Elke Tober-Purze, Interim
First Assistant Corporation Counsel

EXHIBIT A**CITY CODE SECTIONS 10-6-14 THROUGH 10-6-21****10-6-14: AUTHORITY TO IMMOBILIZE MOTOR VEHICLES:**

The City Manger or his or her designee is hereby authorized to immobilize in such a manner as to prevent its operation, a motor vehicle parked upon a public way or public place or a vehicle parked upon private property without consent, if there are five (5) or more outstanding or otherwise unsettled parking violation notices and/or wheel tax violations pending against the owner of such motor vehicle. Motor vehicles on private property shall be booted only with the prior consent of the owner, agent or proprietor in charge of the property, obtained in writing in such form and manner as may be prescribed by the Police Department.

10-6-15: NOTICE PRIOR TO IMMOBILIZATION:

Upon accumulation of five (5) or more outstanding or otherwise unsettled parking violation notices and/or wheel tax violation notices, a notice shall be sent by regular mail to the owner of such vehicle or placed on the owner's vehicle when the owner cannot be reached by mail. Such notice shall indicate that the owner's vehicle is subject to being immobilized unless the owner of said vehicle, within thirty (30) days of the date of notice:

- (A) Deposits the collateral described in subsection 10-6-18(A) of this Chapter and requests an appearance in the Circuit Court to answer for each violation; or
- (B) Pays the amount of the fine or penalty for each violation for which there is an outstanding or otherwise unsettled parking violation and/or wheel tax violation.

10-6-16: POST-IMMOBILIZATION NOTICE:

Upon immobilization of such motor vehicle, the officer shall immediately cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

10-6-17: CONSEQUENCES OF FAILURE TO REQUEST A HEARING:

- (A) Consequences Of Failure To Request A Hearing: If the registered or legal owner or person who is otherwise entitled to possession of a motor vehicle does not request a hearing within seven (7) days of the mailing of notice, the right to such hearing shall be forfeited. The registered or legal owner or person who is otherwise entitled to possession of a motor vehicle must pay the total cost of the immobilization and any storage incurred.
- (B) Consequences Of Failure To Reclaim A Motor Vehicle: If the registered or legal owner or person who is otherwise entitled to possession of a motor vehicle does not claim and take possession of said motor vehicle within fifteen (15) days after the date of the immobilization hearing, the motor vehicle shall be considered abandoned and shall be disposed of pursuant to State statute.

10-6-18: RELEASE OF VEHICLE:

The owner of such immobilized vehicle, or other authorized person, shall be permitted to secure release of the vehicle upon:

- (A) Depositing, as collateral for his or her appearance in the Circuit Court to answer for each violation, fifty percent (50%) of the total fines and penalties for all violations for which there are outstanding or otherwise unsettled parking violation notices and/or wheel tax violations; or
- (B) Depositing the amount of the fine or penalty for each violation for which there is an outstanding or otherwise unsettled parking violation notice and/or wheel tax violation; and
- (C) The payment of the fees as required by Section 10-6-20 of this Chapter.

10-6-19: IMMOBILIZATION:

The immobilizing device shall remain in place for twenty four (24) hours (72 hours if booted on a Friday) unless the owner has complied with Section 10-6-18 of this Chapter. If such compliance has not occurred within twenty four (24) or seventy two (72) hours, as provided in this Section, the vehicle shall be towed or impounded in accordance with Sections 10-6-2 and 10-6-3 of this Chapter. Towing and storage fees shall be paid, along with fees specified in Section 10-6-20 of this Chapter before the owner of such vehicle or authorized person shall be permitted to repossess or secure the release of the vehicle.

10-6-20: FEES:

The owner of an immobilized vehicle shall be subject to a fee of one hundred twenty five dollars (\$125.00) for such immobilization.

10-6-21: POST-IMMOBILIZATION HEARING:

- (A) The owner of a vehicle immobilized by or pursuant to the authority of the Police Department, as set forth in Section 10-6-14 of this Chapter shall be provided the opportunity for a post-immobilization hearing to determine the validity of such immobilization and any immobilization, towing fees or storage fees. This hearing will not be determinative of or adjudicate any citation issued relative to any immobilized vehicle.
- (B) The Police Department will conduct said post-immobilization hearings in accordance with Section 10-6-5 of this Chapter.

EXHIBIT B**CITY CODE SECTION 11-2-11****11-2-11: IMMOBILIZATION PROGRAM:**

- (A) The City Traffic Compliance Administrator or his designee is hereby authorized to direct and supervise a program of vehicle immobilization for the purpose of enforcing the parking ordinances of the traffic code. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle located on the public way or any City-owned property by placement of a restraint in such a manner as to prevent its operation.
- (B) When the registered owner of a vehicle has accumulated five (5) or more final determinations of parking violation liability, in any combination, for which the fines and applicable penalties, if applicable, have not been paid in full, the Director of Administrative Adjudication shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 10-6-15 of this Code. The notice of impending vehicle immobilization shall state the name and address of the registered owner, the state registration number of the vehicle or vehicles registered to such owner, and the serial numbers of parking violation notices which have resulted in final determination of liability for which fines and/or penalties remain unpaid. Failure to pay the fines and penalties owed within twenty one (21) days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would disprove liability within twenty one (21) days of the date of the notice. Documentary evidence which disproves liability shall be based on the following grounds:
1. That all fines and penalties for the violations cited in the notice have been paid in full; or
 2. That the registered owner has not accumulated five (5) or more final determinations of parking violation liability which were unpaid at the time the notice of impending vehicle immobilization was issued.
- (C) Upon immobilization of an eligible vehicle, a notice shall be affixed to the vehicle in a conspicuous place. Such notice shall warn that the vehicle is immobilized and that any attempt to move the vehicle may result in its damage. The notice shall also state that the unauthorized removal of or damage to the immobilizing restraint is a violation of subsection (H) of this Section. The notice shall also provide information specifying how release of

the immobilizing restraint may be had, and how the registered owner may obtain an immobilization hearing. If the restraint has not been released within twenty four (24) hours of its placement, the restraint shall be released and the vehicle towed and impounded.

- (D) The owner of an immobilized vehicle or other authorized person may secure the release of the vehicle by paying the immobilization, towing and storage fees provided in subsection (G) of this Section, and all fines and penalties remaining due on each final determination of liability issued to such person.
- (E) The owner of an immobilized vehicle shall have the right to a hearing to determine whether the immobilization or any subsequent towing was erroneous, if the owner files a written request for a hearing with the Director of Administrative Adjudication within fourteen (14) days after immobilization or fourteen (14) days of the date of the notice sent pursuant to subsection (F) of this Section, whichever is later. Hearings requested pursuant to this subsection shall be conducted by an administrative hearing officer upon receipt of a written request for a hearing. The determination of the administrative hearing officer regarding the validity of the immobilization shall become final for the purpose of judicial review under the Administrative Review Law of Illinois upon issuance.
- (F) Within ten (10) days after a vehicle has been impounded, a notice of impoundment shall be sent by certified mail, return receipt requested, to the address of the registered owner as listed with the Secretary of State. The notice shall state that the owner has the right to request a post-immobilization and post-towing hearing as provided in subsection (E) of this Section, and that if the vehicle is not claimed within thirty (30) days from the date of the notice, the vehicle may be sold or otherwise disposed of in accordance with section 4-208 of the Illinois Vehicle Code.
- (G) The fee for removal of immobilization device shall be one hundred twenty five dollars (\$125.00). Fees for towing and storage will be the current year's City contract price for said services.
- (H) It shall be unlawful to remove or damage the immobilizing device or to relocate or tow any vehicle restrained by an immobilization device without the prior approval of the City Traffic Compliance Administrator. Any person who violates this Section shall be subject to a penalty of five hundred dollars (\$500.00) for each such violation.