

Chapter 16.1

IMMOBILIZATION AND IMPOUNDMENT OF MOTOR VEHICLES

Sec. 16.1-1. Short title.

This chapter shall be referred to by the short title of "Booting Ordinance of 1984."

Sec. 16.1-2. Purpose.

This chapter is enacted as an enforcement procedure for protection of the public peace, safety and welfare, and the safeguarding of property, and to provide for additional penalties for scofflaws who habitually violate the parking regulations of the Town of Brattleboro. It should be understood that any and all fines assessed for violation of this chapter are deemed to be assessed against, and vested within, the person who was the registered and/or titled owner of the offending vehicle at the time of the offense. As such, fines shall not be avoided by the transference of title or registration, or the purchasing of a different vehicle.

Sec. 16.1-3. Immobilization of vehicle.

Any unattended motor vehicle found parked any time upon any public highway or parking lot of the Town of Brattleboro, the owner of which has three (3) or more unpaid parking violations may be immobilized by an officer or member of the Brattleboro Police Department in such manner as to prevent its operation, providing that notice, stating that any vehicle registered or titled to a person who has three (3) or more unpaid parking violations, is subject to impoundment by the use of a "Booting Device". This notice must be sent to the offender by first class mail at least fifteen (15) days prior to impoundment. 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.

. (Amended 7/16/96) (Amended 12/10/05) (Amended 8/5/06)

Sec. 16.1-4. Notice to owner.

It shall be the duty of the officer or member of the Brattleboro Police Department immobilizing such motor vehicle to inform, as soon as practicable, the owner of an immobilized vehicle of the nature and circumstances of the prior unpaid parking violations on account of which such vehicle was immobilized. At the time of immobilization, the officer or members 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.

Sec. 16.1-5. Release of vehicle.

The owner of such immobilized vehicle, or another person duly authorized by the owner, shall be permitted to secure the release of the vehicle upon: (amended 7/16/96)

- (1) The payment of all outstanding fines assessed against said owner for any vehicle currently registered or titled to said owner, or for any vehicle which was registered or titled to said owner at the time the offense occurred; or
- (2) The depositing of the amount of the potential fines to be assessed by the Vermont District Court in the event of court action; and
- (3) A booting fee of one hundred dollars (\$100.00) for the first immobilization. After the first immobilization, the fee will increase by \$25.00 for each booting thereafter. (Amended 8/5/06)

Sec. 16.1-6. Towing of vehicle.

In the event the owner of the immobilized vehicle fails to make the payments required in Section 16.1-5 above within a period of twenty-four (24) hours from the time of such immobilization, the police department shall cause said vehicle to be towed away as provided for in Section 16-97(a).

Sec. 16.1-7. Tampering with immobilization.

It shall be unlawful for any unauthorized person to deface, injure, tamper with, open, break, destroy or remove the immobilizer, impair the usefulness thereof or attempt to do any of those acts. A person who violates this section shall be fined two hundred dollars (\$200.00) and the waiver fee shall be one hundred dollars (\$100.00).

Sec. 16.1-8. Post-seizure hearings for immobilized or impounded vehicles.

As to any vehicle immobilized or impounded pursuant to this chapter by or at the request of the Town of Brattleboro, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a seizure administrative hearing to determine whether there was probable cause to immobilize or impound the vehicle if such person files a written demand, on forms so provided for such a hearing, with the Town of Brattleboro within ten (10) days after such person has learned such vehicle has been immobilized or impounded.

Sec. 16.1-9. Conduct of hearing.

- (a) A hearing shall be conducted before a hearing officer within forty-eight (48) hours of receipt of a written demand therefore from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays and town holidays are to be excluded from the calculation of the forty-eight-hour period. The sole issue before the hearing officer shall be whether there was probable cause to immobilize or impound the vehicle in question.
- (b) The hearing officer shall be the town manager, assistant town manager or an individual designated by the town manager to act in his stead.
- (c) "Probable cause to immobilize or impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local,

state or federal law to grant legal authority for the immobilization or impoundment of the vehicle.

- (d) The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right of possession of the vehicle. The police department shall carry the burden of establishing that there was probable cause to immobilize or impound the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the immobilization or impoundment in question, and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or his agent, to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

Sec. 16.1-10. Decisions of the hearing officers and their effect.

The hearing officer shall only determine that as to the vehicle in question either there was probable cause to immobilize or impound the vehicle or there was no such probable cause. In the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the vehicle and the police department. Upon receipt of the possessor's copy of such certificate, the official police garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, immobilization, towing and storage fees shall be paid by the town in accordance with arrangements made between the town and the official police garage. If the possessor fails to present such certificate to the official police garage having custody of the vehicle within twenty-four (24) hours of its receipt, excluding such days when the official police garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

Sec. 16.1-11. Disposal of Unclaimed vehicles.

- (a) Whenever any vehicle so impounded shall remain unclaimed by the owner or other person legally entitled to possession thereof for a period of sixty (60) days from the day notice to owner was mailed, it shall be the duty of the police department to sell such vehicle at public auction to the highest bidder for cash, the time and place of such sale to be published at least once in a newspaper of general circulation in the town, not less than ten (10) nor more than fifteen (15) days from expiration of said sixty (60) days. Said notice shall contain a full description of the vehicle to be sold and the time and place of sale; provided, that any such vehicle not sold at the first sale may be offered for sale and sold at any subsequent sale without further notice or publication. The proceeds of such sale after paying all liens and deducting all reasonable charges and expenses incurred by the impoundment of said vehicle, including the fees and charges herein specified, in booting, towing, keeping, preparing and giving notices, advertising for sale or selling or otherwise disposing of such vehicle shall be

paid to the town treasurer.

- (b) Whenever any such vehicle shall remain unsold for a period of one hundred twenty (120) days from the day notice to owner was mailed, then such vehicle may be given to the use of any department of the town or other governmental agency desiring the same, or disposed of as scrap metal.
- (c) No member of the police department, nor any other employee of the town, directly or indirectly, shall purchase or participate in the bidding for, or purchase of, any vehicle offered for sale.
- (d) If the vehicle shall be deemed by the chief of police to be of no value or of insufficient value to warrant storage and sale, and if no owner shall appear to redeem such valueless vehicle within sixty (60) days after the mailing of notice of its removal, which notice shall contain a statement that the vehicle is deemed to be of no value or of insufficient value to warrant storage and sale, and that it is the intention to dispose or destroy such vehicle, to any owner whose name and address can be ascertained with reasonable diligence, or by publishing such notice in the official newspaper once, at least five (5) days before its destruction or other disposition. Such vehicle as above provided shall be conclusively deemed of no value and to be abandoned property, and there shall be no claim against the town, the chief of police, the police department, nor any of their agents or employees by reason of any such destruction or disposition.