

AN ORDINANCE TO AMEND CHAPTER 37 RELATING TO THE COLLECTION OF PARKING FINES

#0471

Sponsor:

Council
Member
Cabrera

WHEREAS, pursuant to Wilmington City Charter § 6-109 (e), the Department of Finance is tasked with collecting “all fines due to the city from parking violations”; and

WHEREAS, it is a necessary function of City government to regulate parking and implement parking regulations throughout the City; and

WHEREAS, the City is committed to responsibly and thoughtfully implement its parking regulations; and

WHEREAS, the City has previously addressed the burdens that parking regulations may have on some residents and guests through legislative changes to the City’s Code, including but not limited to reducing certain parking ticket fines, requiring notice to vehicle owners prior to reaching immobilization/towing thresholds, and increasing immobilization/towing thresholds; and

WHEREAS, the City has also made changes to its towing contract to, among other things, expand the time period vehicle owners have to redeem their vehicles without payment of storage fees and increasing the length of time vehicles must be held by towing contractors; and

WHEREAS, the City wishes to continue to mitigate the burdens of parking regulations by providing greater flexibility in payment agreements for parking and traffic related fines and penalties, allowing for the release of impounded vehicles when vehicle owners enter into a payment agreement authorized by the Department of Finance, and voiding certain outstanding penalties and fees when, pursuant to a State-authorized process,

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title to a vehicle that has been impounded is transferred to the towing or storage contractor, or the towing or storage contractor obtains authority to dispose of the vehicle; and

WHEREAS, City Council deems it necessary and proper to amend Chapter 37 of the Wilmington City Code to effectuate these and certain other housekeeping changes provided herein.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:

SECTION 1. Chapter 37, section 37-66 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Sec. 37-66 - Violations of chapter and penalties generally; discount for payment within 48 hours in person or on-line.

- (c) The director of finance or his authorized agent shall be authorized to waive, in whole or in part, penalties which are ~~owned~~ owed in connection with unpaid parking violations or the parking penalty, under the following circumstances only:
- (1) When litigation of the amount of the civil penalties is pending or threatened and waiver of penalty is proposed as part of the overall settlement of the litigation.
 - (2) Where the assessment of the penalty is based on parking violations assessed in error.
 - (3) When the waiver of the penalty is proposed as part of an agreement by which the entire principal amount of the civil penalties shall be paid to the city whether litigation is pending or not.
 - (4) When the penalties are proposed to be waived for good cause or as part of a payment agreement entered into by the vehicle owner.
- (d) The director of finance shall permanently suspend all civil penalties older than seven years from the date of issuance and deem such penalties to be uncollectible.
- (e) When a vehicle has been towed and impounded at the direction of the city and the city's towing contractor takes title to said vehicle or obtains authority to dispose of the vehicle through a State-authorized legal process, the director of finance shall void all unpaid civil penalties, including late fees, penalties and other fees, associated with the vehicle.

(e)(f) The civil assessments and penalties assessed under this chapter shall, unless otherwise provided, be levied in accordance with the following schedule:

SECTION 2. Chapter 37, section 37-125 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Sec. 37-125 - Outstanding and overdue citations.

(a) The department of public safety shall provide the license registration numbers of motor vehicles which have outstanding and overdue traffic citations issued to such motor vehicles for violations incurred under 21 Del. C., this chapter, any law of the state, or any ordinance of the city or other provision of this Code or regulation issued by the city government and which citations total in amount \$150.00 or more in unpaid fines and/or total in number five or more traffic citations. The amount owed in unpaid fines will be calculated in conjunction with any outstanding and overdue traffic citations issued to the owner on currently or previously owned motor vehicles. Except that unpaid fines, penalties and fees that have been waived, permanently suspended or voided pursuant to section 37-66 will not be included in the calculation for immobilization or towing eligibility. Further, ~~An~~ unpaid fines that are the subject of an appeal will not be calculated towards immobilization and/or towing eligibility until the designated appeal window has passed. If any such vehicle is found parked on the streets of the city, it shall be:

(1) Issued a warning notice, affixed to the vehicle, alerting the owner that further unpaid fines may result in the vehicle being immobilized and towed once the vehicle reaches the threshold outlined in subsection (a)(2) if the owner does not make payment or enter into a payment agreement.

i. Warning notices issued pursuant to this section shall provide the following information to vehicle owners: how to dispute the amount owed; how to submit a payment; and that payment plans may be available.

(2) Immobilized in such manner as to prevent its operation if the total amount of unpaid fines exceeds \$600.00 and the vehicle shall be towed and impounded as provided in section 37-125(c) or immobilized in such manner as to prevent its operation; provided, however, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place. At the time of immobilization, a

notice in the form required by section 37-128(a) shall be affixed to the vehicle.

- (c) Any vehicle remaining immobilized and not released for up to 36 hours or constituting a wrecked or abandoned vehicle under section 37-123 hereof, shall be towed and impounded, but only at the specific direction of the authorized towing contractor and upon the towing contractor having verified that the vehicle is to be towed by reference to the state-issued vehicle license plate and registration tags, if any, or by reference to the vehicle identification number of the vehicle to be towed, or by observation that the vehicle is in fact immobilized and not released, or that the vehicle is considered to be abandoned under section 37-123 hereof. Any such vehicle remaining immobilized and not released may be towed within less than such 36 hours if any of the following extenuating circumstances or conditions are met and the towing contractor has been so advised by the city's finance department, or by the city's authorized scofflaw enforcer(s), or by the city's police department, or by the city's office of public safety:
- (1) The same vehicle has been immobilized on one or more previous occasions and on such occasion(s) the "motor vehicle boot" was unlawfully removed;
 - (2) The owner of the motor vehicle has made fraudulent use of a credit card or issued a bad check in payment of any traffic citation issued by the city;
 - (3) The vehicle is parked in a tow-away zone or is otherwise parked unlawfully;
 - (4) The motor vehicle owner has ~~failed to make timely payments under any defaulted on a~~ time-to-pay agreement regarding parking tickets or red light camera citations with the city or has otherwise breached any such agreement with the city as determined by the department of finance;
 - (5) The motor vehicle owner has failed to return a "motor vehicle boot" from a previous immobilization of any motor vehicle of that same owner; or
 - (6) The owner of the motor vehicle has outstanding, overdue and unpaid motor vehicle immobilization booting fees ~~citations for violations of Chapter 37 of the City Code totaling in amount more than \$500.00 in motor vehicle immobilization booting fees.~~

Any vehicle so impounded or immobilized shall not be released to its lawful owners, any provision in this chapter to the contrary notwithstanding, until all unpaid traffic citations, including red light camera citations, issued to such vehicle have been discharged either by payment of all fines and costs assessed thereon or by action of the court having jurisdiction thereof or by the director of finance or by entering into a payment agreement authorized by the director of finance. It shall

be unlawful for any person to tow any immobilized vehicle except at the specific direction of the city towing contractor above referenced. It shall be unlawful for any person to remove an immobilization device, commonly known as a "motor vehicle boot", or having unlawfully removed such "motor vehicle boot" not to return it to the proper city officer, except as such removal may be done in accordance with the authority of the towing contractor. In any instance in which a "motor vehicle boot" has been removed other than by or at the direction of the towing contractor, there shall be a rebuttable presumption that the registered owner of the motor vehicle is responsible for the missing or stolen "motor vehicle boot". Any violation of this section constituting an unlawful towing of an immobilized vehicle, or an unlawful removal of a "motor vehicle boot", or a failure to return to the city any "motor vehicle boot" that has been removed from a motor vehicle shall be punishable upon conviction by a fine in an amount of not less than \$515.00 plus court costs; in addition, any and all such unpaid traffic citations issued to the vehicle that was immobilized by the subject immobilization device shall be paid.

- (f) The director of finance or their designee shall be authorized to enter into an agreement with the owner of ~~any a~~ motor vehicle subject to the provisions of this subsection for scheduled regular payments of fines, penalties, fees and costs over a period of time ~~not to exceed three months in order to discharge all unpaid traffic citations issued to the owner of such motor vehicle.~~ The director of finance shall promulgate regulations to establish procedures relating to payment agreements offered under this Chapter. Such regulations may establish, among other things, the type of fines, penalties, fees and costs subject to a payment agreement, a monetary threshold to obtain a payment agreement, the length of a payment agreement, late payment notices, and default. Any such agreements entered into prior to the effective date of the ordinance from which the amendments herein set forth regarding the department of transportation derive and for which payments are still due as of such date shall continue in effect and such scheduled payments shall be made to the department of finance.

SECTION 3. Chapter 37, section 37-128 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Sec. 37-128 - Procedure; notices; issuing citation without causing vehicle to be towed or immobilized; civil penalty for violation.

- (a) Police officers or parking regulation enforcement officers, authorized scofflaw enforcers, the commissioner of licenses and inspections, the deputy commissioner, and designated code enforcement officers shall be the only persons authorized to direct the immobilization and/or the removal of any vehicle under the provisions of this article or article IV of this chapter. Such police officer or parking regulation enforcement officer or scofflaw enforcer, or such commissioner, deputy

commissioner, or code enforcement officer shall be present at the time of immobilization and/or removal and shall securely affix an immobilization notice form or a towing notice form in a prominent place on such vehicle, such forms to bear the license number and state of registration of the vehicle, the date, time, place and nature of the violation, how to contest the immobilization or towing of the vehicle, how to submit a payment, the availability of payment agreements and the name and identifying badge number of the person directing the immobilization or the removal of the vehicle; provided, however, that any unregistered vehicle and any vehicle not bearing a valid registration tag shall be removed without the opportunity for the owner or agent for the owner to stop the towing of such vehicle. Such notice forms shall be made out in as many copies as necessary for proper administration and shall be identified by a separate number on each original form. The same number shall appear on all copies of the form. At least one copy shall be made for the offender, one copy shall be kept by the police department or the scofflaw enforcer, or the department of licenses and inspections as the case may be, one copy shall be delivered to the registered owner and the original copy shall be delivered to the department of finance.

SECTION 4. Chapter 37, section 37-131 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Sec. 37-131. - Redemption of vehicles; contesting immobilization and towing; civil penalties for abandoned vehicles.

- (a) Before the owner or his agent shall be permitted to have an immobilized vehicle released or to remove an impounded vehicle from any pound provided for by this article, the following steps shall be taken:
- (1) The owner shall pay by cash, money order, ~~or~~ certified check, or by any other payment method authorized by the director of finance, only to the city any fines, penalties and immobilization fees due and owing for the violations for which the vehicle was immobilized or towed, as well as any other fines, penalties and fees for any other parking violations which the vehicle owner may owe to the city, or the owner may enter into a payment agreement authorized by the director of finance for payment of said fines, penalties and fees. Upon payment of these fines, penalties and fees or the execution of a payment agreement authorized by the director of finance, the department of ~~public works~~ finance will provide a receipt. In the case of an immobilized vehicle, the department of ~~public works~~ finance shall cause the device to be removed from the vehicle and release the vehicle to the owner forthwith.

- (2) The owner shall present the department of ~~public works~~ finance receipt, as well as proof of ownership of the towed vehicle, to the records division of the police department. The owner will then be issued a release-of-vehicle form.
- (3) The owner of an impounded vehicle shall then deliver to the official pound the release-of-vehicle form, and he shall also pay to the pound operator any applicable towing and storage charges. The towing and storage charges shall not exceed the amounts agreed upon between the pound operator and the city in the current contract for towing services. A printed statement of the charges which the pound operator is permitted to charge under contract can be obtained through the department of ~~public works~~ finance or through the records division of the police department. A statement of charges shall also be prominently posted in a public area at the pound.
- (b) If such immobilization and/or towing and storage charges are paid under protest, or if the fine on the violation for which the vehicle was towed or immobilized is paid under protest or the vehicle owner elects to contest the immobilization or towing of their vehicle without payment under protest, the offender vehicle owner shall be entitled to a hearing before the municipal court for the city a hearing officer employed or contracted by the city who will determine whether the vehicle was properly subject to immobilization or towing. The hearing officer's decision will not have preclusive effect in a subsequent court action. The director of finance shall promulgate regulations to establish procedures related to hearings by the city's hearing officer. An appeal of the underlying parking or traffic violation shall be heard and determined by the Justice of the Peace Court for the State of Delaware as provided for in 21 Del. C. § 4181A. Such hearings are held, without appointment, on Friday mornings at 9:30 a.m. in the municipal court for the city. The notice placed upon the motor vehicle pursuant to section 37-125, warning that the vehicle has been immobilized and should not be moved, shall include a statement advising the motor vehicle owner or his agent of the foregoing right to pay the fines and fees under protest and/or to appear in the municipal court on the next Friday morning at 9:30 a.m. a hearing to present his their reasons why the motor vehicle should not have been immobilized and/or why the vehicle should not have been towed. When such fines and fees are paid under protest, at which time the motor vehicle shall be released, such fines and fees shall be held in escrow by the department of finance pending the outcome of the municipal court hearing. If the municipal court hearing officer determines that the motor vehicle should not have been immobilized or towed, or that such fines and fees or any part thereof need not have been paid, or the court determines the vehicle owner did not violate a provision of this Chapter, shall so advise the department of finance which shall release such fines or fees or part thereof from the escrow account to the motor vehicle owner or his agent.

- (c) The person or party who appears as owner of any wrecked or abandoned vehicle shall, in addition to any penalties provided by any other provision of this chapter or ordinance or regulation, be subject to and liable for a civil penalty at Level 6.

SECTION 5. Chapter 37, section 37-132 of the City Code is hereby amended by deleting the stricken language and adding the underlined language as follows:

Sec. 37-132. - Towing of unauthorized motor vehicles from handicapped parking spaces and other restricted areas.

- (b) In any case involving immobilization of a vehicle pursuant to this section, the police officer or parking regulations enforcement officer shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle. The immobilization notice shall also contain the information required by section 37-128(a).
- (c) Any vehicle remaining immobilized and not released for 24 hours shall be towed and impounded, but only at the specific direction of authorized police officers or parking regulation enforcement officers. Any vehicle so impounded or immobilized shall not be released to its lawful owner, any provision in this chapter to the contrary notwithstanding, until all unpaid traffic citations issued to such vehicle have been discharged either by payment of all civil penalties or costs assessed thereon, by entering into a payment agreement authorized by the department of finance, by action of the hearing officer acting pursuant to section 37-131(b) or by action of the court. It shall be unlawful for any person to tow any immobilized vehicle except at the specific direction of the above-referenced city officials. It shall be unlawful for any person to remove an immobilization device, commonly known as a “motor vehicle boot,” for having unlawfully removed such “motor vehicle boot” not to return it to the proper city parking regulation enforcement officer. In any instance in which a “motor vehicle boot” has been removed other than by or at the direction of the above referenced city officers, there shall be a rebuttable presumption that the registered owner of the motor vehicle is responsible for the missing or stolen “motor vehicle boot.” Any violation of this section constituting an unlawful towing of an immobilized vehicle, or an unlawful removal of a “motor vehicle boot,” or a failure to return to the city any “motor vehicle boot” that has been removed from a motor vehicle shall be punishable by a civil penalty in the amount of not less than that established at Level 22 plus court costs; in addition, any and all unpaid traffic citations issued to the vehicle that was immobilized by the subject immobilization device shall be paid.
- (d) The owner of such impounded or immobilized motor vehicle shall redeem it only pursuant to the provisions of section 37-131. The owner of such impounded or immobilized motor vehicle shall redeem it only on payment of the sum of \$50.00

for the cost of immobilizing or towing and releasing such vehicle and shall sign a receipt for such vehicle. The owner of an immobilized vehicle which was subsequently towed and impounded shall be subject to a fee of \$50.00 plus ~~an~~ any additional fees for towing and storage. The \$50.00 fee may be included in a payment agreement authorized by the department of finance.

SECTION 6. This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First Reading.....August 29, 2024
Second Reading.....August 29, 2024
Third Reading.....
Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ___ day of _____, 2024

Mayor

SYNOPSIS: This Ordinance amends Chapter 37 of the Wilmington City Code to 1) allow the Director of Finance greater flexibility when entering into payment plans by deleting the three-month time limitation on such plans; 2) permit a vehicle owner to obtain a release for a vehicle that has been immobilized or impounded when the owner enters into a payment agreement that is authorized by the Department of Finance; 3) require that outstanding civil penalties and fees imposed under this Chapter be voided when, pursuant to a State-authorized process, title to a vehicle that has been impounded is transferred to the towing or storage contractor, or the towing or storage contractor obtains authority to dispose of the vehicle; and 4) clarify that disputes related to immobilization and towing will be heard by a hearing officer employed or contracted by the City in accordance with regulations adopted by the Department of Finance.

FISCAL IMPACT: It is anticipated that the Department of Finance may need to hire an employee in the next fiscal year and make certain modifications to technology because of the passage of this Ordinance. The estimated cost for the new position and technology modifications is approximately \$200,000.00 (TWO HUNDRED THOUSAND DOLLARS). Additionally, the current default rate for payment agreements is approximately 70%. While providing greater flexibility in payment agreements and increasing notice of the availability of payment agreements may result in a decrease in the default rate and the payment of more fines and penalties, the potential decrease in the default rate cannot be quantified with any degree of certainty. There is minimal fiscal impact anticipated from voiding outstanding civil penalties and fees when title to a vehicle that has been impounded is transferred to the towing or storage contractor or the towing or storage contractor obtains authority to dispose of the vehicle because the City is unable to collect the majority of that debt.