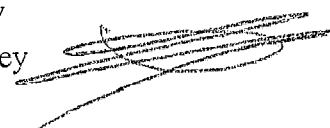


CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION - 11-002

TO: Art Noriega, Chief Executive Director
Miami Parking Authority
FROM: Julie O. Bru, City Attorney 
DATE: October 4, 2011
RE: Charging Parking Fees for Vehicles with Disabled Persons Parking
Identification Permit

You have asked:

*WHETHER THE MIAMI PARKING AUTHORITY ("MPA")
MAY ENFORCE PAYMENT FOR PARKING FROM
CUSTOMERS WHO DISPLAY A VALID DISABLED
PERSONS PARKING IDENTIFICATION PERMIT
("DISABILITY HANG TAG") ON THEIR VEHICLES WHILE
PARKING IN ON-STREET OR OFF-STREET CITY OF
MIAMI ("CITY") OWNED FACILITIES OR PARKING
SPACES, INCLUDING THOSE PRIVATELY OWNED
FACILITIES AND LOTS THAT ARE MANAGED BY THE
MPA?*

The answer is yes, in certain circumstances. The provisions regarding parking for disabled persons' vehicles are addressed under Florida Statute, Sections 316 and 320. The statute states that "the provision of handicapped parking shall be enforced by state, county, and municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies."¹ The general rule is that fees are not to be charged to vehicles with a disability hang tag if the vehicle "displays a disabled parking permit or a license plate issued under s. 316.1958² or s. 320.0848³ or a license plate issued under s. 320.084⁴, s. 320.0842⁵, s. 320.0843⁶, or s. 320.0845⁷ if the vehicle is transporting the person who has a disability and to whom the disabled parking permit or license plate was issued."⁸

¹ Fla. Stat. §316.1959 (2011)

² See Exhibit A

³ See Exhibit B

⁴ See Composite Exhibit C

⁵ See Composite Exhibit C

⁶ See Composite Exhibit C

⁷ See Composite Exhibit C

⁸ Fla. Stat. §316.1964(1) (1998)

However, numerous exceptions exist to this general rule. The exceptions are based on several factors including the type of equipment used by the vehicle, the duration of the parking time, the purpose of the parking facility and the location of the facility. Specifically, Florida Statute, Section 316.1964 (8) states:

“...a county, municipality, or any agency thereof may charge for parking in a facility or lot that provides timed parking spaces any vehicle that displays a disabled parking permit, except that any vehicle with specialized equipment, such as ramps, lifts, or foot or hand controls, for use by a person who has a disability, or any vehicle that is displaying the Florida Toll Exemption permit, is exempt from any parking fees.”

Therefore fees may be charged if the vehicle does not have specialized equipment. Further fees may be charged under the guidelines of the parking rate structure as outlined in Article IV of the City Code. Additional fees may also be charged based on lease provisions of certain facilities. For example, if the MPA leases spaces within a facility for a duration that exceeds one (1) week, Florida Statutes have carved out an exception whereby fees may be charged, and the lease rate charged is “not required to be reduced for a lessee who is disabled.”⁹ Similarly, any parking facility that “restricts the number of consecutive days that a vehicle may be parked may impose that same restriction on a vehicle that displays a disabled parking permit issued to a person who has a disability.”¹⁰

Another exception to the general rule about not charging parking fees to vehicles with disability hang tags, given the nature of the various City facilities and events, indicates that “when a state, county, or municipal parking facility or lot is being used in connection with an event at a convention center, cruise-port terminal, sports stadium, sports arena, coliseum, or auditorium, the parking facility may charge a person whose vehicle displays such a parking permit a parking fee in the same manner and amount as it charges other persons.”¹¹ As such, in addition to the existing City facilities and lots that this section is applicable to, be advised that the exception would also apply to the Marlins Stadium parking garages and surface lots currently under construction.

Finally, with respect to on-street parking, “when an on-street parking meter restricts the duration of time that a vehicle may be parked, a vehicle properly displaying a disabled parking permit is allowed a maximum of four (4) hours at no charge; however, local governments may extend such time by local ordinance.”¹² Therefore, fees may be charged to vehicles displaying disability hang tags in duration restricted on-street locations once the vehicle has parked in excess of the four (4) hour statutory threshold.

⁹ Fla. Stat. §316.1964(6) (1998)

¹⁰ Fla. Stat. §316.1964(4) (1998)

¹¹ Fla. Stat. §316.1964(3) (1998)


¹² Fla. Stat. §316.1964(5) (1998)

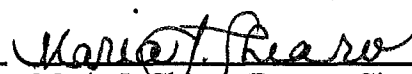
CONCLUSION

Based on the provisions contained in the Florida Statutes, parking fees *are not* to be charged to vehicles with disability hang tags; however *many exceptions exist*, which if applicable, *allow for parking charges* to vehicles that display disability hang tags. Please note that should a fee be allowed, *all fees are subject to the parking rates contained in Article IV of the City Code*.

PREPARED BY:

REVIEWED BY:


Kira L. Grossman, Assistant City Attorney


Maria J. Chiaro, Deputy City Attorney

cc: Honorable Mayor and Members of the City Commission
Johnny Martinez, P.E., City Manager

EXHIBIT A

316.1958 Out-of-state vehicles bearing identification of issuance to persons who have disabilities.—

Motor vehicles displaying a special license plate or parking permit issued to a person who has a disability by any other state or district subject to the laws of the United States or by a foreign country that issues disabled parking permits that display the international symbol of accessibility are recognized as displaying a valid license plate or permit, that allows such a vehicle special parking privileges under s. 316.1955, if the other state or district grants reciprocal recognition for residents of this state who have disabilities. However, when an individual is required by law to have a Florida driver's license or a Florida vehicle registration, a special motor vehicle license plate or parking permit issued by another state, district, or country to persons who have disabilities is not valid and the individual whose vehicle displays such an invalid plate or permit is subject to the same penalty as an individual whose vehicle does not display a valid plate or permit. A law enforcement officer or parking enforcement specialist may not ticket a vehicle for a violation of s. 316.1955 without first determining whether the vehicle is transporting a resident of another state who is the owner of the out-of-state placard.

History.—s. 5, ch. 85-227; s. 26, ch. 90-330; s. 4, ch. 96-200; s. 2, ch. 98-202; s. 2, ch. 99-248.

EXHIBIT B

320.0848 Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.

- (1)
 - (a) The Department of Highway Safety and Motor Vehicles or its authorized agents shall, upon application and receipt of the fee, issue a disabled parking permit for a period of up to 4 years, which period ends on the applicant's birthday, to any person who has long-term mobility impairment, or a temporary disabled parking permit not to exceed 6 months to any person who has a temporary mobility impairment. No person will be required to pay a fee for a parking permit for disabled persons more than once in a 12-month period from the date of the prior fee payment.
 - (b)
 1. The person must be currently certified as being legally blind or as having any of the following disabilities that render him or her unable to walk 200 feet without stopping to rest:
 - a. Inability to walk without the use of or assistance from a brace, cane, crutch, prosthetic device, or other assistive device, or without the assistance of another person. If the assistive device significantly restores the person's ability to walk to the extent that the person can walk without severe limitation, the person is not eligible for the exemption parking permit.
 - b. The need to permanently use a wheelchair.
 - c. Restriction by lung disease to the extent that the person's forced (respiratory) expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or the person's arterial oxygen is less than 60 mm/hg on room air at rest.
 - d. Use of portable oxygen.
 - e. Restriction by cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association.
 - f. Severe limitation in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.
 2. The certification of disability which is required under subparagraph 1. must be provided by a physician licensed under chapter 458, chapter 459, or chapter 460, by a podiatric physician licensed under chapter 461, by an optometrist licensed under chapter 463, by an advanced registered nurse practitioner licensed under chapter 464 under the protocol of a licensed physician as stated in this subparagraph, by a physician assistant licensed under chapter 458 or chapter 459, or by a similarly licensed physician from another state if the application is accompanied by documentation of the physician's licensure in the

other state and a form signed by the out-of-state physician verifying his or her knowledge of this state's eligibility guidelines.

(c) The certificate of disability must include, but need not be limited to:

1. The disability of the applicant; the certifying practitioner's name and address; the practitioner's certification number; the eligibility criteria for the permit; the penalty for falsification by either the certifying practitioner or the applicant; the duration of the condition that entitles the person to the permit; and justification for the additional placard pursuant to subsection (2).
2. The statement, in bold letters: "A disabled parking permit may be issued only for a medical necessity that severely affects mobility."
3. The signatures of:
 - a. The applicant's physician or other certifying practitioner.
 - b. The applicant or the applicant's parent or guardian.
 - c. The employee of the department's authorized agent which employee is processing the application.

(d) Beginning April 1, 1999, the Department of Highway Safety and Motor Vehicles shall renew the disabled parking permit of any person certified as permanently disabled on the application.

(e) The Department of Highway Safety and Motor Vehicles shall, in consultation with the Commission for the Transportation Disadvantaged, adopt rules, in accordance with chapter 120, for the issuance of a disabled parking permit to any organization that can adequately demonstrate a bona fide need for such a permit because the organization provides regular transportation services to persons who have disabilities and are certified as provided in this subsection.

(2) **DISABLED PARKING PERMIT; PERSONS WITH LONG-TERM MOBILITY PROBLEMS**

(a) The disabled parking permit is a placard that can be placed in a motor vehicle so as to be visible from the front and rear of the vehicle. Each side of the placard must have the international symbol of accessibility in a contrasting color in the center so as to be visible. One side of the placard must display the applicant's driver's license number or state identification card number along with a warning that the applicant must have such identification at all times while using the parking permit. In those cases where the severity of the disability prevents a disabled person from physically visiting or being transported to a driver license or tax collector office to obtain a driver's license or identification card, a certifying

physician may sign the exemption section of the department's parking permit application to exempt the disabled person from being issued a driver's license or identification card for the number to be displayed on the parking permit. A validation sticker must also be issued with each disabled parking permit, showing the month and year of expiration on each side of the placard. Validation stickers must be of the size specified by the Department of Highway Safety and Motor Vehicles and must be affixed to the disabled parking permits. The disabled parking permits must use the same colors as license plate validations.

(b) License plates issued under ss. 320.084, 320.0842, 320.0843, and 320.0845 are valid for the same parking privileges and other privileges provided under ss. 316.1955, 316.1964, and 526.141(5)(a).

(c) The department shall not issue an additional disabled parking permit unless the applicant states that he or she is a frequent traveler or a quadriplegic. The department may not issue to any one eligible applicant more than two disabled parking permits except to an organization in accordance with paragraph (1)(e). Subsections (1), (5), (6), and (7) apply to this subsection.

(d) If an applicant who is a disabled veteran, is a resident of this state, has been honorably discharged, and either has been determined by the Department of Defense or the United States Department of Veterans Affairs or its predecessor to have a service-connected disability rating for compensation of 50 percent or greater or has been determined to have a service-connected disability rating of 50 percent or greater and is in receipt of both disability retirement pay from the United States Department of Veterans Affairs, he or she must still provide a signed physician's statement of qualification for the disabled parking permits.

(e) To obtain a replacement for a disabled parking permit that has been lost or stolen, a person must submit an application on a form prescribed by the department and must pay a replacement fee in the amount of \$1.00, to be retained by the issuing agency. If the person submits with the application a police report documenting that the permit was stolen, there is no replacement fee.

(f) A person who qualifies for a disabled parking permit under this section may be issued an international wheelchair user symbol license plate under s. 320.0843 in lieu of the disabled parking permit; or, if the person qualifies for a "DV" license plate under s. 320.084, such a license plate may be issued to him or her in lieu of a disabled parking permit.

(3) DISABLED PARKING PERMIT; TEMPORARY

(a) The temporary disabled parking permit is a placard of a different color from the color of the long-term disabled parking permit placard, and must clearly display the date of expiration in large print and with color coding, but is identical

to the long-term disabled parking permit placard in all other respects, including, but not limited to, the inclusion of a state identification card number or driver's license number on one side of the temporary permit. The temporary disabled parking permit placard must be designed to conspicuously display the expiration date of the permit on the front and back of the placard.

- (b) The department shall issue the temporary disabled parking permit for the period of the disability as stated by the certifying physician, but not to exceed 6 months.
 - (c) The fee for a temporary disabled parking permit is \$15.
- (4) From the proceeds of the temporary disabled parking permit fees:
- (a) The Department of Highway Safety and Motor Vehicles must receive \$3.50 for each temporary permit, to be deposited into the Highway Safety Operating Trust Fund and used for implementing the real-time disabled parking permit database and for administering the disabled parking permit program.
 - (b) The tax collector, for processing, must receive \$2.50 for each temporary permit.
 - (c) The remainder must be distributed monthly as follows:
 - 1. To the Florida Governor's Alliance for the Employment of Disabled Citizens for the purpose of improving employment and training opportunities for persons who have disabilities, with special emphasis on removing transportation barriers, \$4. These fees must be deposited into the Transportation Disadvantaged Trust Fund for transfer to the Florida Governor's Alliance for Employment of Disabled Citizens.
 - 2. To the Transportation Disadvantaged Trust Fund to be used for funding matching grants to counties for the purpose of improving transportation of persons who have disabilities, \$5.
- (5) The applications for disabled parking permits and temporary disabled parking permits are official state documents. The following statement must appear on each application form immediately below the physician's signature and immediately below the applicant's signature: "Knowingly providing false information on this application is a misdemeanor of the first degree, punishable as provided in s. 775.082, Florida Statutes, or s. 775.083, Florida Statutes. The penalty is up to 1 year in jail or a fine of \$1,000, or both."

(6) Any person who knowingly makes a false or misleading statement in an application or certification under this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) Any person who fraudulently obtains or unlawfully displays a disabled parking permit that belongs to another person while occupying a disabled parking space or an access aisle as defined in s. 553.5041 while the owner of the permit is not being transported in the vehicle or who uses an unauthorized replica of such a disabled parking permit with the intent to deceive is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(8) A law enforcement officer may confiscate the disabled parking permit from any person who fraudulently obtains or unlawfully uses such a permit. A law enforcement officer may confiscate any disabled parking permit that is expired, reported as lost or stolen, or defaced, or that does not display a personal identification number.

(a) Beginning April 1, 1999, the permit number of each confiscated permit must be submitted to the Department of Highway Safety and Motor Vehicles, and the fact that the permit has been confiscated must be noted on the permit holder's record. If two permits issued to the same person have been confiscated, the Department of Highway Safety and Motor Vehicles shall refer the information to the central abuse hotline of the Department of Children and Family Services for an investigation of potential abuse, neglect, or exploitation of the permit owner.

(c) A confiscated permit must be held as evidence until a judicial decision about the violation has been made. After a finding of guilt has been made or a plea of nolo contendere has been entered, the charging agency shall destroy the confiscated permit. A confiscated permit may not, under any circumstances, be returned to its registered owner after a finding of guilt has been made or a plea of nolo contendere has been entered in court. The permit number of each destroyed permit must be reported to the department, and the department must record in the real-time disabled parking permit database that the permit has been invalidated.

(9) A violation of this section is grounds for disciplinary action under s. 458.331, s. 459.015, s. 460.413, s. 461.013, s. 463.016, or s. 464.018, as applicable.

(10) The Department of Highway Safety and Motor Vehicles shall adopt rules to administer this section.

History.—s. 7, ch. 79-82; s. 3, ch. 80-196; s. 32, ch. 83-318; s. 4, ch. 84-108; s. 7, ch. 85-227; s. 1, ch. 86-237; s. 1, ch. 87-220; s. 1, ch. 90-28; s. 18, ch. 90-330; s. 66, ch. 93-120; s. 1, ch. 93-127; s. 12, ch. 93-268; s. 356, ch. 95-148; s. 7, ch. 95-327; s. 12, ch. 96-200; s. 8, ch. 96-296; s. 52, ch. 96-350; s. 51, ch. 97-100; s. 69, ch. 97-264; s. 12, ch. 97-300; s. 177, ch. 98-166; s. 7, ch. 98-202; s. 102, ch. 99-13; s. 271, ch. 99-248; s. 57, ch. 2000-349; s. 67, ch. 2001-61; s. 1, ch. 2002-6; s. 121, ch. 2002-20; s. 1, ch. 2002-243; s. 1, ch. 2005-225; s. 3, ch. 2007-103; s. 8, ch. 2009-183.

COMPOSITE EXHIBIT C

320.084 Free motor vehicle license plate to certain disabled veterans.

(1) One free motor vehicle license number plate shall be issued by the department for use on any motor vehicle owned or leased by any disabled veteran who has been a resident of this state continuously for the preceding 5 years or has established a domicile in this state as provided by s. 222.17(1), (2), or (3), and who has been honorably discharged from the United States Armed Forces, upon application, accompanied by proof that:

- (a) A vehicle was initially acquired through financial assistance by the United States Department of Veterans Affairs or its predecessor specifically for the purchase of an automobile;
- (b) The applicant has been determined by the United States Department of Veterans Affairs or its predecessor to have a service-connected 100-percent disability rating for compensation; or
- (c) The applicant has been determined to have a service-connected disability rating of 100 percent and is in receipt of disability retirement pay from any branch of the United States Armed Services.

(2) The production by a veteran of a valid identification card issued by the Department of Veterans' Affairs in accordance with s. 295.17 or a letter from the United States Department of Veterans Affairs or its predecessor or any branch of the uniformed Armed Services certifying a service-connected disability rating of 100 percent for the veteran is prima facie evidence of the veteran's eligibility for the benefits contained in subsection (1).

(3) The department shall, as it deems necessary, require each person to whom a motor vehicle license plate has been issued pursuant to subsection (1) to apply to the department for reissuance of his or her registration license plate. Upon receipt of the application and proof of the applicant's continued eligibility, the department shall issue a new permanent "DV" numerical motor vehicle license plate which shall be of the colors red, white, and blue similar to the colors of the United States flag. The operation of a motor vehicle displaying a "DV" license plate from a previous issue period or a noncurrent validation sticker after the date specified by the department shall subject the owner if he or she is present, otherwise the operator, to the penalty provided in s. 318.18(2). Such permanent license plate shall be removed upon sale of the vehicle, but may be transferred to another vehicle owned by such veteran in the manner prescribed by law. The license number of each plate issued under this section shall be identified by the letter designation "DV." Upon request of any such veteran, the department is authorized to issue a designation plate containing only the letters "DV," to be displayed on the front of the vehicle.

(4) (a) With the issuance of each new permanent "DV" numerical motor vehicle license plate, the department shall initially issue, without cost to the applicant, a

validation sticker reflecting the owner's birth month and a serially numbered validation sticker reflecting the year of expiration. The initial sticker reflecting the year of expiration may not exceed 27 months.

(b) There shall be a service charge in accordance with the provisions of s. 320.04 for each initial application or renewal of registration and an additional sum of 50 cents on each license plate and validation sticker as provided in s. 320.06(3)(b).

(c) Registration under this section shall be renewed annually or biennially during the applicable renewal period on forms prescribed by the department, which shall include, in addition to any other information required by the department, a certified statement as to the continued eligibility of the applicant to receive the special "DV" license plate. Any applicant who falsely or fraudulently submits to the department the certified statement required by this paragraph is guilty of a noncriminal violation and is subject to a civil penalty of \$50.

(5) A county or municipality, or any agency thereof, may not impose upon any person who is issued a license plate with the international accessibility symbol, under this section, any fee or penalty for parking in any metered or timed parking space except:

(a) As provided in s. 316.1964; or

(b) When the person is parked without a permit issued under s. 320.0848 in a space designated for use by persons who have disabilities.

History.—s. 1, ch. 26839, 1951; s. 7, ch. 28186, 1953; s. 3, ch. 57-266; s. 1, ch. 59-104; s. 1, ch. 63-277; s. 6, ch. 65-190; ss. 1, 2, ch. 67-47; s. 1, ch. 67-420; ss. 24, 35, ch. 69-106; s. 1, ch. 69-269; s. 92, ch. 71-355; s. 3, ch. 77-68; s. 16, ch. 77-357; s. 1, ch. 79-208; s. 1, ch. 80-306; s. 5, ch. 83-71; s. 28, ch. 83-318; s. 3, ch. 85-63; s. 27, ch. 88-290; s. 11, ch. 93-268; s. 354, ch. 95-148; s. 10, ch. 96-200; s. 29, ch. 99-248; s. 28, ch. 2010-223.

320.0842 Free motor vehicle license plates to veterans who use wheelchairs.

(1) Upon application by any person who owns or leases a motor vehicle and who is qualified under subsection (2), the department shall issue to such person a free motor vehicle license plate, similar in all respects to the plate issued under s. 320.084, with the exception that the designation "DV" is replaced by the international symbol of accessibility. The international symbol of accessibility is as follows:



(2) In order to be eligible for the motor vehicle license plate described in subsection (1), a person must comply with the following provisions:

(a) The veteran must be eligible for the license plate issued under s. 320.084 and must apply for the license plate issued under this section in lieu of or in exchange for the motor vehicle license number plate authorized by s. 320.084; and

(b) The veteran must offer, in addition to the proof required by s. 320.084(1), proof that due to a service-connected disability he or she permanently uses a wheelchair or proof, in the form of an application that conforms to the requirements set forth in s. 320.0848, that he or she qualifies for a disabled parking permit under that section. The license plate entitles the person to all privileges afforded by a parking permit issued under s. 320.0848.

(3) Upon request, the department shall issue, to a person who has received a motor vehicle license plate under subsection (2), a designation plate containing only the international symbol of accessibility, to be displayed on the front of a vehicle.

(4) Section 320.084(3) and (4) applies to license plates issued under this section.

History.—s. 1, ch. 72-31; s. 2, ch. 74-202; s. 5, ch. 79-82; s. 2, ch. 79-208; s. 30, ch. 83-318; s. 355, ch. 95-148; s. 11, ch. 96-200; s. 5, ch. 98-202.

320.0843 License plates for persons with disabilities eligible for permanent disabled parking permits.

(1) Any owner or lessee of a motor vehicle who resides in this state and qualifies for a disabled parking permit under s. 320.0848(2), upon application to the department and payment of the license tax for a motor vehicle registered under s. 320.08(2), (3)(a), (b), (c), or (e), (4)(a) or (b), (6)(a), or (9)(c) or (d), shall be issued a license plate as provided by s. 320.06 which, in lieu of the serial number prescribed by s. 320.06, shall be stamped with the international wheelchair user symbol after the serial number of the license plate. The license plate entitles the person to all privileges afforded by a parking permit issued under s. 320.0848. When more than one registrant is listed on the registration issued under this section, the eligible applicant shall be noted on the registration certificate.

(2) All applications for such license plates must be made to the department.

History.—s. 1, ch. 74-30; s. 4, ch. 77-68; s. 4, ch. 77-83; s. 6, ch. 79-82; s. 66, ch. 79-164; s. 31, ch. 83-318; s. 29, ch. 87-198; s. 6, ch. 98-202; s. 63, ch. 2005-164; s. 31, ch. 2006-1.

320.0845 License plates for members of Paralyzed Veterans of America.

(1) Any owner or lessee of a motor vehicle who resides in this state and is a member of the Paralyzed Veterans of America, upon application and payment of the appropriate license tax and fees accompanied by proof of such membership, shall be issued a motor vehicle license plate, as provided in s. 320.06, which shall be imprinted with the name of said organization to the extent that space permits on the license plate with the serial letters prescribed by s. 320.06(1)(a).

(2) All applications for such license plates shall be made to the department.

History.—s. 1, ch. 87-160.