

ORDINANCE No. 97- 16

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH PROVIDING REGULATION FOR THE PROTECTION OF THE PUBLIC OF THE OPERATORS OF TOW TRUCKS AND STORAGE FACILITIES; PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; INTENT; MAXIMUM RATES; UNLICENSED OPERATORS PROHIBITED; TOWN TOWING LICENSE. APPLICATION; REGULATORY FEE; DISPLAY OF TOWN TOWING LICENSE; CONDITIONS OF TOWN TOWING LICENSE USE; INSURANCE; RECORDS; AUTHORIZATION; ENFORCEMENT AND PENALTY; SEVERABILITY; REPEALING CLAUSE AND EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION ONE: Authority.

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Title and Citation

This ordinance shall be known and cited as the "Town of Fort Myers Beach Towing of Parked Vehicles Ordinance"

SECTION THREE: Definitions

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The words "shall" and "will" are mandatory and not discretionary.

A. "Owner" shall mean that person who owns the real property from which a vehicle is to be towed, to include the lessee of the real property or any person authorized by the owner or lessee or in control of the property which allows such person to have vehicles removed as provided in F.S. Section 715.07.

B. "Person" shall mean any natural person, firm, partnership, association, corporation or other entity of any kind whatsoever.

C. "Recover" shall mean to take possession of a vehicle and its contents and to exercise control, supervision and responsibility.

D. "Remove" shall mean to change the location of a motor vehicle by towing it from private Property without the consent of the registered owner or other legally authorized person in control of the vehicle.

E. "Store" shall mean to place and leave a towed vehicle at a location where the person providing the towing service or the person's designee exercises control, supervision and responsibility over the vehicle.

F. "Tow" shall mean to haul, draw or pull along a vehicle by means of another vehicle equipped with booms, car carriers, winches or similar equipment.

G. "Tow Truck" shall mean any privately owned motor driven vehicle, including, but not limited to, car carriers, used in the recovery, towing or removal of a vehicle.

H. "Tow Truck Operator" or "Operator" shall mean any person who provides the services of recovering, towing or removing vehicles and any vehicle storage services associated therewith pursuant to F.S. Section 715.07 Vehicle Parked on Private Property; Towing.

I. "Vehicle" shall be as defined in F.S. 715.07.

SECTION FOUR. Intent

This Ordinance is supplemental to the authority, condition and restrictions set forth in Florida Statutes Section 715.05 "Vehicles Parked on Private Property; Towing." The Town is providing additional regulation for the protection of the public in the setting of maximum public service rates, solicitation restrictions and minimum insurance requirements to be maintained by the operators of tow trucks and storage facilities. The Town is not legislating additional standards of operator qualifications, operational standards or safety criteria and assumes no legislative or regulatory responsibility therefor. Nothing herein should be construed to alleviate the need of operators to be familiar with and to comply with the Florida Uniform Traffic Control Laws and other applicable laws, rules and regulations.

SECTION FIVE. Maximum Rates

A. Procedure For Setting Rates.

The Town Council shall establish maximum towing and storage rates for vehicles picked up from property located within the Town limits.

In determining such rates the Town Council shall consider:

(a) costs incurred by the wrecker operator in the storage of vehicles, including the rental or purchase of property, insurance premiums, and maintenance of storage facilities;

(b) costs incurred by the wrecker operator in the removal of vehicles including maintenance and operation of wrecker units;

(c) prior or existing contracts between wrecker services and governmental agencies for the removal and storage of vehicles;

(d) towing and storage charges currently imposed by wrecker services for rotation and owner's requests calls.

- a. Business Owner's name, home address, local address, telephone number;
- b. Manager's name, home address, local address, telephone number;
- c. Mailing address at which notice of any Town information pertinent to any TOWN TOWING LICENSE shall be considered received and binding upon the applicant or TOWN TOWING LICENSE holder, on the fifth day after First Class Mail is posted to said address;
- d. State sales tax number.

(3) BUSINESS EQUIPMENT INFORMATION

The number of, and a description of, the vehicles to be used by the business, including model, year, manufacturer, color and Florida Vehicle registration number(s).

(4) PROOF OF INSURANCE Proof of required insurance.

(5) FIRE REPORT Prior to annual license renewal, the Fire Marshal will submit evidence of a fire safety inspection to the Town.

(6) ANNUAL FEE

Pays an annual fee of:

- a) \$60.00 for Town administrative processing costs; and
- b) \$30.00 for the right to provide towing services, as herein provided; and

(c) Applicants who misrepresent information provided under this Section shall not be issued a TOWN TOWING LICENSE, or if issued, may suffer suspension or revocation of the TOWN TOWING LICENSE.

(d) Town Towing License's shall be issued on an annual basis coinciding with the Town's fiscal year, October 1 through September 30.

SECTION EIGHT. Display Of Town Towing License

Every vehicle used in the towing business shall display the TOWN TOWING LICENSE number in plain sight.

SECTION NINE. Conditions Of Town Towing License Use

Each vehicle owner of a towed vehicle shall receive standardized rules provided by the operator and approved by the Town Manager. All owners, operators, TOWN TOWING LICENSE holders and employees will obey the same standardized rules. Such rules shall set by resolution.

SECTION TEN. Insurance

B. Rates Set Shall Consist Of The Following Rate Schedule.

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|---|-------------------------|
| Towing rate (24 hours) | \$75.00 |
| Storage Rate (first 24 hours) | no charge |
| Storage Rate after 1 st 24 hours | |
| Outdoor | \$15.00 |
| Indoor | \$25.00 |
| Business hours | 8:00 a.m. to 11:59 p.m. |
| After Hours Redemption (12:00 a.m. to 7.59 a.m.) | \$40.00 |

C. Maximum Forms Charge.

A maximum of \$30.00 may be charged to the owner/driver of a vehicle towed or stored for the preparation, filing or mailing of any forms required by Florida Statutes, local ordinance or the Division, if a vehicle is in storage for more than 24 hours. This paragraph does not apply to any action initiated by a wrecker operator to foreclose a lien recognized by Florida law.

SECTION SIX. Unlicensed Operators Prohibited

- (a) No person shall recover, remove, store or tow a vehicle pursuant to Florida Statutes 715, within the Town of Fort Myers Beach except acting as a business which fully complies with the regulations set forth in the Land Development Code and this ordinance.
- (b) No person shall conduct any Tow Truck Operator business within the Town of Fort Myers Beach, except from a business holding a valid TOWN TOWING LICENSE and which fully conforms to the terms of this Ordinance.

SECTION SEVEN Town Towing License. Application; Regulatory Fee

- (a) Application for a TOWN TOWING LICENSE shall be made to the Town Manager on a form provided by the Town.
- (b) Information to be provided by the applicant shall include, at a minimum:

(1) BUSINESS LOCATION

- a. The STRAP number and street address from which the towing business will be operated;
- b. If the applicant is not the owner of the property from which the towing will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.

(2) OWNERSHIP INFORMATION

All operators shall maintain and comply with the minimum insurance standards established by Florida Administrative Code Rule 15B-9.006(9) as it now exists or as duly amended and as further incorporated herein. Each insurance policy required to meet the established minimum limits shall be in the name of the operator and shall include coverage for towing and storage. All such insurance shall be maintained with a duly qualified insurance company authorized to do business within the State of Florida. Said insurance coverage shall remain in effect throughout the period that the operator performs towing and/or storage services pursuant to F.S. 715.07.

SECTION ELEVEN. Records

Each operator shall keep, maintain and retain records of its business reflecting the dates of services rendered pursuant to this Ordinance and F.S. Section 715.07, the nature of said services, the names and addresses of the parties involved, the charges related to the tow and/or storage and the identification of such vehicle as may come under the custody and control of the operator for a period of three (3) years following the occurrence of the transaction and services rendered by the operator incidental thereto. The operator shall maintain and keep at his business of operations documents which reflect the insurance coverage as currently in effect at any given time.

All such records as provided herein shall be made available for inspection and copying by a duly designated representative of the Town of Fort Myers Beach and/or any law enforcement officer upon reasonable notice thereof.

SECTION TWELVE. Authorization

Operators, their employees, or any person acting in the operators behalf, shall be prohibited from removing vehicles improperly parked on private property without first obtaining the express authorization of the owner to remove said vehicle(s). All written contracts with owners shall be maintained and retained by the operator and be subject to the provisions of the forgoing section.

Operators, their employees or any person acting in the operator's behalf are prohibited from soliciting property owners for the removal of a specific vehicle(s). The term "soliciting" shall be defined to mean the uninvited contacting and asking of an owner if he desires to have a specific vehicle(s) removed. The term does not include bona fide operator authorization to remove improperly parked vehicles per a previously agreed-upon written contract with an owner, prior express authorization, or in direct response to calls from an owner.

SECTION THIRTEEN. Enforcement and Penalty

It shall be the duty and responsibility of all law enforcement officials to assist in the enforcement of and compliance with this Ordinance and Resolutions adopted pursuant thereto, to the extent that it is within their jurisdiction.

Any person or persons, firm or corporation, or any agent thereof who violates any of the provisions of this Ordinance shall, upon conviction, be guilty of a second degree misdemeanor and subject to a fine not exceeding the sum of Five Hundred Dollars (\$ 500.00) or imprisonment in the County Jail for a period not exceeding sixty (60) days, or by both such fine and imprisonment.

Each separate occurrence of a violation of this Ordinance shall constitute a separate offense and shall be punishable as such hereunder.

In addition to the criminal penalties provided, the Town Council is hereby authorized to institute any appropriate action or proceeding, including suit for injunctive relief, in order to prevent or abate violations of this Ordinance.

SECTION FOURTEEN. Severability.

If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way affect the validity of all other provisions of this ordinance.

SECTION FIFTEEN. Repealing Clause.

All ordinances or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION SIXTEEN: Effective Date.

This ordinance shall become effective immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Murphy and seconded by Council Member Isler and, upon being put to a vote, the result was as follows:

- Anita T. Cereceda aye
- Ted FitzSimons absent
- William (Rusty) Isler aye
- Garr Reynolds aye
- Ray Murphy aye

DULY PASSED AND ENACTED this 22nd day of September, 1997.

ATTEST:

TOWN OF FORT MYERS BEACH

By: Marsha Segal-George
Marsha Segal-George, Town Clerk

By: Anita T. Cereceda
Anita T. Cereceda, Mayor

Approved as to form by:
Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney