



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2018-2428

Substitute

Public Hearing: YES NO

Department: Board of Commissioner - District 5

SUBJECT:

Commission District(s): All Districts.

An Ordinance to Amend Chapter 26 of the DeKalb County Code to add the proposed Booting of Vehicles on Private Property Ordinance.

Information Contact: Commissioner Mereda Davis Johnson

Phone Number: 404-371-2410

PURPOSE:

Establishes an ordinance to regulate vehicle immobilization and booting services in DeKalb County.

NEED/IMPACT:

Currently there are no ordinances or regulations for vehicle immobilization and booting services in unincorporated DeKalb County. The proposed ordinance will be known as the Booting of Vehicles on Private Property Ordinance, and will require permits for operation of booting or vehicle immobilization devices, establish a daily maximum for removal fees, and mandate notice signage on properties that allow booting or vehicle immobilization.

FISCAL IMPACT:

None.

RECOMMENDATION:

Adopt the ordinance in a substantial final form acceptable to the County Attorney and authorize the Chief Executive Officer to execute all necessary documents.

AN ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA, AS REVISED 1988, CHAPTER 26, PERTAINING TO WRECKERS AND BOOTING, AND FOR OTHER PURPOSES

WHEREAS, the Governing Authority of DeKalb County is authorized to adopt such ordinances or regulations for the governing and policing of the county for the purpose of protecting and preserving the health, safety, and welfare of the citizens of the county; and

WHEREAS, the Governing Authority has determined that these regulations will help regulate businesses operating vehicle immobilization services in DeKalb County.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING AUTHORITY OF DEKALB COUNTY, GEORGIA, AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF SAME, that Chapter 26 of the Code of DeKalb County, as Revised 1988, is hereby amended to read as follows:

PART I. ENACTMENT

Sec. 26-16 - 26-39. Reserved

* * *

ARTICLE II.

Booting of Vehicles on Private Property Ordinances

Sec. 26-40. Title and Purpose.

This article shall be known as the **Booting of Vehicles on Private Property Ordinance**. This article shall specifically apply to businesses operating booting or vehicle immobilization services on private property and immobilization device operators, as defined herein. It shall be unlawful for any person, business, principal, agent, employee or independent contractor to use, operate, charge for, or retain services for the use of any booting services or vehicle immobilization services on private property located within the unincorporated areas of DeKalb County without complying with the provisions of this article.

Sec. 26-41. Definitions.

- (a) Wherever the term "county" is used in this article, it shall be construed to mean the unincorporated area of DeKalb County, Georgia.

(b) Words or phrases not defined in this chapter, but defined in applicable state law or the Code of DeKalb County, as Revised 1988 (hereinafter, the “Code”), shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

- (1) *Business License* as used in this article means a business occupation tax certificate issued pursuant to applicable law. The terms “business license” and/or “business occupation tax certificate” are interchangeable and are defined pursuant to Chapter 15 of the Code of DeKalb County.
- (2) *Boot, booting, mechanical locking device, or vehicle immobilization device* as used in this article are interchangeable and mean any mechanical device or boot 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.
- (3) *Occupant* means any person, entity, business, tenant, or individual(s) that is occupying the premises or property where vehicle is parked or located, whether or not that occupant has a formal lease.
- (4) *Operator* means any person, employee, sole proprietor, independent contractor, partnership or similar business entity, operating booting or vehicle immobilization devices for a vehicle immobilization service.
- (5) *Parking lot, premises, property and area* mean the location and real property at which the vehicle is located, with or without permission of the property owner, and continue to retain their ordinary meaning.
- (6) *Permit* as used in this article means a permit issued by the police department for the use, service or operation of a booting or vehicle immobilization device.
- (7) *Private property owner* means any person, entity, business, or individual(s) that is the record owner of the real property on which a vehicle is located.
- (8) *Towing and wrecker services* as ordinarily defined are not interchangeable with booting and shall be governed separately by Article I of Chapter 26 of the County Code, as amended.
- (9) *Vehicles* as used herein shall mean all cars, trucks, passenger vehicles, and tractor-trailer trucks of all classes and axles.
- (10) *Vehicle immobilization service* means a business, person, including a sole proprietor, independent contractor, partnership or similar business entity offering booting or other services anywhere in the unincorporated portions of the County whereby vehicles are immobilized by the attachment or use of a chain, booting or vehicle immobilization device.

Sec. 26-42 Business occupation tax certificate.

It shall be unlawful for any person to operate or cause to be operated any immobilization device or vehicle immobilization service within the unincorporated boundaries of the county without first having obtained a business occupation tax certificate in compliance with Chapter 15 of this Code, where applicable.

Sec. 26-43 Permit to operate a vehicle immobilization service.

- (a) It shall be unlawful for any vehicle immobilization service or operator to operate within the territorial limits of unincorporated DeKalb County without having obtained a permit issued by the police department or their designee, as provided in this article.
- (b) The owner or officer of a vehicle immobilization service desiring to obtain a permit required by this article shall file an application with the DeKalb County police department on forms to be prepared and approved by the police department. Applicants for the permit or renewal of a permit shall make themselves available for photographing, fingerprinting, and such other background investigation as may be required by the police department.
- (c) The permit application shall state:
 - (1) The name and address of the applicant;
 - (2) Where the business is located;
 - (3) Nature and character of the business to be carried on;
 - (4) Valid addresses of all property for which the permit is requested;
 - (5) A copy of a current and valid business license or business occupation tax certificate;
 - (6) If a sole proprietor, the name of the owner;
 - (7) If a partnership, the names of the partners;
 - (8) If a corporation, the names of the officers;
 - (9) The charges to be imposed for various services;
 - (10) Type of body camera(s) to be used;
 - (11) Amounts and types of insurance held;
 - (12) Such other information as may be required by the police department; and
 - (13) Shall be sworn by the applicant or agent thereof.
- (d) No permit under this article shall be issued to an applicant unless the applicant has a valid and current business occupation tax certificate to do business in the State of Georgia.
- (e) No permit under this article shall be issued to any applicant who has been convicted in this state or any other state within three years immediately prior to the application for a permit or license a crime involving distribution or possession of illegal narcotics, sex offenses, financial crimes, or any other crime involving moral turpitude. Any person operating a vehicle immobilization device without a permit may be cited or charged with criminal trespass or violation of any other applicable law.
- (f) Should any vehicle immobilization service with 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 by the chief of police.

- (g) A permit will be valid for a period of twelve months from the date issued and shall be renewed on or before its expiration.
- (h) Fees under this article shall be recommended by the police department for approval by the board of commissioners.
- (i) The county, department or their designee may revoke the permit of any vehicle immobilization service or operator when such business or person has been issued a citation and found to be in violation of any of the terms of this chapter or in violation of any other applicable law, per the policies and procedures as established by the police department.

Sec. 26-44 Permit for operators of a vehicle immobilization device.

- (a) It shall be unlawful for an individual, independent contractor or employee to operate or use a vehicle immobilization device unless he/she has obtained a permit under this section.
- (b) Every individual desiring to obtain a permit shall file an application with the police department on forms to be prepared and approved by the police department, subject to the policies and permit requirements as established by the department. Persons applying for the permit or renewal shall make themselves available for photographing, fingerprinting, and such other background checks or investigation as may be required by the police department.
- (c) The permit application shall state:
 - (1) The name and address of the applicant/operator;
 - (2) The telephone number of the applicant/operator;
 - (3) The applicant's driver's license number or state issued identification number;
 - (4) Such other information as may be required by the police department; and
 - (5) Shall be sworn by the applicant.
- (d) Once issued, operators shall carry with them their permit or a copy of their permit at all times when they are in the process of installing or removing a vehicle immobilization device.
- (e) No permit under this article shall be issued to any applicant who has been convicted in this state or any other state within three years immediately prior to the application for a license or permit of a crime involving distribution or possession of illegal narcotics, sex offenses, financial crimes, or any other crime involving moral turpitude. Any person operating a vehicle immobilization device without a permit may be cited or charged with criminal trespass or violation of any other applicable law.
- (f) Should any individual with 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 the immediate suspension or revocation of the permit by the chief of police.

- (g) A permit will be valid for a period of twelve months and shall be renewed on or before its expiration.
- (h) Fees under this article shall be recommended by the police department for approval by the board of commissioners.
- (i) The department or their designee may petition to revoke the permit of any vehicle immobilization service or operator when such business or person has been issued a citation and found to be in violation of any of the terms of this chapter or in violation of any other applicable law, and subject to policies and procedures as established by the police department.

Sec. 26-45. Revocation of business license.

- (a) The department or their designee may petition the county to revoke the business license of any vehicle immobilization service or operator when such service or operator has been convicted or found to be in violation of any of the terms of this article or in violation of any other applicable law, ordinance or regulation.
- (b) A business license revocation shall immediately terminate all permits, authority and permission granted to the vehicle immobilization service and operator. Any person whose business license has been revoked shall not be eligible to again apply for a permit for a period of one (1) year from the date of revocation.
- (c) Any person whose business license has been revoked may file an appeal pursuant to Chapter 15 of the Code, as amended.

Sec. 26-46. Vehicle immobilization device operations, generally.

- (a) Vehicle immobilization and booting fees shall be limited as provided herein. Any vehicle immobilization service shall not charge the owner or operator of any immobilized vehicle or personal property for the removal of the vehicle immobilization device in excess of the below fees within a 24-hour time period:

Semi-trucks including those without a trailer	\$150.00
All vehicles other than semi-trucks	\$85.00

- (b) The operator must provide and shall have the means to accept and receive payment by cash, check, credit card, or debit card at no additional charge. The operator shall provide and have the means to issue a receipt upon payment.
- (c) This article shall not prohibit the towing of vehicles left or abandoned on property for more than twenty-four (24) hours, pursuant to Chapter 26 of the Code of DeKalb County, as Revised 1988, and subject to all other applicable laws.

- (d) A vehicle immobilization service must maintain a 24-hour per day, 365 days per year phone number that is staffed by a live operator to communicate immediately with the owner or driver of a vehicle that has been immobilized by the vehicle immobilization service.
- (e) Vehicle immobilization devices shall be removed within 1 hour of the initial request and payment of the permissible fee. The operator shall have immediate access to equipment to remove and/or release the vehicle immobilization device. The removal fee shall be forfeited and the vehicle immobilization device released at no charge if the operator does not remove the vehicle immobilization device within 1 hour after being contacted by the owner or operator of the immobilized vehicle.
- (f) Property owners or occupants that assess a charge for parking may use vehicle immobilization devices only when a paper or electronic receipt for each paid parking charge is provided at the time of payment. Equipment used to collect payment for permitted parking must be on-site and be capable of producing a receipt. The receipt shall include the address of the lot and the time and date of payment, and if applicable, any time limitations to which the parking charge applies. Properties, parking lots or areas that assess a charge for parking and allow the operation of a vehicle immobilization device must provide parking payment options that include both cash, debit, and credit card options. No fee shall be assessed for the removal of a vehicle immobilization device when the owner or operator of the vehicle can immediately show a receipt and proof of parking fees for permitted parking within the time their vehicle is located on the premises.
- (g) The operator must wear an identification badge issued by the vehicle immobilize service listing the name and address of the vehicle immobilize service employing the operator, all applicable booting permit numbers issued by DeKalb County, the operator's first name, and a passport sized photo of the operator.
- (h) The operator shall at all times carry their County-issued permit.
- (i) The operator shall wear a uniform issued by the vehicle immobilization service with the name of the vehicle immobilization service employing the operator.
- (j) During hours of operation, the operator shall wear a body camera, the type and design which shall be approved by the police department as part of the permit process. Body camera recordings shall be maintained by the operator for a period not less than 30 days. Recordings shall be provided to the County or police department upon verbal or written request.
- (k) It shall be unlawful for any person, either as principal, agent or employee, to operate within the territorial limits of the unincorporated County 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.
- (l) It shall be unlawful for an operator to immobilize vehicles on any private property unless contacted by an occupant of the property requesting the immobilization of an unauthorized vehicle or without having entered into a valid written contract for vehicle immobilization

services with the private property owner, lawful lessee, managing agent, or other person or occupant in control of the property.

- (m) It shall be unlawful for either a vehicle immobilization service or an operator to make any payment to an owner, occupant, or agent of a parking lot in excess of the reasonable and customary fee ordinarily charged by the owner, occupant, or agent of the parking lot for parking thereon, and any such excess payment shall be considered a kickback.
- (n) Emergency vehicles used in police, fire or medical emergencies shall not be immobilized for any reason. Upon proof that an unmarked vehicle is used for emergency purposes, the vehicle immobilization device shall be removed immediately at no charge.
- (o) The police department or their designee shall have the authority to request the immediate removal of a vehicle immobilization device for any emergency or public safety purpose.
- (p) It shall be unlawful to immobilize any occupied vehicle. The person occupying the unauthorized vehicle shall either pay the appropriate fee for the privilege of parking at the location or immediately remove the vehicle from the lot.

Sec. 26-47. Notice signs.

- (a) It shall be unlawful for any person, except for law enforcement personnel, to affix a vehicle immobilization device to any automobile parked on private property within the unincorporated areas of the County, regardless of whether a charge for parking is assessed, unless the following conditions are met:
 - (1) At every parking facility, lot or area where vehicle immobilization may occur signs (Sample Sign #1) stating parking prohibitions are in effect and booting may occur shall be posted at every point of ingress and egress to or from the premises. Parking areas with no designated ingress or egress must place signs every 50 feet across the property frontage. The sign shall be at a minimum of 24 inches by 30 inches in size and lettering on the sign shall be a minimum of 1 inch in height. The sign shall be positioned so that the bottom edge is at least seven feet from the ground. The wording on such signs shall consist of the following information and be consistent with Sample Sign #1:
 - (a) a booting symbol;
 - (b) the statement “Warning Unauthorized Vehicles Booted”

Sample Sign #1:



- (2) Signs shall also be erected within the lot, so that a sign can be clearly visible from each row of parking. The sign (Sample Sign #2) shall be at a minimum of 24 inches by 30 inches in size and lettering on the sign shall be a minimum of 1 inch in height. The sign shall be positioned so that the bottom edge is at least seven feet from the ground. Signs larger than the measurements herein shall not be subject to the requirements of the sign ordinance. The wording on such signs shall consist of the following information and be consistent with Sample Sign #2:
- (a) the statement “Warning Booting Enforced”
 - (b) the hours of booting enforcement
 - (c) the name of the business served by the parking lot or the name of the shopping center if more than one business occupant;
 - (d) the maximum fees for removal of the device;
 - (e) the name of the vehicle immobilization service and current phone number to contact for removal of the immobilization device;

- (f) the statement “Booting devices shall be removed within 1 hour of contact with company representative or any fees shall be waived.”;
- (g) the statement “Chapter 26 of the Code of DeKalb County, as Revised 1988”; and
- (h) contain a matrix code or website address provided by the Police Department linking to the County Code.

Sample Sign #2:

**WARNING
BOOTING ENFORCED
Monday- Friday
8am-5pm**

PARKING ONLY FOR
[SHOPPING PLAZA NAME]
Unauthorized vehicles may be booted.

Boot removal fee: \$85 cars, \$150 semi-trucks
Cash, check, credit or debit

Booting devices shall be removed within
1 hour of contact with
company representative
or any fees shall be waived.

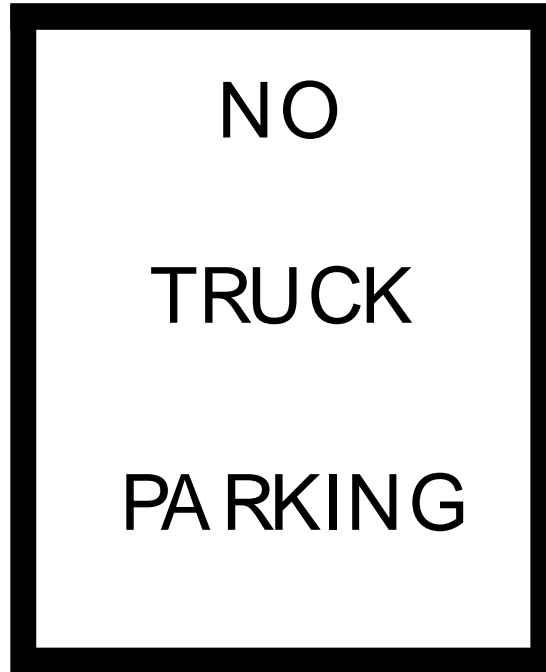
DeKalb Code Chapter 26, Article II

Matrix
Code

[Booting Company Name]
[Contact Phone Number]

- (3) Any property owner or occupant prohibiting parking of semi-trucks on the lot shall post signs at every point of ingress and egress to or from the premises stating semi-truck parking is prohibited and booting may occur. Parking areas with no designated ingress or egress must place signs every 50 feet across the property frontage. The sign shall be positioned so that the bottom edge is at least seven feet from the ground. The wording on such signs shall consist of the following information and be consistent with Sample Sign #3:

Sample Sign # 3:



- (4) All signs must be legible, not faded, and unobscured by vegetation.
- (5) Lettering on all signs shall be black on white. If vehicle immobilization devices are to be utilized before 7:00 a.m. or after 6:00 p.m., the signs shall have a reflective grade background, and be illuminated if out of headlight range.

Sec. 26-48. Vehicle immobilization on residential property.

In addition to the requirements in this Chapter, no operator or any partner, member, officer, employee, or contractor of such operator shall immobilize any motor vehicle in a driveway, parking lot, or parking area that is designated for residential parking or residential use unless the owner or driver of the motor vehicle has been provided with posted or written notice of the use of vehicle immobilization devices on said property. Any device applied to any such motor vehicle in violation of this section shall be removed without the payment of any fee.

Sec. 26-49. Violations.

- (a) The provisions of this article may be enforced by authorized or designated county employees, including police officers and code enforcement officers.
- (b) Any person, operator, or vehicle immobilization service who does any anything prohibited by or fails to do anything required by this article, upon citation by an authorized county employee, including, but not limited to a police officer or a code enforcement officer, and upon conviction of the violation in a court of competent jurisdiction, which includes the Magistrate or State Courts of DeKalb County, and shall be subject to a fine and/or imprisonment with the following minimum penalties:
 - (1) Upon a first conviction of any violation if this article, the court shall impose a fine of not less than \$200.00 in addition to any other penalty or punishment imposed by the court.
 - (2) Upon a second conviction of violation of this article, within one year measured from the date of any previous conviction of a violation of this article, the court shall impose a fine of not less than \$500.00 in addition to any other penalty or punishment imposed by the court.
 - (3) Upon a third conviction of a violation of this article, within one year measured from the date of any previous conviction of a violation of this article, the court shall impose a fine of not less than \$1,000.00 in addition to any other penalty or punishment imposed by the court.
- (c) Upon three (3) convictions under this article, the police department may request and the county shall have the discretion to review and revoke a business license subject to the notice and hearing requirements found under Chapter 15 of the Code.

Sec. 26-50. Insurance.

- (a) All vehicle immobilization services under this article shall procure, or cause to be procured, and keep continuously in full force and effect during the duration of operations, and shall keep on file with the police department, a policy of comprehensive general liability insurance and business auto liability insurance on a certificate of insurance, issued by a casualty insurance company authorized to do business in this state and in the standard form approved by the insurance commissioner of the state.
- (b) The comprehensive general liability insurance must be on a broad form and provide limits of liability for bodily injury and property damage in an amount of \$500,000 per occurrence with a \$1,000,000 aggregate.
- (c) Certificates of Insurance for companies doing business in the county, covering:
 - (1) Statutory Workers Compensation Insurance, or proof that the vehicle immobilization service is not required to provide such coverage under State law;
 - (2) Professional Liability Insurance with a limit of \$1,000,000; and

(3) Commercial General Liability Insurance covering all operations with a combined single limit of \$1,000,000.

(d) Each insurance policy must state that it may not be canceled, materially modified or non-renewed unless the insurance company gives the police department 30 days advance written notice.

Sec. 26-51. Enforcement of this article.

This article shall be effective upon adoption by the board of commissioners and approval by the chief executive officer (the “Effective Date”). Except for the fee and time restrictions and requirements in Section 26-46 of this article, which section shall be enforceable on the Effective Date, vehicle immobilization services and operators that are subject to this article shall have 90 days from the Effective Date to comply with all other sections in this article.

Sec. 26--52 - 60. Reserved.

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PART II. EFFECTIVE DATE

This article shall be effective upon adoption by the board of commissioners and approval by the chief executive officer (the Effective Date).

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PART III. SEVERABILITY

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

ADOPTED by the DeKalb County Board of Commissioners, this _____ day of _____, 2018.

JEFF RADER
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this _____ day of _____, 2018.

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

MARIAN ADEIMY
Assistant County Attorney

JACK H. LUMPKIN
Deputy COO/Director of Public Safety