

**ORDINANCE NO. 3527**

AN ORDINANCE  
To Be Entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA, AMENDING THE CITY CODE, CHAPTER 86 TRAFFIC AND VEHICLES, ARTICLE VII, SKATEBOARDS, ROLLER SKATES, ROLLER BLADES OR SIMILAR CONVEYANCES BY RESERVING SECTIONS 86-248 THROUGH 86-259, CREATING ARTICLE VIII TOWING, DIVISION 1. TOWING FROM CERTAIN PRIVATE PROPERTY, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

**BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT MYERS, FLORIDA,** that:

**SECTION 1.** The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VII, Skateboards, Roller Skates, Roller Blades or Similar Conveyances is hereby amended by reserving Sections 86-248 through 86-259.

**SECTION 2.** The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, is hereby amended by creating Article VIII Towing to read as follows:

**ARTICLE VIII. Towing**

DIVISION 1. Towing From Certain Private Property

**Sec. 86-260. Definitions.**

(a) As used herein, unless otherwise defined or required by the context, the following words and phrases shall have the meanings indicated:

*Emergency towing* means only circumstances where the usual operation of a business is impeded by the blocking of entrances, exits or access to operational equipment, but specifically shall not include tows for the purpose of clearing parking areas.

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*Nonconsensual towing* means towing or removal of a vehicle that is parked on private real property without the consent of the owner or operator of the vehicle.

*Normal business hours* means from 7:00 a.m. to 11:00 p.m.

*Physically connected* means that at least two of the vehicle's wheels are raised from the ground and the connection is in compliance with the requirements of F.S. § 316.222 related to stop lamps and turn signals and F.S. § 316.525 requirements for vehicles hauling loads.

*Violation* means an uncontested citation or the conviction or a plea of nolo contendere to a violation of this article.

**Sec. 86-261. Owner, operator and vehicle registration provisions.**

It shall be unlawful for any person, either as principal, agent, or employee, to perform any nonconsensual towing without having first registered the towing service vehicles with the police department, using a format approved by the police department. The information for registration shall contain the make, model and manufacturer's serial number of the vehicle; date the vehicle was put into service; the driver's license number of the owner and the name of the insurance company or companies with which the owner and operators have liability insurance for the operation of the vehicle as required by law; and the name and driver's license number of all employees involved in the towing of vehicles as defined in this article. The registration fee shall be \$100.00 per

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vehicle. Each registration shall be valid for one year from the date of issuance.

**Sec. 86-262. Application for wrecker operator's permit; violations.**

(a) No wrecker operator shall engage in nonconsensual towing without first having obtained a wrecker operator permit from the police department. Each permit will meet the following specifications:

- (1) Be not less than 2 1/8 inches by 3 3/8 inches.
- (2) Contain a photograph of the wrecker operator that is not less than one inch by 1 1/2 inches in size.
- (3) Provide the name of the wrecker service and wrecker operator's first name in letters that are not less than 1/4 inch by 1/4 inch.
- (4) Provide a control number that is linked to the driver's personal information.
- (5) Provide a place for the chief of police or designee to validate the permit.
  - a. After the permit is validated it shall be laminated to protect the information on the permit.
  - b. If the permit is lost, damaged, stolen, becomes illegible or the permit holder changes wrecker services, the permit must be replaced. The replacement permit shall be valid only for the

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remainder of the time period for which  
the initial permit was valid.

(b) It shall be unlawful for the owner of any wrecker service to permit any person to be employed as a wrecker operator conducting nonconsensual towing within the city unless such person has been granted a wrecker operator permit to engage in nonconsensual towing which has been validated by the chief of police or designee. Upon issuance of the permit, the wrecker operator is granted the privilege of engaging in nonconsensual towing within the city limits unless such permit expires or is suspended or revoked, as provided in this division. Each permit shall be valid for one year from date of issuance.

(c) In order to secure a wrecker operator permit, an applicant must provide information on a form provided by the city as follows:

- (1) Submit to the chief of police or designee a certified copy from the Florida Department of Law Enforcement of his/her criminal history and a certified copy of his/her driving record from the Florida Department of Highway Safety and Motor Vehicles;
- (2) Possess a valid Florida Class E driver's license and provide a photocopy to the chief of police or designee.
- (3) Not have been convicted, pled nolo contendere to, or had adjudication withheld for or been incarcerated after any conviction, plea of nolo

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contendere or adjudication withheld for any of the following:

- a. Any capital felony, any first degree felony, sexual battery, any violent felony involving the use of a gun or knife or which results in great bodily harm.
- b. Within the previous ten years, any violent felony including not referenced in subsection a. above.
- c. Within the previous ten years, any felony or first degree misdemeanor directly related to the business of towing motor vehicles; repossession of motor vehicles; motor vehicle theft; car jacking or chop shops; or liens for recovering, towing, or storing vehicles and vessels (F.S. § 713.78).
- d. Within the previous five years, of either:
  - (1) driving under the influence of alcohol, a controlled substance, or a chemical substance, to the extent that normal faculties are impaired; or
  - (2) driving with an unlawful blood alcohol level.

(d) A permit shall be reviewed and granted or denied in writing within five business days. If the permit is denied, the reason for such denial shall be provided in writing and shall also advise that the applicant may correct

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deficiencies in the application within seven days of the notice of denial without incurring an additional application fee.

- (e) The permit fee shall be \$50.00 per applicant.

**Sec. 86-263. Prerequisites to towing vehicles parked on private property; exceptions.**

(a) It shall be unlawful for any person to tow or cause to be towed any vehicle parked on private real property unless the provisions of F.S. § 715.07, have been complied with together with the following requirements:

- (1) The owners of the real property shall have executed, at least 24 hours prior to the towing or removal of any vehicle, a written agreement for nonconsensual towing with a towing service, 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 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

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compliance with all of the provisions of  
F.S. § 715.07.

The form for such agreement shall be provided  
by the police department, and may not be  
amended or modified in any manner that  
provides for terms or activities that violate the  
provisions of this article or F.S. § 715.07.

- (2) A copy of the completed agreement shall be  
placed on file with the police department.
  - a. A new completed agreement shall be  
placed on file with the police  
department each time a property owner  
changes tow vendors or the ownership  
or management of the property  
changes.
  - b. A completed agreement shall be  
resubmitted annually, one calendar  
year from the date of last submittal.
- (3) Signage shall be installed on the property  
owner's property in accordance with  
F.S. §715.07. Signage must be of a sturdy  
weather resistant nature with reflective paint.  
Additionally, the sign shall state the specific  
hours of towing or state 24 hours, if  
applicable. To ensure compliance with state  
and municipal law, the owners of the real  
property shall pay a one time fee of \$100.00 to  
the community development department for  
plan review and sign inspection and approval.

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As part of this review all installed signage must be inspected and approved by code enforcement prior to any towing of any vehicles being authorized.

- (4) Photograph(s) of the "offending" vehicle shall be taken prior to its removal and shall be of sufficient detail to demonstrate the violation of rule or regulation for which the vehicle is being towed. The photograph(s) must be date and time stamped and maintained by the wrecker company for a minimum period of one year. Photos shall be available for viewing the following business day. Normal hours for viewing the photographs will be Monday through Saturday, 8:00 a.m. to 5:00 p.m. There shall be no charge for viewing the photographs when such is done during the first available business day as referenced above.

- (5) The towing service must obtain a business tax receipt for a nonconsensual tow company from the city. This requirement is in addition to any other business tax receipt requirements that may apply to a towing service.

- (b) The provisions of this article shall not apply

to:

- (1) The towing of vehicles pursuant to any towing or service provider agreement to which the city is a party.



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- (2) The city's authority to tow any vehicles under the city code, as well as any provision of state or federal law.
- (3) The towing of vehicles from property appurtenant to and obviously a part of a single-family residence.
- (4) When notice is personally given to the owner or other legally authorized person in control of the vehicle that the area in which that vehicle is parked is reserved or otherwise unavailable and that the unauthorized vehicle will be removed at the owner's or operator's expense.

(c) The 24 hour notice requirement of this section shall not apply where the tow is of an emergency nature and the property owner or authorized representative of the tow owner or operator has notified the police department prior to removing the vehicle.

(d) Each towing service shall staff or monitor its telephones at all times (pager only does not satisfy this requirement) and immediately advise any vehicle owner or authorized representative who calls by telephone of the following:

- (1) Each and every document or other item which must be produced to retrieve the vehicle.
- (2) Exact charges as of the time of the telephone call, and the rate at which charges will accumulate thereafter.
- (3) The acceptable methods of payment are cash, major credit card, and debit card. Also, if the

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towing service owner or operator cannot, or will not provide change to a customer, the owner or operator shall advise the customer to bring exact payment, if paying with cash.

- (4) That the vehicle can be picked up within one hour of request.

**Sec. 86-264. Nonconsensual tow bill of rights.**

Any towing firm engaged in the business of nonconsensual towing shall post the nonconsensual tow bill of rights in a clearly visible, prominent position, not more than ten feet from the place where payment for the tow is made. The poster shall provide the following:

Nonconsensual Tow "Bill of Rights"

Your car has been towed without your consent. You have certain rights under Florida Statutes and the city ordinances:

- (1) Your vehicle must be released within one hour after requested, provided the towing fees are paid.
- (2) You can retrieve any personal property that is in the vehicle within the first 24 hours of the tow prior to paying the towing fees, after the first 24 hours, a fee may be charged.
- (3) You may inspect your vehicle prior to paying the towing fees. The tow company cannot require you to sign a waiver which would release the firm from liability for damages noted by you at the time the vehicle is picked up. The tow company is responsible for any

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damage done by entry into the vehicle if the entry was not done with the "standard of reasonable care." Proper remedy for these damages is through civil court.

- (4) You may pay the towing charges using cash, debit card, or major credit card. A fee may be charged to use a debit card. No additional fee shall be charged for use of a credit card.
- (5) A detailed, signed receipt showing the legal name of the tow company or person towing the vehicle must be given to you at the time of payment, whether requested or not. The receipt shall also include the following statement: "Notice: Towing from private property is regulated by F.S. § 715.07 and Chapter 86, Article VIII City of Fort Myers Code of Ordinances."
- (6) Tow companies are required to take photographs of your vehicle prior to tow, documenting the violation for which the vehicle was towed. You can make arrangements with the tow company to view the photographs at no charge. Photographs shall be available for viewing the following business day. Normal hours for viewing the photographs are Monday through Saturday, 8 a.m. to 5 p.m. It is a good idea to make an appointment in advance.

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The document shall also contain contact information to report violations.

**Sec. 86-265. Authorized fees and charges.**

(a) Any towing firm engaged in the business of nonconsensual towing shall not charge the owner of any towed vehicle or personal property in excess of the fees listed in subsection 86-265(d). The fees shall be all inclusive during the first 24 hour period following notification of vehicle tow to the police department; no additional fees or charges whatsoever may be charged unless specifically established and authorized herein or by Florida Statutes. Such maximum fees will be subject to rate review as provided in subsection 86-265(c), notwithstanding that such review may occur less than annually for the first instance.

(b) A person, operator, firm, or corporation that provides nonconsensual towing and storage services pursuant to this article shall accept payment for charges from the vehicle owner or authorized representative in the following forms:

- (1) Cash;
- (2) Major credit card; and
- (3) Debit card.

(c) Maximum nonconsensual towing fees shall be subject to amendment no more than annually by the city council after receiving a request for fee modification by the towing company owners and recommendations by the city based on financial information submitted by the nonconsensual towing companies as to their costs for the

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removal of vehicles and on other information. The required information shall be submitted by the towing company owners by September 30 of each year. The maximum fees shall be adopted by the city council prior to December 31 of each year in which a request for modification has been received, provided that city council is under no obligation to change the fees. City council may vote to keep the fees at the current rate. Such maximum fees shall be effective until changed city council.

(d) The towing fees are as follows:

(1) Automobiles, pickup trucks, econoline type vans, trailer combinations, boats, motorcycles, mopeds, and small campers:

- a. Towing Fee: \$100.00
- b. Administrative Fee: \$30.00
- c. Storage Fee: \$25.00

(2) Large Trucks that require a class "C" wrecker or special equipment:

- a. Towing Fee: \$200.00
- b. Administrative Fee: \$30.00
- c. Storage Fee: \$25.00

**Sec. 86-266. Vehicle not connected upon operator returning.**

The owner or operator of any towing service vehicle which is summoned to tow away any vehicle on private property shall not remove or tow the vehicle away and shall not charge any fee if the vehicle operator returns to the

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vehicle prior to the towing service operator having physically connected the vehicle to the towing apparatus.

**Sec. 86-267. Vehicle not towed upon operator returning.**

If the registered owner or other legally authorized person in control of the vehicle arrives at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected from the towing or removal apparatus, and that person shall be allowed to remove the vehicle without interference upon the payment of \$50.00 for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.

**Sec. 86-268. Point of tow to point of storage.**

Except as provided in section 86-267 above and except for bona fide emergencies, a vehicle in tow shall be taken from the point of tow to the permanent business address of the tow owner or operator where vehicles are normally stored. Temporary storage at any other location is prohibited.

**Sec. 86-269. Vehicles subject to criminal investigation.**

A tow owner shall not refuse to relinquish to the police, a vehicle which is the subject of a criminal investigation. Relinquishment of the vehicle to the police for impoundment at its contract site shall not affect tow owners right to payment for services rendered and payment for those services shall be made to tow owner by the owner of the vehicle or his/her representative, or other arrangements shall be made with tow owner to receive

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payment before the vehicle is released to the owner or his/her representative.

**Sec. 86-270. Civil citation; violation.**

In addition to any criminal prosecution that may occur, police officers and code enforcement officers may issue a civil citation to tow owners or their authorized representatives and property owners or their authorized representatives, for violations of any section of this article. All tow owners shall be subject to a semi-annual inspection by code enforcement to ensure compliance with all city ordinances and applicable state and federal law.

**Sec. 86-271. Receipt from towing service to be furnished to owner when vehicle claimed.**

When a towed vehicle is claimed the towing service shall furnish the owner or other legally authorized person with a receipt which shall include the name of the person or management entity who authorized the towing. The receipt shall also include the following language:

"Notice: Towing from private property is regulated by the provisions of F.S. § 715.07 and Chapter 86, Article VIII, City of Fort Myers Code of Ordinances.

**Sec. 86-272. Prohibitions.**

(a) It shall be a violation of this article to charge any fee which is based on police response to a call by the owner of a vehicle.

(b) It shall be a violation of this article for any person other than the real property owner or an authorized representative of the owner, or the tow owner or authorized representative of the tow owner if the signs are placed by

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the tow company, to move, remove, or deface any tow-away sign.

**Sec. 86-273. Penalties.**

In addition to those penalties imposed by F.S. § 715.07, violation of any provisions of this article, including any of the requirements of F.S. § 715.07 shall be subject to the following civil penalties:

- (1) Any person who violates this article shall be liable to the owner or lessee of the vehicle for all costs of recovery, including all towing and storage fees, plus attorney's fees and court costs, and shall in addition be liable to the owner or lessee of any towed or removed vehicle for damages resulting directly or indirectly from the removal, transportation or storage of the vehicle.
- (2) Any person who violates any of the provisions of this article shall upon conviction be fined not more than \$500.00 per violation. Each violation shall be considered a separate offense.

**Sec. 86-274. Revocation; appeal.**

(a) The city may revoke the privilege of any person to perform nonconsensual towing on any of the following grounds:

- (1) If the towing service owner and/or operator fails to register as required by this article;
- (2) If the registration contains a false statement of material fact;



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- (3) If the towing service owner and/or wrecker operator provides monetary or other valuable consideration to the private property owner for the privilege of towing vehicles from the property under contract;
  - (4) If the towing service owner and/or operator provides monetary or other valuable consideration to the private property owner for each or any individual vehicle towed from the property;
  - (5) If the towing service owner and/or wrecker operator charges the owner of any towed vehicle or personal property fees in excess of those established by resolution adopted by city council.
  - (6) If a wrecker operator fails to display on or about his person or on the dashboard of the wrecker, easily visible to the public, the wrecker operator permit while performing a nonconsensual tow.
  - (7) If the towing service owner refuses to allow code enforcement access to records and/or equipment within fourteen (14) calendar days of a written request for semi-annual inspection being made by the code enforcement division in accordance with section 86-270.
- (b) Three violations of the provisions of this section by any owner and/or operator of a towing service or

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towing service vehicle within a one year period shall result in the automatic suspension of the owner's and/or operator's privilege to engage in the business of nonconsensual towing. In the event of such suspension:

- (1) The chief of police or designee shall inform the owner and/or operator in person or by certified or registered mail within seven days prior to the effective date of the suspension.
- (2) The owner and/or operator may file a written request for a due process hearing within ten calendar days of the date of the suspension with the chief of police or designee. Failure to request a hearing within the ten calendar day period shall constitute a waiver by the owner and/or operator of any rights to a hearing.
- (3) At the due process hearing, the towing service owner and/or operator shall have the opportunity to present any testimony and/or documentation he/she believes negates or mitigates the suspension.
- (4) Upon a review of the evidence presented at the hearing, the chief of police or designee may revoke the owner's and/or operator's privilege to engage in the business of nonconsensual towing for up to one year:
  - a. First revocation . . . Six months
  - b. Second and subsequent revocations . . .  
One year

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(c) Any towing service owner and/or operator whose privilege to engage in nonconsensual towing has been revoked by the chief of police, or designee, shall not be eligible to again obtain a permit with the police department for nonconsensual towing until such revocation period has expired. Any revocation shall include the period of suspension which led to the revocation.

(d) Any towing service owner and/or operator whose privilege to engage in the business of nonconsensual towing has been revoked by the chief of police or designee may file an appeal within 15 days of the date of revocation pursuant to the appeals process specified below.

(e) *Right of appeal.* Any towing service owner and/or operator whose privilege to engage in nonconsensual towing has been revoked by the chief of police or designee may appeal such decision to the nuisance abatement board. Such appeal shall be taken by filing written notice with the chief of police or designee within 15 days after the decision by the police chief to revoke such privilege. The notice of the appeal shall contain the grounds for the appeal and shall contain information showing that either the finding is contrary to the law or is not supported by competent substantial evidence. The chief of police or designee shall transmit copies of the appeal to the nuisance abatement board along with papers constituting the record upon which the action appealed from is based. The filing of a notice of appeal will not delay the effectiveness of any revocation. The nuisance abatement board may decide to uphold or reverse the

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decision of the chief of police. If the nuisance abatement board reverses the decision of the chief of police, the nonconsensual towing privilege will be immediately reinstated.

**Secs. 86-275 - 86-284. Reserved.**

**SECTION 3.** Severability. If for any reason any section, subsection, paragraph, or part of this ordinance shall be held invalid or destroy any other section, subsection, or part of this ordinance then the remaining portions thereof shall remain in full force and effect without regard to the section, subsection, paragraph, or part invalidated.

**SECTION 4.** This ordinance shall become effective immediately upon adoption.

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**PASSED IN PUBLIC SESSION** of the City Council of the City of Fort Myers, Florida, this 19th day of October, A.D., 2009.

|               |                                      |
|---------------|--------------------------------------|
| <u>Aye</u>    | <u>/s/ Warren J. Wright</u>          |
| <u>Aye</u>    | <u>/s/ Johnny W. Streets, Jr.</u>    |
| <u>Aye</u>    | <u>/s/ Levon Simms</u>               |
| <u>Absent</u> | <u>/s/ Michael Flanders</u>          |
| <u>Aye</u>    | <u>/s/ Randall P. Henderson, Jr.</u> |
| <u>Aye</u>    | <u>/s/ Thomas C. Leonardo</u>        |

Council Members

**APPROVED** this 19th day of October, A.D., 2009, at 5:42 o'clock p.m.

|            |                         |
|------------|-------------------------|
| <u>Aye</u> | <u>/s/ Jim Humphrey</u> |
|------------|-------------------------|

Mayor

**FILED** in the Office of the City Clerk this 19th day of October, A.D., 2009.

|                             |
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| <u>/s/ Nancy J. Heberle</u> |
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Deputy City Clerk