

**STATE OF GEORGIA
CITY OF HAPEVILLE**

ORDINANCE NO. _____

AN ORDINANCE BY COUNCIL MEMBERS _____

AN ORDINANCE AMENDING PART II, CHAPTER 41, ARTICLE VIII, (VEHICLE IMMOBILIZATION DEVICES) OF THE CITY OF HAPEVILLE CODE OF ORDINANCES SO AS TO AMEND AND STRENGTHEN THE REGULATORY REQUIREMENTS IMPOSED THEREBY; AND FOR OTHER PURPOSES.

WHEREAS, the City of Hapeville has an interest in maintaining the public safety and general welfare of citizens of the City of Hapeville and its visitors; and

WHEREAS, Chapter 41 Article VIII (Vehicle Immobilization Services) of the City of Hapeville Code of Ordinances was adopted in 2009 to authorize vehicle immobilization on private property in the City of Hapeville as long as compliance with certain conditions by such services and operators is maintained;

WHEREAS, since the enactment of the Vehicle Immobilization Services Code, it has come to the attention of the Hapeville City Council that the requirements imposed thereby are inadequate to secure the rights of private property owners along with the public safety and welfare of the citizens of and visitors to the City of Hapeville;

WHEREAS, the City of Hapeville desires to amend the requirements imposed by the Vehicle Immobilization Services Ordinance to more securely safeguard the public safety and welfare of the citizens of and visitors to the City of Hapeville; and

WHEREAS, to properly balance the rights of private property owners and the welfare of the citizens of, and visitors to, the City of Hapeville, the City of Hapeville desires to set a uniform fee charged by a vehicle immobilization service to remove the vehicle immobilization device; and

WHEREAS, due to the vulnerability vehicle owners, passengers, drivers, or persons in charge thereof may feel when interacting with vehicle immobilization operators, the City of Hapeville wishes to require vehicle immobilization service operator permits to be displayed all times when such operators are in the process of installing or removing a vehicle immobilization device, for such operators to wear something clearly designating their association with a licensed vehicle immobilization service when such operators are in the process of installing or removing vehicle immobilization devices; and

WHEREAS, due to the vulnerability vehicle owners, passengers, drivers, or persons in charge thereof may feel when interacting with vehicle immobilization operators, the City of Hapeville wishes to require more stringent criminal background examination for vehicle immobilization service operators; and

WHEREAS, advances in technology have made self-releasing vehicle immobilization devices available; and

WHEREAS, these devices may be released by the owners, passengers, driver or persons in charge of vehicle who have had their vehicles immobilized by vehicle immobilization operators through the secure payment of the vehicle immobilization fee via a smartphone app, or a secure encrypted means; and

WHEREAS, the ability to remove a vehicle immobilization device without the assistance of a Vehicle Immobilization Operator shall enable the owner, passenger, driver or person in charge of the vehicles to more efficiently pay the appropriate fee and secure the release of their vehicle; and

WHEREAS, to help ensure that vehicle owners, passengers, drivers, or persons in charge thereof have adequate notice that their failure to abide by the conditions private property owners have placed on the use of their parking lots or facilities may result in the installation of a vehicle immobilization device on their vehicle, the City of Hapeville wishes to require uniform and adequate signage, to be approved by the City of Hapeville and to be posted on private property whereon vehicle immobilization services are to be employed; and

WHEREAS, to safeguard the welfare of owners, passengers, drivers, or persons in charge thereof have adequate notice that their failure to abide by these conditions private property owners have placed on the use of their parking lots or facilities may result in the installation of a vehicle immobilization device on their vehicle, the City of Hapeville wishes to require uniform and adequate signage; and

WHEREAS, the City of Hapeville desires for the amendments contained in this Ordinance to be effective April 1, 2019; and

WHEREAS, after July 1, 2019, all licensed or permitted services or operators shall comply with the amendments contained in this Ordinance, regardless of their being licensed or permitted at the time of the approval of this Ordinance.

THE CITY COUNCIL OF THE CITY OF HAPEVILLE, GEORGIA, HEREBY ORDAINS, AS FOLLOWS:

ARTICLE 8. - VEHICLE IMMOBILIZATION DEVICES

Sec. 41-8-1. - Definitions.

On-site vehicle immobilization services shall mean entities that do not operate parking facilities as their primary purpose, including, but not limited to, educational institutions, houses of worship, restaurants, shopping centers and freestanding establishments with adjacent parking for patrons, customers, or invitees that use vehicle immobilization devices as a method of parking control.

Operator shall mean any person, including a sole proprietor, independent contractor, partnership or similar business entity, operating vehicle immobilization devices for a vehicle immobilization service.

Self-release vehicle immobilization device shall mean any device that is designed or adopted to be attached to a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation, and which may be released upon electronic payment of the fee without assistance of an Operator.

Vehicle immobilization device, device or boot shall mean any mechanical device that is designed or adopted to be attached to a wheel, tire, or other part of a parked motor vehicle so as to prohibit the motor vehicle's usual manner of movement or operation. Unless otherwise specified, the term Vehicle Immobilization Device shall include a self-release vehicle immobilization device.

Vehicle immobilization service or service shall mean a person, including a sole proprietor, independent contractor, partnership or similar business entity, offering services anywhere in the territorial limits of the city whereby vehicles are immobilized by the installation of a vehicle immobilization device.

SECTION 2: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

Permit to Operate as an Operator of a Vehicle Immobilization Service.

- (a) It shall be unlawful for any vehicle immobilization service, entity, or person to operate within the territorial limits of the City of Hapeville without having obtained a vehicle immobilization service permit granted by the Chief of Police, or his or her designee.
- (b) Every operator, service, entity, or person desiring to obtain a permit required by this article shall file an application with the City of Hapeville Police Department on forms to be prepared and approved by the unit. The application shall state:
1. The name and address of the applicant;
 2. The name and address of the principal place of business for the service, operator, entity or person;
 3. If a partnership, the names of the partners;
 4. If a corporation, the names of the officers;
 5. The charges to be imposed for vehicle immobilization services;
 6. The amounts and types of insurance held;
 7. Any such other information as may be required by the Chief of Police.

All statements in the application for a licenses required by this article shall be sworn by the applicant or by an authorized and qualified agent thereof.

- (c) Every person desiring to be an operator and obtain a permit as required by this article shall be fingerprinted by the Hapeville Police Department and submit to a criminal background search annually.

(d) No license or permit under this article shall be issued to any person who has been convicted in this or any other country within three years immediately prior to the application for a permit as required by this article of any misdemeanor crime involving solicitation for prostitution, distribution of possession of illegal narcotics, sex offenses or any other crime involving theft, violence or acts of moral turpitude. No permit under this article shall be issued to any person who has been convicted in this or any other county within five years immediately prior to the application for a permit of any felony.

(e) Should any person with a license or a permit obtained pursuant to this article be charged with committing any crime as described in this section, such charge shall constitute the basis for adverse action, including suspension or revocation of their operator permit. Immediately upon such suspension or revocation, written notice thereof shall be given to the operator, service, entity, or person, listed as the applicant on the permit application, in person or by certified United States mail addressed to his or her permanent address, or business address as set forth in the permit application. Operators, services, or entities must immediately return suspended or revoked permits obtained pursuant to this article to the Hapeville Police Department.

(f) Further, to be eligible for a permit under this article, the person applying must possess a current driver's license or state issued identification as provided by the laws of the state and proof of valid liability insurance with policy limits specified by the City Manager.

(g) Any person denied a license or a permit under this section or any person whose license or permit may be revoked under this section shall have the right to appeal this denial or revocation to the City Manager. Said appeal must be in writing and must be filed with the Hapeville City Clerk on or before the thirtieth (30th) day from the date stated on the notification of denial or revocation.

Any person denied a license or permit under this section or any person whose license or permit may be revoked after appeal to the City Manager shall have the right to appeal this denial or revocation to the Council for the City of Hapeville. Said appeal must be in writing and must be filed with the Hapeville City Clerk on or before the thirtieth (30th) day from the date stated on the notification of denial or revocation after appeal to the City Manager. The decision of the City Council shall be final.

(h) Once issued, permits obtained pursuant to this article shall be valid for one calendar year. Operators shall carry their permit at all times when they are in the process of installing or removing a vehicle immobilization device. Additionally, all operators shall wear something clearly designating their association with a licensed vehicle immobilization service or company when they are in the process or installing or removing a vehicle immobilization device.

SECTION 3: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

General Requirements for Vehicle Immobilization Services and Operators

1. It shall be unlawful for either a vehicle immobilization service or an operator to procure a license or a permit by fraud or misrepresentation of fact.

2. It shall be unlawful for either a vehicle immobilization service or an operator to pay any amount in the form of a gratuity to any person, owner, employee, agent, of a commercial parking lot or residential property for information as to illegally parked vehicles. Payments that exceed the reasonable and customary fees charged by the owner or person in possession of the commercial parking lot or residential property for parking which will afford vehicle immobilization services the opportunity to obtain information as to illegally parked vehicles shall be considered an illegal kickback.

3. A vehicle immobilization service or operator must maintain, or provide access to, a 24-hour a day, 365 days per year phone number that is staffed by a live operator to communicate immediately with a driver of a vehicle that has been immobilized by the vehicle immobilization service or operator. This shall apply to vehicle immobilization services utilizing self-release vehicle immobilization devices.

4. It shall be unlawful for either a vehicle immobilization service or an operator to immobilize vehicles at any off-street pay parking facility, vacant lot, or other private property without having a valid written contract specifically for such services entered into with the private property owner or lawful lessee thereof.

5. It shall be unlawful for a vehicle immobilization service or operator to fail to arrive on the site where the vehicle was immobilized within thirty minutes of being contacted by the owner, driver or person in charge of the vehicle. It shall also be unlawful for either a vehicle immobilization service or an operator to fail to release vehicles from immobilization within fifteen minutes after receipt of payment from the owner, driver or person in charge of a vehicle that has been immobilized by a vehicle immobilization device.

6. All vehicle immobilization service or operators must utilize secure and encrypted processing systems for debit card and credit card payments such that said payments may be made and immediately processed in the driver's presence without need to photograph or manually credit card or debit card information for processing.
7. All vehicle immobilization service or operators must utilize secure and encrypted processing systems for copying state issued identifications such that said information may be obtained and confidentially stored without the need to photograph or manually record state issued identification information.
8. It shall be unlawful for a vehicle immobilization service or operator to fail to provide
a receipt of payment of the booting fee to the owner, driver or person in charge of a vehicle at the time that payment is made. The receipt shall have the following information: The name, address, and phone number of the vehicle immobilization service or company and the name and signature or the person who applied/removed
the boot or vehicle immobilization device. Such receipts may be provided electronically.
9. A vehicle immobilization service must procure reasonable insurance, as determined by the City Manager, to cover damage caused to vehicles by the use of a vehicle immobilization device.
10. A vehicle immobilization service shall keep copies of permits issued to its operators under this article in their place of business, so that they may be inspected
by any member of the Hapeville Police Department, upon request, at any time.
11. A vehicle immobilization service or operators utilizing Self-Release vehicle immobilization devices shall ensure that there is a drop off location either located in or directly adjacent to the lot wherein the Self-Release vehicle immobilization device
was utilized. Such drop-off locations shall be in the form of secured receptacles or at attended locations and must be accessible 24 hours per day. Said devices must have
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sticker thereon that contains the name and telephone number for the Vehicle Immobilization Service or Operator who owns the Self-Release vehicle immobilization device.

SECTION 4: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

- (a) It shall be unlawful for any person hired by an owner or leasee of any private property, or his agent or employee, located within the territorial limits of the City of

Hapeville to install or attach to any vehicle a vehicle immobilization device(s), boot(s), or any other instrument(s) that is/are designed to, or have the effect of, restricting the normal movement of such vehicle or by any other means whatsoever to restrict the normal movement of such vehicle, unless the owner or leasee of the property, or his agent or employee, has complied with all applicable provisions regarding the posting of vehicle immobilization signs that comply with the following requirements:

SIGNS

- (1) Signs shall be located at each designated entrance and exit to the parking facility, lot, or area where a vehicle immobilization device or boot is to be used indicating that parking prohibitions are in effect. Such signs must be erected so that the front of the signs are visible from each and every parking space or area in the parking facility lot or area. Parking spaces must be clearly marked to afford notice to drivers of vehicles who enter the premises.
- (2) Where there is no designated entrance and exit to the parking facility or lot, such signs shall be erected so as to be clearly visible from each and every parking space or area.
- (3) Such signs shall be in accordance with specifications promulgated by the Chief of Police and shall be presented by the operator, service, entity, or person desiring to obtain a permit as required by this article at the time of application for inspection and approval.
- (4) Such signs shall state the names of each and every company, person, or entity that have rights of possession or ownership of the premises, through color of title or lease, and authorize the use of vehicle immobilization devices on the premises.
- (5) Such signs shall state in letters at least three inches high as follows “Unauthorized Vehicles may be booted at the Vehicle Owner’s Risk and at the Vehicle Owner’s Expense”. Such signs shall also include the following information in letters at least two and one half inches high:
 - a. Cost of boot removal. Said amount shall not exceed \$75.00, the maximum fee for removal of the immobilization devices set forth herein;
 - b. A statement that cash, credit cards, and debit cards are accepted payments;
 - c. A statement that no additional fees will be charged for accepted forms of payment;
 - d. The name, address, and phone number of the vehicle immobilization company, operator, person, or entity responsible for affixing and removing the immobilization device;
 - e. The name of each company, person, or entity who is authorizing the use of immobilization devices on the premises;
 - f. The name and a contact phone number where complaints regarding the affixing or removal of immobilization devices may be made.

SECTION 5: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

General Requirements for Vehicle Immobilization Services and Operators

1. It shall be unlawful for either a vehicle immobilization service or an operator to procure a license or a permit by fraudulent conduct or a false statement of a material fact.
2. It shall be unlawful for either a vehicle immobilization service or an operator to pay in the form of a gratuity any person who does not own or operate a commercial parking lot for information as to illegally parked vehicles.
3. It shall be unlawful for either a vehicle immobilization service or an operator to make any payment to an owner, employee, agent or a person in possession of a commercial parking lot in excess of the reasonable and customary fee ordinarily charged by the owner or person in possession of the parking lot for parking thereon, such payment shall be considered an illegal kickback.
4. It shall be unlawful for either a vehicle immobilization service or an operator to immobilize any vehicle located on any portion of a public street within the City of Hapeville.
5. It shall be unlawful for either a vehicle immobilization service or an operator to immobilize vehicles at any off-street pay parking facility, vacant lot, or other private property whereon persons must pay to park their vehicles without having signs as required by this ordinance.
6. A vehicle immobilization device cannot be affixed to a vehicle and a fee cannot be charged if the driver of the vehicle returns to the vehicle before the installation of the vehicle immobilization device is complete.
7. A vehicle immobilization service must maintain, or provide access to, a phone number that is staffed, 24-hours a day for 365 days a year, by a live operator to communicate immediately with a driver of vehicle that has been immobilized by the vehicle immobilization service. This shall apply to vehicle immobilization services utilizing Self-Release vehicle immobilization devices.
8. It shall be unlawful for either a vehicle immobilization service or an operator to immobilize vehicles at any off-street pay parking facility, vacant lot, or other private property whereon persons must pay to park their vehicles without having a valid written

contract specifically for such services entered into with the private property owner or lawful lessee thereof.

9. It shall be unlawful for a vehicle immobilization service or operator to fail to arrive on the site where the vehicle was immobilized within thirty minutes of being contacted by the owner, driver or person in charge of the vehicle. It shall also be unlawful for either
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vehicle immobilization service or an operator to fail to release vehicles from immobilization fifteen minutes after receipt of payment from the owner, driver or person
in charge of a vehicle that has been immobilized by a vehicle immobilization device.
10. It shall be unlawful for a vehicle immobilization service or operator to photograph or
manually record state issued identification information, credit card, or debit card information for processing.
11. It shall be unlawful for a vehicle immobilization service or operator to fail to provide a receipt of payment of the booting fee to the owner, driver or person in charge of a vehicle. The receipt shall have the following information: The name, address, and phone number of the vehicle immobilization service or company and the name and signature or the person who applied/removed the boot or vehicle immobilization device. Such receipts may be provided to the owner operator of the vehicle electronically.
12. In the event that the application of a vehicle immobilization device damages a vehicle,
then the service must pay the cost of repairs for that damage.
12. In the event that the owner or operator of a vehicle, to which an immobilization device has been applied, attempts to operate said vehicle or remove the device, then the vehicle immobilization service is not liable for any damage to that vehicle.
Additionally, the owner, driver or person in charge of the vehicle will be liable to the vehicle immobilization service for the cost of damage to the vehicle immobilization device.
13. A vehicle immobilization service must procure reasonable insurance, as determined by
the City Council, City Manager, or the city police department, to cover damage caused
to vehicles by the use of a vehicle immobilization device.
14. A vehicle immobilization service shall keep copies of permits issued to its operators under this article in their place of business so that they may be inspected by any

member of the Hapeville Police Department at any time.

15. A vehicle immobilization service utilizing Self-release vehicle immobilization devices shall ensure that there is a drop off location either located in or directly adjacent to the lot wherein the Self-release vehicle immobilization device was utilized. Such drop-off locations be in the form of secured receptacles or at attended locations and must be accessible 24 hours per day.
16. All Self-release vehicle immobilization devices must have information thereon providing notice of where the device may be returned, along with the contact information for the Vehicle Immobilization Service.
17. Upon proper registration in accordance with this section, a written permit shall issue, to be valid for one calendar year from the date of issuance. Each person affixing or removing a vehicle immobilization device shall at all times carry upon his or her person the permit so issued pursuant to this article and shall display such permit upon request.

SECTION 6: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

Any person who is convicted of violating any provision of this chapter shall be punished by a fine not to exceed \$1,000.00 or by imprisonment not to exceed six months, or both such fine and imprisonment.

SECTION 7: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows: RESERVED.

SECTION 8: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows:

The amendments of the foregoing ordinance shall become effective immediately, except that the specifications for the signs required in Section 4 shall be promulgated and approved by the Chief of Police by no later than April 1, 2019; and the sign requirements in Section 4 shall be otherwise effective July 1, 2019.

SECTION 9: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict only.

SECTION 10: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be amended such that it shall read as follows: That the Municipal Clerk for the City of Hapeville is instructed to retain all legislative history references in the codified version of Chapter 41, including Editor's notes, and shall not delete any such references, but shall amend them to include this ordinance.

ORDAINED this _____ day of _____, 2019.

CITY OF HAPVILLE, GEORGIA

Alan H. Hallman, Mayor

ATTEST:

(Ord. No. 2009-01, § 1, 3-1-2009; Ord. No. 2011-04, §§ 1—8, 5-3-2011)