

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HOLLYWOOD,
FLORIDA, AMENDING CHAPTER 111 OF THE CODE OF
ORDINANCES; ADOPTING PERMIT REQUIREMENTS FOR
WRECKER AND TOWING SERVICES THAT TOW
VEHICLES FROM PRIVATE PROPERTY.

WHEREAS, In March, 2013, the City Commission of the City of Hollywood, Florida adopted Ordinance No. O-2013-09, which imposed additional regulations regarding the towing of vehicles from private property; and

WHEREAS, the City Commission finds that Ordinance No. O-2013-09 has not sufficiently solved the problem of predatory towing of vehicles from private property; and

WHEREAS, in a further effort to address the problem of predatory towing of vehicles from private property, the City Commission now wishes to adopt a comprehensive regulatory system of permitting persons who tow vehicles from private property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That Section 111.07 of the Code of Ordinances is hereby amended to read as follows:

TITLE IX: GENERAL REGULATIONS

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CHAPTER 111: TOWING FROM PRIVATE PROPERTY

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§ 111.07 PERMIT REQUIREMENTS ~~PENALTY~~.

(A) *Towing by wrecker and towing service.* Commencing January 1, 2015, no person, partnership, association or corporation shall tow a vehicle from private property located in the city without first having obtained a permit from the City Manager or his/her designee. The issuance of a permit, as described above, gives each wrecker

(Coding: Words and figures underscored are additions to existing law; words and figures ~~struck through~~ are deletions.)

and towing service so permitted a franchise to tow vehicles from private property located in the city. A permit shall be issued only upon the criteria set forth in divisions (B) and (C) below.

(B) Permit required. Any person, partnership, association or corporation who wishes to tow vehicles from private property located in the city must have been granted a permit by the City Manager or his/her designee. The completed application for a permit to tow vehicles from private property located in the city shall be on file no later than September 30th and shall include a fee, as applicable under division (C)(2) below.

Each applicant shall submit, in writing, a list of qualifications, including:

(1) Certification of proper and adequate insurance coverage of not less than \$500,000 per occurrence public liability insurance.

(2) Demonstration that the applicant owns and maintains in good condition the various types of wreckers and/or tow trucks and other equipment to provide the level of service desired by the city.

(3) Evidence of sufficient maintenance ability to meet the service needs of the number of wreckers or tow trucks and equipment to be used by the applicant.

(4) Demonstration that a local business office with a local telephone number will be operated to provide adequate response to customer inquiries or complaints. The office must be in Miami-Dade or Broward County. The telephone number must be a toll-free call from the city.

(5) Name, address and telephone number of the person to be contacted by the city with reference to the operation of this section.

(6) Names and addresses of the owners of the company making the application. If the applicant is a corporation, this includes a list of all officers and directors of the corporation. If the applicant is a partnership, this includes a list of all partners.

(7) A list of all convictions within the past ten years in federal court or the court of any state for violation of anti-trust, anti- competitive, racketeering or fraudulent practices laws with a brief description of the circumstances. The applicant shall also list any and all indictments, charges or investigations against the company within the past ten years pertaining to the above-referenced matters with a brief description of the circumstances. This division also applies to all individuals listed in division (B)(1)(g) above.

(8) A list of any and all cities and counties from which the applicant or the principals have voluntarily or involuntarily withdrawn service during the five-year period

immediately preceding the date of the application. The applicant shall also list any and all franchises issued to the applicant which have been voluntarily or involuntarily withdrawn, suspended, revoked or abandoned by either the issuing governmental entity or the applicant for the five-year period immediately preceding the date of the application with a brief description of the reason for such withdrawal. The applicant shall also provide a list of cities and counties where it is currently or has in the past provided service.

(C) Issuance of permit.

(1) (a) In determining whether to issue a permit, the City Manager or his/her designee shall consider the information provided by the applicant under division (B), above. The City Manager or his/her designee shall determine, based on these criteria, whether the applicant has sufficient experience, ability and expertise to allow the applicant to operate successfully within the City in accordance with all applicable laws and regulations.

(b) In analyzing the information provided in division (B)(1)(8) and (9), the City Manager or his/her designee shall consider the number and seriousness of the specific incidents listed, and whether any penalty imposed has been satisfied.

(c) After evaluation of the permit application pursuant to (a) and (b) above, the City Manager or his/her designee shall either grant the permit, which includes the permit requirements set forth in (d) below, or deny the permit.

(d) Permit requirements. In addition to the other regulations set forth in this chapter, the permit holder shall also adhere to the following requirements:

1. All vehicles shall be clean, in good working condition and shall adhere to the maintenance schedule set forth in the applicant's permit application.

2. Wrecker and towing service accounts shall comply with all provisions of this chapter.

3. The permit holder shall not enter into a contract to provide wrecker and towing services anywhere in the city for a term that extends beyond the expiration date of its permit in effect on the effective date of the contract, unless such contract specifically provides for automatic and immediate termination if the permit holder is not issued a permit for any succeeding year that begins during the term of the contract. Any contract entered into in violation of this paragraph is void as against public policy. Because the contract is between the permit holder and the customer, the city will not become involved in any contract dispute between the permit holder and the customer.

4. The permit holder shall file a current customer list with the City Manager or his/her designee within three months of the effective date of this section and shall update such list with the City Manager or his/her designee on a quarterly basis. The customer list must be in alphabetical order and contain the customer name, address, and frequency of tows.

5. The permit holder shall respond to and, if feasible, resolve all complaints received by 12:00 noon on any business day by 5:00 p.m. of the same day and shall respond to and, if feasible, resolve all complaints received after 12:00 noon on any business day by 12:00 noon the next day. An emergency telephone number where the permit holder can be reached shall be given to the City Manager or his/her designee. In the event legitimate complaints shall exceed 2% of the total customers served by the permit holder during any city fiscal year, or 0.5% of the total customers serviced by the permit holder during any calendar month, the city may revoke the permit and/or seek fines pursuant to Chapter 36 of Hollywood's Code of Ordinances.

6. The permit holder shall not be deemed to be an agent of the city and shall be responsible for any losses or damages of any kind arising from its performance or nonperformance under its franchise. The permit holder shall defend at its own expense or reimburse the city for its defense, at the city's option, on any and all claims and suits brought against the city, its elected or appointed officers, employees and agents resulting from the permit holder's performance or nonperformance of service pursuant to the franchise and its contracts with its customers.

7. The term of all contracts entered into, and the term of all renewal periods commencing on or after October 1, 2014, shall not exceed one year.

(2) Permit fee. The fee for a permit shall be set by resolution of the City Commission. All permits shall expire each September 30. A new application and fee is required for each permit. Permits are not assignable or transferable.

(D) Appeal to City Commission upon denial of permit; retention of application fee.

(1) Any person who applies for a permit to tow vehicles from private property in the city and is refused such a permit may appeal directly to the City Commission for a review of the decision of the City Manager or his/her designee. Any such appeal must be filed within two weeks of the denial.

(2) The appeal shall be forwarded in writing to the City Manager for placement on the Commission agenda and shall state:

(a) The grounds for appeal with specificity.

(b) Why, in the opinion of the applicant, the City Manager or his/her designee erred in not issuing a permit to the applicant.

(3) If a permit application is denied and no appeal is taken under division (D)(1) or if the Commission upholds the denial of a permit by the City Manager or his/her designee, the City Manager or his/her designee shall refund the money submitted under division (B) above, less \$250, which is to be retained as the application fee.

(E) *Revocation of permit.* Should any person who holds a permit, as described above, violate any of the provisions of this section or fail to perform an act required by this section, he or she shall be subject to the following:

(1) Should the City Manager or his/her designee determine that a permit holder is operating in a manner harmful to the citizens of the city, based upon the requirements of divisions (B) and (C) above, or in violation of any other requirement or requirements imposed in this chapter, he/she shall place on the Commission agenda the matter of revoking the permit.

(2) The agenda item shall be publicly advertised in a newspaper of local circulation and written notice of the charges against the permit holder shall be sent to him/her at least 14 days in advance and shall also contain the date, time and place of the agenda item.

(3) After consideration of the matter, and allowing the permit holder to be heard, the Commission may revoke the permit. The criteria to be used by the Commission shall be the criteria set forth in divisions (B) and (C) above and the other requirements imposed in this chapter.

(4) Should the permit be revoked, the former permit holder may seek review of such action in Circuit Court by filing the necessary petition with the Clerk of the Court within 30 days of the City Commission decision. Any person whose permit is so terminated shall not be eligible to apply for a new permit until 365 days after the City Commission decision.

(F) *Franchise fee.* A franchise fee on shall be established by resolution of the City Commission. Each permit holder shall be responsible for remitting payment of the franchise fee to the City, no later than the 15th of each month, based upon the gross receipts of the permit holder. The permit holder shall remit the franchise fee payment along with a remittance form to be provided by the City Manager or his/her designee.

(1) The permit holder shall also provide the City Manager or his/her designee the following information no later than the 15th of each month in order to determine the applicable franchise fee:

(a) The total amount of monies received in the preceding month and the year-to-date total for towing vehicles from private property located in the city; and

(b) Such information shall be acknowledged as true and correct by the permit holder by notarized written certificate. The permit holder agrees, by accepting the permit, to allow the city, or a representative of the city, during normal business hours with reasonable prior notice, to audit the records of the permit holder evidencing the total amount of monies received at the office where these records are housed. The reasonable cost of the audit will be borne by the permit holder if, as a result of the audit, the permit holder and the city agree, or a court of competent jurisdiction determines, that the permit holder has underpaid the franchise fees owed in an amount equal to or exceeding 5% of the franchise fees actually paid.

(c) If the permit holder makes an underpayment in any month, the permit holder shall pay interest at the rate of 12% per annum on the amount underpaid or not paid, calculated from the date the amount was due to the date it is paid.

~~The penalty for a violation of any provision of this chapter shall be a fine of not more than \$500.~~

Section 2: That Section 111.08 of the Code of Ordinances is hereby created to read as follows:

TITLE IX: GENERAL REGULATIONS

* * *

CHAPTER 111: TOWING FROM PRIVATE PROPERTY

* * *

§ 111.08 PENALTY.

The penalty for a violation of any provision of this chapter shall be a fine of not more than \$500, imprisonment for a period not to exceed 60 days, or both.

Section 3: That it is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the provisions of this ordinance may be renumbered to accomplish such intention.

Section 4: That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

ORDINANCE ADOPTING PERMIT REQUIREMENTS FOR WRECKER AND TOWING SERVICES

Section 5: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this ordinance shall be in full force and effect immediately upon its passage and adoption.

ADVERTISED on _____, 2014.

PASSED on first reading this _____ day of _____, 2014.

PASSED AND ADOPTED on second reading this _____ day of _____, 2014.

PETER BOBER, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:

JEFFREY P. SHEFFEL, CITY ATTORNEY