

Be it enacted by the Board of Trustees of the Village of Port Chester New York, as follows:

**A LOCAL LAW AMENDING THE CODE OF THE VILLAGE OF PORT CHESTER
BY ADDING A NEW CHAPTER, CHAPTER 302, TOWING AND BOOTING**

SECTION 1: The purpose and intent of this local law is to regulate the towing and booting of Unauthorized Vehicles on private parking lots in the Village of Port Chester. It is hereby declared and found that the towing and booting of Unauthorized Vehicles from parking lots that are on Privately Owned Property, as defined in this chapter, in the Village of Port Chester involve matters affecting the public interest. Regulation of these commercial activities through a licensing process is necessary to establish a uniform and predictable system of business operations, maintain the rights of private owners to manage and operate their property, and to protect the rights of consumers against unreasonable fees, and predatory and illicit practices. The Village is authorized to adopt this local law pursuant to Municipal Home Rule Law, Section 10(1)(ii)(a)(9-a) and Section 10(1)(ii)(a)(12) and General Business Law, Section 399-v.

SECTION 2: The section of the Code of the Village of Port Chester is hereby amended by adding a new chapter, Chapter 302, entitled “Towing and Booting” and to read as follows:

Section 302-1 Purpose and Intent.

It is hereby declared and found that the towing and booting of Unauthorized Vehicles from parking lots that are on Privately Owned Property, as defined in this chapter, in the Village of Port Chester involve matters affecting the public interest. Regulation of these commercial activities through a licensing process is necessary to establish a uniform and predictable system of business operations, maintain the rights of private owners to manage and operate their property, and to protect the rights of consumers against unreasonable fees and predatory and illicit practices. The Village is authorized to adopt this local law pursuant to Municipal Home Rule Law, Section 10(1)(ii)(a)(9-a) and Section 10(1)(ii)(a)(12) and General Business Law, Section 399-v.

Section 302-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPLICANT

An owner of a towing and/or booting service, seeking a towing/booting license under this chapter.

BOOT(ING)

Shall mean the utilization of a “boot” or other device which causes vehicles to be immobile or otherwise renders a vehicle immobile or inoperable.

BOOTER

Any person who boots or immobilizes a motor vehicle.

BOOTING OR IMMOBILIZATION DEVICE

Any mechanism that is clamped, affixed or locked onto the wheel of a motor vehicle to prevent the wheel from rotating, thereby immobilizing the vehicle, or other similar mechanism that results in the immobilization of the vehicle.

HOOKUP

The steps and actions to be taken in order to totally secure and engage a vehicle for towing.

LICENSE

A certificate duly issued by the Village of Port Chester to allow the Licensee to engage in booting and/or towing.

LICENSEE

An owner of a tow truck or booting company who is the holder of a valid license. This term shall also include said owner’s employees or agents.

MULTI FAMILY DWELLINGS

Residences containing three or more dwelling units.

POLICE LIST

A listing of all Licensees who have been authorized to boot and tow from privately-owned property within the Village of Port Chester.

PRIVATELY-OWNED PROPERTY

Real property owned or leased by any individual, firm, association, joint venture, partnership, group, corporation or any legal entity or combination of entities whatsoever, and shall include, without limitation, shopping centers, parking lots, multi-family dwellings and land used for commercial purposes. This term shall include real property, where by agreement with another party, fee title is nominally with the Port Chester Industrial Development Agency, but the lessee is using for the any of the preceding purposes. This term shall also include parking lots owned by or under the control of Port Chester Housing Authority. This term shall not include property improved by one or two family dwellings.

PROPERTY OWNER

The person who exercises dominion and control over a parcel of Privately Owned Property, including but not limited to the legal title holder, lessee, a resident manager, a property manager or other agent who has legal authority to bind the owner. .

TOW

To haul, carry, pull along, or otherwise transport or remove a vehicle by means of another vehicle.

TRESPASS TOWING

The moving or removal of a Vehicle without the consent of the Vehicle's owner or operator, as authorized by this chapter, when the Vehicle is parked on Privately Owned Property.

TOW TRUCK

A Vehicle that is being used to tow another motor vehicle.

TOW TRUCK DRIVER

Any person that is operating a tow truck for the purposes of towing.

UNAUTHORIZED VEHICLE

A Vehicle that is parked in violation of the posted parking lot rules on the Privately-Owned Property.

VEHICLE

Automobiles, trucks and trailers of any kind.

Section 302-3 License required.

No person shall engage in Trespass Towing or Booting on Privately-Owned Property without first having obtained a towing/booting license from the Village of Port Chester as provided herein.

Section 302-4 License application requirements.

An Applicant for a towing/booting license shall make application to the Chief of Police or his designee on a form provided by the Village which contains the following:

A. A statement of the name and address of the Applicant, specifying, in the case of a partnership or an unincorporated association, each partner or member thereof, and in the case of a corporation, the location and address of the place of incorporation and principal place of

business, as well as the name and address of each officer, director and stockholder with a controlling interest thereof.

B. A statement of the owner or lessee and address of all properties that will be used for the storage of towed vehicles in connection with the Applicant's towing or booting business which location shall not exceed ten (10) miles from the subject Privately Owned Property. All motor vehicles towed to such storage location(s) shall be able to be reclaimed by the vehicle's owner or operator on a twenty-four seven (24/7) basis. The Applicant must provide certification from the municipal enforcement officer charged with the enforcement of buildings and land uses, that the storage location(s) to be used are in conformance with the applicable zoning and building codes.

C. A statement as to whether the Applicant or any booter or tow truck driver under the Applicant's employ or contract has, within the last five years, ever been convicted of a crime and, if so, the date, crime charged and sentence imposed. The Applicant, and all booters and tow truck drivers under the Applicant's employ or contract, shall submit to fingerprinting through the Police Department such fingerprints and fees shall be submitted in the form and manner as prescribed by the Division of Criminal Justice Services. The fee for such investigation shall be assumed by the Applicant.

D. A statement whether the Applicant has ever been denied a license or permit by any governmental agency or authority to operate a tow truck, towing business and/or booting business and also whether or not any such license or permit has been suspended or revoked and, if so, the date, the location and the circumstances thereof.

E. A copy of all current licenses or permits duly issued to the Applicant which authorizes the operation of a tow truck or booting business.

F. A copy of all current licenses or permits duly issued to Applicant or its employees and/or agents to operate a tow truck or boot.

G. An indication as to whether the application is for an initial license or a renewal.

H. A certificate of insurance evidencing proof of comprehensive general liability insurance in accordance with Village's standard insurance requirements and indemnification agreement, both approved by the Village Attorney.

I. Vehicle and tow truck ownership information for all vehicles to be used, including but not limited to make, model, year, color, vehicle identification number, license plate number, a copy of each registration, and a copy of all insurance information.

J. Copy of a duly executed contract between the Licensee and the Property Owner, lessee, managing agent or other person in control of the Privately Owned Property that is the subject of the license. The contract shall at a minimum contain the following terms:

(i) The legal name, physical address and telephone number of the towing or immobilization service and the Property Owner requesting the towing or immobilization services;

(ii) The name of the real Property Owner and the name of any agent, site manager, lessee or other person in control of the Privately Owned Property and the address and/or legal description of the real property from which the vehicle(s) will be towed or at which the vehicle(s) will be immobilized;

(iii) The duration of the agreement. The contract must be in effect for the entire term of the license ;

(iv) The time of day that such towing or immobilization is authorized;

(v) The days of the week that such towing or immobilization is authorized;

(vi) An enumerated list of all fees to be charged to the vehicle owner/operator that shall not exceed the amounts set by the County in Chapter 863 of the consumer protection code;

(vii) The address and tax lot designation of the location where the vehicle will be towed/stored or immobilized. Said storage site shall not be more than ten (10) miles from where the tow originates; and

(viii) A statement stating that no payment or valuable consideration was given, or will be given, from Applicant to the Property Owner for the right to engage in booting and towing from the Property Owner's Privately Owned Property.

(ix) The signature of both the Property Owner and the owner, or authorized representative of the towing or immobilization service, certifying that each has read and is in compliance with the applicable provisions of State and Local law.

(x) If the Property Owner elects to designate the Applicant/Licensee as his agent to authorize the Licensee to boot and or engage in trespass towing without individualized direct requests, such relationship must be disclosed in the contract.

(xi) The contract shall also acknowledge that both parties shall be jointly and severally liable with the Licensee to the Village of Port Chester for any violation by such Licensee or his

or her employees or agents of any of the provisions of this chapter or of any rules and regulations promulgated thereunder. The contract shall be in effect for the entire term of the license.

K. Photographs or proof of informational signage as provided for and in compliance in this chapter.

L. Any change(s) from the information provided in the application shall be disclosed to the Chief of Police on a form provided by the Village, within five days of such change(s).

Section 302-5 Application fee

An application fee, in the amount set forth in Chapter 175, shall accompany each application for a towing/booting license.

Section 302-6 No Soliciting

No Applicant or Licensee shall pay or rebate money, or solicit or offer the payment or rebate of money or other valuable consideration, to Property Owners for the right to engage in booting and towing from any property.

Section 302-7 Issuance of License

Upon receipt of a complete application, payment of the requisite fees, and results of the criminal history background check, the Chief of Police may issue a towing/booting license, such license shall be valid for a term of twenty-four months from issuance. A Licensee may reapply for a renewed license provided that such application made and received within sixty days prior to expiration.

Section 302-8 Denial of Application

The Chief of Police is responsible for reviewing the criminal history record information disseminated by the Division of Criminal Justice Services and may deny an application, in the first instance or renewal, if it is determined that:

A. The Applicant is unfit and incapable of properly conducting a towing or booting business within the Village of Port Chester or does not conform to the provisions of this chapter; or

B. The place where vehicles are towed for storage is in violation of any state or local law or regulation, including any zoning or building codes; or

C. The Applicant has made a false statement or misrepresentation in the application; or

D. The Applicant, or any booter or tow truck driver under the Applicant's employ or contract has been convicted of a felony or any crime involving violence, dishonesty, deceit, or moral turpitude. If an Applicant has been convicted of one of the above specified criminal activities, any decision regarding such Applicant's fitness for a license shall be made upon consideration of New York State Correction Law §§701-703-b and §§751-753.

Section 302-9 Transfer or assignment.

A license issued hereunder shall not be transferred or assigned by the Licensee, and any attempt to transfer or assign, shall render such license void.

Section 302-10 Informational Signs.

A. No Property Owner of Privately Owned Property shall tow or boot, or cause to be towed or booted any Vehicle, nor shall any Licensee service such Privately Owned Property, unless there is erected in plain view and maintained at each entrance to such property an informational sign with minimum dimensions of twenty-four inches by twenty-four inches. All information on the sign must be legible at all times from the parking lot entrances.

B. Each sign must contain the following minimum information:

- (a) The rules of the parking lot, including but not limited to, a statement that the lot is for customers or employees of the business(es) only, hours of operation, size and type of vehicles allowed, and a statement that a vehicle parked in violation of the listed rules shall be deemed an unauthorized vehicle.
- (b) A statement containing a warning that unauthorized vehicles are subject to be towed or booted at the vehicle owner's expense.
- (c) The towing/booting and/or storage fee to be charged, which shall not exceed the fee amount authorized by the County of Westchester.
- (d) The name, address and telephone number of the licensed towing/booting company, and how the car may be recovered or how the boot can be removed.

C. The signs shall be on a white background, with black lettering that shall be of sufficient size so as to be capable of being read from the sidewalk or street adjacent to the entrance(s) to the parking lot.

D. All informational signs, prior to their installation, and any changes made to the informational signs during the term of the license must be approved by the Police Chief or his designee.

E. All informational signs shall be kept in good condition.

Section 302-11 Towing of Vehicles.

A. No person shall engage in trespass towing, without having a current and valid towing/booting license as prescribed by this chapter.

B. No vehicle shall be towed, nor shall any Licensee engage in trespass towing, without the direction and/or authorization of the Property Owner, lessee, or agent. Such authorization shall be documented and a written entry on a form prescribed by Police Department shall be made prior to towing said Vehicle. Such entry shall include the time, date, location, production year, manufacturer, and license plate number of the vehicle towed or booted. Furthermore said Licensee shall maintain such form for a period of at least one year and deliver a copy of entries made during the preceding week to the Chief of Police or his representative each Monday, or in the event of a holiday, the first business day of the week. Said Licensee shall make such records available for inspection, at any time, to any member of the Port Chester Police Department, or any other law enforcement agency having jurisdiction in the Village, upon request of such officer.

C. Whenever a Licensee engages in a trespass tow within the Village of Port Chester, said Licensee shall notify the Port Chester Police Department immediately prior to any such tow. Such notification to the Police Department shall relate at a minimum the following information: the identification of the Licensee and tow truck driver involved, the nature of the motor vehicle's violation, the location of the storage site to which the vehicle will be towed, the time the vehicle will be towed or removed, the make, model, year, color, vehicle identification number (VIN) and license plate number of the vehicle. Such notification shall be made to the Police Department in the manner in which prescribed in the rules and regulations accompanying this section of the Village Code.

D. Whenever a Licensee is about to remove an unauthorized vehicle from a private parking lot but has not yet hooked up or engaged said vehicle to a towing truck, and said vehicle owner or operator appears seeking the return of the vehicle, said Licensee shall immediately release custody and control of the vehicle to the owner or such other person authorized to operate the same without charging any fee whatsoever, provided only that said vehicle is immediately removed from the property.

E. In the event that a Licensee is about to remove an unauthorized vehicle from private owned property and has hooked up, and engaged, said vehicle to a tow truck, but has not removed the vehicle from the premises, and said vehicle owner or operator appears seeking the return of the vehicle, said tow truck driver shall immediately release custody and control of the vehicle to the owner or operator, for the payment of a fee of \$15, and further provided that said vehicle is immediately removed from the premises by the owner or operator.

F. Whenever a Licensee, engages in trespass towing, and removes an unattended motor vehicle from Privately Owned Property to the storage location, said Licensee shall provide at such site,

on a twenty-four-hour-a-day basis an individual authorized to release the impounded vehicle. Said motor vehicle must be released within one hour, upon receipt of payment of the authorized towing and storage charges. Upon release, the Licensee shall provide the owner of the impounded vehicle with a legible, numbered and signed receipt of payment. Such receipt shall state the name, business address, business telephone number and license number of the person who has towed such vehicle as such information appears on the license to engage in towing, and such receipt shall also include a telephone number for the office within the Police Department responsible for receiving complaints with respect to towing.

G. Upon request, the tow truck driver shall display to the owner or operator of such vehicle a valid towing/booting license issued by the Village of Port Chester pursuant to this chapter.

H. An owner, lessee, managing agent or other person in control of Privately Owned Property who has entered into a contract with a person licensed pursuant to this section authorizing such licensee to tow motor vehicles parked on such property shall be jointly and severally liable for any violation by such licensee, or such licensee's employees or agents, of the provisions of this section, or of any rules promulgated pursuant there under.

I. No Vehicle may be towed or removed if:

- (1) Such Vehicle is occupied by a natural person, or live animal; or,
- (2) Such Vehicle is an ambulance, police or fire vehicle, or other official Village or other governmental vehicle.

J. If any person has committed a violation of this section, or any rules promulgated pursuant to this section, such person shall be prohibited from collecting a fee or charge for their towing services, and any such unlawful charge collected shall be reimbursed to the vehicle's owner.

K. Whenever a Licensee engages in trespass towing, and removes the unauthorized vehicle from the Privately Owned Property, all charges imposed for both towing and storage shall not exceed those authorized by the County of Westchester Consumer Protection Code.

L. The owner or person in control of a vehicle that has been towed, or hooked up but not removed from the premises, shall be allowed to pay any authorized charge(s), in cash or credit card.

Section 302-12 Booting of vehicles.

A. No person shall engage in booting, without having a current and valid towing/booting license as prescribed by this chapter.

B. No vehicle shall be booted or immobilized without the direction and/or authorization of the Property Owner, lessee, or agent. Such authorization shall be documented, and a written entry on a form prescribed by Police Department shall be made prior to the vehicle being booted. Such entry shall include the time, date, location, production year, manufacturer, and license plate number of the vehicle towed or booted. Furthermore said Licensee shall maintain such form for a period of at least one year and deliver a copy of entries made during the preceding week to the Chief of Police or his representative each Monday, or in the event of a holiday, the first business day of the week. Said Licensee shall make such records available for inspection, at any time, to any member of the Port Chester Police Department, or any other law enforcement agency having jurisdiction in the Village, upon request of such officer.

C. Whenever a Licensee engages in booting or immobilization of vehicles within the Village of Port Chester, said Licensee shall notify the Port Chester Police Department immediately prior. Such notification to the Police Department shall relate at a minimum the following information: the identification of the Licensee and booter involved, the nature of the motor vehicle's violation, the location of the parking lot, the time the vehicle will be booted, the make, model, year, color, vehicle identification number (VIN) and license plate number of the vehicle. Such notification shall be made to the Police Department in the manner in which prescribed in the rules and regulations accompanying this section of the Village Code.

D. A Licensee may boot an unauthorized vehicle on Privately Owned Property instead of towing it therefrom. The fee for such booting shall not exceed that authorized by the County of Westchester Consumer Protection Code.

E. Immediately after a vehicle is booted or immobilized, the Licensee booting or immobilizing such vehicle, the owner of the property where the vehicle was immobilized, or an employee or agent of such person or owner, shall affix upon the window adjacent to the driver's seat of such vehicle, a sticker with a completely removable adhesive, measuring eight and one-half by eleven (8½ x 11) inches, containing a warning that any attempt to move the vehicle may result in damage to the vehicle and stating the name and business address of the Licensee who immobilized such vehicle as well as a business telephone number, which must be available on a 24 hour basis 7 days a week, that will facilitate the dispatch of personnel responsible for removing the immobilization device

F. In the event that a Licensee boots an unoccupied motor vehicle on privately owned real property, the Licensee must remove the boot from the vehicle within 15 minutes after being paid the charge for same as prescribed by the parking lot's rules. Upon the removal of the booting device, said vehicle shall be immediately removed from the property by the owner or operator thereof.

G. Whenever a Licensee has begun the process of booting an unauthorized vehicle on Privately Owned Property but has not yet locked the boot onto the vehicle, and said vehicle owner or operator arrives and makes demand for return and the owner or operator of the vehicle offers to remove the vehicle from the premises, said booter shall remove the boot from the improperly parked vehicle at no charge to the vehicle owner or operator.

H. Upon request, the booter shall display to the owner or operator of such vehicle a valid towing/booting license issued by the Village of Port Chester pursuant to this chapter.

I. An owner, lessee, managing agent or other person in control of Privately Owned Property who has entered into a contract with a person licensed pursuant to this section authorizing such licensee to boot motor vehicles parked on such property shall be jointly and severally liable for any violation by such licensee or such licensee's employees or agents of the provisions of this section, or of any rules promulgated pursuant there under.

J. No motor vehicle may be booted if:

- (1) Such vehicle is occupied by a natural person, or live animal;
- (2) 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;
- (3) Such vehicle is an ambulance, police or fire vehicle, or other official Village or other governmental vehicle.
- (4) Such vehicle is parked in a space reserved for vehicles displaying a handicap permit.

K. No release or waiver 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 Police Department responsible for receiving complaints with respect to booting.

L. If any person has committed a violation of this section, or any rules promulgated pursuant to this section, such person shall be prohibited from collecting a fee or charge for their booting services, and any such unlawful charge collected shall be reimbursed to the vehicle's owner

M. The owner or person in control of a vehicle that has been booted, shall be allowed to pay any authorized charge(s), in cash or credit card.

N. Tampering with a boot or immobilization device that is lawfully attached to a motor vehicle is prohibited.

O. Any vehicle that has been booted which has not been claimed within twenty-four (24) hours of booting, may be towed by the Licensee who booted said vehicle.

Section 302-13 Penalties.

Any person who violates any of the provisions of this chapter shall be subject to a fine of not more than \$500 for the first violation \$1,000 for the second violation and \$1,500 for each violation thereafter per violation. Each violation shall be considered a separate and distinct offense.

Section 302-14 License Suspension/Revocation.

A. Any license issued hereunder may be suspended or revoked by the Chief of Police upon the grounds that the Licensee has been notified and charged with a violation of this chapter or any rule or regulation adopted hereunder.

B. Such notice shall become final unless the Licensee makes application to appeal same to the Village Manager or his designee within five (5) days from receipt.

C. Any Licensee whose license has been revoked shall not be eligible to file an application for a towing/booting license for a period of one year from the date of revocation.

Section 302-15 Regulations.

The Chief of Police is authorized to promulgate reasonable rules and regulations with regard to the administration and implementation of this local law.

Section 302-16 Enforcement.

A. The provisions of this chapter shall be enforced by the Police Department.

B. The Village Attorney is authorized to commence a civil action or special proceeding for an injunction upon any person(s) in violation of this chapter, and to take such action authorized in General Business Law §§ 399-v and 399-x.

C. Violators of this local law shall be subject to referral to the Westchester County Department of Consumer Protection.

D. All Vehicle Owners shall have the right to bring a civil action in a court of competent jurisdiction to enforce sections 302-3, 302-11, & 302-12, to enforce against a booter, tow truck driver, and/or property owner

SECTION 3: SEVERABILITY

If any clause, sentence, paragraph or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

SECTION 4: EFFECTIVE DATE

This local law shall take effect immediately upon filing with the Secretary of the State of New York.