

**AN ORDINANCE OF THE CITY OF HENDERSONVILLE CITY COUNCIL
ADOPTING CERTAIN PROVISIONS REGARDING THE NONCONSENSUAL
TOWING OF MOTOR VEHICLES FROM PRIVATELY OWNED LOTS**

WHEREAS, The City of Hendersonville City Council has a significant governmental interest in protecting the health, safety, and welfare of the general public, and preserving the public order; and

WHEREAS, North Carolina General Statutes 160A-174 authorizes municipalities to regulate or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city; and

WHEREAS, some nonconsensual towing and booting practices disrupt the public order and threaten the safety and welfare of the general public and the City Council the City of Hendersonville wishes to enact regulations to protect members of the general public from such practices;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HENDERSONVILLE, NORTH CAROLINA that:

SECTION 1. This Ordinance shall be known as “An Ordinance Addressing Nonconsensual Towing of Motor Vehicles From Privately Owned Lots.”

SECTION 2. Chapter 36 – Offenses and Miscellaneous Provisions of the Code of Ordinances for the City of Hendersonville is hereby amended by adding an article, to be numbered VII, which reads as follows:

**ARTICLE VII. – NONCONSENSUAL TOWING AND BOOTING ON
PRIVATELY OWNED PRIVATE PARKING LOTS**

Sec. 301. – Definitions

Motor vehicle means a vehicle which is self-propelled and every vehicle designed to run upon the highways which is pulled by a self-propelled vehicle. This term shall not include mopeds or electric assisted bicycles.

Commercial Parking Lot means a parking lot whose primary purpose is parking by the general public for a fee, typically based on minutes, hours, or daily rates, allowing parking on a first-come, first served, upon entry, basis. The fact that some of the spaces are leased or rented for part of all of the time shall not change the classification of a commercial parking lot to a leased parking lot. Unless specifically exempted, all commercial parking lots are regulated by this article, whether parking by the general public for a fee is permitted all or part of the time.

Commercial Parking Lot Operator means any owner or operator of a commercial parking lot.

Communal parking lot means a parking lot whose primary purpose is to provide parking spaces to accommodate the following (regardless of whether a fee is charged):

- (1) owners, clients, employees, customers, tenants and/or other invitees of a nonresidential establishment (i.e. commercial, professional, institutional, for profit, nonprofit, educational, etc.);
- (2) owners, tenants, residents, and/or other invitees, of an establishment consisting of attached dwelling units utilizing shared parking (i.e., apartments, condominiums, townhomes, dormitories, group quarters, etc.); or
- (3) a combination of (1) and (2).

One or more parking spaces dedicated to one or more attached dwelling units shall be considered a communal parking lot, regardless of whether the attached dwelling unit(s) is/are attached to another dwelling unit or is/are part of a nonresidential establishment. If all or part of a communal parking lot is open for parking by the general public for a fee for all or part of the time, compliance with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee (reference Sec. 307).

Leased Parking Lot means a parking lot (that is not a communal parking lot) whose primary purpose is to lease or rent parking spaces to persons, or entities, on a pre-arranged basis, typically charging on a weekly or monthly basis. If all or part of a leased parking lot is open for parking by the general public for a fee for all or part of the time, compliance with the posting requirements of a commercial parking lot shall be required during such times as they are open to the general public to park for a fee (reference Sec. 307).

Nonconsensual booting means the placement of a wheel lock, or other similar device, to immobilize the motor vehicle, without the consent of the owner or operator of the motor vehicle.

Nonconsensual towing means the towing of a motor vehicle without the permission or consent of the owner or operator of the motor vehicle.

Private Parking lot means an area, used, or intended to be used, primarily for the parking or storage of one or more motor vehicles, which is privately owned, leased or operated, and which is one of the following:

- (1) A commercial parking lot, including temporary commercial parking lots; or
- (2) A communal parking lot; or
- (3) A leased parking lot

Private parking lots include both parking lots that are primary uses and accessory uses of real property. All public streets, public rights of way, and public alleys are specifically excluded from this definition, regardless of ownership.

Service Provider means a towing service or a wheel lock service.

Temporary Commercial Parking Lot means a commercial parking lot that operates for less than ten (10) days in a calendar year. Temporary commercial parking lots shall not have to comply with the posting requirements of Section 307.

Tow storage lot means a lot that the towing service uses to store the motor vehicles that they have towed.

Towing service means any person or entity that engages in the business of towing motor vehicles for a fee.

Tow truck operator means the driver or person in most direct control of a tow truck.

Wheel lock means a wheel lock, boot, or any other instrument that is attached to a motor vehicle in order to immobilize it.

Wheel lock service means any person or entity that engages in the business of applying wheel locks onto motor vehicles for a fee.

Wheel lock operator means the person who physically applies a wheel lock onto a motor vehicle or most directly causes the application of a wheel lock onto a motor vehicle.

Sec. 302. – Findings

The City Council for the City of Hendersonville makes the following findings:

- (a) The city council of the City of Hendersonville has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.
- (b) G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.
- (c) Some practices related to the non-consensual towing or booting of motor vehicles from private parking lots have exposed the public or members of the towing industry to harm. Non-consensual towing or booting can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.
- (d) Inadequate notification of parking restrictions and fees for private parking lots can lead to inadvertent unauthorized parking on the lot and nonconsensual towing or booting of vehicles.
- (e) The Hendersonville City Council desires to minimize the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from private parking lots, while also protecting the lot owners' and lessees' property rights, by enacting an ordinance that will assist in making sure that:
 - i. Parking is available to those lawfully present on the private parking lots.
 - ii. The public is aware that their vehicle may be towed or booted if they park in a private parking lot without permission, or without paying applicable fees.
 - iii. If a vehicle parked on a private parking lot is subject to nonconsensual towing or booting, the vehicle owner or operator has a reasonable means of securing the return of the personal property within the motor

vehicle and the motor vehicle itself, without being subjected to coercive practices.

Sec. 304. –Service Provider Permits required.

It shall be unlawful for any service provider to engage in the nonconsensual towing or nonconsensual booting of motor vehicles from a private parking lot without first obtaining a permit from the City of Hendersonville Police Department.

- (1) All service providers must have in place a general liability policy of the insurance covering the service provided.
- (2) All service providers must be authorized to conduct business in the State of North Carolina.
- (3) All service provider shall provide to the Police Department, and keep current, on a form provided by the City the following information:
 - a. Name of the towing service or booting service;
 - b. Whether they will be engaged in towing or booting of motor vehicles, or both;
 - c. The physical address of the service provider;
 - d. The name and contact number for the service provider's primary manager, operator, or supervisor;
 - e. The make, model, and tag number of each tow truck in service within the City of Hendersonville;
 - f. An unexpired certificate of insurance, showing the City of Hendersonville as the certificate holder, evidencing the general liability insurance policy required by the terms of this Sec. 304;
 - g. The address of all tow storage lots; and
 - h. Their fee schedule (ref Sec. 308).
- (4) A permit will not be issued to a service provider whose permit has been revoked for repeated violations of this article during such period of revocation.

Sec. 305. – Posted notice required for nonconsensual towing or nonconsensual booting from a private parking lot.

- (a) It shall be unlawful for a service provider to engage in the nonconsensual towing or nonconsensual booting of a motor vehicle which is parked on a private parking lot if the notice required by this section 305 is not posted on the private parking lot.
- (b) It shall be unlawful for any person to cause or permit the nonconsensual towing or nonconsensual booting of a motor vehicle which is parked on a private parking lot if the notice required by this section 305 is not posted on the private parking lot.
- (c) The notice required by this section 305 shall be by signs, placed upon the private parking lot, which meet all of the following requirements:

- (1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs adjacent to one another may be considered as one sign.)
- (2) Signs shall be:
 - i. Prominently placed on the private parking lot at each access or curb cut allowing vehicular access to the property (whether such access be from a street or adjacent property) and in at least one other location (not at an access point) on the private parking lot. Notwithstanding the foregoing, at least one sign must be visible and legible from all spaces within the private parking lot; or
 - ii. Placed at each parking space that restricts or prohibits parking within the private parking lot.
- (3) Each sign required by this Section shall display, at a minimum, the following:
 - i. In not less than two inch high letters on a contrasting background, the words “tow-away zone,” “towing enforced,” or a similar phrase, or in the case of a wheel lock being applied, the words “unauthorized vehicles booted,” “wheel locks in use,” or similar phrase.
 - ii. In not less than two-inch high letters on a contrasting background, a statement indicating that parking by is prohibited or otherwise restricted by the use of a phrase such as “leased parking only,” “no parking,” “parking for customers only,” “parking for residents only,” “paid parking only,” or a similar phrase. If parking is not prohibited or restricted on a continuous basis, the days of the week and hours of the day during which parking is prohibited or restricted shall be posted.
 - iii. In not less than one-inch high letters on a contrasting background, the name and telephone number of the service provider at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be reached at any time, twenty-four hours per day, seven days per week. (See Sec. 308 for required response times).
 - iv. In not less than one-inch high letters on a contrasting background, the fees and charges of the service provider (Reference Sec. 308).
 - v. In not less than one-inch high letters, on a contrasting background, the web address for the City’s webpage designated by the City to provide information for persons whose vehicles have been towed from a private parking lot.
- (d) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.
- (e) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.

- (f) Signs existing as of November 1, 2023 may be augmented with supplemental signs placed adjacent to them that, together, meet the requirements of this ordinance. Additionally, letter height requirements shall not apply to such pre-existing signs. Additions to, replacement of, or modification of existing signs shall be required to comply with the terms of this ordinance.

Sec. 306. – Exceptions to notice requirements for towing from a private parking lot.

No notice shall be required to be posted on a private parking lot for the nonconsensual towing or removal of a motor vehicle in any of the following circumstances:

- (1) The motor vehicle is towed pursuant to Chapter 36, Article VI of the City of Hendersonville Code of Ordinances;
- (2) The towing of the motor vehicles is authorized by the North Carolina General Statutes.
- (3) The motor vehicle is towed pursuant to the order of a court of competent jurisdiction.
- (4) The motor vehicle is towed pursuant to the order of a law enforcement officer.

Section 307. – Posted notice requirements for commercial parking lots

- (a) It shall be unlawful for any commercial parking lot operator to operate a commercial parking lot if all posted notice requirements of this Section are not met. As used herein, “commercial parking lot operator” includes any person acting for, on behalf of, or with the permission of, the commercial parking lot operator.
- (b) The notice required by this Section shall be by signs, placed upon the property which meet all of the following requirements:
 - (1) All signs shall be a minimum of 18 inches by 24 inches, and a maximum of six square feet in size (a combination of signs located adjacent to one another may be considered as one sign);
 - (2) Signs shall be prominently placed on the commercial parking lot so that at least one sign, containing all required information, is plainly visible and legible to all persons parking in the commercial parking lot. Notwithstanding the foregoing, a minimum of two (2) signs shall be placed on all commercial parking lots.
- (c) Each sign required by this Section shall display, at a minimum, the following:
 - (1) In not less than two inch high letters on a contrasting background, the words “Paid Parking Lot” or similar phrase indicating that all persons parking must pay for parking in the lot, and the hours during which payment is required, and the hours that parking is otherwise restricted, if applicable. Such sign must be distinguishable from City paid parking lot signs, and must clearly indicate that the commercial parking lot is not owned or operated by the City of Hendersonville.

- (2) In not less than two-inch high letters on a contrasting background, a statement indicating the fees applicable to parking in the lot, the method and place for payment, and the types of payment accepted. (Reference Sec. 306(d))
- (3) In not less than 1 ½ inch high letters on a contrasting background, any parking rules which apply to the commercial parking lot. If there are fees for overtime parking or for failing to pay for parking, this must be clearly stated, including the amounts of such fees.
- (4) In not less than one-inch high letters on a contrasting background, the name and telephone number of the name of the owner or operator of the commercial parking lot and a phone number at which the owner or operator may be reached during normal business hours, M-F. (Please see section 308 for required response times.)
- (d) The signs displaying the notice required by this section shall not be placed on a sidewalk or other area designated for pedestrian traffic.
- (e) The signs displaying the notice required by this section shall be kept clear of visual obstruction, such as vegetation, so that they are plainly visible by drivers entering and parking on the property.
- (f) Signs existing as of November 1, 2023 may be augmented with supplemental signs placed adjacent to them that, together, meet the requirements of this ordinance. Additionally, letter height requirements shall not apply to such pre-existing signs. Additions to, replacement of, or modification of existing signs shall be required to comply with the terms of this ordinance.

Sec. 308. – Fees and other requirements

- (a) Fees for towing and storage; other requirements.
 - (1) All service providers shall have a fee schedule for the different services provided. The service provider must provide the fee schedule to the Hendersonville Police Department. Any changes in fees must be provided to the Police Department and posted on the signs required by this article at least 24 hours before they go into effect. Only fees reflected in the fee schedule filed with the Hendersonville Police Department and posted on the private parking lot may be charged.
 - (2) The service provider shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:
 - a. The name address and telephone number of the service provider.
 - b. First and last name of the tow truck operator or wheel lock operator.
 - c. An itemized breakdown of all fees charged.

- d. A clear and accurate reason for the nonconsensual towing or nonconsensual booting, and the date, location of private parking lot, and time of the towing or booting.
 - (3) All service providers shall, at a minimum, accept payment by cash, debit card, and at least two major national credit cards. All tow truck operators and wheel lock operators must be able to accept all required forms of payment at the private parking lot, and at the tow storage lot.
 - (4) A person with the authority and ability to release the motor vehicle must answer the call, or return the call, within 15 minutes of a message being left on a voice mail or answering machine type device. The vehicle must be available for release at the tow storage lot within 30 minutes of the call being answered or the call being returned, whichever is later, but in no event less than 45 minutes from the message being left.
- (b) Fees for commercial parking lots; other requirements
- (1) If persons are charged a fee for parking in a commercial parking lot, for overtime parking, or for not paying for parking, a commercial parking lot owner or operator may not use the words “citation”, “ticket”, “penalty”, “fine”, or other words that would tend to deceive the public that such fee is being assessed by the City of Hendersonville or other governmental body.
 - (2) All commercial parking lot operators shall provide a method for persons charged a fee to contest or otherwise question the fee that was charged by the commercial parking lot operator.
 - (3) All commercial parking lot owners and operators shall, at a minimum, accept payment by debit card, and at least two major national credit cards.
 - (4) A person with the authority must answer a call, received during the commercial parking lot operator’s normal business times, M-F, or return the call, within 24 hours of a message being left on a voice mail or answering machine type device. Calls received, or messages left, outside of the operator’s normal business times shall be returned no later than the business day next following the call.

Sec. 309. – Report to police department

When engaging in the nonconsensual towing a motor vehicle from a private parking lot, a tow truck operator shall report by telephone to the City of Hendersonville Police Department the license tag number and description of the motor vehicle being towed, the private parking lot that the motor vehicle is being towed from and the address of the tow storage lot. This report to the police department shall be made before the tow truck towing the motor vehicle leaves the private parking lot.

Sec. 310. – Release prior to tow or immobilization

If, prior to the nonconsensual towing or nonconsensual booting of a motor vehicle on a private parking lot, the owner or operator or other person able to move the motor vehicle returns to the private parking lot, the tow truck operator or wheel lock operator shall release the motor vehicle to that person upon payment of the applicable fees.

Sec. 311. – Regulations towing to a tow storage lots

- (a) A towing service towing a motor vehicle from a private parking lot may only use a tow storage lot that accepts cash, debit, and at least two (2) nationally recognized credit cards for payment of the storage fees.
- (b) A towing service shall store all motor vehicles towed from a private parking lot at a tow storage lot located within 15 miles as the crow flies from the point of tow.
- (c) A towing service shall only store motor vehicles towed from a private parking lot at tow storage lots that are clearly identified with a sign stating the name of the tow storage lot, that are secured with a fence and a locked gate, and that provide security lighting meeting the requirements of Sec 6-19 of the Hendersonville Zoning Ordinance.
- (d) Tow storage lots may be subject to annual inspections by the Hendersonville Police Department for compliance with this Article.

Sec. 312. – Regulations for wheel locks

Immediately upon installing the wheel immobilization device, a blaze orange warning decal at least 24 square inches in size shall be prominently placed in the center of the driver's side window or on the front windshield directly in front of the vehicle steering wheel. The warning decal must clearly and legibly inform the operator of the vehicle that a locking device has been installed on the front wheel of the vehicle and that attempting to move the vehicle will cause serious damage to the vehicle. The decal must display the telephone number and address of the wheel lock service provider. Upon payment of the applicable fees, the wheel lock service provider shall remove the decal and shall have in possession the appropriate materials needed to remove all parts of the decal and residue.

Sec. 313. – Enforcement and Penalties

- (a) This Article shall be enforced by the Hendersonville Police Department, including (1) any sworn officer and (2) any unsworn employee designated by the Chief of Police.
- (b) Any violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty as follows:
 - (1) In the amount of three hundred dollars (\$300.00) for the first offense; and
 - (2) In the amount of six hundred dollars (\$600.00) for each offense when the offense is the second offense within a twelve-month period; and

- (3) In the amount of one thousand two hundred (\$1,200.00) for each offense when the offense is the third or subsequent offense within a twelve-month period.
- (c) The third violation within any twelve-month period may result in the revocation of a service provider permit's issued under this article. Such revocation shall be effective for a period of 90 days. Only the Hendersonville Chief of Police shall be authorized to revoke a permit. Any service provider who's permit has been revoked shall be required to apply for and receive a new permit before resuming towing and booting operations in the City of Hendersonville.
- (d) This article may also be enforced by an appropriate equitable action, injunction, or order of abatement issued by a court of competent jurisdiction.
- (e) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this article.

SECTION 3. If any provision of this ordinance or its application is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provisions or application, and to this end the provisions of this ordinance are severable.

SECTION 4. It is the intention of the city council and it is hereby ordained, that the provisions of this ordinance shall become and be made part of the Code of Ordinances, City of Hendersonville, North Carolina, and the sections of this ordinance may be renumbered to accomplish such intention.

SECTION 5. This Ordinance shall be effective November 1, 2023.

Adopted by the City Council of the City of Hendersonville, North Carolina on this ____ day of _____, 2023.

Attest:

Barbara G. Volk, Mayor, City of Hendersonville

Jill Murray, City Clerk

Approved as to form:

Angela S. Beeker, City Attorney