ORDINANCE NO. 2014-55

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 90 ENTITLED "VEHICLES FOR HIRE", "ARTICLE III. WRECKER SERVICE" OF THE CODE OF ORDINANCES AND IN PARTICULAR AMENDING HIALEAH CODE §98-171 "DEFINITIONS" TO DEFINE "IMMOBILIZATION"; AND FURTHER BY CREATING SECTION 90-179 ENTITLED "IMMOBILIZATION" REQUIRING A BUSINESS TAX RECEIPT, SETTING THE MAXIMUM FEE OF $20.00 FOR REMOVAL OF THE IMMOBILIZATION DEVICE AND $15.00 FOR REMOVAL OF THE IMMOBILIZATION DEVICE WHEN THE OPERATOR IS STILL ON THE PROPERTY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council finds private real property owners may cause the removal of unauthorized vehicles upon their private real property;

WHEREAS, the use of immobilization devices prior to the removal of unauthorized vehicles parked on private property is not prohibited by law;

WHEREAS, Florida Statutes §166.04391)(c) authorizes municipalities establish a maximum fee for immobilization of motors vehicles on private property; and

WHEREAS, it is in the best interest of the safety and general welfare of the community and residents of the City of Hialeah to establish the maximum fee of $20.00, for the removal of an immobilization device by an immobilization contractor and a

maximum fee of $15.00, for the removal of the immobilization device when immobilization contractor is still on the scene.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 90 entitled "Vehicles for Hire" of the Code of Ordinances of the City of Hialeah, Florida, is hereby amended to read as follows:

Chapter 90

VEHICLES FOR HIRE

* * *

ARTICLE III. WRECKER SERVICE

Sec. 90-171. Definitions.

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

* * *

Express instruction means a clear, definite and explicit request, made in writing by:

(1) A police officer to recover, tow, remove or store a specific and individual vehicle that is disabled or abandoned or parked without authorization, or whose operator is unable or unwilling to remove the vehicle;

(2) A property owner or duly authorized agent of the property owner to recover, tow, immobilize, remove or store a specific and individual vehicle parked without permission of the property owner; however, such property owner or agent shall not be the same person requested to recover, tow, immobilize, remove or store the vehicle ~~or~~ of an employee or agent thereof; or

(3) By telephone, in person or in writing by a vehicle owner or the authorized driver to recover, tow, remove or store a specific and individual vehicle that is in the lawful control of the vehicle owner or authorized driver requesting the towing service. Where the property owner is a government entity, the property owner or

an employee or agent thereof, may be the same person requested to recover, tow, remove or store the vehicle.

Every request made in writing or in person must indicate the date and time of the instruction and must be signed by the police officer, the property owner or agent, or the vehicle owner or authorized driver in the presence of the person providing the requested service. Every request made by telephone must also be documented with the date and time of the call.

HPD means the Hialeah police department.

Immobilization means the act of placing, on a parked vehicle, a mechanical device that is designed to be attached to the wheel or tire of the vehicle so as to prohibit its usual manner of movement.

Industry means the business of recovering, immobilizing, towing or removing vehicles and providing such vehicle storage services as may be associated therewith.

* * *

License means the certificate or document which allows a person to engage in the city in the activity of recovering, immobilizing, towing, removing and storing of vehicles for compensation. As used in this article, the term "license" shall not mean the city ~~occupational license~~ or county ~~occupational license~~ business tax receipt.

* * *

Operate means to provide for compensation the services of recovering, immobilizing, towing or removing vehicles and any vehicle storage services associated therewith.

Operator means any person who provides for compensation the services of recovering, immobilizing, towing or removing vehicles and any vehicle storage services associated therewith.

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Property owner means that person who exercises dominion and control over real property, including, but not limited to, the legal titleholder, lessee, designated representative of a condominium association or any person authorized to exercise dominion and

control over real property; however, the term "property owner" shall not mean or include a person providing towing services within the purview of this article or article IV. All government entities providing their own towing services may be property owners for purposes of this article.

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Sec. 90-179. Immobilization.

(a) No operator shall engage in the business of immobilization of vehicles parked on private property without permission or authorization unless such operator shall first obtain a city business tax receipt in accordance with the provisions and procedures set out in Chapter 86 Article II.

(b) The total maximum fee that an operator can charge for the removal of the immobilization device placed on a vehicle parked on private property without permission or authorization shall not exceed twenty dollars ($20.00). Except that, when the operator is still at the property where the vehicle is immobilized, the total maximum fee charged shall not exceed fifteen dollars ($15.00).

Section 2: Repeal of Ordinances in Conflict.

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

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed $500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent

jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 5: **Effective Date.**

This ordinance shall become effective when passed by the City council and signed by the Mayor or after the next regularly scheduled City Council meeting if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 23 day of September, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 25 day of September, 2014.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, Acting City Attorney

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Cásals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS PUBLISHED IN ACCORDANCE WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING.