

ORDINANCE NO. 3560

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 VIII TOWING, DIVISION 1. TOWING FROM CERTAIN PRIVATE PROPERTY, SECTION 86-260 DEFINITIONS; SECTION 86-261 OWNER, OPERATOR AND VEHICLE REGISTRATION PROVISIONS; SECTION 86-262(E) APPLICATION FOR WRECKER OPERATOR'S PERMIT; VIOLATIONS; SECTION 86-263 PREREQUISITES TO TOWING VEHICLES PARKED ON PRIVATE PROPERTY; EXCEPTIONS; SECTION 86-264 NONCONSENSUAL TOW BILL OF RIGHTS; SECTION 86-265 AUTHORIZED FEES AND CHARGES; AND SECTION 86-274 REVOCATION; APPEAL; 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 VIII Towing, Division 1 Towing from Certain Private Property, Section 86-260 Definitions is hereby amended to read as follows:

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.

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 and pursuant to an agreement between a towing firm and a

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private property owner wherein the towing firm is authorized to tow unauthorized vehicles from the private real property without first receiving a specific request from the private real property owner.

Normal business hours means Monday through Friday from 8:00 a.m. to 6:00 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.

Private property 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 by a towing firm upon specific request of the private real property owner, or authorized representative.

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

SECTION 2. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-261 Owner, operator and vehicle registration provisions is hereby amended to read as follows:

Sec. 86-261. Nonconsensual towing 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 to be used for nonconsensual towing

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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 \$20.00 per vehicle. Each registration shall be valid for one year from the date of issuance.

SECTION 3. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-262(e) Application for wrecker operator's permit; violations is hereby amended to read as follows:

Sec. 86-262. Nonconsensual towing application for wrecker operator's permit; violations.

(e) The permit fee shall be \$25.00 per applicant.

SECTION 4. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-263 Prerequisites to towing vehicles parked on private property; exceptions is hereby amended to read as follows:

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

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property unless the provisions of F.S. § 715.07, have been complied with together with the following requirements:

- (1) 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 \$50.00 to the community development department for plan review and sign inspection and approval. 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.
- (2) 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 Friday, 8:00 a.m. to 6:00 p.m. There

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shall be no charge for viewing the photographs.

- (3) Prior to towing a vehicle pursuant to a private property tow, the driver of the towing vehicle must obtain the signature of the private real property owner or authorized representative of the owner authorizing the towing of the specific vehicle that the owner or authorized representative has requested to be towed. Such signature must be obtained at the same location that the vehicle to be towed is located.
- (4) A tow company shall only conduct a private property tow requested by the authorized representative of a private real property owner if the owner has previously provided the authorized representative's name to the tow company in writing as an authorized representative with owner permission to request a private property tow. In no instance shall an employee of any tow company be listed as an authorized representative of an owner authorized to request a private property tow.

(b) In addition to the requirements listed in subsection (a), it shall be unlawful for any person to nonconsensually tow any vehicle unless the following additional requirements have been complied with:

- (1) The owners of the real property shall have executed, at least 24 hours prior to the towing

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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 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

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or management of the property changes.

b. A completed agreement shall be resubmitted annually, one calendar year from the date of last submittal.

(c) The provisions of this article shall not apply to:

(1) The towing of vehicles pursuant to any towing or service provider agreement to which any governmental entity is a party.

(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.

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

(e) Each towing service shall staff or monitor its telephones at all times (pager only does not satisfy this

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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 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.

SECTION 5. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-264 Nonconsensual tow bill of rights is hereby amended to read as follows:

Sec. 86-264. Towing bill of rights.

Any towing firm engaged in nonconsensual towing or private property towing shall post the towing 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:

Towing "Bill of Rights"

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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 prior to paying the towing fees. No fee may be charged for retrieving personal property from the vehicle.
- (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 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

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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 Friday, 8:00 a.m. to 6:00 p.m. It is a good idea to make an appointment in advance.

The document shall also contain contact information to report violations.

SECTION 6. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-265 Authorized fees and charges is hereby amended to read as follows:

Sec. 86-265. Authorized fees and charges.

- (a) Any towing firm engaged in the business of nonconsensual towing or private property towing shall not charge the owner of any towed vehicle or personal property in excess of the fees listed in subsection 86-265(d). 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

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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 or private property 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 or private property 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 towing companies as to their costs for the 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 by city council.

(d) The towing fees are as follows:

- (1) Automobiles, pickup trucks, econoline type vans, trailer combinations, boats,

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motorcycles, mopeds, and small campers:

- a. Towing Fee: \$100.00
- b. Administrative Fee: \$30.00
- c. Storage Fee: After the first six hours, \$25.00 per 24 hour increment.

(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: After the first six hours, \$40.00 per 24 hour increment.

SECTION 7. The City Code of the City of Fort Myers, Florida, Chapter 86, Traffic and Vehicles, Article VIII Towing, Division 1 Towing from Certain Private Property, Section 86-274 Revocation; appeal is hereby amended to read as follows:

Sec. 86-274. Revocation of nonconsensual towing rights; 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;
- (3) If the towing service owner and/or wrecker operator provides monetary or other valuable

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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 towing service vehicle within a one year period shall result in the automatic suspension of the owner's and/or

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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
 - (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

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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 decision of the chief of police. If the nuisance abatement board reverses the decision of the chief of police, the

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nonconsensual towing privilege will be immediately reinstated.

SECTION 8. 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 9. 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 July, A.D., 2010.

<u>Aye</u>	<u>/s/ Teresa Watkins Brown</u>
<u>Aye</u>	<u>/s/ Johnny W. Streets, Jr.</u>
<u>Aye</u>	<u>/s/ Levon Simms</u>
<u>Aye</u>	<u>/s/ Michael Flanders</u>
<u>Aye</u>	<u>/s/ Forrest Banks</u>

Council Members

APPROVED this 19th day of July, A.D., 2010, at 7:28 o'clock p.m.

<u>Aye</u>	<u>/s/ Thomas C. Leonardo</u>
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Mayor Pro tem

FILED in the Office of the City Clerk this 19th day of July, A.D., 2010.

<u>/s/ Marie Adams, MMC</u>

City Clerk