

ORDINANCE # 2008 - 14

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF DORAL, FLORIDA, PROVIDING REGULATIONS FOR TOWING OF VEHICLES; REQUIRING TOWING COMPANIES TO OBTAIN A PERMIT FROM THE CITY PRIOR TO ENGAGING IN BUSINESS; REQUIRING PROOF OF INSURANCE; REQUIRING NOTICE PROVISIONS; REGULATING TOWING IN ASSIGNED PARKING AREAS IN PRIVATE RESIDENTIAL COMMUNITIES; PROVIDING FOR PENALTIES; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council finds that unauthorized parking of vehicles constitutes a public nuisance and may constitute a public emergency effecting the property, public safety and welfare of the City's residents; and

WHEREAS, the City Council desires to regulate the towing of vehicles to ensure the safety of its residents and property and to ensure notice is provided to individuals who have had their vehicles towed; and

WHEREAS, the City Council desires to regulate towing companies to ensure that they conduct business in a fair and safe manner which preserves the quiet enjoyment of the community for its residents; and

WHEREAS, the City Council finds that it is in the best interests of the City to provide regulations concerning the towing of vehicles; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

Section 2. A new Section of the Code of Ordinances of the City of Doral, entitled "Towing," shall be created as follows:

Definitions.

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

(1) *Business enterprise* means a unit of economic organization or activity in the form of an individual natural person, sole proprietorship, corporation, partnership, organization, joint venture, trust, foundation, firm, group, society, association or any combination thereof engaged in the recovering, towing, removing and storing of parked vehicles from private real property at the express instruction of the owners of such real property. However, "business enterprise" shall not mean nor include in its meaning the term "property owner."

(2) *Chief* means the chief of the police department, that department of City government or its successor responsible for administering permits pursuant to this ordinance.

(3) *Express instruction* means:

a. *During business hours.* A clear, definite and explicit written request by a property owner or agent, on a form approved by the City Manager, to a business enterprise that a specific and individual vehicle parked without permission of the property owner be removed. Such owner or agent shall not be an officer, agent, employee or associate of the business enterprise. The request must indicate the time of the instruction and must be signed and dated by the property owner or agent in the presence of the employee of the business enterprise.

b. *During nonbusiness hours.* It is recognized that many businesses close at a certain hour and that there may be no one at the premises authorized to give the express instruction or authorization to the business enterprise as required in subsection (a) of this section. In promulgating subsection (b) of this section, it is the express intent of this law to provide for a convenient and orderly process by which vehicles parked on private property, without the permission of the property owner, may be towed or removed during nonbusiness hours. Signage that clearly reflects the business hours must be posted on the premises and must clearly indicate that vehicles left on the premises after business hours are subject to being towed to an authorized storage facility.

(4) *Parked* means the state of a vehicle being left and unattended by its owner or operator.

(5) *Permit* means the certificate or document itself, which allows a business enterprise to engage in the activity of recovering, towing, removing and storing of parked vehicles from private real property at the express instruction of the owners of such real property. As used in this ordinance, "permit" shall not mean a municipal or county occupational license.

(6) *Property owner* means that person who exercises dominion and control over private real property, including but not limited to the legal titleholder, lessee, designated representative of a condominium association, or any person authorized to exercise or share dominion and control over private real property. However, "property owner" shall not mean nor include in its meaning, the term "business enterprise."

(7) *Recover* means to take possession of a vehicle and its contents and to exercise control, supervision and responsibility over the vehicle.

(8) *Regulation* means a rule set forth within this ordinance made applicable to business enterprises, the disobedience of which is sufficient grounds for revocation of a permit.

(9) *Removing* means the act of changing, by tow, the location of a parked vehicle from its location on private real property to the storage site of the business enterprise.

(10) *Revoke* means the action of the chief whereby a permit is annulled and made void.

(11) *Storing* means the act of placing and leaving a towed vehicle at a site where the business enterprise exercises control, supervision and responsibility over the vehicle.

(12) *Towing* means the act of hauling, drawing or pulling along a vehicle behind by means of another vehicle equipped with booms, car carriers, winches or similar equipment.

(13) *Vehicle* means a mobile item that normally uses wheels, including but not limited to cars, trucks, trailers and motorcycles.

Declaration of legislative intent.

This City Council finds and determines that the unauthorized parking of vehicles that cannot be removed constitutes a public nuisance and a public emergency affecting the property, public safety and welfare of the citizens and residents of the City.

Adoption of state towing standards.

Any person engaged in the business of towing or removing vehicles shall comply with all the requirements and standards imposed by F.S. § 715.07, as may be amended from time to time.

Occupational business license required.

Every person engaged in towing or removing vehicles for profit must obtain an occupational business license issued by the City.

Owners' vehicles.

The provisions of this ordinance shall not apply to the towing or removal of any privately owned vehicle by the operator of any vehicle towing or removal service when such service is performed at the request of the owner of the vehicle.

Vehicles on City property.

No vehicle shall be towed or removed from property belonging to the City except with the authorization or prior agreement of the City Manager and/or his designee. Further, if the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to the removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus and that person shall be allowed to remove the vehicle without interference upon payment of a reasonable service fee of not more than half the posted rate for such towing service for which a receipt shall be given, unless that person refuses to remove the vehicle otherwise unlawfully parked.

Vehicles parked on private property; towing.

(A) Except as provided in subsection (5) below, a property owner may cause any vehicle parked on his property without his permission to be removed by a business enterprise without liability for the costs of removal, transportation or storage or damages caused by such removal, transportation or storage, under any of the following circumstances:

(1) When the property is appurtenant to and obviously a part of a single-family residence property;

(2) When the property is obviously not intended to be used for parking vehicles;

(3) In the case of any other property, when notice is prominently posted on the property in compliance with Section 715.07, Florida Statutes, as may be amended from time to time, or has been personally given to the owner or driver of the vehicle that the area in which such vehicle is parked is reserved or is otherwise unavailable for unauthorized vehicles; or

(4) When the vehicle has been parked in the same place without authorization for more than 48 hours.

(5) In order to preserve the quiet enjoyment of neighborhoods, an association may not remove a vehicle unless the vehicle is located in a common area and proper notice of removal has been provided or there is an immediate safety concern.

(B) When any person causes a vehicle to be removed from property, he shall, upon request, immediately and without demanding compensation,

inform the owner or lessor of such vehicle of the name and location of the business enterprise that has removed it. If the area from which the vehicle has been removed is unattended, the person causing the vehicle to be removed shall have prominent notice in such area of the name and location of the business enterprise that has removed the vehicle.

(C) This section shall not apply to law enforcement, firefighting, rescue squad, ambulance or other emergency vehicles marked as such.

(D) When a person improperly causes a vehicle to be removed, such person shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, storage, and any damages resulting from the removal, transportation or storage, and attorney fees.

Security requirements.

(A) All business enterprises shall file with the City's Manager, or designee, and have in effect an insurance policy or certificates of insurance in lieu thereof, which shall indemnify or insure the business enterprise for its liability:

(1) For injury to person, in an amount not less than \$300,000.00 to any one person and \$300,000.00 for any one accident.

(2) For damage to property, in an amount not less than \$300,000.00 for any one accident.

(B) Any such policy shall be issued by an insurance firm qualified to do business as such in the state and must name the City as an additional insured. The City must receive 30 days' advance written notice in the event of cancellation of the above policies. The insurance must be approved by the City's Manager, or designee, prior to the issuance of a permit. All certificates will be kept on file in the office of the City's Manager, or designee.

Permit required.

(A) No business enterprise shall engage in the business of recovering, towing, removing and storing of vehicles parked on private real property and parked without the permission of the owner of the private real property unless such business enterprise shall first apply for and obtain, and subsequently maintain in unrevoked status, a permit issued pursuant to this ordinance.

(B) The requirement for a permit described in subsection (A) of this section is a requirement separate and apart from and in addition to any county or City requirements for occupational licenses. The required permit is a regulatory permit and not a revenue-generating permit.

(C) Nothing in this section shall be construed to mean that a natural person cannot work in or for such business enterprises without such permit. There is no requirement that employees or agents of such business enterprises apply for and obtain the permit provided for by this ordinance. The practice of a

business enterprise to consider persons as independent contractors or employees shall not be construed to allow avoidance of the requirement that the business enterprise itself apply for, obtain and maintain a permit.

Issuance of permit; fees; renewal.

(A) A permit issued or renewed pursuant to the provisions of this ordinance shall not be transferable from one business enterprise to another business enterprise. All permits shall expire on December 31 of each year following the date of original issuance. Permits shall be renewable annually.

(B) There shall be permit fees as determined by the City Manager, as established by administrative order, and as approved by the City Council. Such fees, whether initial or renewal, shall accompany the application and shall be nonrefundable subsequent to the filing of the application. All moneys received under this section shall be deposited with the director of finance of the City and shall be used to defray the expense of providing the services described in this ordinance.

(C) Permits shall be issued in the name of the business enterprise meeting the standards and requirements for permits.

(D) The City Manager or his designee is empowered and directed to issue permits to business enterprises that have met the standards and requirements for a permit and that are otherwise qualified for a permit. The City Manager is hereby authorized and directed to promulgate reasonable rules and procedures for the application, issuance and revocation of such permits and a schedule of maximum allowed rates as permitted by Sections 166.043 and 715.07, Florida Statutes.

Permitting of business enterprises.

(A) *Application.* All business enterprises desiring to obtain an initial permit or renew a previously issued and unrevoked permit shall submit an application in writing to the City Manager or his designee on forms prescribed by the City Manager. The application and all supporting documents shall be retained by the City Manager. All applications shall include:

(1) Name of the business enterprise; and

(2) If the business enterprise is a corporation, the name, date and state under whose laws such corporation was organized, and if a foreign (out-of-state) corporation, whether authorized to do business in the state, the fictitious name under which the corporation may be doing business, the names of the principal officers, directors, resident agent and local representatives, and their business addresses; or

(3) If the business enterprise is a partnership, the fictitious name under which the partnership may be doing business, the name, business address of each partner; or

(4) If the business enterprise is a sole proprietorship, the fictitious name under which the sole proprietorship may be doing business, the name, business address of the natural person who owns, controls or directs the sole proprietorship; and

(5) A list of all persons having a financial interest in excess of \$2,000.00 in the business enterprise; and

(6) A list of all persons with ownership interests in the business enterprise who have previously been denied a permit; and

(7) The signature of the president or vice-president of the applying corporation; or, the signature of a partner of the applying partnership; or, the signature of the natural person who owns, controls or directs the applying sole proprietorship; and

(8) Such other information and data as the City Manager or his designee may consider appropriate.

(B) *Standards for issuance of a permit.* The City Manager or his designee shall approve the application for issuance or renewal of a license hereunder where he finds:

(1) That the application has been fully completed and submitted;

(2) That the initial application or renewal application fee has been paid;

(3) That proof of insurance, as required in this ordinance, has been met; and

(4) That the applicant has been subject to a complete background investigation as it affects the towing industry, conducted by the chief or his designee and it has been determined by the chief that:

a. The applying business enterprise, if a corporation, does not have as an officer or director, a person who is or was an officer, director, partner or sole proprietor of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;

b. The applying business enterprise, if a partnership, does not have as a partner a person who is or was an officer, director, partner or sole proprietorship of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;

c. The applying business enterprise, if a sole proprietorship, does not have as the sole proprietor a person who is or was an officer, director, partner or sole proprietor of a business enterprise which has a currently suspended permit or has had its permit revoked within five years of the date of application;

d. The permit is not revoked or currently under suspension; or

e. No fraud or willful and knowing misrepresentation or false statement was made in the application.

Revocation of permit; appeal; review.

Any person dissatisfied or aggrieved with the decision of the chief, or his designee, with reference to any recommendation for denial of his application for such permit or the revocation or suspension of such permit, may within ten days after such denial, revocation or suspension, appeal to the City Manager or his designee, who shall schedule a hearing on the matter; and upon the affirmance or approval of the action taken by the chief, such action shall be final. At this hearing, witnesses shall be sworn and the rules of evidence applicable to quasi-judicial proceedings shall govern. When the City Manager or his designee upon the original review, determines that the applicant is entitled to such permit, the City Manager or his designee shall immediately issue such permit or reinstate the permit if revoked or suspended, all conditions having been complied with.

Additional requirements.

(A) No business enterprise issued a permit under this ordinance shall do any of the following:

(1) Recover, tow, remove or store a vehicle except upon the express instruction and written authorization demonstrating a signature of the property owner or agent to the business enterprise requesting the tow or removal. Such agent shall not be an officer or employee of the business enterprise. No such instruction shall be considered to have been given by the mere posting of the notice as required herein. No such instruction shall be considered to have been given by virtue of the mere terms of any contract or agreement between a business enterprise and a property owner. No such instruction shall be considered to have been given where the instruction occurs in advance of the actual unauthorized parking of the vehicle. No such instruction shall be considered to have been given where the instruction is general in nature and unrelated to specific, individual and identifiable vehicles which are already parked without authorization.

(2) Tow or remove a vehicle where there is a natural person occupying the vehicle.

(3) Recover, tow, remove or store a vehicle unless the business enterprise shall maintain trip record(s) relating to the previous calendar year. The trip record(s) must indicate at a minimum:

- a. The name of the business enterprise.
- b. The date and time of the day in hours and minutes when a specific vehicle was recovered, towed, removed and stored.
- c. The make, model, color, vehicle identification number, and license plate number of the specific vehicle(s).
- d. The precise address or description of the location from which the specific vehicle was removed.
- e. The full name of the property owner or designated representative who expressly instructed the removal of the specific vehicle.
- f. The name of the law enforcement department to whom notification of the towing or removal of the vehicle was given.

(4) Recover, tow, remove or store a vehicle unless the vehicle shall be towed directly to the business enterprise's storage site and the vehicle shall not be kept in any temporary holding area.

(5) a. Tow or remove any vehicle without the consent of the registered owner to a site outside a ten (10) mile radius of the point of removal; or

(6) Recover, tow, remove or store a vehicle unless the business enterprise shall assist the registered owner in obtaining any identification and documentation of ownership as well as any personal effects, medical materials and perishable goods contained within the stored vehicle that the registered owner has requested.

(7) Recover, tow, remove or store a vehicle unless the business enterprise shall file, and keep on record with the chief, a complete photocopy of any and all fully executed contracts, agreements or other authorizations, by and between the business enterprise, and any property owners for the removing of vehicles from the property owner's property.

(8) Recover, tow, remove or store a vehicle unless the business enterprise's tow trucks or other vehicles, or equipment used in towing, and storage sites used in connection with towing operations, shall have been inspected by the chief or his designee for any violations of state, county or City laws, ordinances or regulations.

(9) Use physical force or violence, or threat of physical force or violence, in dealing with persons who are responsible for administering this

ordinance or persons who have had or are about to have their vehicles recovered, towed, removed or stored.

(10) Misrepresent or make any false statement in the conduct of the business enterprise.

(11) Fail to maintain insurance as required by this ordinance.

(12) Fail to satisfy a judgment arising out of the business enterprise prior to a permit renewal, unless a stay of denial is procured during the pendency of a court appeal.

(13) Violate any of the provisions of this ordinance, or rules and regulations promulgated thereunder, or Chapter 715 of the Florida Statutes.

(B) In conjunction with the issuance of the permit, and for good cause, a fee may be set by a resolution of the City Council to require that each licensed towing company truck operated within the City be inspected by the police to ensure that it is a safe vehicle and in compliance with all insurance regulations and all legal requirements. This subsection is added for the protection of the City, and also may be utilized to defray the cost in carrying out the intent and operation of the ordinance. The City Manager has the power to suspend or reject the use of any towing vehicle deemed unsafe or not up to standard by the chief.

Penalties.

(A) The City Manager's designee shall enforce the provisions of this section. This does not preclude other law enforcement agencies from any action as necessary to assure compliance with all applicable laws. If an inspector finds a violation of this section, the inspector shall issue a notice of violation to the violator as provided in the City of Doral Code. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator may be liable, instructions and due date for paying the fine, notice that the violation may be appealed by requesting an administrative hearing within ten days after service of the notice of violation, and that failure to do so shall constitute an admission of the violation and waiver of the right to a hearing.

(1) Violations shall be issued as follows:

a. Fines

First offense: \$100.00.

Second offense: \$250.00.

Third offense: \$500.00.

Fourth offense and all subsequent offenses \$500.00 and the City may also revoke the contractor's business license pursuant to the procedures set forth in the City of Doral Code and may be subject to a suit for injunctive relief to enjoin the operation of the contractor in violation of this section.

(2) As an additional means for enforcement/collection and supplemental to above, when a notice or record of any past due penalties which became due and payable to the City after the effective date of this section is recorded in the public records of Miami-Dade County, said notice shall constitute a special assessment lien upon all real and personal property of the contractor owing such penalties, and shall remain a lien equal in rank and dignity with the lien of ad valorem taxes and shall be superior in rank and dignity to all other liens, encumbrances, titles and claims in, to or against the property involved. Such liens may be foreclosed or levied upon in the manner provided by law.

(3) In addition to the above, a violation of this section shall constitute a misdemeanor and shall be punished by imprisonment not to exceed 60 days or by imposition of a fine not to exceed \$500.00 or both.

Liens for towing vehicles.

Whenever a business enterprise removes a vehicle pursuant to this ordinance, the business enterprise shall have a lien on such vehicle for a reasonable towing and storage fee.

Section 3. Repeal of Conflicting Provisions. To the extent any provisions of the Code, as made applicable to the City through Section 8.03 of the City Charter conflict with this Chapter, those provisions are repealed in its entirety.

Section 4. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Doral, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and

that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Councilwoman Ruiz who moved its adoption. The motion was seconded by Vice Mayor Cabrera and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Peter Cabrera	Yes
Councilman Michael DiPietro	Yes
Councilwoman Sandra Ruiz	Yes
Councilman Robert Van Name	Yes

PASSED AND ADOPTED on FIRST READING the 10th day of September, 2008.

PASSED AND ADOPTED on SECOND READING this 8th day of October, 2008.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



BARBARA HERRERA, CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



JOHN J. HEARN, CITY ATTORNEY