

ORDINANCE _____
0-08-72

An ordinance of the City of Gainesville amending Chapter 14.5, Article III of the Gainesville Code of Ordinances relating to towing from certain private property; changing the title to include immobilization; amending §14-25 by adding definitions; creating a new division 2 of Article III consisting of §14.5-39 through §14.5-45 related to immobilization of vehicles on private property; providing for immobilization; providing for operator permits; specifying violation; providing immobilization criteria; providing of enforcement; providing for permit revocation; providing for civil citations; providing a repealing clause and providing an immediate effective date.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA;

Section 1. A new Division 1 is hereby created and section 14.5.25 of Article III is amended to read as follows:

ARTICLE III. TOWING FROM OR IMMOBILIZING VEHICLES ON CERTAIN PRIVATE PROPERTY

DIVISION 1. TOWING OF VEHICLES ON PRIVATE PROPERTY

Sec. 14.5-25. Definitions.

As used in this article:

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1 *Emergency towing* as used in this article shall only include circumstances where the
2 usual operation of a business is impeded by the blocking of entrances, exits or access to
3 operational equipment, but specifically shall not include tows for the purpose of clearing
4 parking areas.

5 *Major credit card* means a Visa and Mastercard.

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

7 *Physically connected* as used in this article shall mean that at least two of the vehicle's
8 wheels are raised from the ground and the connection is in compliance with the
9 requirements of F.S. § 316.222 (related to stop lamps and turn signals) and F.S. §
10 316.525 (requirements for vehicles hauling loads).

11 *Property owner* means the person who exercises dominion and control over the real
12 property, including, but not limited to, the legal title holder, lessee, a resident manager, a
13 property manager or other agent who has legal authority to bind the owner. An owner,
14 operator, or other agent or employee of a towing or immobilization service may not be
15 appointed as an agent for a property.

16 *Tow* shall mean to haul, carry, pull along, or otherwise transport a connected vehicle by
17 means of another vehicle in a direct and continuous movement to the storage site of the
18 towing or immobilization service and applies only to private property or trespass tows as
19 defined in this Article.

20 *Trespass towing* shall mean towing or removal of a vehicle that is parked on private real
21 property, without the consent of the vehicle's owner or operator.

22 *Trespass towing service* includes any person, company corporation, or other entity
23 whether licensed or not, who engages in or who owns or operates a business which

engages, in whole or in part, in the towing of vehicles for compensation from private property and does not apply to repossessions, or to the towing or removal of any privately owned vehicle by the operator or of any vehicle towing or removal service when such service is performed at the request of the owner of the vehicle.

Violation as used in this article shall mean an uncontested citation or the conviction or a plea of nolo contendere to a violation of this article.

Section 2. A new division 2, of Article III, is created and added to read as follows:

DIVISION 2. IMMOBILIZATION OF VEHICLES ON PRIVATE PROPERTY

Sec. 14.5-39-14.5-51. Reserved. Intent and purpose; applicability and exemptions.

(a) Intent and purpose. The intent of this division is to protect and safeguard the safety, property and welfare of the public and businesses by providing for the licensure and regulation of business enterprises engaged in the practice of immobilization of vehicles. The purpose of this division is to provide a uniform system for the licensure and regulation of persons who are engaged in or who intend to engage in the practice of immobilization of vehicles which are parked on private property without the permission or authorization of the owner of the private property.

(b) Applicability and exemptions. Any person who utilizes any vehicle immobilization method for unauthorized vehicles parked on private property shall comply with the regulations set forth herein below. Provided however, this section shall not apply to the following:

(1) Towing of vehicles; or

(2) Immobilization of a vehicle which occurs:

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1 a. At the direction of a law enforcement officer, police service technician, traffic
2 enforcement technician or any individual who successfully completes a training program
3 established and approved by the Criminal Justice Standards and Training Commission for
4 parking enforcement specialists and, whose current duties with the city include parking
5 enforcement, or

6 b. With the consent of the vehicle's owner or operator, or

7 **Sec. 14.5-40. Definitions.**

8 The following words, terms and phrases, when used in this division shall have the
9 meanings ascribed to them in this section, except where the context clearly indicates a
10 different meaning:

11 *Immobilization, immobilize or immobilizing*, also known as boot or booting shall mean
12 the act of placing, on a parked vehicle, a "boot" or other device which causes a vehicle to
13 be immobile or prohibits its usual manner of movement or otherwise disables a vehicle
14 from operation.

15 *Immobilization contractor* shall mean any person or firm authorized by the owner, lessee,
16 or controller of real property to engage in the business of immobilization of unauthorized
17 vehicles parked on private property of such owner, lessee or controller, their agents, or
18 employees.

19 *Immobilization service(s)* shall include any person, company, corporation or other entity,
20 whether licensed or not, who engages in or owns or operates a business which engages, in
21 whole or in part, in the immobilization or booting of vehicles on private property.

22 *Parked* means the state of a vehicle being temporarily left and unattended by its owner or
23 operator.

1 Person shall mean and include, but shall not be limited to, any individual, firm,
2 partnership, joint venture, syndicate or other group, or combination acting as a unit,
3 association, corporation, estate, trust, trustee, executor, administrator, receiver, or other
4 fiduciary, and shall include the plural as well as the singular.

5 Property owner means that person who exercises dominion and control over private real
6 property, including but not limited to legal titleholder, lessee, designated representative of
7 a condominium association or any person authorized to exercise or share dominion and
8 control over private real property. However, "property owner" shall not mean nor be
9 included in the term "business enterprise".

10 Recover means to take possession of a vehicle and its contents and to exercise control
11 and supervision over the vehicle.

12 **Sec. 14.5-41. Prerequisites to immobilization on private property and**
13 **responsibilities of immobilization service.**

14 (a) Immobilization permit required. No person shall engage in the act, practice or
15 business of immobilization of unauthorized motor vehicles that are parked on private
16 property unless such person has obtained an immobilization permit. An application for an
17 immobilization permit shall be submitted to Towing Administrator at the Gainesville
18 Police Department. Immobilization permits shall be issued on an annual basis. An annual
19 permit fee as provided in Appendix A, Schedule of Fees, Rates and Charges, shall be
20 charged for the cost of review and administration of issuance of immobilization permits.

21 (b) Requirements for issuance of immobilization permit. No person shall be issued an
22 immobilization permit under this division unless they comply with the following
23 requirements:

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1 (1) Proof of insurance. Every applicant for an immobilization permit shall file with the
2 city's business tax division office a certificate of insurance or other proof of insurance
3 providing coverage for all liability claims and claims of damage to property resulting
4 from any action or operation in connection with the immobilization service, in an amount
5 not less than sixty thousand dollars (\$60,000.00) for each incident.

6 (2) Local Business Tax. No immobilization service shall engage in the business of
7 immobilization of unauthorized vehicles parked on private property unless such
8 immobilization service shall first obtain a local business tax receipt in accordance with
9 the provisions set forth in Chapter 25, Article III of the Gainesville Code of Ordinances.

10 Tow companies, current in their local business tax, are not required to pay an additional
11 local business tax for the privilege of engaging in immobilization services.

12 (c) Authorization of the real property-owner. No immobilization service shall
13 immobilize a vehicle on private property unless such immobilization service has written
14 authorization or permission of the owner of the real property upon which the
15 immobilization will occur.

16 (1) Prior to immobilization of any vehicle, every immobilization service or
17 immobilization contractor shall have executed a written agreement with the owner of the
18 real property upon which the immobilization will occur, and shall file and maintain on
19 record at all times with the Towing Administrator at the Gainesville Police Department a
20 list of any and all such agreements for immobilization services on private property within
21 the city limits. The list shall be kept current and shall provide the city with (a) the address
22 of the real property; (b) the date of the agreement; (c) the property owner's name, a

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1 contact name and a telephone number, the duration of the agreement; (d) the days of the
2 week and time of day that such immobilization is authorized;

3 (2) The above requirement of a written agreement shall not apply to the immobilization
4 of vehicles from property appurtenant to and part of a single-family residence;

5 (3) The rebate or payment of money or any other valuable consideration, directly or
6 indirectly from the person, immobilization contractor or immobilization service
7 immobilizing vehicles to the owners or operators of the property upon which the vehicles
8 are immobilized, for the privilege of immobilizing those vehicles, is prohibited.

9 (d) Record keeping procedures. Every person, immobilization service, and
10 immobilization contractor who immobilizes a vehicle shall keep and maintain an
11 immobilization log with the following information:

12 (1) Date and time the vehicle was observed illegally parked;

13 (2) The date and time of immobilization;

14 (3) The location/address of the real property where the immobilization took place;

15 (4) The description of the vehicle including make, model, year, color, vehicle
16 identification number, and license plate number;

17 (5) The date and time the request for removal of the immobilization device was received
18 and the date and time of response and removal of the immobilization device.

19 (6) The amount and method of payment for release of the immobilization device;

20 (7) The name of the person removing the immobilization device; and

21 (8) The name of person to whom the vehicle was released.

22 All persons, immobilization contractors and immobilization services shall file a copy of
23 their immobilization log with the Towing Administrator at the Gainesville Police

1 Department and shall also keep all such immobilization logs on file for a period of one
2 (1) year and shall make such logs available for inspection to any law or code enforcement
3 officer or designee assigned to investigate the complaints and enforcement during normal
4 business hours.

5 (e) Identification.

6 (1) All employees or agents of every immobilization service or immobilization
7 contractor, and every person who immobilizes a vehicle shall wear the Immobilization
8 Operator Permit on the outer garment and uniforms which shall state the full name of the
9 immobilization service.

10 (2) All immobilization service vehicles shall be equipped with an amber light bar and
11 shall display the name (or name of joint venture or individual owner or other entity
12 ownership) on the driver and passenger side of the vehicle in letters at least three (3)
13 inches high, and the address (or address of joint venture, or individual owner or other
14 entity ownership) and telephone number of the immobilization service shall be displayed
15 on the driver and passenger side of the vehicle in letters at least one (1) inch high.

16 Lettering on the vehicle shall be permanently applied. Temporary lettering or magnetic
17 lettering/signs are prohibited. All vehicles used in providing immobilization services
18 shall be inspected for compliance with this ordinance and must display a medallion
19 issued by the towing administrator to evidence such compliance.

20 **Sec. 14.5-42. Application for immobilization operator's permit; violations.**

21 (a) No one shall engage in immobilization without first having obtained an operator's permit
22 from Towing Administrator at the Gainesville Police Department. Each permit will meet the
23 following specifications:

- 1 (1) Be not less than 2 1/8 inches by 3 3/8 inches.
- 2 (2) Contain a photograph of the operator that is not less than one inch by 1 1/2 inches in size.
- 3 (3) Provide the name of the immobilization service and the operator's first name in letters that
- 4 are not less than 1/4-inch by 1/4-inch.
- 5 (4) Provide a control number that is linked to the operator's personal information.
- 6 (5) Provide a place for the chief of police or designee to validate the permit.
- 7 a. After the permit is validated it shall be laminated to protect the information on the permit.
- 8 b. If the permit is lost, damaged, stolen, becomes illegible or the permit holder changes
- 9 immobilization services, the permit must be replaced. The replacement permit shall be valid only
- 10 for the remainder of the time period for which the initial permit was valid.
- 11 (b) It shall be unlawful for the owner of any immobilization service to permit any person to be
- 12 employed as an immobilization operator conducting immobilization within the city unless such
- 13 person has been granted a operator permit to engage in immobilization services which has been
- 14 validated by the chief of police or designee. Upon issuance of the permit, the immobilization
- 15 operator is granted the privilege of engaging in immobilization services within the city limits of
- 16 the City of Gainesville, Florida, unless such permit expires or is suspended or revoked, as
- 17 provided in this article. Each permit shall be valid for two years from date of issuance.
- 18 (c) In order to secure an immobilization operator permit, an applicant must provide the
- 19 following information on a form provided by the city. The applicant must:
- 20 (2) Possess a valid Florida Class E driver's license and provide a photocopy to the chief of
- 21 police or designee.
- 22 (3) Not have been convicted, pled no contest to, or had adjudication withheld for or been
- 23 incarcerated after any conviction, plea of no contest or adjudication withheld for any of the
- 24 following:

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1 a. Any capital felony, any first degree felony, sexual battery, any violent felony involving the
2 use of a gun or knife or which results in great bodily harm.

3 b. Within the previous ten years, any violent felony including not referenced in subsection a
4 above.

5 c. Within the previous ten years, any felony or first degree misdemeanor directly related to the
6 business of towing motor vehicles; repossession of motor vehicles; motor vehicle theft; car
7 jacking or chop shops; or liens for recovering, towing, or storing vehicles and vessels (F.S. §
8 713.78).

9 d. Within the previous five years, of either: (1) driving under the influence of alcohol, a
10 controlled substance, or a chemical substance, to the extent that normal faculties are impaired; or
11 (2) driving with an unlawful blood alcohol level.

12 (d) A permit shall be reviewed and granted or denied in writing within two business days. If the
13 permit is denied, the reason for such denial shall be provided in writing and shall also advise that
14 the applicant may correct deficiencies in the application within seven days of the notice of denial
15 without incurring an additional application fee.

16 (e) Permit fees shall be as provided in appendix A, Schedule of Fees, Rates and Charges.

17 **Sec. 14.5-42. Immobilization; criteria and requirements for immobilizing vehicles;**
18 release of vehicle; maximum fee.

19 (a) *Immobilization criteria.* No person shall immobilize an unauthorized vehicle which
20 is parked on private property, unless such immobilization is in accordance with the
21 following requirements:

22 (1) The vehicle is parked in an unauthorized manner and a sign was posted in
23 accordance with subsection 14.5-42(b) below;

1 (2) The immobilization device is placed on the front wheel of the driver's side of the
2 motor vehicle. The device may be placed on any other wheel if placement on the front
3 wheel of the driver's side is not feasible; and

4 (3) Immediately upon immobilization, the person immobilizing such vehicle, shall affix
5 on the driver's side window of such vehicle, a warning notice sticker with a completely
6 removable adhesive, measuring eight and one-half (8 1/2) by eleven (11) inches,
7 containing a warning stating that the vehicle has been immobilized and that any attempt
8 to move the vehicle may result in damage to the vehicle, and shall provide the name and
9 business address of the person who immobilized such vehicle, the business telephone
10 number to contact for release of the immobilization device, and fee for its removal as set
11 forth in Appendix A, Schedule of Fees, Rates and Charges.

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

20 (b) Sign posting. Prior to immobilizing, in any manner, any unauthorized vehicle
21 parked on a private property, a separate/individual sign meeting the following
22 requirements shall be posted:

1 (1) The sign shall be prominently placed at each driveway access or curb cut allowing
2 vehicular access to the property, within five (5) feet from the public right-of-way. If there
3 are no curb cuts or access barriers, sign(s) must be posted for each twenty-five (25) feet
4 of property abutting public right-of-way, with a minimum of at least one (1) sign;

5 (2) The sign must clearly indicate, in not less than two (2) inch high, light reflective
6 letters on contrasting background, that unauthorized vehicles will be immobilized at the
7 owner's expense. The words "vehicle immobilization area" must be included on the sign
8 in not less than four-inch high letters;

9 (3) The sign structure containing the above notices must be permanently installed with
10 the words "vehicle immobilization area" not less than three (3) feet and not more than six
11 (6) feet above ground level and must be continuously located on the property for not less
12 than twenty-four (24) hours prior to immobilization of any vehicles;

13 (4) The sign must also provide the name and current telephone number of the person or
14 firm which placed the immobilization device on the vehicle; and

15 (5) The sign shall state whether public parking is permitted and the hours of operation
16 that the property is utilized for public parking.

17 (c) Where property is posted for trespass towing and immobilization will be performed
18 by the same company, the signage requirements may be met by adding "vehicle
19 immobilization area" to existing tow signage.

20 (d) Removal of immobilization device; release of vehicle; availability and response
21 time. When a vehicle has been immobilized, the immobilization device shall be removed
22 and the vehicle shall be released or returned to its owner or custodian within one hour
23 upon request for removal and payment of the immobilization charge. If the

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1 immobilization device is not so removed, then the Gainesville Police Department may
2 remove said device, if possible.

3 Any person, immobilization contractor or immobilization service which places an
4 immobilization device on an unauthorized vehicle parked on private property shall
5 operate a twenty-four-hour, seven-day-a-week answering service, and shall make
6 available on a twenty-four-hour, seven-days-a-week basis, attendants and equipment for
7 the release of the immobilization device within one hour of request for removal and
8 payment of the immobilization charge.

9 (e) *Maximum immobilization charge.* No person, immobilization service, nor
10 immobilization contractor may charge an immobilization charge or fee for removal of an
11 immobilization device on an unauthorized vehicle parked on private property in excess of
12 the fee provided in Appendix A, Schedule of Fees, Rates and Charges, of this ordinance.

13 An immobilization service or immobilization contractor shall accept payment for charges
14 from the vehicle owner or authorized representative in the following forms:

15 (1) Cash;

16 (2) Major credit card; and

17 (3) Debit card.

18 The immobilization service or immobilization contractor are required to accept payment
19 at the site of the immobilization.

20 (e) *Required receipt.* Any person, immobilization contractor or immobilization service
21 which places an immobilization device on an unauthorized vehicle parked on private
22 property shall provide, at the time of payment, a written receipt for all charges imposed
23 and received from the owner or operator of a vehicle resulting from the immobilization of

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1 a vehicle. Said receipt shall be made and maintained in duplicate and shall include at a
2 minimum:

3 (1) The date, time, and location of the immobilization;

4 (2) The total charges listed individually and specifically;

5 (3) The date and time of the request for removal of the immobilization device;

6 (4) The date and time of payment of the charges; and

7 (5) The following disclosure in bold capitalized letters of at least twelve-point type:

8 IF YOU HAVE AN QUESTION OR COMPLAINT, PLEASE CONTACT THE CITY

9 OF GAINESVILLE'S TOWING ADMINISTRATOR AT THE GAINESVILLE

10 POLICE DEPARTMENT, 413 NW 8th Avenue, GAINESVILLE, FL 32601;

11 TELEPHONE: (352) 393-7524; (352) 334-2504 (FAX).

12 (f) *Return of owner prior to immobilization.* No person, immobilization contractor or

13 immobilization service shall immobilize a vehicle or charge for its services where the

14 registered owner or other legally authorized person in control of the vehicle arrives at the

15 scene prior to the immobilization, unless:

16 (1) The registered owner or other legally authorized person in control of the vehicle

17 refuses to remove the vehicle; or

18 (2) The vehicle has already been connected to the immobilization device and the

19 registered owner or other person in control of the vehicle refuses to pay a service fee of

20 not more than one-half (1/2) of the rate contained in Appendix A, Schedule of Fees,

21 Rates and Charges for such immobilization service.

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(3) The person immobilizing the vehicle shall wait a minimum of twenty (20) minutes to allow the vehicle's owner or operator to secure cash or other acceptable payment of the fees enumerated herein.

(g) Proof of ownership cannot be required of any person who is paying a fee for the removal of the immobilization device.

(h) The registered owner or other legally authorized person in control of the vehicle shall not be prevented from accessing any of the vehicle's interior compartments.

(i) Towing/removal requirements. An immobilized vehicle shall not remain immobilized on private property for more than twenty-four (24) hours. After such period of time has expired, the vehicle shall be released from the steel boot and may be towed or removed pursuant to this article, and no fee shall be assessed for release of the immobilization device.

Sec. 14.5-43. Enforcement and inspection; disclaimer.

(a) Enforcement and inspection. The official shall enforce the provisions set forth in this division. This shall not preclude other law enforcement personnel from conducting any action as deemed necessary to assure compliance with all applicable laws.

To determine compliance and enforce the provisions of this division, the official shall have the right of entry upon real property during the operating hours of the subject business and shall be immune from civil or criminal prosecution for trespass upon real property while in the discharge of his duties of enforcing the provisions of this division.

(b) Disclaimer of immobilization methods. The imposition of the vehicle immobilization regulations set forth herein are solely intended for the public's protection from vehicle immobilization without adequate notice. Nothing herein shall be construed

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as authorization or permission to immobilize vehicles on private parking lots open to the public. Any person immobilizing vehicles on private parking lots open to the public shall be subject to whatever legal remedies the owner of the vehicle may have.

Sec. 14.5-44. Revocation of immobilization permit.

In addition to the penalties set forth above, the city may also institute proceedings to revoke a person's immobilization permit upon finding that the person has violated any provision of this division on three (3) or more occasions. The procedures for revocation of an immobilization permit shall be as set forth under this Article for towing.

Sec. 14.5-45. Civil citation; violation of ordinance.

Police officers and code enforcement officers may issue a civil citation to immobilization contractor, immobilization service or their authorized representatives and property owners or their authorized representatives, for violations of any section of this article.

Secs. 14.5-46--14.5-51. Reserved.

Section 3. Appendix A, Schedule of Fees, Rates and Charges, POLICE, is amended by adding a new subsection titled Immobilization to read as follows:

POLICE:

Immobilization:

- a. Annual Permit fee275.00
- b. Late penalty, annual payment not timely filed ... \$25.00 /month
- c. Operator permit \$10.00/year
- d. Replacemenet permit ½ Permit fee
- Vehicle (Medallion) Permit25.00/biennially
- b. Removal 60.00

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Section 4. Section 2-339 of the Code of Ordinances of the City of Gainesville, is amended by adding the immobilization to the title of Section 14.5, Article III of the table of applicable codes and ordinances:

Sec. 2-339. Applicable codes and ordinances.

The following ordinances are enforceable by the procedures described in this division:

TABLE INSET:

Section	Description	Class	Penalty
Article III of Chapter 14.5	Towing from <u>or immobilizing vehicles on</u> certain private property	II	\$125.00

Section 5. It is the intention that Sections 1 through 4 of this ordinance shall become and be made a part of the Code of Ordinances, of the City of Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered or relettered in order to accomplish such intentions.

Section 6. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the valid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

Section 7. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 8. This ordinance shall become effective immediately on adoption.

PASSED AND ADOPTED this ____ day of _____, 2009.

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PEGEEN HANRAHAN,
MAYOR

ATTEST APPROVED AS TO FORM AND LEGALITY

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this ____ day of _____, 2009.

This Ordinance passed on second reading this ____ day of _____, 2009.