

RECOMMENDED BY: THE TRANSPORTATION COMMITTEE

SUBMITTED BY: THE CITY ATTORNEY

ORDINANCE NO. _____

AN ORDINANCE TO CREATE CHAPTER 23 OF TITLE 12 OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM TO REGULATE COMMERCIAL PARKING LOTS AND TO REPEAL CHAPTER 15 OF TITLE 10 OF THE GENERAL CODE OF THE CITY OF BIRMINGHAM.

SECTION 1. BE IT ORDAINED by the Council of the City of Birmingham that a new Chapter 23 is hereby created and added to Title 12 of the General Code of the City of Birmingham to regulate commercial parking lots in the and to read as follows:

Sec. 12-23-1. Definitions

Applicant means any person applying for a parking lot permit under the provisions hereof and any officer, agent or employee of that person.

Motor vehicle means any automobile, truck, motor scooter or other self-propelled vehicle.

Commercial parking services or *commercial parking lot* shall mean private property that is used, wholly or in part, for storage or parking of motor vehicles for a fee or the provision of such services for a fee where payment for the parking is made:

- (a) At the time of parking and to a pay station, a uniformed parking lot attendant, or by means of web or mobile application or similar technology; or,
- (b) Pursuant to a long-term (monthly or longer) parking agreement whereby a decal, hang-tag or other form of written authorization is issued to be displayed in or on the vehicle allowed to be parked on the property according to the terms of the agreement.

Such lots must comply with all City of Birmingham zoning, business licensing and operating requirements for commercial parking lots.

Consent of a parking lot owner shall mean that the vehicle is authorized to park on the property through payment of the proper fee to a pay station, uniformed parking lot attendant, or by means of web or mobile application or similar technology, by contract or permit issued by the parking lot owner or through other direct permission of the parking lot owner.

Director means the director of the department of transportation or his or her designee.

Dynamic pricing means a strategy for charging flexible rates depending on changing market demands. Dynamic pricing may also be referred to as surge pricing, demand pricing, or time-based pricing

Parking lot means any commercial parking lot as defined herein.

Parking attendant means an individual who, on behalf of a parking lot general manager, collects a parking fee from motor vehicle operators as payment to park in a parking lot.

Parking lot owner means a person, or the person's agent or lessee, who holds legal title, deed, or right of occupancy to a parking lot. The term includes an agent authorized to operate or manage the parking lot but does not include a vehicle immobilization or towing service licensee or an employee or representative of a vehicle immobilization or towing service licensee.

Pay station means a booth or box, whether attended or not, situated at or on a parking lot where payment of the hourly, daily, or monthly parking fee for that parking lot is made or deposited.

Sec. 12-23-2. - Permit—Required.

- (a) Any person conducting, operating or maintaining a commercial parking lot must obtain a permit therefor as provided in this ordinance, from the department of transportation. No permit granted hereunder shall be in lieu of any license required pursuant to an applicable license code of the city, nor in lieu of any permit required pursuant to an applicable building code or zoning ordinance of the city.
- (b) Any commercial parking lot subject to the requirements of this ordinance shall apply for a permit within thirty (30) days of the effective date of this ordinance.
- (c) All existing commercial lots shall comply with requirements of any ordinance of the city regulating vehicle immobilization and towing of trespassing vehicles in effect on the effective date of this ordinance within thirty (30) days of the effective date of this ordinance. If vehicle immobilization or towing is used for enforcement, signs must be posted 24 hours prior to beginning vehicle immobilization or towing. Existing lots with signs complying with the requirement of Ord. No. 13-81 prior to the effective date of this ordinance may leave those signs in place while obtaining signs required after the effective date of this ordinance.

Sec. 12-23-3 - Same—Application.

Application for a license to be issued hereunder shall be submitted to the director upon blank forms prepared and made available by director. The application shall contain in writing:

- (1) The full name and address of the applicant if an individual proprietorship; full name and address of all partners if the applicant is partnership; full name and address of the corporation, LLP or LLC if the applicant is a corporation, LLP or LLC;

- (2) The business telephone number, email address, and mailing address (if different from the physical address) of the applicant;
- (3) The legal name of the company and the trade name of the company (name under which the service will be operated) if different than the legal name;
- (4) The full name of all company officials, all managers, and all other persons responsible for the operation of the business, and the full name of all persons having a proprietary or profit interest in the business that is the subject of the application, and the amount of stock, if any, held by the company officials, managers, and all other persons having a proprietary or profit interest in the business that is the subject of the application;
- (5) A description of methods to be used to enforce payment of parking, including any contracts entered for vehicle immobilization or towing services, and the way that violators will be determined and reported.
- (6) A complete schedule of parking rates;
- (7) A list of what methods of payment the applicant will accept;
- (8) Proof of the insurance coverage required by this chapter;
- (9) Receipt from the director of finance showing payment of the application fees required by this chapter;
- (10) Three copies of a scaled drawing or site plan of the parking lot, showing its location (including the address and relation to adjoining properties, including public rights of way), design, size, capacity, location, size and type of construction of attendant's station or pay station, if any; all walls, barriers or other structures surrounding or enclosing the premises; the location and size of all driveways; and all other design details including plant materials, specification sheets for paving, signs, fencing, and other similar elements. A digital copy may be submitted in lieu of three paper copies.
- (11) The hours for storage or parking of motor vehicles and whether night storage is to be conducted upon the premises.
- (12) The hours during which any parking attendants will be on duty.
- (13) Such other information as the director shall find reasonably necessary to effectuate the purpose of this chapter and to arrive at a fair determination of whether the terms of this chapter have been complied with; and
- (14) The applicant or authorized agent thereof swears to the truthfulness and accuracy of the application.

Section 12-23-4. Fees; renewals

Applications shall be accompanied by a nonrefundable application fee in the amount of \$200.00. Permits shall be renewed by January 1 of the next calendar year. Renewal applications shall be accompanied by a fee of \$100.00.

Sec. 12-23-5. - Insurance.

No parking lot shall be opened for business or otherwise operated until the applicant shall have filed with the city clerk policies or proper certificates of insurance issued by an insurance company authorized to do business in the state in an amount not less than \$50,000.00 for liability insurance coverage for personal injury or death to any individual and not less than \$100,000.00 for any one accident, which insurance shall continuously remain in force and effect for so long as the parking lot shall be operated or maintained. These policies shall require the company issuing the same to give not less than 30 days' written notice to the city clerk before any cancellation or expiration thereof. The cancellation or expiration of any insurance policy as required by this section shall automatically suspend the permittee's permit until such time as a new insurance policy complying with the provisions of this section shall be filed with the city clerk.

Sec. 12-23-6. - Same—Review; grant.

- (a) The director shall review the application and grant the permit if it is determined
 - (1) that the application is complete, sufficient, and correct;
 - (2) the premises meet all requirements of applicable laws and ordinances, including, but not limited to, zoning regulations, and can be safely used as a parking lot;
 - (3) that the operation of a parking lot at the premises will not adversely affect or endanger vehicular or pedestrian traffic on abutting streets; and
 - (4) that the parking lot will be operated in compliance with all applicable laws and ordinances.
- (b) If the application is incorrect, insufficient, or incomplete, or where the parking lot can be brought into compliance with the requirements of this ordinance, the applicant shall either cure the insufficiency or submit a written plan for compliance within 10 days from being notified of the insufficiency. Any plan for compliance must include the expected time necessary to correct the problems and must be approved by the director.
- (c) Any compliance plan submitted pursuant to subsection (b) of this section shall provide for compliance no later than December 31, 2023, unless approved by the director for an extension on showing of good cause.

Sec. 12-23-7. Same - Denial.

If it is determined, upon investigation, that the premises are unsafe for use as a parking lot, or that the operation thereof will adversely affect or endanger vehicular or pedestrian traffic on abutting streets, the permit shall be denied.

Sec. 12-23-8. - Same—Appeal to council upon denial.

Upon any denial of a parking lot permit by the department of planning, engineering and permits, the applicant may appeal the denial to the council by filing a written statement of appeal with the city clerk within ten days following the denial, and a hearing shall be held thereon by the council at a regular meeting of the council or a continuance thereof not later than 14 days thereafter. The applicant, during the appeal, may be represented by counsel and shall have the right to introduce witnesses and evidence on his or her behalf. The council shall hear all witnesses and evidence in support of the permit application and the reasons for denial of the permit.

Sec. 12-23-9. - Same—Revocation.

The council may revoke any parking lot permit if, upon a hearing and investigation, after at least ten days' written notice to the permittee of the time and place of the hearing, the council finds the permittee:

- (1) Has knowingly made any false or materially incorrect statement in the application;
- (2) Has violated or permitted or countenanced the violation of any provisions of this chapter;
- (3) Has violated or permitted or countenanced the violation of any provision of any penal law or ordinance involving theft, larceny or conversion of a motor vehicle without the owner's consent; or
- (4) Fails to keep an attendant on duty during the times specified in the permittee's application.

Sec. 12-23-10. - Signs.

Every permittee shall display at each entrance to its parking lot in a clearly visible manner a permanently affixed sign in compliance with the sign requirements of Title 12, Chapter 19 of this code.

Sec. 12-23-11. - Charging more than scheduled rates.

It shall be unlawful for a permittee to accept, require or demand any fee or charge for the parking or storage of a motor vehicle in excess of the amount shown in the posted schedule of fees or charges for the parking or storage.

Sec. 12-23-12. - Loading or unloading of vehicles to be within property line of parking lot.

No loading or unloading of passengers or drivers of vehicles shall take place across or upon any public street, sidewalk or alley, and any operator or employee of a parking lot who receives or delivers any vehicle other than within the property line of the parking lot and blocks or obstructs any public sidewalk, street or alley shall be in violation of this section.

Sec. 12-23-13. - Unauthorized use or removal of vehicles.

It shall be unlawful for any permittee to make or permit any use for any purpose whatsoever of any parked or stored vehicle, unless the use shall have first been expressly authorized by the owner or operator of the vehicle. This shall not be construed to prohibit a permittee from removing a trespassing vehicle from the property, provided that compliance with all regulations for nonconsensual towing are complied with.

Sec. 12-23-14. - Manner of driving vehicles—Generally.

It shall be unlawful for any person to drive a vehicle in willful or wanton disregard for the safety of persons or property upon or within a parking lot, or to drive thereon or therein at a speed in excess of ten miles per hour. The traffic engineer is hereby authorized to cause such signs as he or she may deem necessary to be erected on the public rights-of-way at or near one or more entrances to such lots stating the speed limit of ten miles per hour upon such lot.

Sec. 12-23-15. - Same—In certain parking lots.

(a) It shall be unlawful for any person to stop, park, drive or operate a vehicle upon any parking lot in any manner which unreasonably obstructs or hinders the free flow of pedestrian or vehicular traffic.

(b) It shall be unlawful for any person operating a vehicle upon a parking lot to fail to yield the right-of-way to any pedestrian who is walking in a marked crosswalk or other marked pedestrian walkway.

Sec. 12-23-16. - Grounds maintenance.

(a) The permittee shall keep the sidewalks adjacent to the parking lot free from any accumulation of dirt, ice, sleet and snow.

(b) Parking lots shall comply with all applicable standards for off-street parking design pursuant to the City of Birmingham Zoning Ordinance, including, but not limited to, size and arrangement of parking spaces; regulation of traffic flow; illumination; landscaping; barriers; and surfacing.

(c) The permittee shall maintain smooth and durable parking surfaces which shall at all times remain free of breaks, potholes or other dangerous conditions, and be adequately drained so as not to retain water and be kept free of dirt and any other type of debris.

(d) The permittee shall maintain demarcation for spaces and traffic flow so that striping, space numbers, and traffic directions remain clearly discernible to lot patrons.

(e) The permittee shall provide adequate illumination to enable reading of demarcations and signs and to aid in vehicular and pedestrian navigation of the lot.

(f) All weeds, shrubs, trees and grass adjacent to or on the parking lot shall be kept neatly trimmed or cut and be removed or relocated if the same interfere with the parking of vehicles or with safe sight distance at any entrance or exit.

(g) Adequate disposal cans or other durable receptacles shall be maintained in every parking lot for the deposit or collection of refuse, trash or other waste materials, and in no event shall there be less than one such can or receptacle available for those purposes.

Sec. 12-23-17. - Permits not transferable.

No permit issued hereunder shall be transferred or assigned to another or used by any person other than the person to whom the permit was issued, nor shall the permit be used at any location other than the location for which the same was issued.

Sec. 12-23-18. - Assembling so as to restrict access; parking in parking spaces required.

(a) It shall be unlawful for any person to assemble, with one or more other persons, upon any parking lot, in such manner as to restrict for more than five minutes the free passage of pedestrians or vehicles or to obstruct any designated driving lane for more than five minutes.

(1) It shall not be a violation of this section to park in a designated parking space and then leave the parking lot area without delay, or to go upon such parking lot and without delay proceed to an open business establishment, or to go upon such parking lot and without delay proceed to a parked vehicle and then leave.

(2) It shall not be a violation of this section for a person to assemble with less than four other persons, for less than one hour, to remove or repair an inoperable motor vehicle.

(b) This section shall not apply to any law enforcement vehicle, ambulance, firefighting vehicle, or other official emergency vehicle or the personnel of any of them.

(c) This section shall not apply to any person who has received written consent from the owner of such parking lot or from the owner's authorized agent to assemble on such parking lot.

(d) It shall be unlawful for any person to park or leave any vehicle upon any parking lot unless such vehicle shall be parked wholly within a parking space as designated by painted lines or other discernible markings; but this section shall not apply to authorized emergency vehicles, inoperable motor vehicles, or persons given written consent to so park by the owner of the parking lot or by such owner's authorized agent.

Sec. 12-23-19. - Entry powers of city officials.

Any city official or employee tasked with enforcement of this ordinance may enter any portion of the premises of the parking lot for the purpose of inspection of such premises and vehicle immobilization and towing services operating on the lot for compliance with this ordinance.

Sec. 12-23-20. - Compliance with other laws.

Compliance with the requirements of this article does not excuse compliance with any other provisions of state law or the General City Code relating to parking regulations or parking lots.

Sec. 12-23-21. - Enforcement.

The director of the department of transportation or his or her designee or any police officer is authorized to enforce the provisions of this article. The director of the department of planning, engineering, and permits or his or her designee is authorized to enforce applicable provisions of the zoning ordinance.

Sec. 12-23-22. - Vehicle immobilized for reasons other than non-payment.

It shall be unlawful for a permittee to have a vehicle immobilized for any reason (e.g., being parked on or across the parking space lines, on or across areas marked with hash marks, in driving lanes or in other unauthorized areas on the parking lot) other than non-payment of a parking fee.

Sec. 12-23-23. - Attendant requirements.

It shall be the duty of any permittee to ensure that no individual at any time performs as a parking lot attendant unless the individual meets each of the requirements of this section. Each parking lot attendant shall:

- (1) Be at least 16 years of age or older;
- (2) Wear a picture ID, name tag with the employee's first name and employee identification number, and shirt, jacket or vest with the name and logo of the parking lot operating company;
- (3) If the parking lot general manager intends to have vehicles immobilized ("booted") or towed for non-payment of parking fees, provide a written receipt to the operator of a vehicle parked on the parking lot with the name and logo of the parking lot, the street address of the parking facility, the parking space number if the parking lot utilizes "pay by space," and the date and time parking fees were paid; and
- (4) Perform his or her duties in a courteous and professional manner.

Sec. 12-23-24. - Closure of parking lots.

(a) The permittee of a commercial parking lot shall clearly state on all required signs the hours when parking is not allowed. The permittee may indicate the closure by barricading entrances to and exits from the parking lot by means of a barrier gate, chain, or other durable barrier equipment. Vehicles shall not be immobilized or towed if the hours are not clearly posted.

(b) Barriers shall not be attached to signage, trees, or any such object in the public right-of-way.

(c) Where payment is made by web or app or similar technology, it shall be unlawful for the system to allow payment for parking during times at which the parking lot is closed or only available for tenant, customer, or permit parking.

Sec. 12-23-25. - Parking for special events.

The owner or operator of any on-site or off-site parking lot which is used or available for parking during special events as defined in section 12-19-2 of the General Code of the City of Birmingham must continuously provide a uniformed attendant for a time period to begin one hour before the start of the special event until one hour after the conclusion of the special event. The attendant must provide a receipt to any patron using the parking lot. This section shall not apply to parking lots that regularly allow parking with payment by a mobile technology system and that maintain signs indicating the use of such payment system.

Sec. 12-23-26. - Parking lots using stationary unattended payment devices.

Any parking lot which uses an honor box, kiosk, or other unattended device for the collection or receipt of parking fees must locate said device in a location visible from any point in the parking lot. If the said parking lot is operated at night, the honor box must be illuminated in such a manner as to be clearly visible by the lot's patrons. The device must be maintained in good working order at all times.

Sec. 12-23-27.

Vehicle immobilization or towing services or other methods used to enforce payment for parking must comply with all applicable laws and ordinances.

Sec. 12-23-28.

Any property owner having vehicles immobilized or removed for trespass must comply with all applicable laws and ordinances.

Sec. 12-23-29.

It shall be unlawful for any non-commercial private parking lot that does not charge a fee for parking and which only allows parking during certain hours to enforce compliance with the allowed hours for parking by vehicle immobilization or towing unless the hours during which parking is allowed are clearly posted on an appropriate sign approved by the director.

SECTION 2. BE IT FURTHER ORDAINED by the Council of the City of Birmingham that Chapter 15 of Title 10 of the General Code of the City of Birmingham be and hereby is repealed. This repeal shall not be construed to repeal or otherwise affect the validity of the enforcement action for any offense or act committed or done or any penalty or forfeiture incurred, established, or accruing before the effective date of this ordinance

SECTION 3. The provisions of this Ordinance are hereby declared to be severable. If any of these sections, provisions, sentences, clauses phrases, or parts are held to be unconstitutional or void, the remainder shall continue in full force and effect.

SECTION 4. This Ordinance shall become effective upon publication as required by statute.

SECTION 5. The use of numbering and captions in this ordinance shall not prevent renumbering or other non-substantive arrangement of the provisions of this ordinance for inclusion in the General Code of the City.

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