



City of Gainesville Master Report

City Hall
200 East University Avenue
Gainesville, Florida 32601

File Number: 000374

File Number: 000374

File Type: Discussion Item

Status: In Committee

Version: 5

Reference:

Controlling Body: Audit and Finance Committee

File Name: Review of Trespass (Roam) Towing Fees - Rate Increase Request (B)

Introduced: 12/11/00

Requester:

Cost:

Final Action:

Notes:

Title: Review of Trespass (Roam) Towing Fees - Rate Increase Request (B)

Indexes:

Sponsors:

Attachments:

History of Legislative File

Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
City Commission	8/28/00	Referred	Public Safety Committee	2/28/01		Pass
Public Safety Committee	10/19/00	Discussed				

Action Note: GPD staff provided a general overview of the Roam Towing (Towing from Certain Private Property) Ordinance and an historical review of the current rate of \$70 set by Resolution. Attorney Leonard Ireland for Robert Roundtree, representing a local towing company(s), requested the City Commission revisit the \$70 maximum tow rate, providing that increases in fuel, tow trucks, and insurance warranted a review and an increase in the allowable tow rate. Mr. Ireland provided as an example, that some of the other areas they looked at (Pinellas, Orange, Collier and Broward counties) had maximum towing fees of \$100 for this type of tow. Stan Forron, Stan's Towing and Todd Rousseau, Ultimate Towing spoke to the matter. The PSC requested additional information: 1) how did staff/city arrive at the original \$70 rate 2) survey of other municipalities such as Tallahassee, Ocala, and Jacksonville, and 3) explore a tie into the market rate percentages. Further discussion will be placed on the 11/16 PSC agenda, with anticipated recommendations to the CC on 12/11/00.



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Public Safety Committee 11/16/00 Returned Without Recommendation Pass

Action Note: The PSC recognized citizens Matt Blane, Todd Rousseau, Harry Hall, Robert Roundtree, Gene Watson, Mark Adler who spoke to the matter.

GPD staff presented a comparison survey of other municipalities' roam towing rates and provided the requested CPI. Attorney Roundtree referred to his original letter to the PSC of 9/28/00 requesting rate increase consideration and citing as an example of justification for that increase: a 58% increase in the cost of fuel, a 79% increase in the cost of insurance and a 36% increase in the purchase price of new tow trucks, commenting that increasing the maximum fee per tow to \$100 would help offset those costs.

Two students (or student representatives) suggested that roam towing is "predatory towing" and that standards of behavior and unethical practices by some tow companies should be part of this review.

Towing companies are governed by city ordinance and by Florida State Statutes that provides numerous guidelines with which tow companies must comply.

Complaints of illegal tows, although handled by GPD, don't cover complaints of legal tows that involve the behavior or practices of the tow companies during the tow or pick up of the vehicle.

Committee members felt the need to have more information regarding the totality of this issue and the impact with regard to standards, practices and cost.

After much discussion, the PSC recommended that the City Commission hear the presentation of information and take action necessary with regard to the provisions of Resolution #R-94-79.

City Commission 12/11/00 Referred Public Safety Committee 6/11/01 Pass

Action Note: City of Gainesville Assistant City Attorney Ron Combs, GPD Captain Robert Mitchell and City Auditor Alan Ash gave presentations.

Chair Paula M. DeLaney recognized Citizen Ben Tecler, Attorney Robert Roundtree and Reverend Tim Keyes spoke to the matter.

MOTION: The City Commission: 1) Refer the issue of reviewing the Towing Ordinance to the Public Safety Committee; 2) refer the issues associated with roam towing fees to the City Manager, the City Auditor and the City Attorney and bring this information to the Audit and Finance Committee; and 3) bring recommendations back to the full City Commission.

City Commission	12/11/00	Referred	City Manager	6/11/01	
City Commission	12/11/00	Referred	City Auditor	6/11/01	
City Commission	12/11/00	Referred	City Attorney	6/11/01	2/22/01
City Commission	12/11/00	Referred	Audit and Finance Committee	6/11/01	

Public Safety Committee 1/25/01 Discussed



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Action Note: The Public Safety Committee recognized Robert Roundtree, Stan Forron, Ben Tecler, Dave Kanzler, Rebecca Ferguson, Marci Silver, Shane Lewis, Gene Watson, Diana Moss, Todd Rousseau, Marc Adler, Chester Zukowski, Randy Batista, Alex Alonso, Cpl. Bruce Giles, Ofc. Marc Plourde and Lt. Sherry Scott who spoke to this matter.

Attorney Roundtree spoke on behalf of several tow companies, stating their commitment to work with the citizens on any problems that are perceived to exist and stating that if there needs to be stronger enforcement or proper standards, they were committed to working together on that.

Members of the Gainesville Police Department were asked to address the PSC with any direct knowledge they had with regard to towing concerns. Lt. Sherry Scott introduced Cpl. Giles and Ofc. Plourde who spoke, after Lt. Scott commented about the valuable role towing companies play in the downtown area, yet acknowledging there does appear to be a number of issues with regards to the complaints received from officers and citizens.

Stan Forron advised that 23% of the vehicles he tows are never picked up, and in return they are sold for \$30-\$35 for metal, after a certificate of destruction is completed. Commissioner Nielsen asked if records were maintained on these destructions and statistics, and requested this be kept on record for potential future discussion.

Ben Tecler, Marci Silver, Dave Kanzler, Rebecca Ferguson, Marc Adler, Chester Zukowski, Randy Batista spoke of personal towing experiences and general complaints with the process, including assistance or lack of from law enforcement.

Diana Moss spoke to her need for roam towing in the apartment complex she manages, stating that it helps ensure that paying residents have a place to park and it deters large parties when crowds can't park illegally.

Commissioner Nielsen noted that apartment owners/managers should be invited to future PSC meetings on this issue.

Mr. Combs advised that even if a citizen does pay the \$70 to get their vehicle returned, they can still pursue civil remedies.

Other general discussion included: a) vehicles being towed that had proper decals and citizens feeling a sense of powerlessness against the towing company, b) who is responsible when the owner of private property has a vehicle towed that the vehicle owner disputes was legally parked on private property?, c) how to address human errors and what penalties/consequences can be put in place if mistakes are made, d) erecting signs in towing businesses that clearly explain how to file complaints, e) issue of a vehicle's dollar value vs the value to the owner, contrasted by the tow fee and storage charge, f) what responsibility do the apartment managers have to their tenants with regard to the towing contracts, g) need for a standard code of ethics, h) the history of roam towing and their role in assisting law enforcement, i) billing options, safety issues for young students stranded without a vehicle.

The Committee agreed on the following tasks/assignments:

- 1) Basis of legal agreements/contracts between the towing companies and the property owners, and what those responsibilities include.
- 2) Procedure and types of signage for roam towing, i.e., are they clear, how are the signs placed, how are they kept current, who is responsible for placement and maintenance, and what are the current flaws?
- 3) Ethics, procedures of the towing process itself. What are the ground rules, what is allowed during a tow and what is not allowed? What should the penalties be when there is a transgression of these rules/procedures?
- 4) Communication process between GPD, the citizens and the towing companies.
- 5) What are the mechanics of the towing process - straps, lights, securing the vehicle, etc.
- 6) How do we ensure that the citizens know as early as possible what is going on throughout the whole towing process, what their rights are from beginning to end.
- 7) Review of the actual fee process as it compounds itself over time.



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- 8) Responsibility of the property owners/apartment complexes with regard to their contract with the tow companies (decals, towing signs, etc.) and how they advise their residents.
- 9) Penalties imposed for breaking the issues of the laws. Can we put some teeth into already existing laws and ordinances?
- 10) Require certain minimum financial stability requirements (bonding/insurance) for the towing business to conduct business.
- 11) Education of the towing process to the citizens.

Staff will return with first drafts for discussion at the next PSC meeting on February 22nd at 2:00 p.m.

Public Safety Committee 2/22/01 Discussed



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Action Note: The Public Safety Committee recognized Robert Roundtree, Todd Russeau, Gregory Woolley, Gladys Perkins, Ben Tecler, Kimberly Sweigard, Gene Watson, Legal Advisor Ron Combs, Cpt. Robert Mitchell and Chief Norm Botsford who spoke to this matter.

The PSC heard an update from Ron Combs and Cpt. Mitchell on the 11 tasks/assignments made at the January 28, 2001 PSC meeting.

Discussion of those responses from staff included:

- 1) Commissioner Nielsen presented a promotional flyer from Elite Towing he had obtained, and questioned whether the FSS made it illegal for property owners to receive benefits from towing companies who provide roam towing services on their properties. The Legal Advisor advised that it did, unless the towing firm offered that same benefit to all residents. There was a suggestion that the City may want to include a statement of that in the City ordinance, to reinforce that violation. The Committee asked for staff's response or critique to increased enforcement of the FSS that make it illegal for the towing companies to have these "improper" arrangements/benefits with their clients.
- 2) The PSC discussed whether there needed to be other reviews in place for ensuring that the roam towing signs are appropriately placed, noting that GPD provides an initial review when they receive a contract from a towing firm; however, cannot realistically keep up with monitoring the more than 200 contracts in place now.
- 3) The ordinance currently requires the tow companies notify GPD within 15 minutes of hook-up. One of the tow companies asked for the FSS 30 minute notification. The PSC asked staff to give them their recommendations at the next PSC meeting on how most efficiently to get this information to GPD/ASO.
- 4) GPD suggested that all towing companies be required to post a clearly visible sign in their business advising citizens who enter and exit how to register a complaint, both internal to the business and to the GPD. Specific recommended procedures for this will be made by staff at a future meeting.
- 5) Commissioner Nielsen suggested a "towing bill of rights", bullet points presented to citizens as soon as possible after the tow, either on the receipt itself or a separate document. This document would include information on fees, the ordinances and state statutes that regulate the towing, mechanics of the towing, how to file claims- giving them option to follow whether they be civil or criminal in nature, and contact names and numbers for citizens to call. Staff cautioned that the language would have to be vague with regard to giving legal advice to citizens or transferring the anger from the towing companies to GPD.
- 6) Commissioner Chestnut proposed requiring tow companies to purchase permits for roam towing, in part to handle the administrative costs that staff must provide for inspections, compilation of contracts, etc.
- 7) Commissioner Chestnut proposed stricter penalties for violations of the city's roam towing ordinance. Currently, the ordinance provides that 3 convictions of any provision of the ordinance within any 12-month period will result in the automatic revocation of the owner's or operator's privilege to engage in trespass towing for one month.
- 8) There was citizen comment regarding excessive speeding by the tow company drivers in the Porter's neighborhood, and concern that if the towing fees are increased, it will give the drivers even more incentive to speed to get more tows.
- 9) Comments from members of the Gainesville Apartment Association contributed to the necessity to have roam towing, but understanding that the tenants must be educated with regards to towing from their private properties. GAA Dori Farley indicated a willingness to take the "towing bill of rights" pamphlet to the GAA apartment owners/managers for their tenants to sign saying they received the "rights" to ensure they are aware of the process if they are towed.

Staff will return with further recommendations to the above issues at the March PSC meeting.



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Public Safety Committee 3/15/01

Discussed

Action Note: City Attorney Staff Ron Combs provided a "Rights of Persons Towed from Private Property" brief. During this discussion Mr. Combs advised that certain actions to further regulate towing companies by the PSC/CC are unclear with regards to the City's Roam Towing Ordinance at this time, based on Federal laws that were enacted in 1998, four years after the city's ordinance was adopted. The Federal law allows municipalities to set the cost of non-consensual tows only, but limits what can be done with respect to further regulations. The Court under who's jurisdiction Florida falls has ruled that we cannot set insurance and safety factors - that is limited to the state and the state only. With regard to the procedures, there are requirements set by FSS requiring certain things, such as signage on the part of the property owners. It was pointed out that while the tow companies may physically erect the signs, ultimately the property owner is responsible for causing the tow.

Commissioner Nielsen asked if the City could change the fee charged when a citizen returns to their vehicle while the vehicle is being hooked up. Again, Mr. Combs suggested that would be limited to what the State set. There was discussion regarding whether the City should lobby for changes through State and Legislative initiatives.

The PSC recognized citizens Ben Tecler, Marc Adler, Pete McManus, Jane Doe, Dave Kenzler, Gene Watson, Stan Forron, Robert Roundtree, Kimberly Sweigard, Todd Rousseau and Rick Moore who spoke to this issue.

Citizens McManus and Doe provided personal accounts of their towing complaints. It was noted that Mr. McManus' vehicle was towed in the county and pointed out that the city ordinance is not effective in the county limits.

Mr. Moore commented that the FSS states that the person causing the tow (property owners/not tow companies) are responsible and that the property owners should be part of this discussion. For the record, there was a Gainesville Apartment Association member present at this meeting. He also noted that there are civil remedies spelled out in the FSS for those who feel their vehicle was improperly towed.

Attendees were reminded that the fee issue of roam towing is being handled by the City's Audit and Finance Committee. That group will be holding a Towing Fee Panel meeting (open to the public) on March 21st at 9:00 a.m. in Rm. 16, City Hall.

Commissioners commented that even with this as the fourth meeting, they continue to receive e-mails, letters, phone calls. As such, this is an issue that the Committee would very much like to have some ability to take action on. They asked citizens to allow the committee to have a full working/focused meeting in April so that they can begin to move forward to the CC with recommendations.

Mr. Roundtree suggested that the bill of rights pamphlet be prepared by the towing companies and the apartment owners/managers, and make it that every person who executes a lease gets a pamphlet.

Commissioner Nielsen requested for the next meeting:

- 1) (From the City Attorney staff) What areas the PSC and the CC can address with regards to the procedures of roam towing. Where can decisions be made and where does the city have the ability for leverage. Where can they make changes in the procedures of roam towing and what type of oversight is available to the City and what consequences can be enacted when violations occur?
- 2) (From the City Attorney staff) Should the State Attorney's office be involved in the practices of towing companies giving property owners benefits as part of their contract? Need advice.
- 3) (From Towing Industry, Student Representatives, GPD, Apartment Association and City Attorney staff) Each area bring back a written draft of their proposed "bill of rights for tows" to the next meeting.
- 4) Can the city require certain methods of payment be accepted by the tow companies?



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Public Safety Committee 4/19/01

Recommended for
Approval

Action Note: Sr. Assistant City Attorney Ron Combs provided an overview of the local towing regulation and Federal Preemption documents provided. After the City passed the Towing Ordinance in May 1994, Congress enacted the FAAA Act in January 1995, which specifically limited the area in which States can regulate the towing industry. With regard to the issue before the PSC, Mr. Combs advised the committee that it was his opinion: 1) the City could clearly regulate the rate of nonconsensual tows, 2) setting a rate different than one half the posted rate when a car's owner returns before the vehicle has been towed would be a valid exercise of local authority, 3) Storage fees charged by towing companies cannot be regulated by the City, 4) Methods of payment for services cannot be regulated by the City, 5) regulation of "demeanor" or behavior cannot be regulated by the City, 6) both FSS and City ordinance prohibits "kickbacks", however, FSS does not make it a criminal violation. The City provides for fine and revocation of towing privileges under the current ordinance, however, he opines that this is also an area the city cannot regulate. He recommends the ordinance be amended to place this prohibition on the property owner, rather than the towing industry, and 7) if the City wishes to maintain the 15 minutes notification of tow to police requirements, that the ordinance be amended to put this under the requirements of the property owner.

Following Mr. Combs' overview, he continued with recommendations as follows:

- 1) Amend 14.5 of the code of ordinances so that it comports with the strictures required by preemptive federal legislation.
- 2) Any current provision of the ordinance which can be maintained if re-stated, should be maintained.
- 3) Make the towing ordinance enforceable under the civil citation process.
- 4) Encourage state legislators to enact additional safety and financial responsibility provisions, if such will aid in the regulation of the tow companies.
- 5) Lobby federal legislators for a change in federal law which re-establishes local regulatory control of tow companies.
- 6) If local control is not re-established, encourage federal legislators to enact regulations, which will curtail the negative behavior of the tow companies.

The PSC recognized Dave Kanzler, Gene Watson, Bob Roundtree, Stan Forron, Ben Tecler, Jon Curran, Chris Carmody, Chester Zakowski and city staff who spoke to the matter.

Attorney Roundtree provided a "Towing Bill of Rights and Responsibilities" proposal for consideration. Gene Watson also provided one to the Commissioners after the last PSC meeting, but was not provided at this meeting. It was noted that these are largely voluntary, with no enforcement options.

Extensive discussion followed, including the committee's related frustration that the City appears to be unable to address, through the ordinance, the numerous complaints that have been brought out. Civil remedies for the complainants and Legal's recommendations for ordinance language changes and lobbying efforts are still options in many areas.

The Committee recommended 1) the City Attorney's Office make a legal presentation of these circumstances as outlined in this meeting and including those proposed recommendations, to the full City Commission; 2) the drop rate (when a vehicle has been hooked up but the driver arrives) be reduced from 1/2 to 1/4; and 3) staff prepare a list of recommendations the City can address to the State and Federal legislators to lobby for more city regulation ability;

The presentation to the City Commission is expected to be during the May 29, 2001 meeting and will be in conjunction with the Audit and Finance Committee's recommendations on setting trespass towing rates.

Mr. Combs mentioned that Mr. Radson would be consulting with the State Attorney's Office regarding the "kickback" issue.

Mr. Watson requested an opportunity to speak against lowering the amount an individual pays for a vehicle already hooked up but not towed and was advised he would have an opportunity during the City Commission discussions.



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Public Safety Committee
FROM: Ronald D. Combs, Sr. Assistant City Attorney
SUBJECT: PROPOSED RECOMMENDATIONS

DATE: April 19, 2001

-
1. Amend §14.5 of the Gainesville Code of Ordinances, so that it comports with the strictures required by preemptive federal legislation.
 2. Any current provision of the ordinance which can be maintained if re-stated, should be maintained.
 3. Make the towing ordinance enforceable under the civil citation process.
 4. Encourage state legislators to enact additional safety and financial responsibility provisions, as such will aid in the regulation of the tow companies.
 5. Lobby federal legislators for a change in federal law which re-establishes local regulatory control of tow companies.
 6. If local control is not re-established, encourage federal legislators to enact regulations, which will curtail the negative behavior of the tow companies.

RDS:bs



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Public Safety Committee
FROM: Ronald D. Combs, Sr. Assistant City Attorney
SUBJECT: LOCAL TOWING REGULATION & FEDERAL PREEMPTION

DATE: April 17, 2001

LOCAL TOWING REGULATION AND FEDERAL PREEMPTION

The reexamination of the towing issue arises from a request by the local towing industry for an increase in the maximum towing rates and resultant complaints by the citizenry in regards to that request and the activities of the tow companies.

Since the City of Gainesville enacted its towing ordinance, federal law has been passed and judicially interpreted in ways which affect the ability of state and local governments to regulate the towing industry. This is an examination of that effect.

Removal of vehicles from private property is regulated by §715.07, F.S. and Article III of Chapter 14 of the Gainesville Code of Ordinances. A synopsis of the coverage of the referenced statute and ordinance is included as Attachment 1. Copies of the statute and ordinance are included as Attachments 2 and 3, respectively.

On May 5, 1994, the City of Gainesville passed its towing ordinance as set forth in Attachment 3 and set the maximum towing rate at \$70.00.

Approximately three months after the City enacted its towing ordinance, Congress enacted the Federal Aviation Administration Authorization Act which had an effective date of January 1, 1995. The Act set forth a general rule regarding the Interstate Commerce Commissions' authority over INTRASTATE transportation and provided for PREEMPTION over certain aspects of state economic regulation of motor carriers.

As is pertinent to this discussion, 49 U.S.C. § 14501(c)(1), 1994 provides that:

a state, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of any motor carrier ... with respect to the transportation of property.

An exception to the general rule was provided which stated that the general rule:

shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitation based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a state to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self insurance authorization.
49 U.S.C. §14501(c)2(C) (1996)

In 1995, Congress passed the Interstate Commerce Termination Act (ICCTA) which had an effective date of January 1, 1996. This Act left the preemption language of the Federal Aviation Administration Authorization Act intact, but included language which stated that the general rule:

does not apply to the authority of a state or political subdivision of a State to enact or enforce a law, regulation or other provision RELATING TO THE PRICE OF for-hire motor vehicle transportation by tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.
(emphasis added).
49 U.S.C. § 14501(c)(2)(C) (1996)

This is the language which “trumps” most attempts by local governments to regulate the towing industry.

LEGAL CHALLENGES

City of Atlanta v R. Mayer of Atlanta, Inc, et al. (11th Cir 1998)

In March of 1999, the United States Supreme Court denied the City of Atlanta’s request for review of the 11th Circuit Courts’ decision in the *Mayer* case which struck down portions of Atlanta’s regulatory scheme over towing companies. The 11th Circuit, whose judicial rulings are controlling for Florida ruled that:

Atlanta AND ALL OTHER LOCAL GOVERNMENTS are preempted, in part from regulating the towing industry because of the federal statute enacted as part of the deregulation over interstate commerce. (emphasis added).

While *Mayer* was initiated because of consensual tow regulation, the ramifications extend to nonconsensual tows. The 11th Circuit found that §14501(c) expressly preempted:

municipal ordinances that are ‘related to’ the price, route or provision of consensual towing services *except* when the ordinance

pertains to the regulation of the price of a nonconsensual tow.
(e.s.)

In addition, the court found the federal statute permitted the states to:

regulate towing for safety and insurance purposes.

And that

the statute prohibits the states from delegating the regulation of safety and insurance issues to their local governments.

It should be noted that at least one U.S. circuit court has issued a contrary opinion as to the ability of the states to delegate safety and insurance regulation to their local governments. However, that decision doesn't affect the 11th Circuit's controlling ruling as to Florida. The conflict will have to be settled by the United States Supreme Court whose denial of review occurred after the conflict was created by the 2nd Circuit decision.

PREEMPTION – EFFECTS

The Supremacy Clause of the U.S. Constitution provides that:

the laws of the United States ... shall be the supreme law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
U.S. Const. Art. VI cl.2

Any state law that conflicts with the federal law is without effect. There are three ways federal law preempts state and local law.

1. **Express preemption** – Congress defined explicitly the extent to which a federal statute preempts state law.
2. **Field preemption** – state law is preempted because Congress has regulated a field so pervasively or federal law touches on a field implicating such a dominant federal interest, that an intent for federal law to occupy the field may be inferred.
3. **Conflict preemption** – state law is preempted by implication because state and federal law may conflict so that it's impossible to comply with both.

The towing issue is one of express preemption, the federal law having specifically limited the area in which States can regulate the industry.

WHAT CAN THE CITY REGULATE?

1. **Rates.**

The court has stated that local governments can regulate the rate of nonconsensual tows, that's clear.

Question: Can the city set the rate charged when a car's owner returns before the vehicle has been towed? Section 715.07(2)(a)3, F.S. and our local companion section provide for a "fee not to exceed one half the posted rate."

It is my opinion that since local governments are given the authority to regulate the rate of nonconsensual tows, that this may be considered part of the tow, i.e., an incomplete tow. Further, since state law provides that its provisions are minimum standards and that local governments may enact more stringent regulations, it is my opinion that setting a rate different than one half the posted rate would be a valid exercise of local authority.

2. Storage Costs.

Question: It is my opinion that the storage fee charged by towing companies does not constitute a part of the tow rate and, therefore, cannot be regulated by the city. This same conclusion was reached by the Attorney General in AGO 89-59.

3. Method of payment.

Question: Can the city require tow companies to acceptance a particular form of payment for towing. That is, may the city require that tow companies accept checks and or credit cards?

The federal law states that a city:

may not enact or enforce a law, regulation or other provision having the force and affect of law related to a ... service of any motor carrier.

In my opinion, whether a company accepts alternate forms of payment is a "service" to its customers and, as such cannot be regulated by the city.

During the course of the towing discussion, comments were made as to the perceived unpleasant demeanor of tow operators both during the tow and at retrieval. Suggestion followed that the demeanor be regulated. The feasibility of regulating demeanor is questionable, but since this too, is a service-related function, it is beyond the pale of the city to regulate.

VIOLATIONS/PUNISHMENT/REMEDY

The state statute provides criminal violations for the failure to comply with only three sections of §715.07.

1. § 715.07(2)(a)2 – requiring police notification within 30 minutes of the tow:
Violation is a 1st degree misdemeanor.
2. § 715.02(2)(a)6 – requiring police be supplied with a copy of current rates and current contracts: Violation is a 1st degree misdemeanor.

3. § 715.07(2)(a)(7) – requiring specific identifying information on tow trucks:
Violation is a 3rd degree felony.

Kickbacks

Both the state statute [§ 715.07(2)(a)4] and the city ordinance [§ 14.5-32(a)(3)] prohibit remuneration for the privilege of towing vehicles from private property.

The statute prohibits this activity, but does not ascribe a criminal penalty to it. I believe that towing a vehicle while improper remuneration is occurring would subject the tow company and/or property owner to civil litigation as authorized by the statute for return of towing cost, attorney's fees and court costs.

The city ordinance, provides for

- fines and
- revocation of towing privileges.

In my opinion, the city cannot enforce these penalty provisions against the towing companies because they relate to an area we are not permitted to regulate. However, the prohibition against remuneration can still be made effective as a prohibition against the property owner from receiving remuneration for the contracting for the removal of vehicles. It is recommended that the current ordinance be amended to place this prohibition on the property owner.

It is also recommended that, if the city wishes to maintain the 15 minute notification of tow to police requirement, that the ordinance be amended to bring this under the requirements of the property owner.

To the extent that § 14.5-32, of the Gainesville Code of Ordinances, related to "Revocation for violations of the ordinance", attempts to sanction tow operators for acts which do not arise from charging more than the fee allowed by the city, it is my opinion that it cannot be enforced.

An overall reading of the statute and local ordinance does not reflect an intent for criminal enforcement and the commission may wish to consider enforcement by civil citation when the ordinance is amended to conform to current law.

WHAT CAN LOCAL COMMUNITIES DO TO OBTAIN MORE LOCAL CONTROL OF TOW COMPANIES?

1. Since States are authorized to regulate safety and insurance/financial issues, legislator should be lobbied to enact any regulatory issues that fall under these headings.
2. The genesis of this disenfranchisement of local governments is in federal law, so changes should be sought in the federal law which would reestablish local control over towing.

3. If local control is not reestablished, federal legislation should be sought which achieves the goal of the local governments in protecting their citizenry from what is deemed to be unfair practices of the tow companies.

SYNOPSIS
CHAPTER 715.07 F.S.
CHAPTER 14.5, GAINESVILLE CODE OF ORDINANCES

State:

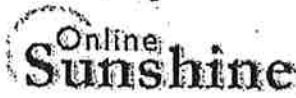
- Location of storage sites.
- Hours facility must be open.
- Phone number for contact at any time.
- Notification of law enforcement within 30 minutes.
- No cost if vehicle not connected when owner/operator arrives.
- One half cost if vehicle connected but not towed when owner/operator arrives.
- Prohibition of rebates for towing privilege.
- Posting of notice (size, height, lettering, wording & placement).
- Local government option to require permitting and inspection of signs.
- Towing without posting if normal business operation obstructed.
- Notice to law enforcement of current rates.
- Signage requirements for tow trucks.
- Vehicle entry by tow operator permitted with reasonable care.
- Release within one hour of request required.
- Right of inspection of vehicle.
- Detailed receipt required.
- Local governments permitted to enact more stringent regulation.
- Exception for government vehicles.

- Civil liability if vehicle improperly towed.
- Criminal liability of 3 specified violations.

City Ordinance:

- Definitions. § 14.5-26
- Prerequisites for towing from private property.
- Contract requirements. § 14.5-26(a)(1)
 - duration, time of day, days of week, fees, signature requirement.
- filed with police. § 14.5-26(a)(2)
- Requires property owner authorization unless certain standards are met. § 14.5-26(a)(3).
- Notice to include "Roam Towing". § 14.5-26(a)(4)
- Contract on file with police to include "Roam Towing". § 14.5-26(a)(4).
- Lease/rental agreement to include notice of "Roam Towing". § 14.5-26(a)(4).
- Fifteen minute notification of tow to police by tow operator. § 14.5-26(a)(5).
- Inapplicability of ordinance to abandoned vehicles, single family residence and when personal notice given to vehicle owner/operator. § 14.5-26(a)(5)(b).
- Twenty-four hour notice exception for emergency with prior notice to police. § 14.5-26(a)(5)(c).
- City sets fee. § 14.5-27.
- No charge if vehicle not connected when owner/operator returns. § 14.5-28. One half charge if vehicle connected but not towed when owner/operator returns. § 14.5-29.
- Police authorized to possess vehicle subject to criminal investigation. Tow company right to payment unaffected by police possession. § 14.5-30.
- Tow owner and vehicle registration requirements. § 14.5-31.
- Revocation for violation of the ordinance. § 14.5-32.
- Fine and revocation

- failure to register; kickbacks; exceeding allowable rate
- violating any provision of the ordinance.
- Three violations within 12 months net one month revocation.
- Hearing requirements and procedures. § 14.5-33.
- Requirement for a receipt. § 14.5-34.



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REAL AND PERSONAL PROPERTY

Property: General Provisions

715.07 Vehicles parked on private property; towing.--

(1) As used in this section, the term "vehicle" means any mobile item which normally uses wheels, whether motorized or not.

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles, without liability for the costs of removal, transportation, or storage or damages caused by such removal; transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle from private property without the consent of the registered owner or other legally authorized person in control of that vehicle is subject to strict compliance with the following conditions and restrictions:

1.a. Any towed or removed vehicle must be stored at a site within 10 miles of the point of removal in any county of 500,000 population or more, and within 15 miles of the point of removal in any county of less than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle must be stored at a site within 20 miles of the point of removal in any county of 500,000 population or more, and within 30 miles of the point of removal in any county of less than 500,000 population.

2. The person or firm towing or removing the vehicle shall, within 30 minutes of completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff of such towing or removal, the storage site, the time the vehicle was towed or removed, and the make, model, color, and license plate number of the vehicle and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. 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 a reasonable service fee of not more than one-half of the posted rate for such towing service as provided in subparagraph 6., for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.

4. The rebate or payment of money or any other valuable consideration from the individual or

8. Vehicle entry for the purpose of removing the vehicle shall be allowed with reasonable care on the part of the person or firm towing the vehicle. Such person or firm shall be liable for any damage occasioned to the vehicle if such entry is not in accordance with the standard of reasonable care.

9. When a vehicle has been towed or removed pursuant to this section, it must be released to its owner or custodian within one hour after requested. Any vehicle owner, custodian, or agent shall have the right to inspect the vehicle before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle owner, custodian, or agent as a condition of release of the vehicle to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements shall be the minimum standards and shall not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles are towed from private property.

(3) This section does not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles which are marked as such or to property owned by any governmental entity.

(4) When a person improperly causes a vehicle to be removed, such person shall be liable to the owner or lessee of the vehicle for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle; attorneys' fees; and court costs.

(5)(a) Any person who violates the provisions of subparagraph (2)(a)2. or subparagraph (2)(a)6. is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(b) Any person who violates the provisions of subparagraph (2)(a)7. is guilty of a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

History.--s. 1, ch. 76-83; s. 221, ch. 77-104; s. 2, ch. 79-206; s. 2, ch. 79-271; s. 2, ch. 79-410; s. 1, ch. 83-330; s. 51, ch. 87-198; s. 3, ch. 88-240; s. 9, ch. 90-283; s. 839, ch. 97-102.

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CODE OF ORDINANCES, City of GAINESVILLE, FLORIDA

PART II CODE OF ORDINANCES

Chapter 14.5 MISCELLANEOUS BUSINESS REGULATIONS*

ARTICLE III. TOWING FROM CERTAIN PRIVATE PROPERTY

Sec. 14.5-25. Definitions.

Sec. 14.5-25. Definitions.

As used in this article:

Emergency towing as used in this article shall only include 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.

Normal business hours shall be from 7:00 a.m. to 11:00 p.m.

Storage shall begin 24 hours after completion of the tow.

Trespass towing shall mean towing or removal of a vehicle that is parked on private real property.

Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-26. 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 and the towing service shall have executed, at least 24 hours prior to the towing or removal of any vehicle, a written agreement for trespass towing, 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 which provides for terms or activities which violate the provisions of this article or F.S. § 715.07.

(2) A copy of the completed agreement is on file with the Gainesville Police Department.

(3) Where the private real property is provided for residential parking other than for a single-family residence, the agreement, except as provided in section 14.5-26(a)(4), shall not authorize the towing service to tow away or remove any vehicle without a verified request to remove the specific vehicle by the property owner or an authorized representative. A property owner's representative may include a resident manager, a property manager or other agent who has the legal authority to bind the owner, but may not be an officer, employee or agent of a towing service.

(4) Owners of properties used for residential purposes may elect to authorize the towing service to tow away or remove vehicles without a verified request to remove a specific vehicle provided that the owner first complies with the following requirements:

- a. Signage shall be added to each of the existing tow away signs with letters of the same size as the "tow away" language, which provides the following words: "Roam towing." The sign shall state the specific hours of roam towing or state 24 hours, if that is applicable.
- b. Towing contract on file with the Gainesville Police Department as required by section 14.5-26(a)(1) shall be amended to provide for roam towing.
- c. Lease, rental or property owners' association documents shall contain a notice provision indicating that the residential property utilizes roam towing. In the case of properties with existing leases, rental agreements or property owners' association documents, it shall be sufficient to notify by regular mail, at the last known address, each of the tenants/owners of the property prior to the initiation of roam towing. All amendments to or new leases, rental agreements or property owners' association documents shall contain the provision giving notice that the property owner intends to utilize roam towing.

(5) The towing service shall notify the Gainesville Police Department of the tow no later than 15 minutes after "completion of hook-up". The notification shall include: 1) make, model, license number, and vehicle identification number ("VIN") of the vehicle towed, and 2) a phone number to call for more information.

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

(1) The towing of vehicles pursuant to section 3-116, authority to remove vehicles, and section 26-136 et seq "Abandoned, Wrecked and Non-operating Vehicles," City of Gainesville Code of Ordinances.

(2) The towing of vehicles from property appurtenant to and obviously a part of a single-family residence.

(3) 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.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-27. Fees charged.

(a) Any towing firm engaged in the business of trespass towing shall not charge the owner of any towed vehicle or personal property in excess of \$70.00 for the removal of a vehicle. The fee of \$70.00 shall be all inclusive; and no additional fees may be charged for using dollies, trailers, lifts, slim jims, or any other special equipment or services; however, the maximum fees in this section shall not apply to trespass towing of vehicles which have more than two axles or more than four road wheels or are rated to carry more than one ton.

(b) Maximum trespass towing fees shall be established annually by the city commission after receiving recommendations based on financial information submitted by the trespass 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 set by resolution to

be adopted by the city commission prior to December 31 of each year. Such maximum fees shall be effective during the following calendar year and until changed by subsequent resolution.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-28. 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, or stops to tow any vehicle under a valid "Roam Towing" provision on private property, shall not remove or tow the vehicle away and shall not charge any fee if the vehicle operator returns to the vehicle prior to the towing service operator having physically connected the vehicle to the towing apparatus.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-29. 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 a reasonable service fee of not more than one-half of the posted rate for such towing service for which a receipt shall be given, unless that person refuses to remove the vehicle which is otherwise unlawfully parked.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-30. Vehicles subject to criminal investigation.

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

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-31. Owner operator and vehicle registration provisions.

(a) It shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to do any trespass towing without having first registered the owner, operators and 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 of all towing service vehicles; the name of the insurance company or companies with which the owner and operators have liability insurance coverage for the operation of the vehicle as required by law; and such other information as may be required.

(b) It shall be unlawful for a person, firm or corporation hired by the owner of private property within the city to do any trespass towing without first having complied with the provisions of this article. In addition to the requirements of F.S. § 715.07, the wording on the sign shall indicate if towing is conducted other than normal business hours by the posting of a sign indicating "24 hours per day."

(c) All parking regulation announcement signs shall be brought into compliance with this section by July 9, 1994.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-32. Revocation for violations of the ordinance; grounds.

(a) Towing service owners or operators may be fined as provided in section 14.5-36 below, and/or have their privilege to do trespass towing revoked as provided in section 14.5-32(b) on any of the following grounds:

- (1) If the towing service owner or operators fail to register as required by this article; or
- (2) If the registration contains false statement of a material fact; or
- (3) If the towing service owner or operator provides monetary or other compensation to the private property owner for the privilege of towing vehicles from the property under contract; or
- (4) If the towing service owner or operator charges fees in excess of those set out in section 14.5-27; or
- (5) If the towing service owner or operator violates any of the provisions of this article.

(b) Three violations by any owner and/or operator of a towing service or towing service vehicle, of any provision of this article within any 12-month period shall result in the automatic revocation of the owner's or operator's privilege to engage in the business of trespass towing for one month.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-33. Hearing; notice of violation and notice of revocation.

(1) The owner or operator shall receive in person or by certified mail, a copy of any complaint file and shall respond to such complaint in writing within seven days of receipt. The owner or operator shall be advised if the complaint for which notice is given could result in revocation of the privilege to do trespass towing; e.g. if it would constitute a third violation within a 12-month period.

(2) The city manager or designee will review the response, or take the lack of response to consideration and determine if a violation has occurred. Notice of that determination will be sent to the owner or operator.

(3) If the determination is that a violation has occurred and the violation is one that results in revocation of the privilege of trespass towing, the owner or operator will be advised of the effective date of revocation which date shall not be less than 15 days from delivery of the notice of determination.

(4) The owner or operator may make a written request for a due process hearing within 15 calendar days or receipt of the determination of violation. Failure to request a hearing within 15 calendar days of receipt of the determination of violation shall constitute a waiver by the owner or operator of any right to a hearing on the violation or revocation.

(5) The city manager or his designee shall establish rules governing the conduct of the hearing to ensure the due process law.

(6) Upon a review of the evidence presented at the hearing, the city manager or his designee may sustain the violation. The city manager or designee shall revoke the owner's or operator's privilege to engage in the business of trespass towing for one month, if: (a) the determination of violation is sustained; and (b) the violation is the third violation within a 12-month period.

(7) Any towing service owner or operator whose privilege to engage in the trespass towing has been revoked shall not be eligible to again register with the police department for trespass towing for a period of one month from the date of revocation.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-34. 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 14.5, Article III City of Gainesville Code of Ordinances."

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-35. 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 to charge a release fee for towed vehicles which are released from storage facilities during the first 24-hour period after completion of tow.

(c) After the initial 24-hour period following the completion of tow, it shall be a violation of this article to charge a release fee for towed vehicles which are released from storage facilities during normal business hours.

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

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-36. Penalties.

In addition to those penalties imposed by F.S. § 715.07, violation of any provision 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.

(Ord. No. 3973, § 1, 5-9-94)

Sec. 14.5-37--14.5-51. Reserved.

TOWING BILL OF RIGHTS AND RESPONSIBILITIES

1. Conspicuous sign at each towing company listing charges for towing and storage charges and citations to Florida Statutes and City Ordinance along with contact person at GPD to call for making complaint. Receipt should cite statute and ordinance. Use of uniform tow ticket or invoice would help avoid confusion.
2. Pertinent provisions of Florida Statutes and City Ordinance be reduced to Brochure to give persons whose cars have been towed at time they receive receipt for payment for tow charge. In addition, brochure would list phone number to make complaints to.
3. University, City and Tow Companies provide skit or some form of education for new UF and Santa Fe students at orientation or share cost of providing brochure to students at orientation to advise about non consensual towing and the adverse impacts of improperly parking.
4. Make sure property owners are adequately providing information about towing on their property and their procedures. Leases should contain provision about towing and also each new resident should sign acknowledgment of roam towing at time of lease signing or renewal. Perhaps make property owners post in common area their tow policy.
5. Tow Companies, representative of GPD, apartment association and student government if interested, meet at least quarterly to discuss any problems or methods to improve towing and relations with property owners, tow companies, city and persons towed.
6. At time of signing contract for towing, each tow company should provide property owner with copy of statute and city ordinance regarding towing and obtain receipt that property owner or manager received copy.
7. Use of uniform parking decals might help with unauthorized tows. Making property owners and tenants aware of their responsibility to make sure tenants vehicles have proper decals.
8. City to provide local access tv time to education public about roam towing, its need, and the responsibilities of owner, tow companies and violators.
9. Change name of roam towing to "Trespass Towing".