



CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council **DATE:** October 9, 2012

FROM: John McDonough, City Manager

AGENDA ITEM: Amendment to Chapter 58 of the City of Sandy Springs Code of Ordinances ("Code") to create a new Article IV, regulating vehicle immobilization services and operators operating within the City of Sandy Springs (the "City"); and resolution setting fees for vehicle immobilization services and operators

MEETING DATE: For Submission onto the October 16, 2012, City Council Regular Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum
Ordinance Amendment
Resolution

APPROVAL BY CITY MANAGER: JFM APPROVED

PLACED ON AGENDA FOR: 10/16/2012

CITY ATTORNEY APPROVAL REQUIRED: () YES () NO

CITY ATTORNEY APPROVAL: SM

REMARKS:



To: Honorable Mayor and City Council Members

From: Wendell K. Willard

Date: For Submission onto the October 16, 2012 City Council Regular Meeting Agenda

Agenda Item: Amendment to Chapter 58 of the City of Sandy Springs Code of Ordinances ("Code") to create a new Article IV, regulating vehicle immobilization services and operators operating within the City of Sandy Springs (the "City"); and resolution setting fees for vehicle immobilization services and operators.

City Attorney's Recommendation:

The City Attorney's Office recommends that City Council approve the attached ordinance amendment and resolution.

Background and Discussion:

Vehicle immobilization services are currently being used by persons owning, operating, or managing private parking lots in the City. The City has received numerous complaints of alleged predatory practices related to the use of vehicle immobilization services by such persons. Boots are installed on parked vehicles very quickly and drivers are charged as much as \$500 to remove the boot, without regulation.

While the City has a towing ordinance, it does not have an ordinance governing these booting practices by vehicle immobilization services and operators. Several surrounding jurisdictions have adopted ordinances addressing vehicle immobilization services installing the boots.

The attached amendment to Chapter 58, Traffic and Vehicles, of the Code would, among other things, require vehicle immobilization services and operators to: (a) register with the City; (b) obtain licenses and permits to operate in the City; (c) limit the amount to be charged by a vehicle immobilization service; and (d) provide penalties for violation of the ordinance.

The attached resolution sets the fees to be charged pursuant to provisions of the vehicle immobilization ordinance.

Alternatives:

Not to adopt this ordinance and resolution. Vehicle immobilization services and operators could continue to operate in the City without regulation.

Attachment:

Ordinance amendment.
Resolution setting fees for vehicle immobilization services and operators.

**AN ORDINANCE AMENDING CHAPTER 58 OF THE CITY OF SANDY SPRINGS
CODE OF ORDINANCES BY REGULATING VEHICLE IMMOBILIZATION SERVICES
AND OPERATORS; AND FOR OTHER PURPOSES.**

WHEREAS, the City of Sandy Springs (“City”) has heretofore adopted an ordinance for Traffic and Vehicles, codified as Chapter 58 of the City of Sandy Springs Code of Ordinances (the “Code”); and

WHEREAS, the City finds that vehicle immobilization services are currently being used by persons owning, operating, or managing private parking lots within the City; and

WHEREAS, the City has had numerous complaints of predatory practices of vehicle immobilization services and operators on private parking lots within the City; and

WHEREAS, the Mayor and City Council have determined that it is appropriate to amend Chapter 58 of the City Code to include certain regulations for the operation of vehicle immobilization services and operators in the City;

THEREFORE, the Mayor and City Council of the City of Sandy Springs hereby ordain that the Traffic and Vehicles ordinance, Chapter 58 of the City of Sandy Springs Code of Ordinances, is hereby amended by adding a new Article IV, which shall read as follows:

“Article IV. Vehicle Immobilization Service

- Sec. 58-86. Compliance Required.**
 - Sec. 58-87. Definitions.**
 - Sec. 58-88. License to Operate a Vehicle Immobilization Service.**
 - Sec. 58-89. Permit to Operate as an Operator of a Vehicle Immobilization Service.**
 - Sec. 58-90. General Requirements for Applicants of a License or Permit.**
 - Sec. 58-91. Registration of Vehicles Used by a Vehicle Immobilization Service.**
 - Sec. 58-92. Application, License and Permit Fees.**
 - Sec. 58-93. General Requirements for Vehicle Immobilization Services and Operators.**
 - Sec. 58-94. Enforcement.**
 - Sec. 58-95. Fees Charged by Vehicle Immobilization Service.**
 - Sec. 58-96. Signs.**
 - Sec. 58-97. Lettering on Vehicles.**
 - Sec. 58-98. Service Calls.**
 - Sec. 58-99. Vehicle not Immobilized upon Operator of Vehicle Returning.**
 - Sec. 58-100. License not in Lieu of Occupation Tax Certificate.**
 - Sec. 58-101. Effective Date of Enforcement of Article.**
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- Sec. 58-86. Compliance Required.**

It shall be unlawful for any operator or vehicle immobilization service to operate within the municipal limits of the City of Sandy Springs without complying with this article.

Sec. 58-87. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Impound shall mean any means to prohibit a motor vehicle's usual manner of movement or operation by the installation of a vehicle immobilization device.

Vehicle immobilization service shall mean a person or entity that does not operate parking facilities as a primary purpose and uses vehicle immobilization devices as a method of parking control for others, including, but not limited to, educational institutions, houses of worship, restaurants, shopping centers and freestanding establishments with adjacent parking for patrons, customers, or invitees.

Operator shall mean any person or entity operating vehicle immobilization devices for a vehicle immobilization service.

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.

Sec. 58-88. License to Operate a Vehicle Immobilization Service.

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. It shall be unlawful for any vehicle immobilization service to be licensed hereunder if that vehicle immobilization service is also engaged in the business of parking lot ownership or operations or valet parking operations within the municipal limits of the City of Sandy Springs.

C. Every vehicle immobilization service desiring to obtain a license required by this article shall file an application with the City of Sandy Springs police department on forms to be prepared and approved by the police department. The application shall state the name and address of the applicant; where the proposed business is to be located; nature and character of the business to be carried on; if a partnership, the names of the partners; if a corporation, the names of the officers; the charges to be imposed for various services; amounts and types of insurance held; such other information as may be required by the chief of police; and shall be sworn by the applicant or agent thereof.

Sec. 58-89. Permit to Operate as an Operator of a Vehicle Immobilization Service.

A. Every operator desiring to obtain a permit required by this article shall file an application with the city's police department on forms to be prepared and approved by the police department. The application shall state the name and address of the applicant, and telephone number; driver's license number or state issued identification number; and such other information as may be required by the chief of police and shall be sworn by the applicant.

B. Once issued, operators shall carry with them their permit at all times when they are in the process of installing a vehicle immobilization device.

C. A permit will be valid for a period of one (1) year and shall be renewed on or before its expiration. Persons applying for the permit or renewal shall make themselves available for

photographing, fingerprinting for the purpose of a background check, and such other investigation as may be required by the police department. The fee for a permit shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. It shall be unlawful for any person to be an operator without first having been fingerprinted by the Sandy Springs police department and having been issued a permit by the city's police department indicating that such person is eligible to be an operator of a vehicle immobilization service or device. Any person denied a license under this section shall have the right of appeal to the mayor and city council.

D. No person shall impound a vehicle by the use of a vehicle immobilization device unless he/she has obtained a permit to operate as an operator of a vehicle immobilization service.

E. It shall be unlawful for any operator to install vehicle immobilization devices on vehicles if such operator is engaged in the business of parking lot ownership or operations or valet parking operations within the municipal limits of the City of Sandy Springs.

Sec. 58-90. General Requirements for Applicants of a License or Permit.

A. All applicants, whether a vehicle immobilization service or an operator, shall furnish all data, information and records relevant to the application requested of them by the city's police department. Failure to furnish this data, information and records within thirty (30) days from the date of the request shall automatically result in dismissal, with prejudice, 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. When a person applies for an operator's permit, the chief of police or his designee shall have a complete and extensive search made to determine if there is a police record of such person. If there is a record of conduct prohibited by this chapter, issuance of an operator's permit shall be denied.

C. A new search may be conducted on any person issued an operator's permit if the chief of police receives information which warrants such a new search. If the new search reveals evidence that warrants revocation of the operator's permit, the operator's permit may be revoked.

D. Should any of the information provided by an individual on the original application, or any renewal, change during the one (1) year term of an issued operator's permit, the individual shall promptly notify the city police department of the change and provide the new information. The city police department shall then issue, at no charge to the individual, a new operator's permit for the remainder of the one (1) year term. The chief of police or his designee is authorized to conduct a concurrent criminal history check at no charge to the individual.

E. No license or permit under this article shall be issued to any person who has been convicted in this state or any other state within three (3) years immediately prior to the application for a license or permit of a crime involving distribution or possession of illegal narcotics, sex offenses, or any other crime involving moral turpitude. Further, to be eligible for an operator's permit under this article, the person applying must possess a current Georgia driver's license. 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 mayor and city council.

F. Should any person with a license or a permit obtained pursuant to this article be charged with committing any crime as described in subsection (e) above, then such charge shall constitute the basis for adverse action, including suspension or revocation of the license or permit.

G. A license or permit issued through administrative error may be revoked by the chief of police.

Sec. 58-91. 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 assisting in the operation of a vehicle immobilization service without first having filed a registration for such vehicle with the city's police department on forms to be furnished by the police department. All registrations for each vehicle utilized shall expire on December 31 of each year and shall be renewed between December 1 and December 31 of each year. The information for registration shall contain the following:

- A. The make, model and manufacturer's serial number of the vehicle;
- B. The date the vehicle was put into service to assist in the operation of a vehicle immobilization service;
- C. The driver's license number of any operator of the vehicle;
- D. The name of the insurance company with which the owner of the vehicle and all operators have liability insurance coverage with respect to the operation of the vehicle, as required by law;
- E. The operator permit number of each operator who shall drive or operate the vehicle on behalf of the vehicle immobilization service; and
- F. Such other information related to the vehicle as may be required by the Sandy Springs police department.

Sec. 58-92. Application, License and Permit Fees.

A. A non-refundable application fee for all applicants seeking a vehicle immobilization service license shall be submitted with the completed application, made payable to the Sandy Springs police department. The application fee shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

B. An annual license fee shall be paid if an application for a vehicle immobilization service license is approved. The annual license fee shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

C. A non-refundable application fee for all applicants seeking an operator's permit shall be paid upon the filing of a completed application. The application fee shall be made payable to the city's police department. The amount of the application fee shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. An additional fee shall be charged to cover the cost for the background check required by Section 4(C) in an amount set by resolution of the city council, which shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

D. An annual permit fee shall be paid if an operator's permit is approved. The amount of the annual permit fee shall be set by resolution of the city council and shall remain in effect until modified or amended by subsequent resolution adopted by the city council. An additional fee shall be charged to cover the cost for the background check required by Section 4(C) in an amount set by resolution of the city council, which shall remain in effect until modified or amended by subsequent resolution adopted by the city council.

E. The annual fees set forth in this section shall be prorated starting with the date the license or permit is issued to December 31 of the first year of operation as needed.

Sec. 58-93. General Requirements for Vehicle Immobilization Services and Operators.

A. 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.

B. 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.

C. 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, and any such excess payment shall be considered a kickback.

D. It shall be unlawful for either a vehicle immobilization service or an operator to charge fees in excess of those set forth in this article.

E. 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, unless properly authorized in writing by the chief of police of the city.

F. A vehicle immobilization service must maintain a twenty-four (24) hour a day, three hundred sixty-five (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.

G. It shall be unlawful for either a vehicle immobilization service 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 entered into with the private property owner or lawful lessee thereof.

H. It shall be unlawful for a vehicle immobilization service 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 the vehicle. It shall also be unlawful for either a vehicle immobilization service or an operator to fail to release vehicles from immobilization within thirty (30) 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.

I. 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.

J. In the event that the application of a vehicle immobilization device damages a vehicle, then the vehicle immobilization service must pay the cost of repairs for that damage.

K. 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.

L. A vehicle immobilization service must procure reasonable insurance, as determined by the city's police department, to cover damage caused to vehicles by the use of a vehicle immobilization device.

M. A vehicle immobilization service shall keep copies of permits issued to its operators under this article in its place of business so that such permits may be inspected by any member of the Sandy Springs police department at any time.

Sec. 58-94. Enforcement.

A. The chief of police of the city's police department or the chief's designee may recommend the revocation, suspension, the imposition of a fine, or non-renewal of a license of a vehicle immobilization service or a permit of an operator for due cause. As used in this section, the term "due cause" includes unlawful conduct under any section of this article by a vehicle immobilization service or an operator.

B. No adverse action shall be taken regarding any license or permit pursuant to this article until and after notice has been provided and a hearing has been held before the mayor and city council to determine just cause for such action. Notice of such hearing shall be given in writing and served at least ten (10) days prior to the date of the hearing thereon. The notice shall state the grounds of the complaint against the holder of such license or permit and shall designate the time and place where such hearing will be held.

C. The notice shall be served upon the license or permit holder by delivering the notice personally or by leaving such notice at the place of business or residence of the license or permit holder in the custody of a person of suitable age and discretion. If the license or permit holder cannot be found and the service of notice cannot otherwise be made in the manner provided in this section, a copy of such notice shall be mailed registered postage, fully prepaid, addressed to the license or permit holder at the license or permit holder's place of business or residence, at least thirteen (13) days prior to the date of such hearing.

D. The mayor and city council shall conduct the hearings and report its conclusions and recommendations to the chief of police. The chief of police, upon receiving the report, shall, within sixty (60) days, deny applications for new licenses and shall revoke, suspend or refuse to renew any affected license. In lieu of suspension, revocation or the failure to renew, the mayor and city council may impose a fine upon any vehicle immobilization service or operator, such fine not to exceed \$1,000.00 for each violation of this article. The decision of the mayor and city council may be appealed to the Fulton County Superior Court by filing a writ of certiorari.

E. Any vehicle immobilization service whose license has been revoked or an operator whose permit has been revoked pursuant to this code section shall be disqualified from reapplying for

such a license or permit for twelve (12) months immediately following the revocation. The violation of any provision of this article by any person with any ownership interest in a vehicle immobilization service may result in the revocation of the vehicle immobilization service's license.

F. The actions of an operator working within the scope of his employment for a vehicle immobilization service can be attributed to the vehicle immobilization service for purposes of determining due cause under this section.

G. A violation of this article shall be a violation of the Code, as set forth in section 1-10 of the Code.

Sec. 58-95. Fees Charged by Vehicle Immobilization Service.

A. Any vehicle immobilization service engaged in the business of the immobilization of vehicles shall not charge the owner of any immobilized vehicle or personal property in excess of \$40.00 per day for the removal of the vehicle immobilization device or devices or the release from impoundment. The \$40.00 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. 58-96. Signs.

It shall be unlawful for any person hired by an owner of any private property, or his agent or employee, located within the territorial limits of the city 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:

A. 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.

B. Such signs shall be a minimum of seven and one-half (7½) square feet in area (two and one-half (2½) feet by three (3) feet).

C. The bottom of such signs located at a designated entrance to a parking lot shall be at least four (4) feet above the site grade. Where there is no designated entrance, the bottom of such signs shall be six (6) feet above site grade.

D. Such signs shall state in letters at least three (3) inches high that "Unauthorized vehicles may be impounded (booted) at owner's risk and expense." Such signs shall also include the following language in letters at least two and one-half (2½) inches high:

1. Cost of impound - \$40.00 per day;
2. Boot Removal - Call 000-000-0000 (substitute correct telephone number).
3. Vehicle may not be impounded if owner/operator returns before boot is attached.

4. Complaints may be made to:

(a) Parking Company Call - 000-000-0000 (substitute correct telephone number).

(b) Sandy Springs Police Department - Call 770-551-6900.

5. This lot is owned or operated by (insert name) and can be reached at - Call 000-000-0000 (substitute correct number).

E. The sign shall also include the hours during which free parking is permitted and the hours during which pay is required.

F. Misleading signs are prohibited.

No abbreviations shall be used in the language contained in the sign. Where this ordinance leaves a blank, the signs shall include the appropriate information. The lettering on such signs shall be black on a white, reflective background, and shall be illuminated if out of headlight range.

Sec. 58-97. 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 (2½) inches in height.

Sec. 58-98. Service Calls.

It shall be unlawful for any vehicle immobilization service or operator to go to any place and immobilize a vehicle unless:

A. called by the owner, owner's agent, representative or employee of a commercial parking lot; or

B. where a vehicle immobilization service has a contract to immobilize illegally parked cars at a specific commercial parking lot.

Sec. 58-99. Vehicle not Immobilized upon Operator of Vehicle Returning.

The operator of any vehicle immobilization services shall not immobilize a vehicle and shall not charge a fee if the driver of the vehicle returns before the installation of the vehicle immobilization device is complete.

Sec. 58-100. License not in Lieu of Occupation Tax Certificate.

The license issued under this article shall be cumulative and not in lieu of any business license or tax occupation certificate issued by the city.

Sec. 58-101. Effective Date of Enforcement of Article.

This ordinance shall become effective upon adoption by the city council and approval by the mayor.”

SO ORDAINED, this ____ day of _____, 2012.

Approved:

Eva Galambos, Mayor

ATTEST:

Approved as to Form and Content:

Michael Casey, City Clerk
(Seal)

Wendell Willard, City Attorney

**STATE OF GEORGIA
COUNTY OF FULTON**

A RESOLUTION ESTABLISHING FEES FOR LICENSES AND PERMITS FOR VEHICLE IMMOBILIZATION SERVICES AND OPERATORS, AS PROVIDED BY CHAPTER 58, "TRAFFIC AND VEHICLES," ARTICLE IV, "VEHICLE IMMOBILIZATION SERVICE," SECTION 58-92, "APPLICATION, LICENSE AND PERMIT FEES," OF THE CODE OF ORDINANCES OF THE CITY OF SANDY SPRINGS.

WHEREAS, pursuant to Chapter 58, Article IV, Section 58-86, et seq. ("Ordinance") of the Code of Ordinances of the City of Sandy Springs, Georgia ("Code"), an application may be filed seeking a license to operate a vehicle immobilization service in the City of Sandy Springs ("City"), and to obtain a permit to operate as an operator of a vehicle immobilization service, all as set forth in that section; and

WHEREAS, Section 58-92 of the Code provides that in order to obtain such a license or permit, an applicant shall pay such fees when submitting an application or renewal request as set by resolution of the city council; and

WHEREAS, in order to obtain a license or permit under the Ordinance, the applicant seeking such a license or permit must undergo a background check or background checks;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA, AND IT IS RESOLVED BY THE AUTHORITY OF SAID CITY COUNCIL AS FOLLOWS:

The City of Sandy Springs Mayor and City Council hereby authorize the imposition of the following fees in connection with the application for a license or permit pursuant to Section 58-92 of the Code:

1. A nonrefundable application fee in the amount of \$100.00, which fee shall accompany any application for a vehicle immobilization service license submitted pursuant to Section 58-88 of the Code; and
2. A nonrefundable application fee in the amount of \$25.00, which fee shall accompany any application for an operator's permit submitted pursuant to Section 58-89 of the Code; and
3. A nonrefundable fee in the amount of \$50.00 for a background check for each person applying for a vehicle immobilization service license or operator's permit, which fee shall accompany any application submitted pursuant to Sections 58-88 and 58-89 of the Code; and
4. An annual license fee in the amount of \$500.00 upon approval of an application for a vehicle immobilization service license; and
5. An annual permit fee in the amount of \$50.00 upon approval of an application for an operator's permit; and

6. An annual fee in the amount of \$50.00 for a background check for each person approved for a vehicle immobilization service license or operator's permit.

RESOLVED this the _____ day of _____, 2012.

Approved:

Eva Galambos, Mayor

Attest:

Michael Casey, City Clerk

(Seal)