

ARTICLE X. - PARKING FACILITIES SURCHARGE⁹

Footnotes:

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Editor's note— Ord. No. 13568, § 1, adopted October 22, 2015, redesignated the former article IX as article X. Ord. No. 12563, adopted July 22, 2004, repealed article IX in its entirety, and §§ 3—9 of said ordinance reenacted provisions to read as herein set out. Formerly, article IX pertained to similar subject matter and derived from Ord. No. 11813, §§ 3—9, adopted July 13, 1999.

Sec. 35-341. - Short title.

This article shall be known and cited as the "*City of Miami Parking Facilities Surcharge Ordinance.*"

(Ord. No. 12563, § 3, 7-22-04)

Sec. 35-342. - Intent.

This article is intended to impose and levy a surcharge on the sale, lease or rental of space at parking facilities in the city at the rate of 15 percent of the revenues derived from any fee, charge or exchange for the parking of a motor vehicle in or on any parking facility in the city for which a fee, charge or exchange is made on an hourly, daily, weekly, monthly, yearly, event, validation programs, valet or any other basis. Revenues received as part of a daily, weekly, monthly, yearly, or event based rent without a separate parking fee designation are also subject to this article. The net proceeds of the surcharge collected shall be deposited in the general fund subject to appropriation pursuant to the budget and fiscal provisions of the annual budget process.

(Ord. No. 12563, § 4, 7-22-04; Ord. No. 13063, § 2, 5-14-09)

Sec. 35-343. - Authority.

The city commission is authorized to establish and adopt a surcharge pursuant to the authority granted by F.S. § 166.271. The provisions of this article shall not be construed to limit the power of the city to adopt such ordinance pursuant to any other source of local authority nor to utilize any other methods or powers otherwise available for accomplishing the purposes set forth herein, either in substitution of or in conjunction with this article.

(Ord. No. 12563, § 5, 7-22-04)

Sec. 35-344. - Definitions.

As used in this article the following words and terms shall have the following meanings, unless another meaning is plainly intended:

City means the City of Miami, Florida.

Daily means the operation of a facility on any or all of the seven (7) days of the week, inclusive of holidays.

Fee, charge or exchange means the consideration paid including any and all compensation received or costs imposed, collected or exacted by the operator for parking in a parking facility including exchange,

credit or otherwise. Fee, charge or exchange also means the consideration paid to the operator for goods and services ancillary to parking, if payment for such goods and services is mandatory and not optional to the user entering into a parking transaction. Examples of goods and services that may be considered ancillary to parking include, but are not limited to, food, beverages, air fresheners, windshield cleaning, car wash, tire pressure checks, jump starts, and emergency phone services. The intent of this definition is to impose the surcharge on all consideration paid by the user as a condition of entering into a parking transaction, irrespective of whether particular components of such consideration are characterized as compensation received or cost imposed for goods and services separate and apart from parking in an attempt to evade the surcharge.

Garage means any building or other structure in which motor vehicles may be parked, stored, housed, or kept for a fee, charge or exchange.

Manager means the city manager of the city or his or her designee.

Motor vehicle means any self propelled vehicle operated or suitable for operation in a parking facility.

Net proceeds means the amount of the surcharge remitted to the city less the allocable cost of procedures used and expenses incurred by the city to enforce collection of the surcharge in an amount not to exceed five percent (5%).

Open to the general public means a facility which charges a fee, charge or exchange for the use of any parking space therein regardless of when or how the fee, charge or exchange is collected. The intent of this definition is to include all parking facilities including parking facilities that are used by anyone, including but not limited to any private tenant, who must pay a fee, charge or exchange to the operator of the parking facility except for those facilities described in section 35-345.

Operator means any individual, partnership, association, corporation, or other entity which owns, controls, conducts, leases, operates, or causes to be operated a parking facility which offers parking accommodations for a fee, charge or exchange. The intent of this definition is to place the burden for collection of the surcharge on the owner of the facility and not the entity which operates the facility if different from the owner.

Parking means the parking, storing, housing or keeping of a motor vehicle.

Parking facility means any use in whole or in part of any space, plot, place, lot, parcel, yard, enclosure, parking lot, garage, street, building or structure that is open to the general public at which motor vehicles may be housed, stored, kept, or parked for which any fee, charge or exchange is made, no matter how the fee, charge or exchange is collected.

Parking lot means any outdoor area or space motor vehicles may be parked, stored, housed or kept for a fee, charge or exchange.

Revenues means, any and all revenue, to include the entire amount of compensation in whatever form, exchange or otherwise, to be determined according to generally accepted accounting principles, derived directly or indirectly from or in connection with the parking operation of the parking facility.

Surcharge means the parking facility's surcharge expressed as a percentage or in dollars.

Transaction means the parking, storing, housing or keeping of a motor vehicle in a parking facility, in the city, for a fee, charge or exchange.

(Ord. No. 12563, § 6, 7-22-04; Ord. No. 13063, § 2, 5-14-09)

Sec. 35-345. - Applicability of parking facilities surcharge.

This article shall be uniformly applicable to all parking in parking facilities in the city, exclusive of residential parking of tenants or residents, in apartments, condominiums or co-operatives where parking is provided pursuant to a lease or in a separate writing between the apartment building owner, condominium or cooperative and the tenants or residents, whether a parking charge is payable to the apartment owner, condominium or cooperative or to the operator of a residential parking facility. This

article shall not apply to any parking facilities located in any airports, seaports, county administration buildings or other projects defined under F.S. §§ 125.011 and 125.015.

(Ord. No. 12563, § 7, 7-22-04; Ord. No. 13063, § 2, 5-14-09)

Sec. 35-346. - Collection of the parking facilities surcharge.

- (a) Surcharge amounts due pursuant to this article shall be collected by the operator of a parking facility at the time of, and in addition to, collection of any other amounts for the parking of a motor vehicle in a parking facility, whether charge is made on an hourly, daily, weekly, monthly, yearly, event, validation programs, valet or any other basis. All operators shall be required to maintain a valid operational license. The local business tax receipt of an operator shall be revoked upon the failure to remit the surcharge amounts for three (3) consecutive months. No operator shall be permitted to operate the parking facility until all arrears are paid.
- (b) The operator of every parking facility shall remit funds collected pursuant to this surcharge, net of refunds, for the preceding calendar month; payments must be received by the city by the 20th day of each calendar month. Each monthly remittance will be accompanied by such reports as may be prescribed by the manager on forms identifying for each parking facility, the name, address, account number, capacity, parking charges or fees, or rate schedule, number and type of transactions and such other information as may be necessary or convenient to fully calculate the surcharge.
- (c) Every operator of a parking facility shall keep complete and accurate records, in a manner as set forth by the manager, pursuant to subsection 35-346(f)(1) of this Code, of all motor vehicles parked on an hourly, daily, weekly, monthly, yearly, event, validation programs, valet or any other basis in the parking facility, together with the amount of surcharge collected from all transactions, and shall keep all pertinent records and documents as are necessary to determine the amount of surcharge due for a period of three (3) years subsequent to the year of the transaction. Such records and other pertinent data shall be available for inspection and examination upon the request of and with reasonable notice by the manager. Every operator shall provide access to the parking facility to the manager so the manager can survey the parking activity of said facility.
- (d) Whenever any operator fails to keep records from which the surcharge may be accurately computed, the manager may make use of a factor developed by surveying the operator or other operators of a similar type parking facility, or otherwise compute the amount of surcharge due, and this computation shall be prima facie correct.
- (e) Whenever any operator fails to collect or remit to the manager the surcharge imposed within the time limit therefor, the manager shall assess the operator the amount of surcharge due, plus interest at the rate of one percent (1%) per month or any fraction thereof, and a penalty of ten percent (10%) of the surcharge due on uncollected or unremitted amounts.
- (f) In addition to the powers granted to the manager in connection with the collection of the surcharge, the manager is authorized and empowered:
 - (1) To make, adopt and amend such forms, rules and regulations as may be deemed necessary or proper to fully collect the surcharge and to define any terms used in connection with the imposition and collection of the surcharge;
 - (2) To compromise disputed claims in connection with the surcharge and for good and sufficient cause shown to waive interest and penalty;
 - (3) To delegate any of the duties and functions in connection with the collection of the surcharge and the enforcement of the provisions relating to the manager, provided however, that all regulations promulgated shall be issued by the manager.
 - (4) To extend, for good cause shown, the time for remitting any surcharge required to be paid for such period of time as may be deemed reasonable by the manager.

- (5) To retain the services of persons or entities with parking related collection experience to collect the surcharge subject to competitive procurement procedures.
- (6) To enforce any of the penalties described in section 35-347 when an operator of a parking facility fails, neglects or refuses to pay penalties and interest.

(Ord. No. 12563, § 8, 7-22-04; Ord. No. 12885, § 1, 2-8-07; Ord. No. 13063, § 2, 5-14-09; Ord. No. 13257, § 2, 3-10-11)

Sec. 35-347. - Failure to comply; penalties.

- (a) The operator of a parking facility who:
 - (1) Fails, neglects or refuses to collect the surcharge;
 - (2) Fails, neglects or refuses to remit the surcharge;
 - (3) Fails, neglects or refuses to keep accurate records;
 - (4) Submits any incomplete, false or fraudulent return;
 - (5) Refuses to permit the manager to examine books, records and papers relating to the surcharge; or
 - (6) Fails to fully comply with any or all rules or regulations promulgated by the manager pursuant to the authority contained herein, or to keep complete and proper records as required, shall be subject to the following penalties for each offense:
 - (i) Have his or her local business tax receipt revoked;
 - (ii) Have a lien placed upon the parking facility for the sums owed plus interest pursuant to law;
 - (iii) Be subject to an administrative fine in the amount of \$500.00;
 - (iv) Be required to comply with stricter reporting requirements; and/or
 - (v) In addition to any other penalties provided in this section, upon the finding of a violation based on this section, the operator shall pay treble fees; be subject to denial, revocation, or suspension of its permit, certificate of use, temporary certificate of use, and/or business tax receipt for a time period not to exceed two years after a hearing before the code enforcement board pursuant to chapter 2, article X of the City Code; and/or debarment pursuant to section 18-107 of the City Code.
- (b) The operator of a parking facility who:
 - (1) Has outstanding surcharge payments for three months;
 - (2) Has outstanding penalty and interest payments for three months;
 - (3) Fails to maintain complete and accurate records as stipulated by the ordinance;
 - (4) Fails to comply after receiving two notifications regarding compliance with the ordinance; or
 - (5) Fails to comply with an audit request after the manager has reasonably attempted to schedule such audit shall be subject to additional reporting requirements including:
 - (i) The operator of the parking facility will be required to register parking slips, receipts, chits, tickets or the like with the manager.
 - (ii) The operator of the parking facility will be required to complete and submit a "Parking Surcharge Recap Monthly Report."
 - (iii) The operator of the parking facility may be required to install parking revenue control equipment in said facility, as approved by the city manager or city commission.

- (iv) The operator of the parking facility may be required to cease operation for a period of 30 days.
 - (v) In addition to any other penalties provided in this section, upon the finding of a violation based on this section, the operator shall pay treble fees; be subject to denial, revocation, or suspension of its permit, certificate of use, temporary certificate of use, and/or business tax receipt for a time period not to exceed two years after a hearing before the code enforcement board pursuant to chapter 2, article X of the City Code; or debarment pursuant to the City Code.
- (c) Repeat operator violations. The operator of the parking facility who:
- (1) Has been found to have underreported parking revenue or parking surcharge amounts;
 - (2) Has been found to not maintain complete and accurate records as stipulated by the ordinance;
 - (3) Has been assessed an administrative fine more than once; or
 - (4) Has been found violating any part of this section more than once shall be subject to:
 - (i) The operator shall continue to be subject to all remedies noted in subsection (a)(6).
 - (ii) The operator of the parking facility shall be required to cease operation for a period of 30 days.
 - (iii) The operator of the parking facility shall be required to install parking revenue control equipment which will monitor and count the number of vehicles admitted to and leaving from a parking facility. This equipment shall be approved by the city manager or city commission. This type of equipment shall have entrance and exit counters that count every vehicle that enters and exits a parking facility and shall include non-resettable, continuous counters. The equipment shall be used and effective during operating hours.
- (d) Further, the city is authorized to seek injunctive or other equitable relief to enforce compliance with this article.

(Ord. No. 12563, § 9, 7-22-04; Ord. No. 12885, § 1, 2-8-07; Ord. No. 13063, § 2, 5-14-09; Ord. No. 13257, § 2, 3-10-11; Ord. No. 13806, § 2, 11-15-18)