



MEMORANDUM

Agenda Item No. 6(C)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: (Second Reading 7-22-03)
February 4, 2003

FROM: George M. Burgess
County Manager

SUBJECT: Towing Ordinance Amendments -
Article III of Chapter 30 relating to
The Towing of Motor Vehicles

RECOMMENDATION

It is recommended that the Board approve the attached ordinance amendments to Article III of Chapter 30 of the Code of Miami-Dade County (the Towing Ordinance) that effectively reinstate the towing licensing and regulatory program. The amendments, which comply with a recent Federal Supreme Court ruling permitting local governments to enforce safety-related towing regulations, clarify which Code sections apply to consent versus non-consent towers, eliminate provisions that are not deemed to be safety-related, and conform administrative provisions with those contained in other regulatory programs.

BACKGROUND

Miami-Dade County's towing regulations are contained in Article III, Chapter 30, of the Code originally enacted on July 11, 1989. Among other factors, the regulations set forth insurance levels, vehicle standards, records and trip manifest requirements, criminal background standards for business owners, and requirements governing non-consent tows, including the Board's establishment of maximum rates. Consent tows occur when a vehicle owner requests the towing service, while non-consent tows occur without the approval of a vehicle owner when the vehicle is improperly parked on private property. The Consumer Services Department (CSD) administers the towing licensing and regulatory program.

In October 1998, CSD discontinued licensing and regulation of consent towers due to an adverse ruling by the United States Court of Appeals in a case involving Atlanta, Georgia that was interpreted as preempting local regulation of consent towers. Non-consent towers continued to be licensed and regulated. In September 2000, Miami-Dade County was sued in a class action seeking to enjoin the County from enforcing its remaining towing provisions. The County Attorney's Office settled the lawsuit in June 2001, agreeing to refund towing license fees and fines. In accordance with the terms of the settlement agreement, the CSD refunded \$342,601 to towers and paid attorney's fees. Similar class action lawsuits were filed in Broward and Palm Beach Counties with similar results.

Although the County settled the class action lawsuit, the CSD joined other cities and counties to challenge the Appeals Court ruling. On June 20, 2002, in a case involving the City of Columbus, Ohio, the United States Supreme Court affirmed local government authority to establish towing regulations that are safety-related.

CSD has worked with the County Attorney's Office to amend the towing ordinance to comply with the Supreme Court's decision, as well as to update certain provisions. Upon passage of the amendment, CSD will reinstate licensing and regulation of consent and non-consent towers. Amendments include:

- Towing vehicle standards for class B and class D tow trucks are updated
- Requirements for filing a listing of rates, charges, services and hours of operation at the time of application, and provisions addressing involuntary tows from private property, are clarified as applying only to non-consent tows
- A five-day advance notice requirement for CSD to audit financial and operating records is eliminated and the requirement is limited to non-consent towers
- Towers are required to record the date and time vehicles are delivered to a storage facility to allow a determination of compliance with maximum allowable rates
- Towing applications that remain incomplete for more than 60 days from receipt by the CSD will be considered abandoned thus requiring a new application
- In accordance with code enforcement provisions previously enacted by the Board, unpaid amounts owed to Miami-Dade County will preclude a license from being issued
- Although a provision requiring a towing license as a prerequisite for doing business with the County is eliminated, such a requirement can be made a part of any contract or bid package
- Provisions relating to the process for license denials, revocations, suspensions, and related appeals, as well as provisions relating to enforcement remedies and the powers and duties of the CSD, are replaced with standard provisions that govern other regulated industries and cover the same matters

Many provisions remain unchanged or essentially the same. These include insurance levels, criminal background standards, most vehicle standards, and require license numbers to be included in advertisements and on vehicles. Non-consent towers are still required to obtain express authorization from a property owner prior to removing vehicles from private property, accept more than one form of payment to prevent a cash-only policy, private properties must be posted with tow-away zone signs, and kick-backs between towers and property owners are prohibited.

On January 13, 2003, a workshop was held with industry members to review the proposed ordinance. Some industry members voiced concern that the ordinance does not regulate a practice known as "roadside solicitation". The Code previously prohibited roadside solicitation, however, those sections were repealed in 2001 due to a companion lawsuit that was filed against the County. Although CSD staff and various law enforcement agencies acknowledge receipt of consumer complaints regarding abuses by roadside solicitors, federal law prevents the County from reinstating the roadside solicitation regulations. Roadside solicitation and related practices, such as monitoring police frequencies and misrepresenting oneself as a contract tower, are already prohibited under Florida law.

Industry also expressed a desire to have the Board reconsider the maximum rates allowed for non-consent tows. Those rates were last reviewed and adjusted in 1999. An evaluation of the maximum rates will be performed.

Towing historically generates large numbers of consumer complaints. CSD has received 204 towing-related complaints in the last 24 months, not counting those handled directly by police agencies.

Fiscal Impact

It is estimated that there are 450 towing businesses and 1,000 tow trucks in Miami-Dade County. The cost of licensing and enforcement will be supported by fees paid by the regulated industry. The existing CSD fee schedule contains the fees that were in effect under the previous regulatory program. Those fees are being reviewed to determine if adjustments are needed and, if so, an administrative order will be submitted for Board approval.



MEMORANDUM

(Revised)

TO: Honorable Chairperson and Members
Board of County Commissioners

DATE: July 22, 2003

FROM: Robert A. Ginsburg
County Attorney

SUBJECT: Agenda Item No. 6(C)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised**
- 6 weeks required between first reading and public hearing**
- 4 weeks notification to municipal officials required prior to public hearing**
- Decreases revenues or increases expenditures without balancing budget**
- Budget required**
- Statement of fiscal impact required**
- Bid waiver requiring County Manager's written recommendation**
- Ordinance creating a new board requires detailed County Manager's report for public hearing**
- Housekeeping item (no policy decision required)**
- No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(C)
7-22-03

ORDINANCE NO. _____

ORDINANCE RELATING TO TOWING OF MOTOR VEHICLES; AMENDING CHAPTER 30 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, AMENDING LICENSING REQUIREMENTS; PROVIDING FOR DEFINITIONS, DUTIES AND POWERS OF DIRECTOR, AND PROCEDURES FOR APPEALS; AMENDING VEHICLE STANDARDS; AMENDING ENFORCEMENT AND PENALTIES; AMENDING CHAPTER 8CC OF THE CODE PROVIDING CIVIL PENALTIES; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Chapter 30 of Article III of the Code of Miami-Dade County, Florida, is hereby amended as follows:¹

ARTICLE III. TOWING OF MOTOR VEHICLES.

Sec. 30-461. Definitions.

For the purposes of this article, the following definitions shall apply:

* * *

- (22) Wrecker class shall mean the type of towing vehicle, equipment or apparatus used to recover, tow or remove vehicles. The wrecker classes shall be distinguished as follows:

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

* * *

Class B Tow Truck- Minimum Ratings:

* * *

2. Boom capacity.....[[16,000]]
>>24,000<< LBS

3. Winching capacity.....[[16,000]]
>>24,000<<
LBS

* * *

Class D Tow Truck-Minimum Ratings:

>>200<< 4. Cable size and length. 3/4" X [[250]]

* * *

>>() Consent Tower shall mean a person who tows a motor vehicle with the consent of the vehicle owner.

() Nonconsent Tower shall mean persons who perform "Police Directed Tows" or "Private Property Impounds" as defined herein.

() Police Directed Tow shall mean the removal and storage of wrecked or disabled vehicles at the direction of police/law enforcement from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of Private Property Impounds as herein defined.

() Private Property Impound shall mean towing or removal of a vehicle, without the consent of the vehicle's owner or operator, as such is authorized by Section 715.07, Florida Statutes, as may be amended, when that vehicle is parked on private real property.<<

* * *

Sec. 30-463. Application for towing license; fees.

* * *

- (b) Every application for a towing license shall be on a form prescribed by the CSD and shall contain all the information required by that form, including but not limited to:

* * *

- (8) 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.

* * *

- (14) Each >>nonconsent tower who applies<< ~~[[applicant]]~~ for a license shall provide with his or her application for a license a listing of all of his or her existing >>or<< proposed rates and charges ~~[[on a form prepared]]~~ >>in a format approved<< by the CSD.

- (15) Such additional information about the >>nonconsent tower<< applicant as the Director may deem appropriate.

Sec. 30-464. Issuance of license; renewal.

* * *

- (b) The Director shall review and investigate each application for a towing license and shall reject any application that is not properly filed or is incomplete or untrue in whole or in part, or which fails in any way to meet the requirements of subsection (c) of this section. >>An incomplete application shall be considered to be abandoned if an applicant fails to complete his or her application within sixty days from the date that the application was filed with the Director. An application submitted subsequent to the abandonment of a former application shall be treated as a new application.<<
- (c) No towing license shall be issued to an applicant or

renewed unless the applicant has completed the following:

* * *

- (3) Submitted to a background investigation resulting in a determination by the Director that:

* * *

>>(3) There are no (i) unpaid civil penalties; (ii) unpaid administrative costs of hearing; (iii) unpaid County investigative, enforcement, testing, or monitoring costs; or (iv) unpaid liens, any or all of which are owed to Miami-Dade County pursuant to the provisions of the Code of Miami-Dade County, Florida.<<

- (d) Each towing license shall be on a form prescribed by the CSD and shall be signed by the Director. Each towing license shall contain, at a minimum, the name and address of the applicant, the dates the license remains in effect unless suspended or revoked, and a statement of such additional terms and conditions, restrictions and limitations as were authorized in the application and approval process. >>Violation of such a condition, limitation, or restriction of a license shall be a violation of this article.<<

* * *

Sec. 30-466. >>Reserved.<< [[Denial of permit; appeal; review.

~~Any person dissatisfied or aggrieved with the decision of the Director to deny his or her application for initial license or license renewal may, within ten (10) days after the denial, appeal in writing to the County Manager. Upon receipt of an appeal, the County Manager or his designee shall schedule and hold a hearing. At the hearing, witnesses shall be sworn, and the rules of evidence applicable to quasi-judicial proceedings shall govern. After the conclusion of the hearing, the County Manager or his designee shall affirm or reverse the decision of the Director, and that action shall be final. Should the County Manager or his designee reverse the decision of the Director, the Director shall issue the license forthwith.]]~~

Sec. 30-467. Decals; vehicle standards.

* * *

(b) The Director is authorized to issue current licensee decals for each separate towing vehicle or equipment or car carrier, upon application by the licensee and completion of the following:

* * *

(3) Inspection by personnel authorized by CSD to ascertain that the towing vehicle has the equipment required by rules to be promulgated by CSD and that such equipment is operable. If an inspection of the towing vehicle does not reveal that it meets the minimum rating for the vehicle's class specifications, as contained in Section 30-461 ~~[(24)]~~ >>(22)<<, the licensee must furnish the CSD a sworn statement that the towing vehicle meets the applicable minimum ratings.

* * *

Sec. 30-468. Manifest or trip records.

(a) It shall be unlawful for any person to recover, tow or remove a vehicle or provide storage in connection therewith unless the person providing such service shall maintain in his or her possession a manifest or trip sheet which shall include but not be limited to the following information:

* * *

>>(12) Date and time that the vehicle was delivered to the storage facility.<<

* * *

Sec. 30-470. Records required.

Each person regulated under this article >>who performs

nonconsent tows<< shall maintain accurate and complete records of all financial and operating information as the CSD may require, including but not limited to manifests or trip records, invoices and statements for services rendered, and records of payments for services rendered. Such records shall be maintained in Miami-Dade County for at least three (3) years. The CSD shall be granted access to these records for inspection or copying ~~[[, upon five (5) days' prior notice and]]~~ during regular business hours. All records and information inspected and not copied shall be confidential, except that records may be copied or made public for the purpose of license suspension or revocation proceedings.

Sec. 30-470.1. Prohibition on publication of advertising without towing license number.

- (a) No person, firm, corporation or other legal entity may knowingly publish an advertisement which is primarily circulated, displayed, distributed or marketed within Miami-Dade County, which advertisement offers services regulated by Chapter 30, Article III "Towing of Motor Vehicles," Code of Miami-Dade County, Florida, as it may be amended from time to time, unless the advertisement includes the license number issued by Miami-Dade County to that entity, with the words ">>M-<<D.C. Tow. Lic. No. _____."
- (b) Advertisement shall >>include, but not<< be limited to>>₁<< announcements, listings, displays, entries or other written statements containing the name of the licensee or identifying the services offered by the licensee or by a person regulated by this chapter, and which are placed in a magazine or periodical, newspaper or inserts, audio broadcasting or telephone directory, or on towing vehicles or equipment, when such written statement describes or encompasses services regulated by Chapter 30, Article III "Towing of Motor Vehicles," Code of Miami-Dade County, Florida.

* * *

Sec. 30-472. >>Reserved.<< ~~[[Towing license required to do business with County.~~

~~No person shall submit a bid, nor shall any contract be~~

~~awarded, on any County or municipal contract or agreement to recover, tow, or remove vehicles or provide storage in connection with such services unless that person has a valid and current license issued pursuant to this article. Any bids not in compliance with this section shall be null and void.]]~~

Sec. 30-473. >>Nonconsent towing<< [[Towing]] without prior consent of vehicle owner or duly authorized driver of vehicle.

In addition to the other requirements of this article, no [[person]] >>nonconsent tower<< shall recover, tow or remove a vehicle or provide storage in connection therewith without the prior express instruction of the vehicle owner or authorized driver, except in accordance with the following:

* * *

- (m) 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 recovered, towed or removed or stored in connection therewith.

* * *

Sec. 30-474. Requirements for providing >>nonconsent<< tow services at request of property owners.

[[Persons]] >>Nonconsent towers<< duly licensed under this article may recover, tow or remove a vehicle or provide storage in connection therewith upon the instruction of a property owner, or his authorized agent, on whose property the vehicle is abandoned or parked without authorization, provided that the following requirements are satisfied:

* * *

Sec. 30-475. Requirements for licensees and property owners pertaining to >>nonconsent<< tows from private property.

- (a) Each ~~licensee~~ >>nonconsent tower<< must enter into a written contract with every owner of private property that authorizes the licensee to tow vehicles from its property. The licensee must keep on file each contract that is in effect with each property owner, or that was terminated within the previous twelve (12) months. The CSD, law enforcement officers, and the owner of the vehicle towed by the licensee may inspect and copy any such contract during business hours.

* * *

Sec. 30-476. Maximum immobilization, >>nonconsent<< towing and storage rates for providing immobilization or tow services at the request of property owners or police agencies.

- (a) The Commission shall by resolution, establish maximum rates for providing immobilization, recovery, >>nonconsent<< towing, removal and storage services 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 Miami-Dade County, both in incorporated and unincorporated areas, except where municipalities pursuant to Sections 125.0103 and 166.043, Florida Statutes, have established differing maximum rates for their jurisdictions. From time to time, the maximum rates established by the Commission may be altered, revised, increased or decreased.
- (b) Persons who provide >>nonconsent towing<< services ~~[[pursuant to this section]]~~ shall not charge in excess of the maximum allowable rates established by the Commission. No person providing services pursuant to this section shall charge any type of fee other than the fees for which the Commission has established specific rates.

Sec. 30-476.1. ~~[[Reserved;]]~~ >>Denial, revocation and suspension of licenses.

The Director may deny, revoke, or suspend a license issued pursuant to the provisions of this article if the Director determines that the applicant or licensee has:

- (a) Violated any provision of this article, or
- (b) Misrepresented or concealed a fact on the application, renewal application or replacement application for a license, or
- (c) Aided or abetted a person who has not obtained a license to evade or avoid the provisions of this article, or
- (d) Engaged in any conduct as part of the performance of a contract for service which constitutes fraud, or
- (e) Violated any condition, limitation, or restriction of a license imposed by the Director, or
- (f) Was enjoined by a court of competent jurisdiction from engaging in the trade or business of towing or was enjoined by a court of competent jurisdiction with respect to any of the requirements of this article, or
- (g) Failed to comply with the terms of a cease and desist order, notice to correct a violation, written assurance of compliance, or any other lawful order of the Director, or
- (h) Was convicted of a violation of this article.
- (i) In addition to the foregoing, a license issued pursuant to this article shall be automatically suspended without a hearing when the CSD shall receive written notification that the licensee's officer, director or partner, or any other stockholder owning, holding, controlling or having beneficial interest in five (5) percent or more of the issued and outstanding stock of the licensee or of the issued and outstanding stock of a corporate partner of a partnership licensee, has been convicted of a felony as listed in Section 30-463(b)(9) or of three (3) misdemeanors after receiving a license. In addition to such suspension, the CSD shall forthwith initiate a hearing as hereinafter specified to consider revocation of such license. A licensee whose license has been suspended under this provision shall be entitled to reinstatement of his or her license upon proof

that:

- (1) After a felony conviction, the licensee's civil rights have been restored or that the licensee otherwise qualifies for restoration of rights under Section 940.05, Florida Statutes; or
- (2) After a conviction of any other criminal offense, that the person convicted has successfully completed all sentences of incarceration, probationary periods, required rehabilitation activities, and payment of all fines and penalties imposed in connection with such criminal offense.

Notwithstanding the foregoing, no revocation or suspension of a license by the Director shall be effective until the rendition of the appeal, if any, of such revocation or suspension pursuant to this section, or until the time period for filing such appeal has expired, whichever is later.<<

Sec. 30-477. Enforcement >>procedure; remedies; attorney's fees; costs;<< and penalties.

>>(a) It shall be unlawful for any person to violate any of the provisions of this article. In addition to any other judicial or administrative remedies provided by law, rule, regulation, ordinance, or this article, the Director shall have the following judicial remedies available to enforce the provisions of this article:

- (1) The Director may institute a civil action in a court of competent jurisdiction to seek temporary or permanent, prohibitory or mandatory injunctive relief to enforce compliance with or prohibit the violation of any of the provisions of this article.
- (2) The Director may institute a civil action in a court of competent jurisdiction to impose and recover a civil penalty in an amount of not more than ten thousand dollars (\$10,000.00) for each violation of any of the provisions of this article. Each day during any portion of which such violation occurs or continues to occur constitutes a separate violation. The right of trial by jury shall be available in any court to determine both liability for and the amount of the

civil penalties to be imposed and recovered hereunder.

- (3) The Director may institute a civil action in a court of competent jurisdiction to seek restitution and other equitable relief:
 - (i) To recover any sums and costs expended by the Director for tracing, investigating, preventing, controlling, abating or remedying any violation of any of the provisions of this article.
 - (ii) To provide restitution to any customers or consumers injured by any violation of any of the provisions of this article.

- (b) Upon the rendition of a judgment or decree by any of the courts of this state against any person and in favor of the Director under any of the provisions of this article, the trial court, or, in the event of an appeal in which the Director prevails, the appellate court, shall adjudge or decree against said person and in favor of the Director a reasonable sum as fees or compensation for the Director's attorney prosecuting the suit in which the recovery is had. Where so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case. This provision shall apply to all civil actions, legal or equitable, filed after the effective date of this article by the Director. Cessation of any violation of any of the provisions of this article whatsoever, prior to rendition of a judgment or entry of a temporary or final decree, or prior to execution of a negotiated settlement, but after an action is filed by the Director under any of the provisions of this article, shall be deemed the functional equivalent of a confession of judgment or verdict in favor of the Director, for which attorney's fees shall be awarded by the trial court as set forth hereinabove.

- (c) All the judicial and administrative remedies in this article are independent and cumulative.

- (d) In lieu of instituting judicial action the Director may enter into written assurances of compliance pursuant to Section 8A-82.1 of the Code of Miami-Dade County, Florida, with respect to the matters regulated under this article.

Each violation of any of the terms and conditions of a verified, written assurance entered into pursuant to Section 8A-82.1 of the Code with respect to the matters regulated under this article shall constitute a separate offense under this article by the persons who executed the assurance, their respective officers, directors, agents, servants, and employees; and by those persons in active concert or participation with any of the foregoing persons and who receive actual notice of the assurance of compliance. Decisions, actions, and determinations of the Director, pursuant to this section shall not be subject to review pursuant to Section 30-481 of this Code.<<

~~[[a]]~~ >>(e)<< This article shall be enforced by personnel authorized by the CSD, the police forces of the various municipalities in Miami-Dade County and by the Miami-Dade Police Department. When specifically authorized by the Director, this article may be enforced by other Miami-Dade County personnel.

~~[[b]] The CSD shall maintain a system by which licensees are given written notice of all violations.]]~~

~~[[e]]~~ >>(f)<< The CSD is authorized to enforce the provisions of this article by administrative fines ~~[[of up to five hundred dollars (\$500.00)]]~~ >>in accordance with the provisions of Chapter 8CC of the Code of Miami-Dade County, << for each violation. Each day of a continuing violation shall be deemed a separate violation.

~~[[d]] In addition to fines, the CSD is authorized to enforce the provisions of this article by suspension or revocation of towing licenses by the Director, upon notice and hearing as provided in this section, unless the licensee waives such notice and hearing. Licenses are subject to suspension or revocation when it shall appear that:~~

- ~~(1) The licensee has failed to comply with or has violated the provisions of this article; or~~
- ~~(2) The license was obtained by an application in which any material fact was omitted or falsely stated; or~~
- ~~(3) Any towing vehicle or equipment or car carrier owned or operated by the licensee and issued a~~

~~decal pursuant to this article has been operated, parked or stored in violation of this article or of any provision of law regarding the use of tow vehicles, including but not limited to Section 33-20.1 of the Miami-Dade County Code.~~

- (e) ~~In addition to the foregoing, a license issued pursuant to this article shall be automatically suspended without a hearing when the CSD shall receive written notification that the licensee's officer, director or partner, or any other stockholder owning, holding, controlling or having beneficial interest in five (5) percent or more of the issued and outstanding stock of the licensee or of the issued and outstanding stock of a corporate partner of a partnership licensee, has been convicted of a felony as listed in Section 30-463(b)(9) above or of three (3) misdemeanors after receiving a license. In addition to such suspension, the CSD shall forthwith initiate a hearing as hereinafter specified to consider revocation of such license. A licensee whose license has been suspended under this provision shall be entitled to reinstatement of his or her license upon proof that:~~
 - (1) ~~After a felony conviction, the licensee's civil rights have been restored or that the licensee otherwise qualifies for restoration of rights under Section 940.05, Florida Statutes; or~~
 - (2) ~~After a conviction of any other criminal offense, that the person convicted has successfully completed all sentences of incarceration, probationary periods, required rehabilitation activities, and payment of all fines and penalties imposed in connection with such criminal offense.~~
- (f) ~~All hearings required by this section for proposed suspensions or revocations of licenses shall be preceded by a maximum of ten (10) days' written notice. That notice shall specify the Director's proposed action and the grounds upon which the action is predicated. The licensee may be represented by legal counsel and shall be entitled to present his or her defense to the proposed action. The licensee shall notify the CSD in writing no later than five (5) business days before the scheduled hearing whether he or she will be represented by counsel at the hearing. Failure to give such~~

~~notice shall entitle the CSD to a continuance of the hearing if requested. Failure to appear at a duly noticed hearing shall be deemed a waiver of the right to hearing and an admission of the acts specified in the notice. Failure to claim certified mail notifying the licensee of the hearing shall be construed as failure to appear at a duly noticed hearing. All such hearings shall be conducted before a hearing examiner who shall not have responsibility for enforcement of this article and who shall be designated by the Director. Hearings under this section shall, insofar as practicable, be conducted in accordance with the rules of civil procedure governing procedure in the Circuit Court, except as may be otherwise provided in this Code or by rules adopted by the Commission. All such hearings shall be reported and, at the request of any party, transcribed at the expense of said party. Within a reasonable time after the conclusion of the hearing, the hearing examiner shall submit to the Director a statement of findings, conclusions and recommendations. If the hearing examiner affirms the Director's proposed action, the appellant shall pay the administrative costs of the hearing, unless such decision is reversed on subsequent appeal. The Director shall promptly notify the appellant of his or her decision.~~

- (g) ~~The hearing examiner conducting a hearing under this section shall have the power to administer oaths or affirmations, subpoena witnesses upon the written request of any interested party, and may compel the production of records, books, papers or other items. Should the hearing examiner, without good cause, refuse to subpoena witnesses or compel the production of books, records, papers or other items, then any interested party may, without cost to the petitioner, petition the County Court to order the appearance of any witness or witnesses or order the production of any books, records, papers or other items necessary to a fair and proper hearing. Failure to appear by any witness ordered to appear or failure to produce by any person ordered to produce books, records, papers or other items may constitute a contempt of Court and may be punishable as may any other contempt of Court. If any witness fails to honor a subpoena, the party requesting the same may apply to the appropriate Court for an order to show cause why the witness should not appear; and if after being ordered to appear by the Court the witness fails to comply therewith, the Court after due notice and hearing~~

~~may adjudge the witness in contempt of Court and punish him or her accordingly. The party seeking issuance of a subpoena shall bear the cost of such subpoena and the service thereof.~~

- ~~(h) The Director's decision may be appealed to the County Manager within ten (10) days of the date of decision. Upon such an appeal, the County Manager shall consider all evidence produced at the hearing. No further testimony or exhibits shall be permitted. The County Manager shall, within a reasonable time, on the basis of the record established before the hearing examiner, either affirm, reverse or modify the Director's decision.~~
- ~~(i) Review of the County Manager's decisions under this section shall be to a court of appropriate jurisdiction in accordance with the Florida Rules of Appellate procedure.~~
- ~~(j) Notwithstanding any other provision of this article, the Director may secure enforcement of the provisions of this article by any legal action necessary, including but not limited to execution upon fines levied or temporary or permanent injunctive relief.]]~~

~~[[k]]>>(g)<<Criminal penalties: If any person fails or refuses to obey or comply with or violates any of the provisions of this article, such person, upon conviction of such offense, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the County Jail, or both in the discretion of the Court. Each day of continued violation shall be considered as a separate offense.~~

Sec. 30-478. Scope of article.

The provisions of this article shall be the exclusive regulations applicable to the immobilization, recovery, towing and removal of vehicles in Miami-Dade County and all storage provided therewith; except that Section 30-473, ">>Nonconsent<< Towing Without the Prior Consent of the Vehicle Owner or Duly Authorized Driver of Vehicle," Section 30-474 "Requirements for Providing >>Nonconsent<< Tow Services at Request of Property Owners," Section 30-475 "Requirements for Property Owners Pertaining to >>Nonconsent<< Tows From Property," and Section 30-479 "Requirements for immobilizing vehicles without prior

consent of vehicle owner or duly authorized driver of vehicle," shall not apply in any municipality that has adopted and maintains in effect ordinances or regulations governing the same matters. Except as provided by this section, the regulations established by this article shall be applicable throughout Miami-Dade County both in the incorporated and unincorporated areas without regard to municipal boundaries, and shall not be subject to modification by any municipality. The provisions of this article shall not apply to the immobilization of a motor vehicle by a governmental agency, or person acting at the direction of a governmental agency, when such immobilization is authorized by a court order. Except as provided by this section, all municipal ordinances or resolutions contrary to this article are hereby superseded and rescinded.

**Sec. 30-479 Requirements for immobilizing vehicle
without prior consent of vehicle owner or
duly authorized driver of vehicle.**

It is unlawful for a person providing immobilization services to immobilize a vehicle owned by another person which is parked on private property without the permission or authority of the owner or duly authorized driver of that vehicle, unless the following requirements are satisfied:

- (15) The business providing the booting service shall first obtain and maintain a current and valid license issued by the Director in accordance with Section 30-463(a), (b) 1-9 and 11-15 and subject to the provisions of Sections 30-464 ~~[[and 30-466]]~~ >>, 30-476.1 and 30-477<< (any reference in these sections to towing shall mean "immobilization" or "booting").

* * *

**Sec. 30-480 ~~[[--500--Reserved.]]~~ >>Director's duties,
functions and powers.**

The duties, functions, powers and responsibilities of the Director shall include the following:

- (a) Enforce all of the provisions of this article.
- (b) Upon receipt of complaints or upon the Director's initiative, investigate and inspect matters regulated hereunder.

- (c) Institute civil actions or proceedings to enforce all the provisions of this article and subpoena issued by the Director, including seeking mandatory and prohibitory injunctions, the imposition and recovery of civil penalties and such other remedies and attorney's fees as set forth in Section 30-477 of this Code. Such civil actions or proceedings may be instituted by the Director regardless of whether a cease and desist order or notice to correct the violation or other lawful order of the Director has been issued or other administrative proceeding is pending.
- (d) Prosecute through the State Attorney in the criminal courts for violations of this article.
- (e) Deny, revoke, suspend and issue registration certificates and impose conditions, limitations, and restrictions upon same in accordance with Sections 30-464 of this Code. Notwithstanding the foregoing, no revocation or suspension of a registration certificate by the Director shall be effective until the rendition of the appeal, if any, of such revocation or suspension pursuant to Section 8A-481 of the Code of Miami-Dade County, Florida, or until the time period for filing such appeal has expired, whichever is later.
- (f) Issue a subpoena to compel the presence of any person or document or thing at any hearing, conference or proceeding authorized herein upon information or belief by the Director that a violation of any provision of this article has occurred or may occur.
- (g) Inquire into the practices, functions and policies of towers and make such recommendations to the Commission as the Director may deem necessary.
- (h) Administer oaths and certify official acts of the Director.
- (i) Investigate, upon the Director's initiative, the practices of any tower.
- (j) Apply to any judge of the circuit or county court, criminal or civil division, for the issuance of an administrative search warrant.
- (k) Conduct a program for monitoring consumer satisfaction levels in the field of towing and make such monitoring

information available to the Commission and the public.

- (l) Render, in the Director's discretion, assistance and technical advice to towers.
- (m) Institute informal conferences for discussing and resolving any matter covered by this article.
- (n) Publish and disseminate information to the public concerning towers.
- (o) Issue cease and desist orders, notices to correct violations, and any other lawful orders of the Director which shall briefly set forth the general nature of the violation of this article and specify the time within which the violation shall be rectified or stopped. If an order to cease and desist or notice to correct violations or any other lawful order of the Director is not obeyed, the Director shall have the power and authority to revoke or suspend the license, if any has been issued, or deny the issuance of a license and take such other action authorized by this article. Notwithstanding the foregoing, no revocation or suspension of a license by the Director shall be effective until the rendition of the appeal, if any, of such revocation or suspension pursuant to Section 8A-481 of the Code of Miami-Dade County, Florida, or until the time period for filing such appeal has expired, whichever is later. Orders to cease and desist, notices to correct violations, and any other lawful orders of the Director hereunder may be enforced by the institution by the Director of civil actions for mandatory and prohibitory injunctions, civil penalties and other remedies and attorney's fees as set forth in Section 30-477 of the Code of Miami-Dade County in a court of competent jurisdiction.
- (p) Enter into written assurances of compliance pursuant to Sections 8A-82.1 and 30-477 (d) of the Code of Miami-Dade County, Florida, with respect to the matters regulated under this article.
- (q) The powers of the Director enumerated in this article shall be in addition to and not a limitation of any other powers of the Director pursuant to any other provisions of this article or any other provisions of law or ordinance.

Sec. 30-481.

Appeals from actions, decisions or

determinations of the director; judicial review.

- (a) Any person regulated by this article who is aggrieved by any action, decision or determination of the Director pursuant to this article may request an administrative hearing before a hearing officer to appeal the action, decision or determination of the Director which resulted in the grievance. Appeal by administrative hearing of the action, decision or determination complained of shall be accomplished by filing a written request with the Director within fifteen (15) days after the date of the action, decision or determination complained of, a written notice of appeal which shall set forth the nature of the action, decision or determination to be reviewed and the basis for the administrative hearing. A timely request for administrative hearing shall be scheduled and heard by a Hearing Officer pursuant to Section 8CC of the Code of Miami-Dade County, Florida. Customers shall not be deemed to be persons regulated by this article for the purposes of this section. The Hearing Officer shall set the matter for hearing on the earliest practicable regularly scheduled hearing date or as soon as possible, but no sooner than ten (10) days after the request has been filed and shall cause notice of the hearing to be served upon the aggrieved party by first class mail. The notice may include, but not be limited to, the applicable Sections of 8CC-6(b)(2) through (9) of the Code of Miami-Dade County, Florida. The Hearing Officer shall hear and consider all relevant facts in accordance with the procedures set forth in Sections 8CC-6(e), (f), (g), (i), (j), (k), (l), (m)(2), and (n) of the Code of Miami-Dade County (any reference in these sections to Inspector shall mean "Director" and to violator shall mean "the person filing the appeal", and may affirm, modify or reverse the action, decision or determination appealed from. The decision of the Hearing Officer shall constitute final administrative review and no rehearing shall be permitted. Nothing herein shall be construed to prevent or prohibit the Director from instituting any civil or criminal action or proceeding authorized by this article at any time.
- (b) The Director, the Miami-Dade County Consumer Advocate, or any person regulated by this article who is aggrieved by any decision of the Hearing Officer may appeal a final order of the Hearing Officer by filing a notice

of appeal in the Circuit Court in and for Miami-Dade County, Florida, in accordance with procedures and within the time provided by the Florida Rules of Appellate Procedure for review of administrative action. The words "action," "decision" and "determination" as used herein shall not include the filing or institution of any action, conference or proceeding by the Director in any court or otherwise. Customers shall not be deemed to be persons regulated by this article for the purposes of this section.

Sec. 482—500. Reserved.<<

Section 3. Chapter 8CC of the Code of Miami-Dade County, Florida, is hereby amended as follows:

Code Section	Description of Violation	Civil Penalty
	* * *	
>> <u>30-464 (d)</u>	<u>Violation of condition, limitation or restriction of a license</u>	<u>500.00<<</u>
[[30-472	Bidding without a towing license	100.00
	* * *	
30-476.1(a)	Failure to file rates on roadside solicitation	200.00
30-476.1(b)	Failure to disclose rates on roadside solicitation to vehicle owner	500.00
30-476.1(c)	Charging more than rates disclosed on roadside solicitation	500.00
30-476.1(e)(1)	Towing distressed vehicle without having been summoned to accident scene by owner or law enforcement officer	500.00
30-476.1(e)(2)	Stopping or driving by scene of accident to solicit or offer tow services	500.00

30-476.1(e)(3)	Soliciting tow business as a result of information received over police radio	500.00
30-476.1(e)(4)	Diverting patrons of another at scene of vehicle accident or distressed vehicle	500.00
30-476.1(e)(5)	Soliciting or engaging in tow business with false information	500.00
30-476.1(e)(6)	Falsely identifying oneself as contract wrecker	500.00]]

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment, with the exception that Section 30-462 shall become effective four (4) months after the date of enactment, unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

Section 6. This ordinance does not contain a sunset provision.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Jeffrey P. Ehrlich

J:ORD/701

RA6
JPE

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