

## Tow Hearings – Webinar: Handout

### 1. Who is an Owner or Operator?

An owner is a person:

- named as the purchaser or transferee in the certificate of title;
- in whose name the vehicle is registered, or a member of the person's immediate family;
- who holds the vehicle through a lease agreement;
- who is an unrecorded lienholder entitled to possess the vehicle under a chattel mortgage (like a bank); or
- who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

-- Occupations Code § 2308.002.

An operator is presumably anyone who operates the vehicle.

[This term is not specifically defined in Section 2308.002.]

### 2. Consent Tow

A consent tow is a tow of a motor vehicle in which the tow truck is summoned **by the owner or operator** of the vehicle or by a person who has possession, custody, or control of the vehicle.

-- Occupations Code § 2308.002

### 3. Non-consent Tow

A "nonconsent tow" means any tow of a motor vehicle that is **not a consent tow**, including:

- (A) an incident management tow; and
- (B) a private property tow.

-- Occupations Code § 2308.002(6)

### 4. Private Property Tow

"Private property tow" means any tow of a vehicle authorized by a parking facility owner without the consent of the owner or operator of the vehicle.

-- Occupations Code § 2208.002(8-a)

## **5. Incident Management Tow**

Any tow of a vehicle in which the tow truck is summoned to the scene of a traffic accident or to an incident, including the removal of a vehicle, commercial cargo, and commercial debris from an accident or incident scene.

-- Occupations Code § 2208.002(5-a)

## **6. Parking Facility**

A parking facility is public or private property used, wholly or partly, for restricted or paid vehicle parking.

This includes:

- A restricted space on a portion of an otherwise unrestricted parking facility; and
- A commercial parking lot, a parking garage, and a parking area serving or adjacent to a business, church, school or home that charges a fee for parking, apartment complex, property governed by a property owners' association, or government-owned property leased to a private person.

-- Occupations Code § 2308.002

## **7. What is a Boot?**

A boot is a lockable road wheel clamp or similar vehicle immobilization device that is designed to immobilize a parked vehicle and prevent its movement until the device is unlocked or removed.

-- Occupations Code § 2308.002

## **8. Removal of an Unauthorized Vehicle**

A parking facility owner may, without the consent of the owner or operator of an unauthorized vehicle, cause the vehicle and any property on or in the vehicle to be removed and stored at a vehicle storage facility at the vehicle owner's or operator's expense if:

(1) compliant signs prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours and remain installed at the time of towing;

(2) the owner or operator of the vehicle has received actual notice from the parking facility owner that the vehicle will be towed at the vehicle owner's or operator's expense if it is in or not removed from an unauthorized space;

(3) the parking facility owner gives notice to the owner or operator of the vehicle under Subsection (b); **or**

(4) on request the parking facility owner provides to the owner or operator of the vehicle information on the name of the towing company and vehicle storage facility that will be used to remove and store the vehicle and the vehicle is:

(A) left in violation of Section [2308.251](#) or [2308.253](#); or

(B) in or obstructing a portion of a paved driveway or abutting public roadway used for entering or exiting the facility.

**Notice:** (b) A parking facility owner is considered to have given notice under Subsection (a)(3) if:

(1) a conspicuous notice has been attached to the vehicle's front windshield or, if the vehicle has no front windshield, to a conspicuous part of the vehicle stating:

(A) that the vehicle is in a parking space in which the vehicle is not authorized to be parked;

(B) a description of all other unauthorized areas in the parking facility;

(C) that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and

(D) a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle; and

(2) a notice is mailed after the notice is attached to the vehicle as provided by Subdivision (1) to the owner of the vehicle by certified mail, return receipt requested, to the last address shown for the owner according to the vehicle registration records of the Texas Department of Motor Vehicles, or if the vehicle is registered in another state, the appropriate agency of that state.

**Requirements for the Notice:** (c) The notice under Subsection (b)(2) must:

(1) state that the vehicle is in a space in which the vehicle is not authorized to park;

(2) describe all other unauthorized areas in the parking facility;

(3) contain a warning that the unauthorized vehicle will be towed at the expense of the owner or operator of the vehicle if it is not removed from the parking facility before the 15th day after the postmark date of the notice; and

(4) state a telephone number that is answered 24 hours a day to enable the owner or operator to locate the vehicle.

**Mailing of Notice not Required if:** (d) The mailing of a notice under Subsection (b)(2) is not required if after the notice is attached under Subsection (b)(1) the owner or operator of the vehicle leaves the vehicle in another location where parking is unauthorized for the vehicle according to the notice.

-- Occupations Code § 2308.252

#### **9. Other Reasons for a Non-consent Tow or Boot:**

An owner or operator of a vehicle (other than a government emergency vehicle) may not leave unattended on a parking facility a vehicle that:

- is in or obstructs a traffic aisle, entry, or exit of the parking facility;
- prevents a vehicle from exiting a parking space in the facility;
- is in or obstructs a fire lane;
- does not display the special license plates for a vehicle transporting a disabled person and is in a parking space that is designated for the exclusive use of a vehicle transporting a disabled person; or
- is leaking a fluid that presents a hazard or threat to persons or property.

-- Occupations Code § 2308.251

An owner or operator also may not leave a vehicle unattended on a parking facility or real property serving or adjacent to an apartment complex if the vehicle:

- obstructs a gate that is designed or intended for the use of pedestrians or vehicles;
- obstructs pedestrian or vehicular access to an area that is used for the placement of a garbage or refuse receptacle used in common by residents of the apartment complex;

- is in or obstructs a restricted parking area or parking space (that is marked with compliant signs as described below), including a space designated for the use of employees or maintenance personnel of the parking facility or apartment complex;
- is in a tow away zone that is brightly painted and is conspicuously and legibly marked with the warning "TOW AWAY ZONE" in contrasting letters at least three inches tall;
- is a semitrailer, trailer, or truck-tractor unless the owner or operator of the vehicle is permitted under the terms of a rental or lease agreement with the apartment complex to leave the unattended vehicle on the parking facility; or
- is leaking a fluid that presents a hazard or threat to persons or property.

-- Occupations Code § 2308.253.

**10. An apartment complex may not tow vehicles for not displaying unexpired plates/registration unless:**

- a. the contract provision authorizing such a tow requires the owner or operator of the vehicle to be given at least 10 days' written notice that the vehicle will be towed from the facility at the vehicle owner's or operator's expense if it is not removed from the parking facility. The notice must be:
  - i. delivered in person to the owner or operator of the vehicle;
  - ii. sent by certified mail, return receipt requested, to that owner or operator; or o attached:
    - to the vehicle's front windshield;
    - to the vehicle's driver's side window; or
    - if the vehicle has no front windshield or driver's side window, to a conspicuous part of the vehicle.

-- Occupations Code § 2308.253.

## 11. Requirements for a sign to be “compliant”:

For a sign to be “compliant,” it must:

- be visible and conspicuous;
- be at each entrance, or if not possible, must be within 25 feet of each entrance;
- have a bottom edge greater than five and less than 8 feet off the ground; and
- meet the following requirements:
  - o be made of weather-resistant material;
  - o be at least 18 inches wide and 24 inches tall;
  - o contain a statement describing who may park in the parking facility and prohibiting all others; and the words, as applicable:
    - "Unauthorized Vehicles Will Be Towed or Booted at Owner's or Operator's Expense,"
    - "Unauthorized Vehicles Will Be Towed at Owner's or Operator's Expense," or
    - "Unauthorized Vehicles Will Be Booted at Owner's or Operator's Expense;"
  - o contain a statement of the days and hours of towing and booting enforcement;
  - o contain a number, including the area code, of a telephone that is answered 24 hours a day to enable an owner or operator of a vehicle to locate a towed vehicle or to arrange for removal of a boot from a vehicle;
  - o have a bright red international towing symbol, which is a solid silhouette of a tow truck towing a vehicle on a generally rectangular white background, at least four inches in height, on the uppermost portion of the sign or on a separate sign placed immediately above the sign;
  - o have “Towing and Booting Enforced,” “Towing Enforced,” or “Booting Enforced,” (as applicable), with white lettering at least two inches in height on a bright red background, on the portion of the sign immediately below the international towing symbol;
  - o except for the phone number information, have the remaining required information displayed in bright red letters at least one inch in height on a white background; and
  - o have the required telephone numbers on the bottommost portion of the sign, in white lettering at least one inch in height on a bright red background, (and may include the name and address of the storage facility to which an unauthorized vehicle will be removed).

-- Occupations Code Ch. 2308, Subchapter G.

## 12. Information Required on Notice of Booting:

The boot notice must state:

- that the vehicle has been booted and damage may occur if the vehicle is moved;  
o the date and time the boot was installed;
- the name, address, and telephone number of the booting company;
- a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to arrange for removal of the boot;
- the amount of the fee for removal of the boot and any associated parking fees;  
and
- notice of a vehicle owner or vehicle operator rights under Ch. 2308 of the Occupations Code, including their right to a hearing.

-- Occupations Code § 2308.257, 2308.258, 2308.454(c),(d)