

An Ordinance of the Code of the City of West Miami, Florida, to be entitled "Vehicle Impoundment"; Setting forth circumstances under which vehicles must be impounded; providing for an administrative penalty for the use of vehicles under certain circumstances, and a procedure for review of the impoundment decision; containing a repealer provision and a severability clause; providing for an effective date; and providing for inclusion in the code of the City of West Miami.

WHEREAS, prostitution, drug related crimes and crimes involving driving while intoxicated, are a threat to the health, safety and public welfare of the City of West Miami, and

WHEREAS, motor vehicles are routinely used to facilitate the commission of these crimes; and

WHEREAS, this use is destructive to the rights and values of the citizens of the City of West Miami, and

WHEREAS, the City Commission of the City of West Miami finds that it is in the best interest of the City to impound motor vehicles that are used to facilitate the commission of drug and/or prostitution related crimes or crimes involving driving while intoxicated thereby protecting the health, safety, and welfare of the citizens of the City of West Miami.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF WEST MIAMI, COUNTY OF DADE, STATE OF FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Ordinance are hereby adopted by reference thereto and incorporated herein as if fully set forth in this Section.

Section 2. The Code of the City of West Miami, Florida, to be entitled "Vehicle Impoundment" and to read and provide as follows:

ARTICLE I VEHICLE IMPOUNDMENT

Sec 11.1 Impoundment of motor vehicles, controlled substance, prostitution and driving under the influence.

- (a) A motor vehicle shall be subject to seizure and impoundment whenever a police officer has probable cause to believe that the vehicle:

- (1) Contains any controlled substances or cannabis as defined in Chapter 893, Florida Statutes; or
 - (2) Was used in the purchase, attempt to purchase, sale, or attempt to sell such controlled substances or cannabis; or
 - (3) Was used to facilitate the commission of any act of prostitution, assignation of lewdness as defined in Section 796.07, Florida Statutes; or
 - (4) Was used to facilitate the commission of and/or was an instrumentality in the commission of the offense at driving under the influence, as defined in Section 316.193 Florida Statutes.
- (b) Upon seizing the motor vehicle, the police officer shall:
- (1) Provide for the towing of the vehicle pursuant to the City Contract wrecker and all applicable towing procedures; and
 - (2) Notify in writing the person determined to be the owner of the vehicle and any person who is found to be in control of the vehicle at the time of the seizure and impoundment of the vehicle as well as the right to request a preliminary hearing pursuant to Section 1-2 or to pay a five hundred dollar (\$500.00) administration civil penalty, plus towing and storage costs, in lieu of requesting the preliminary hearing.
- (c) The notices to be given pursuant to the Section shall be provided by hand delivery at the time of the seizure and impoundment of the vehicle, or if neither the record owner nor the person in control of the vehicle at the time of its seizure is available to receive such notice, then notice shall be provided to the record owner by certified mail, return receipt requested, within 24 hours of the time of the impoundment excluding Saturdays, Sundays and legal holidays.
- (d) This section shall not apply and the vehicle shall not be seized or impounded if:
- (1) The possession, use or sale of the controlled substance and/or cannabis is authorized by Chapter 893 or Chapter 499, Florida State Statutes; or
 - (2) The vehicle was stolen at the time that is subject to seizure and impoundment; or

- (3) The vehicle was operating as a common carrier at the time it was subject to seizure and impoundment; or
- (4) A law enforcement agency has expressed its intent, in writing, to institute state forfeiture proceedings on the vehicle.

Sec 1.2 Hearings, administrative penalty.

- (a) If the owner of the motor vehicle, or his/her agent or authorized representative has made a written request for a preliminary hearing then:
 - (1) The City shall hold such hearings within five (5) days of receipt of the written request, excluding Saturdays, Sundays, and legal holidays, before a Special Master or Alternate Special Mater of the City of West Miami. At the hearing, the City shall have the burden to show that there is probable cause to believe that the motor vehicle is subject to impoundment and continued seizure under section 1.1. The formal rules of evidence shall not apply at the hearing and hearsay and circumstantial evidence is admissible.
 - (2) If, after the hearing, the Special Master or Alternate Special Master determines that there is probable cause to believe that the motor vehicle is subject to impoundment and continued seizure, he/she shall order the continued impoundment of vehicle unless the owner or his/her agent or authorized representative pays the City and administrative civil penalty of five hundred dollars (\$500.00) plus the towing and storage cost, or posts with the City a cash bond in the amount of five hundred dollars (\$500.00), plus the accumulated costs of towing and storing the vehicle. If, after the hearing, the vehicle shall be released forthwith to the owner or his/her agent of authorized representative without the imposition of penalties or fees.
- (b) Within five (5) days of the date that the motor vehicle is seized and impounded pursuant to Section 1.1 and whether or not a preliminary hearing is requested, the City shall notify by certified mail, return receipt requested, the record owner of the date, time and location of a final hearing to be conducted pursuant to this subsection. The record owner will also be notified of the right to pay a five hundred dollar (\$500.00) administrative civil penalty in lieu of the final hearing. The final hearing shall be scheduled and held

unless continued by order of the Special Master or Alternate Special Master, no later than thirty (30) days after the date that the vehicle was seized and impounded. The City shall have the burden to show by a preponderance of the evidence that the vehicle was used as set forth in Section 1.1(a)(1)-(4). If, after the hearing, a finding is made that the vehicle is subject to impoundment and seizure pursuant to Section 1.1(d) apply, then the Special Master or Alternate Special Master of the City of West Miami shall enter an Order finding the owner of record of the vehicle civilly liable to the City for an administrative penalty of five hundred dollars (\$500.00) plus towing and storage costs. If, after the hearing, a finding is made that the City did not meet its burden of proof as set forth in the subsection of that one of the exceptions of Section 1.1(d) applies, the vehicle shall be returned to the owner along with any cash bond posted.

Section 1.3 Administrative penalty

If an administrative penalty is imposed pursuant to Section 1.1 and 1.4, such penalty shall constitute a debt due and owing to the City and shall be independent of the City's return or release of the vehicle. If a cash bond has been posted pursuant to Section 1.2, the bond shall be applied toward payment of the penalty.

Section 1.4 Return of vehicle

Except as provided otherwise in Section 1.2, an impounded vehicle shall be returned to its record owner, or to the person who is legally entitled to possess the vehicle, upon his/her payment of the administrative penalty to the City, plus towing and storage fees, unless the vehicle had been sold or otherwise disposed of to satisfy a judgement or enforce a lien as provided by law.

Section 1.5 Appeal

The owner of the motor vehicle that has been the subject of a seizure and impoundment pursuant to Sections 1.2 and 1.2, or the City, may appeal the final ruling and decisions of the Special Master or the Alternate Special Master of the City of West Miami, to the Circuit Court of the Eleventh (11th) Judicial Circuit of Dade County, Florida, within thirty (30) days of the date of the Final Order being appealed. The City may charge the appellant a reasonable fee for preparation of the record for purposes for making the appeal.

Section 3. All ordinances or parts of ordinances insofar as they are inconsistent or in conflict with the provisions of this Ordinance are hereby repealed.

PASSED AND ADOPTED THIS 4TH DAY OF FEBRUARY, 1998

ATTEST:


Felix Diaz, City Clerk


Rebeca Sosa, Mayor

Approved as to form:

Jose Villalobos, City Attorney

Roll Call:

Mayor Rebeca Sosa	Y
Vice Mayor Carlos Diaz-Padron	Absent
Comm. Enrique Gonzalez	Y
Comm. Martin	Y
Comm. Tania Rozio	Y