

ORDINANCE No. 2017-14

AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING CHAPTER 44, "TRAFFIC AND VEHICLES," BY PROVIDING REGULATIONS FOR THE IMMOBILIZATION OF THE VEHICLES ON PRIVATE PROPERTY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR INCORPORATION INTO THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Council of the City of Doral (the "City") finds it necessary from time to time to create new regulations for activities occurring in the City; and

WHEREAS, various new sectors of the City have seen an increase of incidents involving the immobilization of vehicles parked on private property; and

WHEREAS, absent City regulations, the Miami-Dade County Code provides the minimum standards regulating involving the immobilization of vehicles; and

WHEREAS, the City Council believes it is in the City's best interest to provide regulations that better reflects the standards of the community.

NOW, THEREFORE, BE IT ORDAINED BY MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are confirmed, adopted, and incorporated herein and made a part of hereof by this reference.

Section 2. Code Amended. The Code of Ordinances of the City of Doral is hereby amended as follows:

Chapter 44 - TRAFFIC AND VEHICLES

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ARTICLE III. – TOWING AND IMMOBILIZATION OF VEHICLES

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Sec. 44-57. - Definitions

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Express instruction means

Immobilization, immobilizing, or immobilize means the act of installing a vehicle antitheft device on the steering wheel of a vehicle, the act of placing a tire lock or wheel clamp on a vehicle, and/or any other activity that makes a vehicle legally inoperable to prevent any person from operating the vehicle.

Parked means

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Sec. 44-61. - Occupational business license required.

Every person or business engaged in towing, ~~or~~ removing, and/or immobilizing vehicles ~~for profit~~ must obtain an occupational business license issued by the city.

Sec. 44-62. – Owners’ vehicles.

The provisions of this article shall not apply to the towing, ~~or~~ removal, and/or immobilization 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.

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Sec. 44-72. – Vehicles parked on private property; immobilization

Except as otherwise limited herein, a property owner may cause any vehicle parked on his/her/its property without permission to be immobilized by a person or business without the permission or authority from the vehicle owner or duly-authorized driver of the vehicle and to avoid liability for the costs of such immobilization, provided that the following requirements are satisfied:

- (1) The vehicle is unlawfully parked, and signage giving notice, in form the specified herein (“Notice Sign”), shall be prominently posted on the property on which the vehicle is immobilized on each side of each driveway access or curb cut allowing vehicle access to the property and of each entrance to a parking structure serving a property, if any. The notice sign shall be permanently installed, oriented for drivers, with the bottom of the sign not less than four (4) feet above ground level and the top of the sign not more

than six (6) feet above ground level, and shall be continuously maintained on the property for not fewer than twenty-four (24) hours before the towing or removal of vehicles. Additional notice signs shall be posted in the corresponding parking lot and/or parking garage at regular intervals throughout said parking lot and/or parking garage with minimum separation between signs not to exceed fifty (50) feet.

The text of the notice signs shall clearly display, in reflective letters on a contrasting background or lit by flood lighting, the following information:

- a. In not less than four (4) inches high, the words “immobilization/tow away zone”:
- b. In letters at least two (2) inches high, notice that private property is being entered, providing the development name or property address and advising that parking is private:
- c. In letters at least two (2) inches high, notice that unauthorized vehicles will be immobilized or towed away and the owners expense:
- d. In letters at least two (2) inches high, the days of the week and hours of the day during which vehicles will be booted;
- e. In letters at least one (1) inch high, the fee to unboot the vehicle;
- f. In letters at least one (1) inch high, the name and address of the person performing the booting service;
- g. In letters at least two (2) inches high, the telephone number to call and the on-site location (if applicable) where a person can go to request the unbooting of the vehicle; and
- h. In letters at least three-fourths of an inch high, CONSUMER SERVICES DEPARTMENT COMPLAINT NUMBER: (insert current telephone number);
- i. In letters at least three-fourths of an inch high, PROPERTY REPRESENTATIVE: (insert on-property location or current telephone number);

The property owner shall provide access to the city manager or designee in order to inspect the required signs on premises where immobilization is used to enforce parking restrictions.

The notice sign shall read substantially as follows (with the designated information to be inserted at the indicated spaces):
IMMOBILIZATION/TOW-AWAY ZONE; ENTERING PRIVATE PROPERTY PARKING PERMITTED FOR (insert name of property owner) CUSTOMERS ONLY. IF YOU PARK YOUR VEHICLE AND LEAVE THE PREMISES, YOUR VEHICLE WILL BE IMMEDIATELY IMMOBILIZED SUBJECT TO A (insert fee) FEE TO RELEASE VEHICLE OR TOWED AT YOUR EXPENSE. IMMOBILIZATION PERFORMED BY: (insert name, address and telephone number to call to request removal of the immobilization device); and PROPERTY REPRESENTATIVE: (insert on-property location or current telephone number).

- (2) The vehicle is not occupied by a living natural person or animal;
- (3) The vehicle may not be a police, fire fighting, rescue squad, ambulance or other emergency vehicle marked as such;
- (4) The persons or business providing the immobilization service shall comply with Section 30-468 of the Miami-Dade County and this Chapter;
- (5) Thirty (30) minutes prior to booting a vehicle, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall place on the windshield of the vehicle a notice advising that the vehicle is parked on private property and that failure to remove within thirty (30) minutes of being posted on the vehicle shall result in the vehicle being immobilized by boot. The time and date of the notice shall be written clearly on the notice.
- (6) Immobilization shall be accomplished by placing a steel boot on the front wheel of the driver's side of the motor vehicle. The steel boot may be placed on any other wheel if placement on the front wheel on the driver side is not feasible.
- (7) Any property engaged in the immobilization of vehicles shall have a designated employee, representative, or security personnel on site and/or immediately available by phone at all times, with the location and/or telephone posted as specified above.
- (7) Immediately after a vehicle is booted, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall affix at the rearmost portion of the window adjacent to the driver's seat of such vehicle, a sticker with a completely removable adhesive, measuring eight and one-half by eleven inches containing a warning that any attempt to move the vehicle may result in damage to the vehicle, and stating the name and business address of the person who booted such vehicle as well as a business telephone number which will facilitate the dispatch of personnel responsible for removing the boot.
- (7) No release or waiver of any kind purporting to limit or avoid liability for damages to a vehicle that has been booted shall be valid. In addition, any person who booted a vehicle, or other person authorized to accept payment of any charges for such booting, shall provide a signed receipt to the individual paying the booting charges at the time such charges are paid. Such receipt shall state the name, business address, and business telephone number of the person who has booted such vehicle, and such receipt shall include a telephone number of the office within the Consumer

Services Department responsible for receiving complaints with respect to booting.

- (8) No charge shall be imposed for the booting of a vehicle unless and until the requirements of this section have been met, and any such unlawful charge shall be reimbursed by any person found to have violated this section.
- (9) Any person who had booted a vehicle shall release such vehicle as soon as practical, but not to exceed thirty (30) minutes of receiving a request for such vehicle's release; provided however, that payment of any charge for booting is made at or prior to the time of such vehicle's release. The owner or person in control of a vehicle which has been booted shall be permitted to pay any charge for booting at the location where such vehicle was booted and the person receiving payment for booting services shall accept payment for charges from the owner or duly authorized representative in accordance with the provisions of **Section 30-473(k) of the Code of Miami-Dade County, Florida.**
- (10) An immobilized vehicle shall not remain immobilized on private property for more than 24 hours. After such period of time has expired, the vehicle shall be released from the steel boot and may be towed or removed pursuant to this article, and no fee shall be assessed for release of the immobilization device.
- (11) A person may not charge more than the maximum fee established by resolution by the City Council.
- (12) The rebate or repayment of money or any other valuable consideration directly or indirectly from the individual or firm booting vehicles to the owners or operators of the premises from which the vehicles are immobilized, for the privilege of immobilizing those vehicles, is prohibited.
- (13) The employees or agents of the booting business shall wear identification tags stating the full name of the booting business and the name of the employee or agent; no identification worn by the booting business' employees or agents shall use the words: "Enforcement," "Department," or "Police." Said identification tags shall be prominently displayed on the front left side of the employee or agent's shirt. All booting business vehicles shall display the company name (or name of joint venture, or individual owner or other entity ownership) on the driver and passenger side of the vehicle in letters at least three (3) inches high. The company's address (or address of joint venture, or individual owner or other entity ownership) and telephone number shall be displayed on the driver and passenger side of the vehicle in letters at least one (1) inch high. No booting business shall use the words "Enforcement," "Department," or "Police," in its advertising, signs, stickers or identifications.

- (14) Each person who performs immobilization must enter into a written contract with every owner of private property that authorizes the person to immobilize vehicles on their property. Each contract that is in effect or that was terminated within the previous twelve (12) months must be kept on file. The any City code compliance office, law enforcement officers, and the owner of the vehicle that was immobilized may inspect and copy such contract during business hours.
- (15) Any person who improperly causes a vehicle to be immobilized shall be liable to the vehicle owner or his authorized representative for the cost of the services provided, any damages results from the immobilization, and the immobilization and attorney's fees.
- (16) The business providing the booting service shall first obtain and maintain a current and valid license issued by the City.
- (17) The individual person who is employed to perform the booting service has first obtained and maintains a permit issued by the County in accordance with Section 30-463(a), (b)(1), (9), (11), (12), (13) and (15), and subject to the provisions in Section 30-464 and 30-466 (any reference to towing license shall mean "immobilization permit").
- (18) The business providing the booting service carries at least twenty-five thousand (\$25,000.00) in liability insurance which will cover any damage to the vehicle.
- (19) The property owner and immobilization contractor shall conduct their business in an orderly, ethical, and business-like manner at all times, and shall use every means to obtain and keep the confidence of the motoring public. All public contact shall be in a courteous and orderly manner. Persons who provide services pursuant to this section shall not use profane language, physical force or violence or threats of physical force or violence in dealing with the individuals responsible for administering this article or individuals who have had or are about to have their vehicles booted or immobilized.
- (20) Persons who provide services pursuant to this section shall maintain a place of business. The place of business shall have a sign that clearly and conspicuously identifies the business to the public; and office space that has at least one person on duty from 8:00 a.m. until 6:00 p.m., Monday through Friday, to answer telephone calls and to be open to serve the public and records requests made pursuant to Section 30-470, Miami-Dade County Code of Ordinances. However, the office may be closed to observe all holidays observed by the City of Doral. The place of business shall maintain a telephone communication system to answer telephone calls from the public twenty-four (24) hours a day. The license issued by the Director shall be prominently displayed to the public at said business location.

44-72. – Maximum immobilization rates when requested by property owners and police agencies.

- (a) The City Council resolution, establish maximum rates for providing immobilization at the request of a police agency or a property owner or authorized representative, without the prior consent of the vehicle owner or other authorized person in control of the vehicle. The rates established shall be uniform throughout the City of Doral. The maximum rates established by the City Council may be altered, revised, increased or decreased, from time to time.
- (b) Persons or businesses who provide immobilization services shall not charge in excess of the maximum allowable rates established by the City Council. No person providing services pursuant to this section shall charge any type of fee other than the fees for which the City Council has established specific rates.

44-73. – Enforcement; penalties.

- (A) If at any time a property owner or immobilization contractor shall fail or refuse to comply with, or violates, any of the provisions of this section, such property owner engaging the services of the immobilization contractor shall be subject to prosecution under the city's code enforcement system, in accordance with chapter 30 and this section.
- (B) If an inspector finds a violation of this section, the inspector shall issue a notice of violation to the violator as provided in section 30-71. 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.
- (C) Violations shall be issued as follows:
- (1) Fines:
- (a) First offense: \$100.00;
- (b) Second offense: \$250.00; and
- (c) Third and subsequent offense: \$500.00.

(D) 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.

(4) Additionally, the city may seek injunctive relief and/or follow procedures to revoke and/or suspend the occupational license where there are repeated violations of this article.

The foregoing not preclude or otherwise limit the City and/or other law enforcement agencies from any action as necessary to assure compliance with all applicable laws.

44-74. – Citizen complaints.

The immobilization contractor shall respond in writing to any complaints received by the city manager or his designee, concerning misconduct on the part of contractor or its employees or agents, such as excessive charges, poor business practices, discourteous service, damage to vehicles, failure to give notice as required by this ordinance. The city manager or his designee shall notify contractor of any complaints within five business days from receipt of the citizen complaint. Contractor shall provide any additional explanation or information with respect to the particular complaint within five days upon notification. A written disposition of the complaint will be forwarded to the contractor and the citizen complainant upon completion of the investigation.

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Section 3. Implementation. The City Manager, City Clerk, and City Attorney are hereby authorized and directed to implement the provisions of this Ordinance and to take any and all necessary administrative actions as may be appropriate by their position to execute the purpose of this Ordinance.

Section 4. Incorporation into the Code. The provisions of this Ordinance, to the extent appropriate, shall become and be made a part of the Code of Ordinances of the City of Doral. The City Clerk is authorized to take all actions necessary to incorporate

the provisions of this Ordinance into the Code of Ordinances, including, but not limited to, renumbering or relettering sections and to change and that the word “ordinance” may be changes to “section,” “article,” or such other appropriate word or phrase in order to accomplish such intention.

Section 5. 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 6. Conflicts. All ordinances or parts of ordinances, resolution or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 7. Effective Date. This Ordinance shall become effective immediately upon adoption.

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

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Claudia Mariaca	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED on FIRST READING this 14 day of June, 2017.

PASSED AND ADOPTED on SECOND READING this 23 day of August, 2017.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, CMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY