



MEMORANDUM
Office of the City Attorney

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

FIRST READING

TO: Mayor and Commissioners

DATE: February 26, 2007

FROM: Marion J. Radson, City Attorney

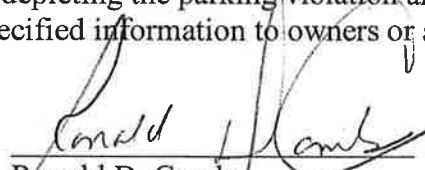
SUBJECT: ORDINANCE NO.: 0-07-07
ROAM TOWING REGULATIONS

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; by requiring owner, operator and vehicle registration for trespass towing; requiring wrecker operator permits; providing permit specifications; providing for permit revocation and appeal; clarifying requirement for agreement when property ownership changes; requiring payment options by cash or major credit card or debit card; requiring photographs depicting violation and requiring telephone monitoring or staffing to provide specified information to owners or authorized drivers of vehicles; providing directions to the codifier; providing a severability clause; providing a repealing clause and providing an immediate effective date.

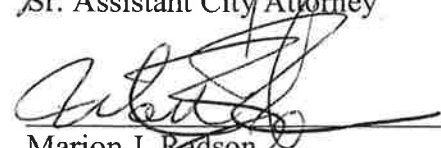
RECOMMENDATION: The City Commission adopt the proposed ordinance.

The City Commission on July 10, 2006 authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance amending Chapter 14.5, Article III, to provide for owner, operator and vehicle registration before engaging in trespass towing. The amendment will also require wrecker operators to obtain permits from owner of the property or company and set the permit specifications, the grounds for permit revocation and the parameters for appeal. Additionally, the amendment clarifies the requirement for a new agreement when property ownership changes; requires acceptance of payment by cash, major credit card or debit card; requires photographs depicting the parking violation and requires telephone monitoring or staffing to provide specified information to owners or authorized drivers of vehicles.

Prepared by:


Ronald D. Combs
Sr. Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson
City Attorney

RDC/bs

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ORDINANCE _____
0-07-07

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6 An ordinance of the City of Gainesville amending Chapter
7 14.5, Article III of the Gainesville Code of Ordinances
8 relating to towing from certain private property; by
9 requiring owner, operator and vehicle registration for
10 trespass towing; requiring wrecker operator permits;
11 providing permit specifications; providing for permit
12 revocation and appeal; clarifying requirement for
13 agreement when property ownership changes; requiring
14 payment options by cash or major credit card or debit card;
15 requiring photographs depicting violation and requiring
16 telephone monitoring or staffing to provide specified
17 information to owners or authorized drivers of vehicles;
18 providing directions to the codifier; providing a severability
19 clause; providing a repealing clause and providing an
20 immediate effective date.
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23 **WHEREAS**, at least 10 days notice has been given once by publication in a
24 newspaper of general circulation notifying the public of this proposed ordinance and of a
25 Public Hearing in the City Commission Auditorium in City Hall, City of Gainesville; and

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

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

31 **Section 1.** Chapter 14.5, Article III, consisting of Sections 14.5-25 thru 14.5-37
32 of the Code of Ordinances of the City of Gainesville, is amended to read as follows:

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MISCELLANEOUS BUSINESS REGULATIONS

Article III. Towing From Certain Private Property

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.

Major credit card means a Visa© or Mastercard©.

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

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

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.

Sec. 14.5-26. Owner, operator and vehicle registration provisions

It shall be unlawful for any person, either as principal, agent or employee, to do any trespass towing without having first registered the owner, wrecker 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 the name of the insurance company or companies with which the owner and operators have liability insurance for the operation

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1 of the vehicle as required by law; the name and driver's license number of all employees
2 involved in the towing of vehicles as defined in the trespass tow ordinance.

3 **Sec. 14.5-27. Application for wrecker operator's permit; violations.**

4 (a) No wrecker operator shall engage in trespass towing without first having
5 obtained a written permit from the owner of the property or company such operator is
6 employed by, or such owner's authorized designee. Each permit will meet the following
7 specifications:

8 (1) Each card shall be not less than 2 1/8 inches by 3 3/8 inches.

9 (2) Each card shall contain a photograph of the wrecker operator that is not
10 less than one inch by 1 1/2 inches.

11 (3) Each card shall contain the name of the wrecker service and wrecker
12 operator's first name in letters that are not less than one-fourth inch by
13 one-fourth inch.

14 (4) Each card shall contain a control number that is linked to the driver's
15 personal information.

16 (5) Each card shall contain a place for the chief of police or designee to
17 validate the card.

18 a. After the card is validated it shall be laminated to protect the
19 information contained on the card.

20 b. If the permit is lost, damaged, stolen or becomes illegible the card
21 must be replaced.

22 (b) It shall be unlawful for the owner of any wrecker service to permit any person
23 to be employed as a wrecker operator within the city unless such person has been granted

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1 a written permit to engage in trespass towing by the chief of police or designee. Each
2 permit shall be valid for two years from date of issuance.

3 (c) In order to secure a wrecker operator permit, an applicant must provide the
4 following information on a form provided by the city manager. The application must:

5 (1) Submit to the Chief of police or designee a certified copy from the Florida
6 Department of Law Enforcement of his/her criminal history and a certified
7 copy of his/her driving record from the Florida Department of Highway
8 Safety and Motor Vehicles;

9 (2) Possess a valid Florida Class E driver's license and provide a photocopy to
10 the Chief of police or designee.

11 (3) Not have been convicted of the following:

12 a. Any felony unless his/her civil rights have been restored.

13 b. Any felony or first degree misdemeanor directly related to the
14 business of towing motor vehicles; or

15 c. Within the previous five years, of either: (1) driving under the
16 influence of alcohol, a controlled substance, or a chemical
17 substance, to the extent that normal faculties are impaired; or (2)
18 driving with an unlawful blood alcohol level; or (3) any other
19 criminal traffic offense.

20 **Sec. 14.5-28. Revocation; appeal**

21 (a) The chief of police or designee may revoke the privilege of any person to do
22 trespass towing on any of the following grounds:

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1 (1) If the towing service owner or operator fails to register as required by this
2 article;

3 (2) If the registration contains a false statement of material fact;

4 (3) If the towing service owner or wrecker operator provides monetary or
5 other compensation to the private property owner for the privilege of
6 towing vehicles from the property under contract;

7 (4) The towing service owner or operator provides monetary compensation to
8 the private property owner for each or any individual vehicle towed from
9 the property;

10 (5) If the service owner or wrecker operator charges fees in excess of that set
11 out in the Police section of Appendix A, Schedule of Fees, Rates and
12 Charges of this Code of Ordinances;

13 (6) If a wrecker operator fails to display on or about his person or on the
14 dashboard of the wrecker, easily visible to the public, the wrecker operator
15 permit while performing a trespass tow.

16 (b) Three violations of the provisions of this article by any owner and/or operator
17 of a towing service or towing service vehicle shall result in the automatic suspension of
18 the owner's or operator's privilege to engage in the business of trespass towing. An
19 owner shall not be suspended for acts of an employee/operator in violation of this
20 section unless the owner actively participated in or had knowledge of the violation and
21 took no corrective action against the employee/operator.

22 In the event of such suspension:

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1 (1) The owner or operator shall be informed in person or by certified or
2 registered mail within seven days prior to the effective date of the
3 suspension.

4 (2) The owner or operator may make a written request for a due process
5 hearing within 15 calendar days of the date of the suspension. Failure to
6 request a hearing within the 15 calendar-day period shall constitute a
7 waiver by the owner or operator of any rights to a hearing.

8 (3) At the due process hearing, the towing service owner or operator shall
9 have the opportunity to present any testimony and/or documentation
10 he/she believes negates or mitigates the suspension.

11 (4) Upon a review of the evidence presented at the hearing, the chief of police
12 may revoke the owner's or operator's privilege to engage in the business
13 of trespass towing for up to one year.

14 (c) Any towing service owner or operator whose privilege to engage in trespass
15 towing has been revoked shall not be eligible to again apply for a permit with the police
16 department for trespass towing until such revocation period has expired.

17 (d) Any towing service owner or operator whose privilege to engage in the
18 business trespass towing has been revoked by the chief of police may file an appeal
19 within 15 days of the date of revocation pursuant to the appeals process specified below:

20 (e) *Right of appeal.* Any towing service owner or operator whose privilege to
21 engage in trespass towing has been revoked by the police chief may appeal such decision
22 to the city manager or designee. Such appeal shall be taken by filing written notice with

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1 the chief of police or designee within 15 days after the decision by the police chief to
2 revoke such privilege. The notice of the appeal shall contain the grounds for the appeal
3 and shall contain information showing that either the finding is contrary to the law or is
4 not supported by competent substantial evidence. The chief of police or designee shall
5 transmit copies of the appeal to the city manager along with papers constituting the
6 record upon which the action appealed from is based. The filing of a notice of appeal
7 will not delay the effectiveness of any revocation. The city manager may decide to
8 uphold or reverse the decision of the chief of police. If the city manager reverses the
9 decision of the chief of police, the trespass towing privilege will be immediately
10 reinstated.

11 **Sec. 14.5-26 29. Prerequisites to towing vehicles parked on private property;**
12 **exceptions.**

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

16 (1) The owners of the real property shall have executed, at least 24 hours prior
17 to the towing or removal of any vehicle, a written agreement for trespass
18 towing with a towing service, which agreement shall contain the following
19 provisions:

20 a. The duration of the agreement;

21 b. The time of day that such towing or removal is authorized;

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- 1 c. The days of the week that such towing or removal is
- 2 authorized;
- 3 d. The fees to be paid for the towing or removal;
- 4 e. The signatures of both the property owner or the authorized
- 5 representative, and the owner, or authorized representative
- 6 of the towing service, certifying that each has read and is in
- 7 compliance with all of the provisions of F.S. § 715.07.

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

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

- 13 a. A new completed agreement is submitted each time a property
- 14 owner changes tow vendors: or the ownership or management of
- 15 the property changes.
- 16 b. A completed agreement is resubmitted annually, one year from the
- 17 date of last submittal.

18 (3) Where the private real property is provided for residential parking other
19 than for a single-family residence, the agreement, except as provided in
20 subsection (a)(4) below, shall not authorize the towing service to tow
21 away or remove any vehicle without a verified request to remove the
22 specific vehicle by the property owner or an authorized representative. A

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1 property owner's representative may include a resident manager, a
2 property manager or other agent who has the legal authority to bind the
3 owner, but may not be an officer, employee or agent of a towing service.

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

8 a. Signage shall be added to each of the existing tow away signs with
9 letters of the same size as the "tow away" language, which
10 provides the following words: "Roam towing." The sign shall state
11 the specific hours of roam towing or state 24 hours, if that is
12 applicable.

13 b. Towing contract on file with the Gainesville Police Department as
14 required by subsection (a)(1) shall be amended to provide for roam
15 towing.

16 c. A photograph of the "offending" vehicle shall be taken prior to its
17 removal and shall be of sufficient detail to demonstrate the
18 violation of rule or regulation for which the vehicle is being towed.
19 The photograph must be maintained by the wrecker company for a
20 minimum period of one year.

21 ed. Lease, rental or property owners' association documents shall
22 contain a notice provision indicating that the residential property

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1 utilizes roam towing. In the case of properties with existing leases,
2 rental agreements or property owners' association documents, it
3 shall be sufficient to notify by regular mail, at the last known
4 address, each of the tenants/owners of the property prior to the
5 initiation of roam towing. All amendments to or new leases, rental
6 agreements or property owners' association documents shall
7 contain the provision giving notice that the property owner intends
8 to utilize roam towing.

9 (5) For private property located within the boundaries of the community
10 redevelopment areas as defined in division 9 of chapter 2 of the
11 Gainesville Code of Ordinances, signage as required by F.S., § 715.07 and
12 subsection (a) above, shall use reflective white lettering on a non-
13 reflective black background. All existing signs within the redevelopment
14 areas referenced herein shall be replaced on or before January 1, 2004.

15 (6) Upon filing the written agreement with the police department as required
16 herein, the property owner or the authorized representative of the property
17 owner, shall simultaneously submit an administrative fee to process the
18 trespass towing application in the amount set forth in Appendix A. The
19 administrative fee shall be applicable to all trespass towing agreements
20 filed with the police department after the adoption of this section and shall
21 be paid each time a trespass towing agreement is filed with the police
22 department as required herein.

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

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

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

7 (3) When notice is personally given to the owner or other legally authorized
8 person in control of the vehicle that the area in which that vehicle is
9 parked is reserved or otherwise unavailable and that the unauthorized
10 vehicle will be removed at the owner's or operator's expense.

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

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

17 (1) Each and every document or other item which must be produced to
18 retrieve the vehicle.

19 (2) Exact charges as of the time of the telephone call, and the rate at which
20 charges will accumulate thereafter.

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1 (3) The acceptable methods of payment. If the company cannot, or will not
2 provide change to a customer, the company shall advise the customer to
3 bring exact payment.

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

5 **Sec. 14.5-2730. Authorized fees and charges.**

6 (a) Any towing firm engaged in the business of trespass towing shall not charge
7 the owner of any towed vehicle or personal property in excess of the fee set by the city
8 commission by resolution. The fee set by resolution shall be all inclusive during the first
9 24-hour period following notification of vehicle tow to the Gainesville Police
10 Department; no additional fees or charges whatsoever may be charged unless specifically
11 established and authorized herein or by state statute. However, the maximum fees in this
12 section shall not apply to trespass towing of vehicles which have more than two axles or
13 more than four road wheels or are rated to carry more than one ton.

14 (b) A person firm or corporation which provides trespass towing and storage
15 services pursuant to Article III, Section 14-5-25, et. seq. of the Gainesville Code of
16 Ordinances shall accept payment for charges from the vehicle owner or authorized
17 representative in any of the following forms:

18 (1) Cash; or

19 (2) Valid major credit card or debit card.

20 (3) Maximum trespass towing fees shall be established no more than annually
21 by the city commission after receiving a request for fee modification by the towing
22 company owners and staff recommendations based on financial information submitted by

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1 the trespass towing companies as to their costs for the removal of vehicles and on other
2 information. The required information shall be submitted by the towing company owners
3 by September 30 of each year. The maximum fees shall be set by resolution to be adopted
4 by the city commission prior to December 31 of each year in which a request for
5 modification has been made. Such maximum fees shall be effective during the following
6 calendar year and until changed by subsequent resolution.

7 **Sec. 14.5-~~2831~~2831. Vehicle not connected upon operator returning.**

8 The owner or operator of any towing service vehicle which is summoned to tow away
9 any vehicle on private property, or stops to tow any vehicle under a valid "Roam
10 Towing" provision on private property, shall not remove or tow the vehicle away and
11 shall not charge any fee if the vehicle operator returns to the vehicle prior to the towing
12 service operator having physically connected the vehicle to the towing apparatus.

13 **Sec. 14.5-~~2932~~2932. Vehicle not towed upon operator returning.**

14 If the registered owner or other legally authorized person in control of the vehicle arrives
15 at the scene prior to removal or towing of the vehicle, the vehicle shall be disconnected
16 from the towing or removal apparatus, and that person shall be allowed to remove the
17 vehicle without interference upon the payment of a reasonable service fee of not more
18 than one-half of the posted rate for such towing service for which a receipt shall be given,
19 unless that person refuses to remove the vehicle which is otherwise unlawfully parked.

20 **Sec. 14.5-~~3033~~3033. Vehicles subject to criminal investigation.**

21 Tow owner shall not refuse to relinquish to the police, a vehicle which is the subject of a
22 criminal investigation. Relinquishment of the vehicle to the police for impoundment at its

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1 contract site shall not affect tow owners right to payment for services rendered and
2 payment for those services shall be made to tow owner by the owner of the vehicle or
3 his/her representative, or other arrangements shall be made with tow owner to receive
4 payment before the vehicle is released to the owner or his/her representative.

5 ~~Sec. 14.5-31. Reserved.~~

6 **Sec. 14.5-3234. Civil citation; violation of ordinance.**

7 Police officers and code enforcement officers may issue a civil citation to tow owners or
8 their authorized representatives and property owners or their authorized representatives,
9 for violations of any section of this article.

10 ~~Sec. 14.5-33. Reserved.~~

11 **Sec. 14.5-3435. Receipt from towing service to be furnished to owner when vehicle
12 claimed.**

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

17 "Notice: Towing from private property is regulated by the provisions of F.S. § 715.07 and
18 Chapter 14.5, Article III City of Gainesville Code of Ordinances."

19 **Sec. 14.5-3536. Prohibitions.**

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

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1 (b) It shall be a violation of this article for any person other than the real property
2 owner or an authorized representative of the owner, or the tow owner or authorized
3 representative of the tow owner if the signs are placed by the tow company, to move,
4 remove, or deface any tow-away sign.

5 **Sec. 14.5-~~363~~7. Penalties.**

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

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

18 **Secs. 14.5-~~373~~8--14.5-51. Reserved.**

19 **Section 2.** It is the intention of the City Commission that Section 1 of this ordinance
20 shall become and be made a part of the Gainesville Code of Ordinance, of the City of
21 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be
22 renumbered or relettered in order to accomplish such intentions.

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1 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be,
2 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in
3 no way affect the validity of the remaining portions of this ordinance.

4 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the
5 extent of such conflict hereby repealed.

6 **Section 5.** This ordinance shall become effective immediately on adoption

7 **PASSED AND ADOPTED** this ____ day of _____, 2007.

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PEGEEN HANRAHAN
MAYOR

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ATTEST

APPROVED AS TO FORM AND

14

LEGALITY

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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This Ordinance passed on first reading this ____ day of _____, 2007.

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This Ordinance passed on second reading this ____ day of _____, 2007.

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