**Rule No.: R161-18.16e**

**NOTICE OF EMERGENCY RULE ADOPTION**

**ADOPTION DATE:**
**____, 2018**

By: Spencer Cronk, City Manager

The City Manager has adopted the following emergency rule. This notice is issued under Chapter 1-2 of the City Code.

Effective Date of Emergency Rule

The rule adopted by this notice is effective on **August 20, 2018** and expires on **December 19, 2018** (not later than the 121st day after the effective date). The rule may be renewed one time after the expiration date. If the rule is renewed, it will expire on the 61st day after the renewal date.

Text of Proposed Rule

The text of the emergency rule is attached.

A copy of the complete text of the adopted rule is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Parking Operations, 1111 Rio Grande Street, Austin Texas 78701

and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas 78701.

Nature of Emergency

Emergency rules are necessary to regulate, enforce and safeguard public safety, health, and convenience regarding the involuntary immobilization or booting of vehicles on parking facilities. Vehicle immobilization involves substantial contact with members of the public whose vehicles have been immobilized on parking facilities in remote locations, or locations far from their homes, and at all times of day or night. Emergency action is necessary to ensure there are binding provisions that all vehicle immobilization service providers and operators must adhere to for safe operations.

Brief Explanation of the Emergency Rules

The emergency rule adopts policies and procedures relating to enforcement of Chapter 13-7 of the City Code, relating to Vehicle Immobilization Services. This is an emergency rule to adopt regulations to be implemented by the Austin Police Department and the Austin Transportation Department. The emergency rule establishes the license and permit requirements and criteria for vehicle immobilization services and operators. It also establishes language that vehicle immobilization service providers must include on receipts provided to the public, including information on how to make complaints.

Authority for Adoption of Emergency Rule

The authority and procedure for adoption of these rules is set forth in Chapter 1-2 and in Section 13-7-1 of the Austin City Code.

Certification by City Attorney

By signing this Notice of Emergency Rule Adoption Rule 161-18.16e, the City Attorney certifies that the City Attorney has reviewed the rule finds adoption of the rule to be a valid exercise of the City Manager's authority.

**REVIEWED AND APPROVED**:

_____ Date: _____
Spencer Cronk
City Manager

_____ Date: _____
Brian Manley
Chief of Police

_____ Date: _____
Rob Spillar
Director, Transportation Department

_____ Date: _____
Anne L. Morgan
City Attorney

# VEHICLE IMMOBILIZATION EMERGENCY RULES

## A. VEHICLE IMMOBILIZATION SERVICE LICENSE REQUIREMENTS

(1) Application required. A person applying for a vehicle immobilization service license must file an application with the Austin Transportation Department Director (director) on a form prescribed by the director and signed by the applicant.

(2) Application contents. An application must include:

(a) the applicant's name, address, and date of birth;
(b) the applicant's Texas driver's license number and a copy of the applicant's driver's license;
(c) the applicant's driver's license number that was issued by another state, if the applicant has not had a domicile in this state for more than 30 days, and a copy of the applicant's driver's license;
(d) the name, address, and telephone number of the applicant's employer, if applicable;
(e) information about the applicant's criminal history;
(f) information about the applicant's prior work experience related to vehicle immobilization or vehicle towing;
(g) the number and type of boots utilized by the vehicle immobilization service, including the make, model, and identification number;
(h) documentary evidence from an insurance company indicating a willingness to provide at least the minimum insurance required by chapter 13-7;
(i) a list, to be kept current, of the owners and management personnel of the proposed vehicle immobilization service, and of all employees who will participate in the proposed vehicle immobilization service, including names, dates of birth, state driver's license numbers, social security numbers, and vehicle immobilization operator's permit numbers;
(j) proof of a valid certificate of occupancy issued by the city in the name of the company and for the location of the vehicle immobilization service business; and
(k) other information required by the director.

(3) Denial, Suspension or Revocation of Vehicle Immobilization Service License. A vehicle immobilization service license allows persons to operate a vehicle immobilization business in the City of Austin. Involuntarily immobilizing vehicles poses a high risk of danger to the public. The director finds that such activities involve substantial contact with the public, including contact with persons whose vehicles may be immobilized at all hours of day and night, and in remote locations, or in locations far from their homes. This business also affords special opportunities for theft and fraud. Therefore, there is a serious need to protect the public from the types of criminal conduct

represented by the offenses listed in this section.

(a) The director may deny a person's application for a vehicle immobilization service license, or may suspend or revoke a vehicle immobilization service license granted under chapter 13-7, if the person:

(1) has a driver's license that is suspended or revoked;
(2) is not at least nineteen years of age;
(3) operates a vehicle immobilization service without a valid vehicle immobilization service license, or during a time period when the person's vehicle immobilization service license is suspended, or after the person's vehicle immobilization service license has been revoked;
(4) knowingly or intentionally violates any of the provisions of chapter 13-7;
(5) uses, or allows the use of, vehicle immobilization equipment that has not been identified to the city;
(6) fails to prove or maintain at least the minimum insurance required by chapter 13-7 for the operation of a vehicle immobilization service or the vehicles used by the service and its employees;
(7) operates, or allows the operation of, vehicle immobilization equipment in a grossly negligent manner that endangers the life or safety of any person, including failure of the licensee's operator to remove a boot within one hour after the time the licensee is notified to do so by the vehicle owner or operator;
(8) submits false information on a license application; or
(9) has been convicted of any crime:

(A) involving, but not limited to:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code;

(vii) theft as described in Chapter 31 of the Texas Penal Code;

(viii) fraud as described in Chapter 32 of the Texas Penal Code;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483 of the Texas Health and Safety Code), or of any comparable state or federal law;

(xiii) a violation of the Controlled Substances Act (Chapter 481 of the Texas Health and Safety Code), or of any comparable state or federal law; or

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (8)(A)(i) through (xiii) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense;

Exception: A conviction for the following may result in denial or revocation when more than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date: Murder; Capital Murder; Manslaughter; Criminally Negligent Homicide; Intoxication Manslaughter; Robbery; Kidnapping; Indecency with a Child; Sexual Assault; Aggravated Assault; Theft of a motor vehicle; any offense requiring the person to register as a sex offender; Failure to Register as a Sex Offender; or three felony convictions for any offense or combination of offenses; and Unauthorized Use of a Motor Vehicle; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(10) has been convicted of, or discharged from probation for, driving while intoxicated:

(A) within the preceding 24 months; or

(B) more than one time within the preceding five years;

(11) is the subject of an outstanding warrant of arrest; or
(12) is required by law to register as a sex offender.

(b) An applicant who has been convicted of an offense listed in Subsection (a)(9) or (10) may qualify for a vehicle immobilization service license only if the director or her/his designee determines that the applicant is presently fit to operate a vehicle immobilization service. In determining present fitness under this section, the director shall consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license to engage in the business or occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved;

(4) the relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the licensed business or occupation;

(5) the extent and nature of the applicant's past criminal activity;

(6) the age of the applicant at the time of the commission of the crime;

(7) the amount of time that has elapsed since the applicant's last criminal activity;

(8) the conduct and work activity of the applicant prior to and following the criminal activity;

(9) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and

(10) other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff or chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the director the evidence required to determine present fitness under Subsection (b) of this section.

(d) In addition to the factors for determining an applicant's fitness under Subsection (b) of this section, the director shall also consider whether the applicant maintained a record of steady employment; supported his/her dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(e) A sentence of community supervision (probation) is considered a conviction. During the period of community supervision that a person serves under a sentence of deferred adjudication, the person is considered to have been convicted. A dismissal and discharge in a deferred adjudication proceeding shall not be considered a conviction for the purpose of this section.

(f) Provided, however, no such vehicle immobilization service license will be denied, revoked or suspended if any conviction was set aside as invalid or it is found that the license should not be denied, revoked or suspended under Chapter 53 of the Texas Occupations Code.

(g) If an applicant timely appeals to the City Manager's Office regarding a decision of the director or the director's designee to suspend, deny or revoke a vehicle immobilization service license, the director, or a member of the director's executive staff, will review all evidence presented at the applicant's ATD hearing to ensure that the evidence supports the decision of the director or the director's designee, before forwarding such evidence to the City Manager's Office.

(4) Suspensions. The director may suspend a vehicle immobilization service license for a maximum of:

(a) 30 days for a first violation; and
(b) 60 days for a second or subsequent violation.

## B. VEHICLE IMMOBILIZATION OPERATOR'S PERMIT REQUIREMENTS

(1) Application required. A person applying for a vehicle immobilization operator's permit must file an application with the police chief on a form prescribed by the police chief and signed by the applicant.

(2) Application contents. An application must include:

(a) the applicant's name, address, and date of birth;
(b) the applicant's Texas driver's license number and a copy of the applicant's driver's license;

(c) the applicant's driver's license number that was issued by another state, if the applicant has not had a domicile in this state for more than 30 days, and a copy of the applicant's driver's license;
(d) the name, address, and telephone number of the applicant's employer, if applicable;
(e) information about the applicant's criminal history;
(f) information about the applicant's prior work experience related to vehicle immobilization or vehicle towing;
(g) the name and vehicle immobilization service license number of the vehicle immobilization service that will sponsor and employ the applicant as a vehicle immobilization operator;
(h) other information required by the police chief; and
(i) the prescribed non-refundable fee.

(3) Denial, Suspension or Revocation of Vehicle Immobilization Operator's Permit. A vehicle immobilization operator's permit allows persons to perform vehicle immobilizations in the City of Austin. Involuntarily immobilizing vehicles poses a high risk of danger to the public. The police chief finds that such activities involve substantial contact with the public, including contact with persons whose vehicles may be disabled at all hours of day and night, and in remote locations, or in locations far from their homes. This business also affords special opportunities for theft and fraud. Therefore, there is a serious need to protect the public from the types of criminal conduct represented by the offenses listed in this section.

(a) The police chief may deny a person's application for a vehicle immobilization operator's permit, or may suspend or revoke a vehicle immobilization operators' permit granted under chapter 13-7, if the person:

(1) has a driver's license that is suspended or revoked;
(2) immobilizes vehicles without a valid vehicle immobilization operator's permit, or during a time period when the person's vehicle immobilization operator's permit is suspended, or after the person's vehicle immobilization operator's permit has been revoked;
(3) knowingly or intentionally violates any of the provisions of chapter 13-7;
(4) uses, or allows the use of, vehicle immobilization equipment that has not been identified to the city;
(5) operates, or allows the operation of, vehicle immobilization equipment in a grossly negligent manner that endangers the life or safety of any person;
(6) submits false information on a permit application; or
(7) has been convicted of any crime:

(A) involving, but not limited to:

(i) criminal homicide as described in Chapter 19 of the Texas Penal Code;

(ii) kidnapping as described in Chapter 20 of the Texas Penal Code;

(iii) a sexual offense as described in Chapter 21 of the Texas Penal Code;

(iv) an assaultive offense as described in Chapter 22 of the Texas Penal Code;

(v) robbery as described in Chapter 29 of the Texas Penal Code;

(vi) burglary as described in Chapter 30 of the Texas Penal Code;

(vii) theft as described in Chapter 31 of the Texas Penal Code;

(viii) fraud as described in Chapter 32 of the Texas Penal Code;

(ix) tampering with a governmental record as described in Chapter 37 of the Texas Penal Code;

(x) public indecency (prostitution or obscenity) as described in Chapter 43 of the Texas Penal Code;

(xi) the transfer, carrying, or possession of a weapon in violation of Chapter 46 of the Texas Penal Code, or of any comparable state or federal law;

(xii) a violation of the Dangerous Drugs Act (Chapter 483 of the Texas Health and Safety Code), or of any comparable state or federal law;

(xiii) a violation of the Controlled Substances Act (Chapter 481 of the Texas Health and Safety Code), or of any comparable state or federal law; or

(xiv) criminal attempt to commit any of the offenses listed in Subdivision (8)(A)(i) through (xiii) of this subsection;

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the applicant was convicted of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the applicant was convicted of a felony offense;

Exception: A conviction for the following may result in denial or revocation when more than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date: Murder; Capital Murder; Manslaughter; Criminally Negligent Homicide; Intoxication Manslaughter; Robbery; Kidnapping; Indecency with a Child; Sexual Assault; Aggravated Assault; Theft of a motor vehicle; any offense requiring the person to register as a sex offender; Failure to Register as a Sex Offender; or three felony convictions for any offense or combination of offenses; and Unauthorized Use of a Motor Vehicle; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if, within any 24-month period, the applicant has two or more convictions of any misdemeanor offense or combination of misdemeanor offenses;

(8) has been convicted of, or discharged from probation for, driving while intoxicated:

(A) within the preceding 24 months; or

(B) more than one time within the preceding five years;

(9) is the subject of an outstanding warrant of arrest; or
(10) is required by law to register as a sex offender.

(b) An applicant who has been convicted of an offense listed in Subsection (a)(7) or (8) may qualify for a vehicle immobilization operator's permit only if the police chief or her/his designee determines that the applicant is presently fit to immobilize vehicles in the City. In determining present fitness under this section, the police chief shall consider the following:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a permit to engage in the occupation;

(3) the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person had previously been involved;

(4) the relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the permitted occupation;

(5) the extent and nature of the applicant's past criminal activity;

(6) the age of the applicant at the time of the commission of the crime;

(7) the amount of time that has elapsed since the applicant's last criminal activity;

(8) the conduct and work activity of the applicant prior to and following the criminal activity;

(9) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release; and

(10) other evidence of the applicant's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the applicant; the sheriff or chief of police in the community where the applicant resides; and any other persons in contact with the applicant.

(c) It is the responsibility of the applicant, to the extent possible, to secure and provide to the police chief the evidence required to determine present fitness under Subsection (b) of this section.

(d) In addition to the factors for determining an applicant's fitness under Subsection (b) of this section, the police chief shall also consider whether the applicant maintained a record of steady employment; supported his/her dependents; maintained a record of good conduct; and paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(e) A sentence of community supervision (probation) is considered a conviction. During the period of community supervision that a person serves under a sentence of deferred adjudication, the person is considered to have been convicted. A dismissal and discharge in a deferred adjudication proceeding shall not be considered a conviction for the purpose of this section.

(f) Provided, however, no such vehicle immobilization operator's permit will be denied, revoked or suspended if any conviction was set aside as invalid or it is found that the license should not be denied, revoked or suspended under Chapter 53 of the Texas Occupations Code.

(g) If an applicant timely appeals to the City Manager's Office regarding a decision of the police chief or the chief's designee to suspend, deny or revoke a vehicle immobilization operator's permit, the police chief, or a member of the chief's executive staff, will review all evidence presented at the applicant's APD hearing to ensure that the evidence supports the

decision of the police chief or the chief's designee, before forwarding such evidence to the City Manager's Office.

(4) Suspensions. The police chief may suspend a vehicle immobilization operator's permit for a maximum of:

(a) 30 days for a first violation; and

(b) 60 days for a second or subsequent violation.

## C. SAFETY, CUSTOMER SERVICE & COMPLAINT PROCEDURE

(1) While engaging in vehicle immobilization operations, licensees shall require, and permittees shall wear, high-visibility safety apparel that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107–2004 publication entitled "American National Standard for High-Visibility Apparel and Headwear."

(2) Licensees shall have a customer service phone number that is available and answered (24) twenty-four hours a day, (7) seven days a week for customers to request removal of a boot, report safety concerns, make complaints, or ask questions.

(3) All notifications to vehicle owners required by section 13-7-44 must include the following statement regarding the procedure for making a complaint against the vehicle immobilization service or operator:

"You have the right to make a complaint with the Austin Transportation or Police Department about the company or person who booted your vehicle. To make a complaint, call the non-emergency number for the City of Austin (3-1-1) and ask to make a booting complaint. In addition to your name and contact information, you will need to provide the date, time, and location of the boot removal and the name of the booting company that placed and removed the boot. You may also make a complaint by sending the required information to: Booting_Complaints@austintexas.gov