

ORDINANCE NO. 2011-05-247

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING SECTION 24-126 OF THE CITY'S CODE OF ORDINANCES REGARDING TOWING PERMITS; AMENDING SECTION 24-157 REGARDING NONCONSENT TOWING; AMENDING SECTION 24-159 REGARDING NONCONSENT TOWING FROM PRIVATE PROPERTY; AMENDING SECTION 24-160 REGARDING REQUIREMENTS FOR IMMOBILIZING VEHICLES WITHOUT PRIOR CONSENT; DELETING SECTION 24-163 REGARDING POSTING OF TOWING SIGNS; RENUMBERING THE REMAINDER OF CHAPTER 24, ARTICLE IV OF THE CODE OF ORDINANCES; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with the City's strategic plan, City staff is working on streamlining and automating various administrative and enforcement processes, and

WHEREAS, to complete this task, City staff is reviewing legislation to determine if amendments to existing regulations are necessary, and

WHEREAS, City staff recently reviewed Chapter 24, Article IV of the City's Code of Ordinances which regulates towing, and

WHEREAS, the current Ordinance requires superfluous documentation and voluminous recordkeeping requirements, and

WHEREAS, in order to facilitate the City's goal to improve overall efficiency, staff recommends the proposed amendments,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. AMENDMENT: Section 24-126 of the Code of Ordinances, shall be amended as follows:

- (a) It shall be unlawful for any person to recover, tow or remove a vehicle or provide storage in connection therewith or to cause or permit any other person for compensation to recover, tow or remove a vehicle or provide storage in connection therewith, or to advertise or offer to recover, tow or remove a vehicle or provide storage in connection therewith within the city limits of the city, without first obtaining and maintaining a current towing permit pursuant to the provisions of this article; provided, however, that a property owner without a towing permit may cause or allow the removal of a vehicle from his/her property in accordance with the provisions of this article. The provisions of this article do not apply to persons who use a towing vehicle to transport their vehicles purely for personal, family, household or recreational use.
- (b) Nothing in this article shall be construed to prohibit the discharge or storage of a vehicle lawfully recovered, towed or removed in another county and lawfully transported into Miami-Dade County and/or the city; nor shall anything in this ordinance be construed to prohibit a vehicle owner or his/her authorized agent from requesting the services of a towing business not regularly doing towing business in the county and/or the city to remove the owner's vehicle to a location outside the county.
- (c) Nothing in this article shall be construed to prevent a natural person from working in an employment relationship for another person holding a valid license under this ordinance; however, any person who is an independent contractor and not an employee of a licensed person is also subject to all the requirements and provisions of this article.
- (d) Every application for a towing permit shall be in writing, signed and verified by the applicant, and filed with the building and code compliance department together the appropriate processing fee, as established by resolution by the city council of the city. The statements contained in the application shall become a part of the towing permit and may be modified only in accordance with the provisions of this article.
- (e) Every application for a towing permit shall be on a form prescribed by the city manager or his/her designee and shall contain all the information required by that form, including, but not limited to:

- (1) Sufficient information to identify the applicant, including but not limited to, full legal name, date of birth or of formation of legal entity, telephone numbers, and all business and residence addresses. If the applicant is a corporation, the foregoing information shall also be provided for each corporate officer, director, resident agent and shareholder. If the applicant is a partnership, the foregoing information shall also be provided for each general and limited partner. Post office box addresses shall not be accepted;
- (2) A copy of the valid towing license issued by the county consumer services department;
- (3) The make, model, and manufacturer's serial number of the vehicles utilized in such towing activities;
- ~~(4) The date the vehicle was put into service;~~
- ~~(5) The driver's license number of the owner and of all towing service vehicle operators;~~
- ~~(6) (4) The name of the insurance company or companies with which the owner and operators have liability insurance coverage for the operation of the vehicle as required by law~~
A copy of a properly completed certificate of insurance evidencing all required insurance coverages pursuant to Section 30-165 of the Miami-Dade County Code of Ordinances;
- ~~(7) (5) Any trade name under which the applicant operates, intends to operate, or has previously operated, and a description of proposed, existing and previous towing vehicles' colors and markings;~~
- ~~(8) A description of the applicant's management plan, which shall include but not be limited to the following:~~
 - ~~a. The location and description of all places of business;~~
 - ~~b. A description of all existing towing vehicles and equipment;~~

- ~~e.~~ ~~A description of the plan and facilities for maintaining towing vehicles and equipment;~~
 - ~~d.~~ ~~A system for handling complaints and accidents;~~
 - ~~e.~~ ~~Insurance coverage; and~~
 - ~~f.~~ ~~A description of any communication system;~~
- ~~(9)~~ (6) A description of nonconsent tower services proposed to be provided, including but not limited to days and hours of operation and types of towing and storage services to be provided;
- ~~(10)~~ ~~Proof of insurance as required by this article;~~
- ~~(11)~~ (7) The signature of each individual applicant, owner, partner, officer, or authorized agent; and
- ~~(12)~~ (8) An agreement on the part of the applicant to abide by the provisions of this article, the applicable ordinances/codes of the county, and the laws of the state.
- (f) It shall be a violation of this section to fail to report, within 15 calendar days, to the city building and code compliance department any material change pertaining to the information supplied by the applicant or licensee for his/her license, including, but not limited to, changing the location of any of the applicant's place of business.
- (g) Each nonconsent tower who applies for a towing permit shall ~~provide with his/her application for a permit the following:~~ certify that the existing or proposed towing rates and charges are less than or equal to the maximum rates established by the City.
- ~~(1)~~ ~~A listing of all of his/her existing or proposed rates and charges in a format approved by the city manager or his/her designee;~~
 - ~~(2)~~ ~~The names and addresses of corporate officials that can accept service of process for the towing company and such other information as may be required;~~

- ~~(3) An agreement to indemnify and hold harmless the city for any actions taken by the applicant;~~
 - ~~(4) Such additional information about the nonconsent tow applicant as the code enforcement director may deem appropriate.~~
- ~~(h) It shall be unlawful for any tow truck company receiving compensation to recover, tow, or remove a vehicle or to provide vehicle storage services in connection therewith, until that company has filed with the city, for each tow truck and tow truck company, an insurance policy or policies or certificates of insurance which shall indemnify/insure such company for its liability, at a minimum, as follows:
 - ~~(1) Auto liability for each tow truck: \$500,000.00 combined single limit.~~
 - ~~(2) General/garage liability:
 - ~~a. \$500,000.00 combined single limit.~~
 - ~~b. Garage keeper's liability, \$50,000.00 for any one vehicle and \$100,000.00 per occurrence.~~
 - ~~c. \$50,000.00 on-hook cargo liability coverage for each vehicle.~~~~
 - ~~(3) Worker's compensation as required by state law.~~~~
- ~~(i) All insurance policies required shall be issued by insurance companies authorized and qualified to do business in the state. Such insurance companies must carry a "B+" rating or higher as determined by the A.M. Best Guide. No policy shall be accepted which is less than a six-month duration. Each policy shall be endorsed to provide for 30 days notice by U.S. mail to the city of any material change, cancellation or expiration of the policy.~~
- ~~(j) A properly completed certificate of insurance evidencing all insurance coverages shall be made available to the article upon application for an operating permit. The city must be named as an additional insured on said policies.~~

- ~~(k)~~ Evidence of the renewal of the policy shall be filed with the article prior to such policy's expiration date. Failure to file such evidence of insurance, or failure to have same in full force and effect, may result in denial of a permit, revocation or suspension of the permit, a denial of renewal of such permit, issuance of a civil citation, a misdemeanor conviction or other such remedies available to the article herein.
- ~~(l)~~(h) Failure to provide current certificates of insurance or policies or failure to maintain the required coverage for each tow truck/tow truck company shall result in suspension of the towing operating permit, which shall remain in effect until proof of compliance with this section is submitted to the director and approved.
- ~~(m)~~ Insurance requirements do not apply to governmental agencies.

Section 3. AMENDMENT: Paragraph (8) of Section 24-157 of the Code of Ordinances shall be amended as follows:

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- (8) ~~Persons who provide services pursuant to this section shall file and keep on record with the building and code compliance department a complete copy of all current rates charged for the recovery, towing or removal of vehicles and storage provided in connection therewith. Such persons shall also display prominently at each vehicle storage site a schedule of all charges and rates for removal of vehicles at the request of property owners. The rate schedule shall be posted prominently in the area designated for the vehicle owner or his/her agent to transact business. Such area shall provide shelter, safety and lighting adequate for the vehicle owner or his/her authorized representative to read the posted rate schedule. Further, notice shall be posted advising the vehicle owner or his/her authorized representative of the right to request and review a complete schedule of charges and rates for towing services provided at police request for the jurisdiction in which the police order to tow was made.~~

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Section 4. AMENDMENT: Paragraph (a) of Section 24-159 of the Code of Ordinances shall be amended as follows:

- (a) It shall be unlawful for any person to tow or cause to be towed any vehicle parked on private real property unless the owner, operator, or agent has obtained the appropriate towing permit from the City; and the provisions of F.S. § 715.07 have been complied with; together with the following requirements:
- (1) ~~The owner, operator, or agent must obtain the appropriate towing permit from the city.~~
 - (2) ~~The owners of the real property and the towing service shall have executed, at least 24 hours prior to the towing or removal of any vehicle, a written agreement for nonconsent/trespass towing, which agreement shall contain the following provisions:~~
 - a. ~~The duration of the agreement;~~
 - b. ~~The time of day that such towing or removal is authorized;~~
 - c. ~~The days of the week that such towing or removal is authorized;~~
 - d. ~~The fees to be paid for the towing or the removal;~~
 - e. ~~The signatures of both the property owner, or the authorized representative, and the owner, or authorized representative, of the towing service, certifying that each has read and is in compliance with all the provisions of F.S. § 715.07.~~
 - (3) ~~The agreement may not be amended or modified in any manner, which provides for terms or activities, which violate the provisions of this division or F.S. § 715.07.~~
 - (4) ~~A copy of the completed agreement shall be filed with the city building and code compliance department.~~

~~(5) Where the private real property is provided for residential parking other than for a single family residence, the agreement shall not authorize the towing service to tow away or remove any vehicle without a verified request to remove the specific vehicle by the property owner or an authorized representative. A property owner representative may include a resident manager, a property manager or other agent who has the legal authority to bind the owner, but may not be an officer, employee or agent of a towing service.~~

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Section 5. AMENDMENT: Paragraph (7) of Section 24-160 of the Code of Ordinances shall be amended as follows:

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(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 city responsible for receiving complaints with respect to booting;

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Section 6. AMENDMENT: Section 24-163 of the Code of Ordinances shall be deleted as follows:

Posting of towing signs required.

(a) ~~It shall be unlawful for a person hired by the owner of private property within the city to do any trespass towing without having first obtained approval of the code enforcement and licensing department of the signs posted on the property. In addition to the requirements of F.S. § 715.07, the wording on the sign shall~~

~~indicate if towing is conducted other than normal business hours by the posting of a sign indicating "24 hours per day."~~

- ~~(b) All parking regulation announcement signs shall be brought into compliance with this section within 90 days of the effective date of the ordinance from which this article is derived.~~

SECTION 7. RENUMBERING: The remaining sections of Chapter 24, Article IV are hereby renumbered.

Section 8. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 9. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 10. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 11. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 23rd DAY OF MARCH, 2011.

PASSED ON SECOND READING ON THE 13th DAY OF APRIL, 2011.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI
GARDENS AT ITS REGULAR MEETING HELD ON THE 13TH DAY OF APRIL, 2011.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA K. DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY CREW, CITY MANAGER

Moved by: Councilman Gilbert
Second by: Councilwoman Davis

VOTE: 7-0

Mayor Shirley Gibson	<u>X</u> (Yes)	____ (No)
Vice Mayor Aaron Campbell, Jr.	<u>X</u> (Yes)	____ (No)
Councilman David Williams Jr.	<u>X</u> (Yes)	____ (No)
Councilwoman Lisa Davis	<u>X</u> (Yes)	____ (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	____ (No)
Councilwoman Felicia Robinson	<u>X</u> (Yes)	____ (No)
Councilman Andre' Williams	<u>X</u> (Yes)	____ (No)