

Miami, Florida, Code of Ordinances >> PART II - THE CODE >> Chapter 42 - POLICE >> ARTICLE V. - VEHICLE IMPOUNDMENT >>

ARTICLE V. - VEHICLE IMPOUNDMENT

Sec. 42-120. - Definitions.

Sec. 42-121. - Impoundment of motor vehicles, controlled substances, prostitution, and illegal dumping of waste.

Sec. 42-122. - Hearings, administrative civil penalty.

Sec. 42-123. - Administrative civil penalty; payment.

Sec. 42-124. - Return of vehicle; disposition of unclaimed vehicles.

Sec. 42-125. - Appeal.

Sec. 42-120. - Definitions.

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Commercial purpose. The words "commercial purpose" shall mean for the purpose of economic gain.

Commercial vehicle. The words "commercial vehicle" shall mean a vehicle that is owned or used by a business corporation, association, partnership or sole proprietorship or any other entity conducting business for a commercial purpose.

Dump. The word "dump" shall mean to dump, throw, discard, place, deposit, or dispose of.

Hazardous waste. The words "hazardous waste" shall mean solid waste, or a combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed.

Litter. The word "litter" shall mean any garbage, rubbish, trash, refuse, can, bottle, box, container, paper, tobacco products, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, or substance in any form resulting from domestic, industrial, commercial, mining agricultural, or governmental operations.

Motor vehicle. The words "motor vehicle" shall mean an automobile, motorcycle, truck, trailer, semitrailer, truck, tractor, or semitrailer combination or any other vehicle that is powered by a motor.

Owner. The term owner shall have the same meaning as provided in F.S. § 316.003(26), as amended.

Person. The word "person" shall mean any individual, firm, sole proprietorship, partnership, corporation or unincorporated associations.

Vessel. The word "vessel" shall mean a boat, barge, or airboat or any other vehicle used for transportation on water.

(Ord. No. 11700, § 2, 9-28-98; Ord. No. 13088, § 2, 9-24-09)

Sec. 42-121. - Impoundment of motor vehicles, controlled substances, prostitution, and illegal dumping of waste.

- (a) A motor vehicle shall be subject to seizure and impoundment whenever a police officer has probable cause to believe that the vehicle:
- (1) Contains any controlled substances or cannabis as defined in Chapter 893, Florida Statutes;
 - (2) Was used in the purchase, attempt to purchase, sale, or attempt to sell such controlled substances or cannabis;

- (3) Was used to facilitate the commission of any act of prostitution, assignation or lewdness as defined in F.S. § 796.07; or
 - (4) Was used to dump litter in any manner as prohibited in F.S. § 403.413(4) (1997), in an amount exceeding 15 pounds in weight or 27 cubic feet in volume, but not exceeding 500 pounds in weight or 100 cubic feet in volume and not for commercial purposes; or
 - (5) Was used to dump litter as prohibited in F.S. § 403.413(4) (1997) in an amount exceeding 500 pounds in weight or 100 cubic feet in volume or in any quantity for commercial purposes, or dumps litter which is hazardous waste.
- (b) Upon seizing the motor vehicle, the police officer shall:
- (1) Provide for the towing of the vehicle pursuant to the city rotational wrecker system and all applicable towing procedures; and
 - (2) Provide written notice of such seizure and impoundment to all persons whom the city knows, or with reasonable investigation should know, have a legal interest in the subject property. The written notice shall advise the persons of the following:
 - a. The right to request a preliminary hearing pursuant to section 42-122 to contest the seizure and impoundment of the vehicle;
 - b. The right to request a preliminary hearing pursuant to section 42-122 to contest the seizure and impoundment of the vehicle and immediately retrieve the vehicle from the towing facility upon the posting with the city of a cash bond in the amount of \$500.00, plus towing and storage costs; or
 - c. The right to waive the preliminary hearing and immediately retrieve the vehicle from the towing facility upon the payment of the \$500.00 administrative penalty, plus towing and storage costs.
- (c) The required notices to be given pursuant to this section shall be provided by hand delivery at the time of the seizure and impoundment of the vehicle to the person in control of the vehicle and all other persons whom the city knows, or with reasonable investigation should know, have a legal interest in the subject property by certified mail, return receipt requested, within 48 hours of the time of the impoundment excluding Saturdays, Sundays, and legal holidays.
- (d) This section shall not apply and the vehicle shall not be seized or impounded if:
- (1) The possession, use or sale of the controlled substance and/or cannabis is authorized by F.S. ch. 893 or ch. 499;
 - (2) The vehicle was reported stolen at the time that it is subject to seizure and impoundment;
 - (3) The vehicle was operating as a common carrier at the time it was subject to seizure and impoundment;
 - (4) A law enforcement agency has expressed its intent, in writing, to institute state forfeiture proceedings on the vehicle; or
 - (5) The vehicle is rented from a company engaged in the business of renting vehicles.

(Ord. No. 11445, § 2, 2-20-97; Ord. No. 11592, § 1, 1-13-97; Ord. No. 11621, § 2, 3-10-98; Ord. No. 11700, § 2, 9-28-98; Ord. No. 13088, § 2, 9-24-09; Ord. No. 13146, § 2, 3-11-10)

Sec. 42-122. - Hearings, administrative civil penalty.

- (a) The owner of the motor vehicle, or his/her agent or authorized representative shall make a written request for a preliminary hearing within five days from the date notice is received then:
- (1) The city shall hold such hearings before a special master or alternate special master of the city within ten days of receipt of the written request, excluding Saturdays, Sundays, and legal holidays.
 - (2) At the hearing, the city shall have the burden to show that probable cause exists to believe that the motor vehicle is subject to impoundment and continued seizure under section 42-121. If the vehicle owner raises as a defense at the preliminary hearing that he/she was unaware that the vehicle was being used or was likely to be used in violation of this article, the city shall establish by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the vehicle was being used or was likely to be used in criminal activity.
 - (3) The formal rules of evidence shall not apply at the hearing and hearsay and circumstantial evidence is admissible.
 - (4) If, after the hearing, the special master or alternate special master determines that probable cause exists to believe that the motor vehicle is subject to impoundment and continued seizure, he/she shall order the continued impoundment of the vehicle and set the date for a final hearing. The owner or his/her agent or authorized representative, if he/she has not already done so, may immediately retrieve the vehicle from the towing facility upon the posting with the city of a cash bond in the amount of \$500.00, plus the accumulated costs of towing and storing the vehicle, without impairing the right to a final hearing.

- (5) If, after the hearing, there is a finding of no probable cause, the vehicle shall be released forthwith to the owner or his/her agent or authorized representative without the imposition of the administrative civil penalty. If the owner, agent or authorized representative has already posted a bond for the immediate release of his/her vehicle, the bond shall be refunded to the owner, agent or authorized representative.
- (b) The final hearing shall be scheduled and held, unless continued by order of the special master or alternate special master, no later than 30 days after the date that the vehicle was seized and impounded. At the final hearing, the city shall have the burden to show by clear and convincing evidence that the vehicle was used as set forth in subsections 42-121(a)(1) through (5). If the owner of the vehicle asserts as a defense that he/she was not aware that the vehicle was being used or was likely to be used in violation of this article, the city shall establish by a preponderance of the evidence that the owner either knew, or should have known after a reasonable inquiry, that the vehicle was being used or was likely to be used in violation of this article. If, after the hearing, a finding is made that the vehicle is subject to impoundment and seizure then the special master or alternate special master of the city shall enter an order finding the owner of record of the vehicle civilly liable to the city for an administrative civil penalty of up to \$500.00, as outlined in subsection 42-121(b)(2), plus towing and storage costs. If, after the hearing, a finding is made that the city did not meet its burden of proof as set forth in this subsection or that one of the exceptions of subsection 42-121(d) applies, the vehicle shall be returned to the owner along with any cash bond posted.

(Ord. No. 11445, § 2, 2-20-97; Ord. No. 11592, § 1, 1-13-97; Ord. No. 11621, § 2, 3-10-98; Ord. No. 11700, § 2, 9-28-98; Ord. No. 13088, § 2, 9-24-09; Ord. No. 13142, § 11, 2-11-10; Ord. No. 13146, § 2, 3-11-10)

Sec. 42-123. - Administrative civil penalty; payment.

If an administrative civil penalty is imposed pursuant to sections 42-121 and 42-122, such penalty shall constitute a debt due and owing the city and shall be independent of the city's return or release of the vehicle. If a cash bond has been posted pursuant to section 42-122, the bond shall be applied toward payment of the penalty.

(Ord. No. 11445, § 2, 2-20-97; Ord. No. 11592, § 1, 1-13-97)

Sec. 42-124. - Return of vehicle; disposition of unclaimed vehicles.

Except as provided otherwise in section 42-122, an impounded vehicle shall be returned to its record owner, or to the person who is legally entitled to possess the vehicle, upon his/her payment of the administrative civil penalty to the city, plus towing and storage fees, unless the vehicle had been sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law.

Vehicles which remain unclaimed after a final determination is made by a special master shall be disposed of pursuant to Florida Statutes and all other applicable laws.

(Ord. No. 11445, § 2, 2-20-97; Ord. No. 11592, § 1, 1-13-97; Ord. No. 11700, § 2, 9-28-98)

Sec. 42-125. - Appeal.

The owner of the motor vehicle that has been the subject of a seizure and impoundment pursuant to sections 42-121 and 42-122 or the city may appeal the final ruling and decisions of the special master or the alternate special master of the city, to the circuit of the 11th Judicial Circuit of Dade County, Florida, within 30 days of the date of the final order being appealed. The city may charge the appellant a reasonable fee for preparation of the record for purposes of making the appeal.

(Ord. No. 11445, § 2, 2-20-97)