

1 **STATE OF GEORGIA**

2 **CITY OF HAPEVILLE**

3 **ORDINANCE NO. _____**

4
5 **AN ORDINANCE BY COUNCIL MEMBERS _____**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

64 **ARTICLE 8. - VEHICLE IMMOBILIZATION DEVICES**

65 **Sec. 41-8-1. - Definitions.**

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

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

74 *Self-release vehicle immobilization device* shall mean any device that is designed or adopted
75 to be attached to a parked motor vehicle so as to prohibit the motor vehicle's usual manner of

76 movement or operation, and which may be released upon electronic payment of the fee without
77 assistance of an Operator.

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

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

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

88 Permit to Operate as an Operator of a Vehicle Immobilization Service.
89

90 (a) It shall be unlawful for any vehicle immobilization service, entity, or person to operate
91 within the territorial limits of the City of Hapeville without having obtained a vehicle
92 immobilization service permit granted by the Chief of Police, or his or her designee.
93

94 (b) Every operator, service, entity, or person desiring to obtain a permit required by this
95 article shall file an application with the City of Hapeville Police Department on forms to
96 be prepared and approved by the unit. The application shall state:
97

- 98 1. The name and address of the applicant;
 - 99 2. The name and address of the principal place of business for the service, operator,
100 entity or person;
 - 101 3. If a partnership, the names of the partners;
 - 102 4. If a corporation, the names of the officers;
 - 103 5. The charges to be imposed for vehicle immobilization services;
 - 104 6. The amounts and types of insurance held;
 - 105 7. Any such other information as may be required by the Chief of Police.
- 106

107 All statements in the application for a license required by this article shall be sworn by
108 the applicant or by an authorized and qualified agent thereof.
109

110 (c) Every person desiring to be an operator and obtain a permit as required by this article shall be
111 fingerprinted by the Hapeville Police Department and submit to a criminal background search
112 annually.
113

114 (d) No license or permit under this article shall be issued to any person who has been convicted in
115 this or any other country within three years immediately prior to the application for a permit as
116 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.

186 8. It shall be unlawful for a vehicle immobilization service or operator to fail to provide
187 a receipt of payment of the booting fee to the owner, driver or person in charge of
188 a vehicle at the time that payment is made. The receipt shall have the following
189 information: The name, address, and phone number of the vehicle immobilization
190 service or company and the name and signature or the person who applied/removed
191 the boot or vehicle immobilization device. Such receipts may be provided
192 electronically.

193
194 9. A vehicle immobilization service must procure reasonable insurance, as determined
195 by the City Manager, to cover damage caused to vehicles
196 by the use of a vehicle immobilization device.

197
198 10. A vehicle immobilization service shall keep copies of permits issued to its
199 operators under this article in their place of business, so that they may be inspected
200 by any member of the Hapeville Police Department, upon request, at any time.

201 11. A vehicle immobilization service or operators utilizing Self-Release vehicle
202 immobilization devices shall ensure that there is a drop off location either located in
203 or directly adjacent to the lot wherein the Self-Release vehicle immobilization device
204 was utilized. Such drop-off locations shall be in the form of secured receptacles or at
205 attended locations and must be accessible 24 hours per day. Said devices must have a
206 sticker thereon that contains the name and telephone number for the Vehicle
207 Immobilization Service or Operator who owns the Self-Release vehicle
208 immobilization device.

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

211 (a) It shall be unlawful for any person hired by an owner of any private property, or his
212 agent or employee, located within the territorial limits of the City of Hapeville to
213 install or attach to any vehicle a vehicle immobilization device(s), boot(s), or any other
214 instrument(s) that is/are designed to, or have the effect of, restricting the normal
215 movement of such vehicle or by any other means whatsoever to restrict the normal
216 movement of such vehicle, unless the owner of the property, or his agent or employee,
217 has complied with all applicable ordinances regarding the posting of vehicle
218 immobilization signs that comply with the following requirements:

219 SIGNS

220 (1) Signs shall be located at each designated entrance and exit to the parking facility, lot, or
221 area where a vehicle immobilization device or boot is to be used indicating that parking
222 prohibitions are in effect. Such signs must be erected so that the fronts of the signs are
223 visible from each and every parking space or area in the parking facility lot or area.

224 (2) Where there is no designated entrance and exit to the parking facility or lot, such signs
225 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 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 person or entity responsible for affixing and removing the immobilization device;
- e. The name of the Company or entity and a contact phone number where complaints 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.

- 268 5. A vehicle immobilization device cannot be affixed to a vehicle and a fee cannot be
269 charged if the driver of the vehicle returns to the vehicle before the installation of the
270 vehicle immobilization device is complete.
271
- 272 6. A vehicle immobilization service must maintain, or provide access to, a phone number
273 that is staffed, 24-hours a day for 365 days a year, by a live operator to communicate
274 immediately with a driver of vehicle that has been immobilized by the vehicle
275 immobilization service. This shall apply to vehicle immobilization services utilizing
276 Self-Release vehicle immobilization devices.
277
- 278 7. It shall be unlawful for either a vehicle immobilization service or an operator to
279 immobilize vehicles at any off-street pay parking facility, vacant lot, or other private
280 property whereon persons must pay to park their vehicles without having a valid written
281 contract specifically for such services entered into with the private property owner or
282 lawful lessee thereof.
283
- 284 8. It shall be unlawful for a vehicle immobilization service or operator to fail to arrive on
285 the site where the vehicle was immobilized within thirty minutes of being contacted by
286 the owner, driver or person in charge of the vehicle. It shall also be unlawful for either a
287 vehicle immobilization service or an operator to fail to release vehicles from
288 immobilization fifteen minutes after receipt of payment from the owner, driver or person
289 in charge of a vehicle that has been immobilized by a vehicle immobilization device.
290
- 291 9. It shall be unlawful for a vehicle immobilization service or operator to photograph or
292 manually record state issued identification information, credit card, or debit card
293 information for processing.
294
- 295 10. It shall be unlawful for a vehicle immobilization service or operator to fail to
296 provide a receipt of payment of the booting fee to the owner, driver or person in
297 charge of a vehicle. The receipt shall have the following information: The name,
298 address, and phone number of the vehicle immobilization service or company and
299 the name and signature or the person who applied/removed the boot or vehicle
300 immobilization device. Such receipts may be provided electronically.
301
- 302 11. In the event that the application of a vehicle immobilization device damages a vehicle,
303 then the service must pay the cost of repairs for that damage.
304
- 305 12. In the event that the owner or operator of a vehicle, to which an immobilization
306 device has been applied, attempts to operate said vehicle or remove the device,
307 then the vehicle immobilization service is not liable for any damage to that vehicle.
308 Additionally, the owner, driver or person in charge of the vehicle will be liable to
309 the vehicle immobilization service for the cost of damage to the vehicle
310 immobilization device.
311

- 312 13. A vehicle immobilization service must procure reasonable insurance, as determined by
313 the City Council, City Manager, or the city police department, to cover damage caused
314 to vehicles by the use of a vehicle immobilization device.
315
- 316 14. A vehicle immobilization service shall keep copies of permits issued to its operators
317 under this article in their place of business so that they may be inspected by any
318 member of the Hapeville Police Department at any time.
319
- 320 15. A vehicle immobilization service utilizing Self-release vehicle immobilization devices
321 shall ensure that there is a drop off location either located in or directly adjacent to the lot
322 wherein the Self-release vehicle immobilization device was utilized. Such drop-off
323 locations be in the form of secured receptacles or at attended locations and must be
324 accessible 24 hours per day.
325
- 326 16. All Self-release vehicle immobilization devices must have information thereon
327 providing notice of where the device may be returned, along with the contact
328 information for the Vehicle Immobilization Service.
329
- 330 17. Upon proper registration in accordance with this section, a written permit shall issue, to
331 be valid for one calendar year from the date of issuance. Each person affixing or
332 removing a vehicle immobilization device shall at all times carry upon his or her person
333 the permit so issued pursuant to this article and shall display such permit upon request.

334 SECTION 6: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be
335 amended such that it shall read as follows:
336

(i)

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

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

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

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

348 SECTION 9: Chapter 41 Article VIII of the City of Hapeville Code of Ordinances shall be
349 amended such that it shall read as follows: That all ordinances and parts of ordinances in conflict
350 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)