

CITY OF AURORA, ILLINOIS
ORDINANCE NO. _____
DATE OF PASSAGE _____

**AN ORDINANCE CREATING ARTICLE III OF CHAPTER 46 OF THE AURORA
CODE OF ORDINANCES ENTITLED “PRIVATE PROPERTY IMMOBILIZATION”
ESTABLISHING A LICENSING PROGRAM FOR THE IMMOBILIZATION OF
VEHICLES ON PRIVATE PROPERTY**

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals and welfare; and

WHEREAS, the City has received complaints of predatory booting practices which affect the safety and welfare of the public; and

WHEREAS, there is a need to ensure that immobilization of vehicles on private property is well regulated in order to protect the public from potential fraudulent and predatory practices; and

WHEREAS, the creation of this licensing program for vehicle immobilization entities is designed to provide a uniform system, as well as to ensure that clear and adequate notice of vehicle immobilization practices are posted at every private parcel so as to discourage predatory practices; and

WHEREAS, in furtherance of its home rule powers, the City Council desires to protect the public health, safety and welfare of the driving public and eliminate or minimize the detrimental effects that vehicle immobilization on private parking property may have on their well-being and high quality of life. .

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows:

SECTION ONE: That in Chapter 46, a new Article III shall be established entitled “Private Property Immobilization” in the Aurora Code of Ordinances, and shall read as follows:

ARTICLE III PRIVATE PROPERTY IMMOBILIZATION

Sec. 46-60. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section:

Immobilization or ***Booting*** shall mean the act of placing any mechanical device on a stationary vehicle that is designed to be attached to a wheel, tire or other part of a vehicle so as to prohibit the vehicle’s usual manner of movement.

Immobilization 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 vehicle so as to prohibit the vehicle’s usual manner of movement.

Immobilization Operator shall mean any person installing, affixing, or removing an immobilization device on behalf of an immobilization service.

Immobilization Service shall mean any person, sole proprietor, independent contractor, partnership, corporation, limited liability company, or other similar business entity offering services anywhere in the city whereby vehicles are immobilized by the installation of any immobilization device.

Vehicle ***Immobilization Service/Operator License*** shall mean a current and valid license issued to an eligible immobilization service or operator pursuant to this article.

Person means any natural individual, corporation, sole proprietorship, independent contractor, partnership, limited liability company, or other such entities.

Private Parking lot or ***Private Parking Area*** shall mean any private property that is used, wholly or in part, for parking or storing vehicles for residents, tenants, employees, customers, members or guests.

Property Owner shall mean that person who exercises dominion and control over real property, including, but not limited to, the legal titleholder, lessee, designated representative of a housing association or commercial enterprise, or any other such person that is authorized to exercise or share dominion and control over real property.

Vehicle shall mean every motorized device in, upon, or by which any person or property is or may be transported or drawn upon a public street or highway, whether operational or not.

Sec. 46-61. Scope.

- (a) This article applies to all private parking lots or parking areas that cause or allow the immobilization of unauthorized vehicles.
- (b) This article shall not apply to the booting of a vehicle by the City of Aurora or any governmental entity or to any person acting under the direction of the City of Aurora or any governmental entity, when booting of a vehicle is authorized by any provision of law or any rule or regulation promulgated thereunder.

Sec. 46-62. Compliance with this article and other laws.

- (a) It shall be unlawful for any vehicle immobilization service to operate within the territorial limits of the city without having obtained a license granted by the chief of police, or his or her designee, as provided in this article.
- (b) Compliance with the requirements set forth in this article does not excuse compliance with any other applicable state laws or city ordinances relating to licensing, parking regulations or parking facilities.

Section. 46-63. General requirements for applicants of a vehicle immobilization service/operator license.

- (a) All applicants, whether they are a vehicle immobilization service or an operator, shall furnish all data, information and records relevant to their application requested by the city's police department, and failure to furnish this data, information and records within 30 days from the date of the request shall result in the automatic denial of the application. Applicants, by the filing of an application, agree to produce for oral interrogation, any person requested by the chief of police or his designee or the corporation counsel or his designee who has knowledge of facts relevant to the application. The failure to produce a person within 30 days after being requested to do so shall result in an automatic denial of the application. Persons under an applicant's control are the partners of the applicant if the applicant is a partnership, the officers of the applicant if the applicant is a corporation, and/or employees, officers or agents of the applicant.
- (b) No license under this article shall be issued to any person who has been convicted of any felony in this or any other county or state within three (3) years immediately prior to the date of application. Further, to be eligible for a license under this article, each individual immobilization operator must possess a current valid driver's license or state issued identification as provided by the laws of the State of Illinois. Any person denied a license under this article or any person whose license may be revoked shall have the right to appeal this denial or revocation to the license review board as provided in Section 46-78(c) of this article.
- (c) Should any person with a license obtained pursuant to this article be convicted of any felony during the license year, such conviction shall constitute the basis for adverse action, including suspension or revocation.

(d) Once issued, immobilization operators shall carry with them, at all times, a copy of the license when they are in the process of installing or removing a vehicle immobilization device.

(e) Every applicant shall provide to the chief of police or his designee the name of every person or entity with whom the applicant has a contract or agreement for immobilization services in the city.

Sec. 46-64. Application for Immobilization Operator and/or Service.

(a) Every application for a vehicle immobilization service/operator license shall be on a form prescribed by the chief of police or his designee and shall provide the following information and/or documentation, including but not limited to:

(1) Sufficient information to identify the applicant, including but not limited to, full legal name, date of formation of legal entity, any trade name under which the applicant operates, telephone number, and all business and residence addresses, as reported to the Secretary of State and/or the Illinois Commerce Commission. If the applicant is a corporation or limited liability company, the foregoing information shall also be provided for each member, corporate officer, director, resident agent and shareholder that hold or control five percent (5%) or more of the stock of said entity. If the applicant is a partnership, the foregoing information shall also be provided for each general and each limited partner. Post office box addresses shall not be accepted.

(2) Certificate of Good Standing demonstrating that all corporate or limited liability company applicants are qualified to do business under the laws of Illinois.

(3) Photocopy of all current licenses issued by the Illinois Commerce Commission to the applicant.

(4) Photocopy of the certificate of occupancy of the applicant indicating authorization for the business use of the applicant for each business address identified in the application.

(5) A list of all persons with any ownership interest in the applicant who have previously been denied a license by the city, another municipality or the State of Illinois.

(6) A description of proposed, existing and previous of the applicant's service vehicles' colors and markings.

(7) A description of the applicant's management plan, which shall include but not be limited to the following: location and description of all places of business, a description of all existing immobilization equipment, a system for handling complaints and damage caused to immobilized vehicles during the process of immobilization, and a description of any communication and payment system.

(8) Days and hours of operation of the immobilization service and/or operator.

(9) Individual applicants shall submit to a background check by the police department.

In the case of a corporate, limited liability company, or partnership applicant, all such information shall be provided by all corporate officers, directors, members, or partners, as the case may be, and by all stockholders who own, hold or control five percent (5%) or more of issued and outstanding stock in the corporation or beneficial interest therein, and by all officers and directors of any corporate general partners of a partnership and by stockholders who own, hold or control five percent

(5%) or more of issued and outstanding stock in a corporate general partner, or beneficial interest therein.

(10) Proof of insurance as required in Section 46-72 of this article.

(11) The signature of each individual applicant, the signature of the president or vice-president of a corporate applicant, the signature of the managing member of a limited liability company, or the signature of all general partners of a partnership applicant.

(12) An affidavit by an authorized agent of the applicant affirming that the information provided in the application is true and accurate, along with an agreement to abide by the provisions of this article, the ordinances of the city, and the laws of the State of Illinois.

(13) Such additional information about the applicant as the chief of police or his designee may deem appropriate.

(b) It shall be a violation of this section to fail to report to the police department any material change pertaining to the information supplied by the applicant or licensee for a license, including, but not limited to, changing the location of any of the applicant's place(s) of business within seven (7) business days of said change.

Sec. 46-65. Application, license and renewal fees.

Fees required under this article shall be determined, from time to time, by separate ordinance or resolution of the city council.

Sec. 46-66. Restrictions on license.

(a) It shall be unlawful for either a vehicle immobilization service and/or an operator to procure a license by fraudulent conduct, false statement of a material fact or by omission of a material fact.

(b) It shall be unlawful for either a vehicle immobilization service and/or an operator to pay a gratuity to any person who does not own or operate a private parking lot or area for information as to illegally parked vehicles.

(c) It shall be unlawful for the owner or manager of a private parking lot or area to have a direct or indirect monetary or ownership interest in a vehicle immobilization service and/or operator that for compensation immobilizes unauthorized vehicles in a private parking lot or area in which the owner or manager has an interest.

(d) It shall be unlawful for either a vehicle immobilization service or an operator to tender payment, rebate, compensation, or other valuable consideration to a property owner, employee, agent or a person in possession of a private parking lot or area in excess of the reasonable and customary fee ordinarily charged by the property owner or person in possession of the parking lot or area for parking thereon, such payment shall be considered a kickback.

(e) It shall be unlawful for either a vehicle immobilization service and/or an operator to charge fees in excess of those set out in Section 46-70 of this article.

(f) A vehicle immobilization service and/or operator must maintain a 24-hour a day, 365 day 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.

(g) It shall be unlawful for either a vehicle immobilization service and/or an operator to immobilize vehicles at any off-street parking facility, vacant lot, or other private property without having a valid written contract specifically for such services with the private property owner or lawful lessee thereof prior to any immobilization activity. All such contracts for immobilization services shall have a term of not more than one (1) year, and shall provide the property owner or lessee with the ability to terminate any such contract upon thirty (30) days written notice. All such contracts shall allow the property owner or lessee to declare, with twenty four (24) hours written notice to the vehicle immobilization service and/or operator, a defined period of time not greater than fourteen (14) days per year, wherein there shall be no vehicle immobilization on the property owner or lessee's property.

(h) It shall be unlawful for a vehicle immobilization service and/or operator to fail to arrive on the site where the vehicle was immobilized within one (1) hour of being contacted by the owner, driver or person in charge of an immobilized vehicle. It shall also be unlawful for either a vehicle immobilization service or an operator to fail to release vehicles from immobilization within one (1) hour after receipt of payment from the owner of a vehicle that has been immobilized.

(i) It shall be unlawful for a vehicle immobilization service or operator to fail to provide a receipt of payment for the booting fee paid by the owner of a vehicle. The receipt shall have the information set forth in Section 46-71(e).

(j) In the event that the application of a vehicle immobilization device damages a vehicle, then the vehicle immobilization service or operator must pay the cost of repairs for that damage. In the event that the owner 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 or operator is not liable for any damage to that vehicle. Additionally in that event, the owner of the vehicle will be liable to the vehicle immobilization service or operator for the cost of damage to the vehicle immobilization device.

Sec. 46-67. Registration of vehicles used by a vehicle immobilization service.

It shall be unlawful for any person, either as principal, agent or employee, to use or to operate within the city any vehicle(s) assisting in the operation of an operator or vehicle immobilization service without first having filed a registration for such vehicle(s) with the chief of police or his designee upon forms to be furnished by the department. All registrations for each vehicle utilized shall expire on June 30th of each year and shall be renewed at least thirty (30) days prior to the expiration date. The information for registration shall contain the following:

- (1) The make, model and manufacturer's serial number of the vehicle;
- (2) Date the vehicle was put into service to assist in the operation of a vehicle immobilization service;

- (3) The driver's license number of operators of the vehicle who shall drive or operate the vehicle on behalf of the vehicle immobilization service; and
- (4) Such other information related to the vehicle as may be required by the chief of police or his designee.

Sec. 46-68. Lettering on vehicles.

It shall be unlawful for any person, either as principal, agent or employee, to operate within the territorial limits of the city any vehicle to assist in the operation of a vehicle immobilization service unless the vehicle shall have displayed on each side in plain view the name of the vehicle immobilization service, the address from which the vehicle immobilization service is operating and the telephone number of the vehicle immobilization service. The lettering shall be in a contrasting color to the color of the vehicle and shall be at least two and one-half inches in height.

Sec. 46-69. Service calls.

It shall be unlawful for any vehicle immobilization service, or the vehicle immobilization service's agent, representative, employee or operator to go to any place and immobilize a vehicle unless called on a particular date by the property owner, property owner's agent, representative or employee to the private parking lot or area where a vehicle immobilization service or operator has a contract to immobilize illegally parked cars.

Sec. 46-70. Fees charged by vehicle immobilization service.

(a) Any vehicle immobilization service or operator, engaged in the business of the immobilization of vehicles, shall not charge the owner of any immobilized vehicle, in excess of \$75.00 for the removal of the vehicle immobilization device or devices if removed on the same day it was placed on the vehicle. A fee of \$75.00 may be charged for each additional day the immobilization device is on the vehicle. The \$75.00 fee shall be all-inclusive; no additional fees may be charged for using other equipment.

(b) Fees may be paid by cash, check, credit card, or debit card at no additional charge.

Sec. 46-71. Notice to vehicle owners; signs.

(a) It shall be unlawful for any person or business entity hired by a property owner, or his agent or employee, to install or attach to any vehicle a vehicle immobilization device(s), boot(s), or 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 of the property, or his agent or employee, has complied with all applicable city zoning ordinances regarding the posting of signs and the following requirements:

(1) Signs shall be located at each designated entrance to a parking lot or parking area where parking prohibitions are to be effective. Where there is no designated entrance, such signs shall be erected so as to be clearly visible from each and every parking space.

(2) Such signs shall be a minimum of seven and one-half square feet in area (two and one-half feet by three feet).

(3) Such signs located at a designated entrance to a parking lot or area shall be at least four feet above the site grade. Where there is no designated entrance, such signs shall be six feet above site grade.

(4) Such signs shall state in letters at least three inches high that "Unauthorized vehicles may be immobilized (booted) at owner's risk and expense." Such signs shall also include the following language in letters at least two and one-half inches high:

- i. Name of property owner of private parking lot or area.
- ii. Terms of use for the subject parking lot or area.
- iii. Name of licensed immobilization service and/or operator, address and 24-hour telephone number to call for immobilization device removal and/or to make a complaint.
- iv. Cost of immobilization: \$75.00 for removal, if removed same day placed; \$75.00 per day immobilization device is in place after initial placement;
- v. Statement notifying user of a private parking lot or area that the immobilization fee is payable by cash, check, and credit or debit card.
- vii. Time limit before a booted immobilized vehicle is towed.

(b) No less than fourteen (14) days prior to the commencement of immobilization services at a particular private parking lot or area, the property owner of said lot or area shall post, at each and every location where immobilization services are to be conducted, a minimum of two (2) signs, no smaller than 24 inches in height and 36 inches in width, in a conspicuous location, setting forth the date upon which a immobilization operation shall commence.

(c) No abbreviations shall be used in the language contained in the sign. The lettering on such signs shall be black on a white, reflective background, and shall be illuminated if out of headlight range.

(d) The vehicle immobilization service and/or operator and the owner of the private parking lot or area shall be jointly and severally liable for violations of this section.

(e) In addition to the notice required above, the vehicle immobilization service or operator shall prepare a multiple-copy form that contains the following information when immobilizing a vehicle:

- (1) The name, business address, and phone number of the vehicle immobilization operator and the vehicle immobilization service;
- (2) The name of the owner, operating company or general manager of the parking facility on which the immobilization device was installed;
- (3) The name of the individual(s) authorizing and performing the immobilization;
- (4) The date, time and location the immobilization device was installed;
- (5) A description of the booted vehicle, including the make, model, and license plate number;
- (6) The amount of the fee for removal of a immobilization device; and

(7) The name of the person who removed the immobilization device, the date and time the device was removed, the name of the person to whom the vehicle was released, and the amount of fees paid for removal of the immobilization device and parking fees, as well as the amount of applicable sales tax.

A copy of the form must be given to the owner of the vehicle. The vehicle immobilization service shall maintain the original form at its place of business for a period of three (3) years. Any police officer shall have the right, upon request, to inspect and copy such records to determine compliance with the requirements of this Article.

Sec. 46-72. Insurance Requirements.

(a) Each licensed vehicle immobilization service and operator licensed under this article shall have in full force and effect, during the license period, public liability, property damage and fire and theft insurance coverage. Proof of such coverage shall be a minimum eligibility requirement. The amounts of public liability and property damage coverage shall not be less than:

- (1) Public liability, five hundred thousand dollars (\$500,000.00) per each accident.
- (2) Property damage, fifty thousand dollars (\$50,000.00) per each accident.
- (3) Comprehensive general liability: Must include the following industry standard forms of insurance:
 - a. Premises/operation coverage;
 - b. Products and completed operations coverage;
 - c. Blanket contractual liability;
 - d. Five hundred thousand dollars (\$500,000.00) combined single limit, or five hundred thousand dollars (\$500,000.00) bodily injury and two hundred fifty thousand dollars (\$250,000.00) property damage.
- (4) Comprehensive auto liability: Must include the following endorsements:
 - a. All owned autos, hired-car coverage, and employers non-owned auto coverage;
 - b. The policy shall not contain a radius restriction of less than fifty (50) miles;
- (5) Workers' compensation and employers' liability: Statutory limits for workmen's compensation and a one hundred thousand dollar (\$100,000.00) employers' liability limit. In the event a vehicle immobilization service and/or operator is exempt under State law from providing workers' compensation coverage, the vehicle immobilization service and/or operator must provide a sworn affidavit stating they are is exempt.

(b) Each vehicle immobilization service or operator shall supply the city with a certificate of insurance, which indicates coverage for the above mentioned minimum insurance requirements and carries the provision that said insurance shall not be cancelled without giving the city at least thirty (30) days' written notice of cancellation or material change. The certificate of insurance shall also name the city as additional non-insured on each policy.

Sec. 46-73. Indemnification.

(a) Each and every vehicle immobilization service or operator performing services under this Article shall defend, indemnify and hold harmless the City of Aurora, the City Council, and elected and appointed officials, employees, including, without limitation, employees of the police department, attorneys, agents, representatives, and volunteers, from any and all suits, claims or actions, damages, losses, regardless of the nature of the action or damages, arising out of the immobilization of vehicles, operation of a vehicle immobilization service or arising out of the performance of any requirements of this article or in consequence thereof.

(b) In the event a claim arises, the city may have attorneys of its own choice prepare and conduct its defense and the vehicle immobilization service and/or operator shall pay all reasonable costs of defense of the city in any such action, including the fees of attorneys of the city's choice.

Sec. 46-75. Conduct; responsibility for employees' acts; joint liability of owner of private parking lot or private parking area.

(a) All vehicle immobilization service and/or operators shall conduct their business with integrity and in a lawful, orderly, businesslike manner and use every means to avoid any conflicts between any interested parties. The chief of police or his designee is charged with the investigation of complaints related to services provided under this article. For purposes of this section, in the course of determining whether a vehicle immobilization service and/or operator has violated this section, the chief of police or his designee may consider various factors, including, without limitation, adequacy of services or immobilization equipment, maintenance of all business records, number and type of complaints received from the public or police department personnel, promptness in response time, professionalism of all staff and history of excessive damage claims or theft. A violation of this section may result in a fine, suspension and/or revocation of a license.

(b) The vehicle immobilization service or operator licensed under this article shall be responsible for the acts of their employees and shall be responsible for damage to all vehicles resulting from the installation of an immobilization device.

Sec. 46-76. Periodic inspection of records, equipment, facilities.

All vehicle immobilization services and/or operators authorized to act pursuant to this article shall be subject to periodic checks of all records, equipment and storage facilities by police officers. A vehicle immobilization service and/or operator that fails to produce the requested records or allow for inspections of its equipment and facilities at the request of the police, shall be immediately suspended until the investigation in question is resolved.

Sec. 46-77. Enforcement.

This article shall be enforced by the Aurora Police Department.

Sec. 46-78. Fine, suspension or revocation of license.

(a) The chief of police, or his designee, may impose a fine and/or suspend for any period of up to thirty (30) days or revoke any license issued if he determines that the licensee has violated any of the following provisions:

- (1) Any violation of this article.
- (2) Any law of the state, any ordinance of the county, or any ordinance of the city, which affects the public health, welfare and safety and which violation occurred as part of the operation of the licensee's business.
- (3) The licensee is more than forty-five (45) days delinquent in the payment of any debt to the city.
- (4) For the purposes of this article, every licensee shall be deemed responsible for the acts of his agents or employees whether or not such licensee knowingly permits or has actual knowledge of the acts.

(b) The police chief shall provide the vehicle immobilization service and/or operator with written notice at least fifteen (15) days prior to the effective date of the imposition of a fine, suspension or revocation by hand-delivery or by mailing, via first class mail, a copy of said notice to the vehicle immobilization service and/or operator's place of business. Said written notice of violation shall include:

- (1) The nature of the violation and the allegations which form the basis of the violation;
- (2) The amount of the fine and/or the effective date of the suspension or revocation;
- (3) The actions, if any, the vehicle immobilization service and/or operator may take to prevent the fine, suspension or revocation from occurring; and
- (4) The procedure which the vehicle immobilization service and/or operator must follow to request a hearing to appeal the fine, suspension or revocation.

(c) The final determination as to suspension or revocation shall be made in accordance with division 6 "Administrative Adjudication System," sections 27-101 through 27-113 of this Code.

Sec. 46-79. Penalties.

Any licensee and/or property owner violating any provisions of this article shall be fined not less than five hundred dollars (\$500.00), nor more than two thousand five hundred dollars (\$2,500.00), plus costs, for an offense, and a separate offense shall be deemed committed on each day during, or on which a violation occurs or continues. For purposes of this article, each and every immobilized vehicle shall be considered as a separate offense.

Section Two: That this Ordinance shall be in full force and effect, and shall be controlling immediately upon passage and approval.

Section Three: That all ordinances or parts of ordinances thereof in conflict herewith are hereby repealed to the extent of any such conflict.

Section Four: That any Section or provision of this Ordinance that is construed to be invalid or void shall not affect the remaining sections or provisions which shall remain in full force and effect thereafter.

PASSED by the City Council of the City of Aurora, Illinois, on _____ .

AYES _____

NAYS _____

ABSTENTION _____

APPROVED AND SIGNED by the Mayor of the City of Aurora, Illinois, on _____ .

Mayor

ATTEST:

City Clerk

City of Aurora
Law Department
44 East Downer Place
Aurora, IL 60507
(630) 256-3060