

LEE COUNTY ORDINANCE NO. 13-19

AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCES 94-27 AND 00-13 AND RESOLUTION 10-03-25, PERTAINING TO NONCONSENT TOWING AND IMMOBILIZATION SERVICES PROVIDED IN LEE COUNTY; PROVIDING FOR AUTHORITY; TITLE; APPLICABILITY; FINDINGS, PURPOSE AND INTENT; DEFINITIONS; PERMIT REQUIRED; PERMIT APPLICATION, FEES; ISSUANCE OF PERMIT, APPEAL, AND RENEWAL; INSURANCE REQUIREMENTS; PERMIT DOCUMENT SPECIFICATIONS; MANIFEST, TRIP RECORD OR TOW SHEET; REGULATIONS APPLICABLE TO THE TOW OR IMMOBILIZATION OPERATOR AND RELATED BUSINESS ENTITY; NONCONSENT TOW OR IMMOBILIZATION; EXPRESS INSTRUCTION BY LAW ENFORCEMENT; REQUIREMENTS FOR NONCONSENT TOWS FROM OR IMMOBILIZATION ON PRIVATE PROPERTY; DROP CHARGES; IMMOBILIZATION; TRUCK CLASS SPECIFICATIONS; BUSINESS INSPECTION REQUIREMENTS; TOWING SAFETY STANDARDS; MAXIMUM RATES FOR NONCONSENT SERVICES; VIOLATIONS, PENALTIES AND ENFORCEMENT; ADMINISTRATION; DISPOSITION OF FEES AND FINES; AUDIT; REPEALER; CONFLICTS OF LAW; SEVERABILITY; CODIFICATION, SCRIVENER'S ERRORS; AND, AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida, is the governing body in and for Lee County, Florida; and

WHEREAS, the Board is authorized pursuant to ch. 125, Florida Statutes, to enact ordinances necessary to the exercise of its powers; and

WHEREAS, the Board of County Commissioners adopted the Lee County Towing Ordinance 94-27, as amended by Lee County Ordinance (LCO) 00-13, to provide regulations applicable to nonconsent towing, removal and storage of vehicles or vessels consistent with the provision of Florida Statutes §715.07; and

WHEREAS, the Board has determined it is appropriate to revise and update the regulations applicable to nonconsent towing, removal, immobilization and storage of vehicles or vessels within Lee County; and

WHEREAS, Florida Statutes §125.0103 requires the County to establish maximum towing, immobilization and storage rates to be charged for the removal, immobilization and storage of vehicles or vessels on private property, or from accident scenes where the vehicle owner or authorized representative is incapacitated, unavailable, leaves the acquisition of towing services to law enforcement or otherwise does not consent to the removal, immobilization, towing or storage; and

WHEREAS, the Board has considered, reviewed and approves the maximum rate fee structure pertaining to the towing, immobilization and storage of vehicles/vessels as set forth herein and finds those rates to be fair and reasonable; and

WHEREAS, the Board finds it is appropriate and in the best interest of the public health, safety and welfare to repeal the provisions of LCO 94-27, as amended by 00-13, and replace the provisions as set forth herein.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee County, Florida:

SECTION 1: **AUTHORITY**

The provisions of this ordinance are enacted pursuant to the statutory and home rule powers of the County to establish and enforce business regulations necessary for the protection of the public.

SECTION 2: **TITLE**

This ordinance is titled and may be cited as the "Lee County Towing and Immobilization Ordinance".

SECTION 3: **APPLICABILITY**

This ordinance is applicable within the unincorporated areas of Lee County, Florida. The ordinance applies to the towing and storage of vehicles/vessels removed from property without the vehicle/vessel owner's prior consent; the towing of vehicles/vessels from, or the immobilization of vehicles on, private property; the removal and storage of wrecked or disabled vehicles/vessels from an accident scene; and, the removal and storage of vehicles/vessels in the event the owner or operator is incapacitated, unavailable or leaves the procurement of wrecker service to the law enforcement officer at the scene; or, otherwise does not consent to removal of the vehicle/vessel.

SECTION 4: **FINDINGS, PURPOSE AND INTENT**

(a) The above recitals are incorporated as additional findings as though fully set forth below.

(b) The Board of County Commissioners find that providing for and safeguarding the life, health, safety, property and welfare of its citizens, the regulation of business enterprises engaged in the practice of recovering, towing, immobilizing, removing and storing vehicles/vessels is a matter affecting the public interest; and, in

order to protect visitors and citizens within Lee County, business entities engaged in these activities must be required to comply with the regulations set forth in this ordinance.

(c) This ordinance is intended to supplement the provisions of Florida Statutes (FS) §§125.0103, 316.193, 713.78, 715.07 and Florida Administrative Code (FAC) Rule 15B-9.

(d) The primary purpose of this ordinance is to:

- (1) Provide a uniform system for the regulation of business entities engaged in, or that intend to engage in, the practice of recovering, towing, immobilizing, removing or storing vehicles/vessels;
- (2) Set maximum public service rates;
- (3) State solicitation restrictions and permit requirements; and
- (4) Establish minimum insurance requirements.

(e) This ordinance is not intended to create additional operations standards or safety criteria; and, assumes no legislative or regulatory responsibility there for. Nothing in this ordinance may be construed to alleviate the need of entities and operators to be familiar and comply with the Florida Uniform Traffic Control laws, as well as other applicable laws, rules and regulations, including but not limited to FS §715.07, FAC Rule 15B-9.001 *et. seq.*, and Florida Highway Patrol requirements.

(f) Except for setting the maximum service rates, this ordinance may not be construed to supersede other Lee County Sheriff and Florida Highway Patrol call allocation rules and procedures.

SECTION 5: DEFINITIONS

As used in the ordinance, the respective word or phrase means:

Accident Scene means the place where the vehicle/vessel is located immediately following an accident that damaged a vehicle/vessel, preventing safe operation.

Administrative/Lien Fee means the fee that is charged by a towing company for title records, conducting a lien search, advertising costs, and certified mail notification to the lien holder, owner and all persons with a vested interest in the vehicle and charges against a vehicle or vessel as required by FS §713.78.

Authorized Agent (for a property) means any agent or authorized agent for a property owner who has written authority to sign for an absentee owner or property

association board for the removal or immobilization of a vehicle or vessel parked on private property.

Authorized representative (for a vehicle/vessel) means any individual who at the time a decision to select a towing company is made, has lawful, actual or constructive physical possession or custody of that vehicle/vessel, including: (1) the registered owner or co-owner of the vehicle/vessel; (2) lienholder or insurance company agent with appropriate documentation evidencing authority to take possession of the vehicle/vessel; or, (3) licensed driver who is then 16 years of age or older with notarized documentation indicating authority to take possession of the vehicle/vessel.

Authorized Wrecker Operator means a wrecker operator who is designated as part of the wrecker operator system established by the governmental unit that has jurisdiction over the scene of a wrecked or disabled vehicle (including, when applicable, the Division of Florida Highway Patrol), where the governmental unit/law enforcement officer has determined removal of a vehicle/vessel by wrecker is necessary.

Disabled means a vehicle/vessel that cannot be moved by its own power because the physical condition resulting from, but not limited to, non-use, lack of fuel or mechanical malfunction prevents movement by the owner. A vehicle/vessel may also be deemed disabled if it cannot be legally operated on the roadways or waterways.

Extra Time at Scene means any extra time beyond one-half ($\frac{1}{2}$) hour at an accident scene that is needed to safely remove a vehicle/vessel and includes the amount of time spent at a scene when a tow truck has been summoned and is on scene but unable to proceed through no fault of the tow truck operator. All extra billable time must be documented by the tow truck operator and include the following information: (a) the name of the law enforcement agency; (b) the officer's name; and, (c) a detailed explanation of why the extra time at the accident scene was required or necessary along with detail regarding the specific services rendered. Extra time on scene will be charged in 15 minute increments.

Gross Weight means the weight of a tow truck in pounds, plus the weight of the vehicles/vessels or other machinery and the contents being towed.

Immobilization means the utilization of a "boot" or other mechanism, as defined herein, which causes a vehicle to be immobile or otherwise renders a vehicle immobile or inoperable.

Immobilization Company means the private partnership, corporation or other privately owned business entity, including sole proprietor, engaged in the immobilization of vehicles, including the utilization of a "boot" or other mechanism that causes a vehicle to be immobile or otherwise renders a vehicle immobile or inoperable.

Immobilization Device or Boot means any device attached to a vehicle designed to prevent the vehicle from being operated.

Immobilization Operator means any individual engaged in the immobilization of vehicles, including the utilization of a "boot" or other mechanism that causes a vehicle to be immobile or otherwise renders a vehicle immobile or inoperable.

Incapacitated means any person who, at the time the wrecker request is made by law enforcement, is physically or legally unable to operate the vehicle/vessel due to the person's physical condition, including but not limited to sickness, injury, being under the influence of alcohol or controlled substance, being under arrest, being detained, revocation or suspension of the person's operator's license or permit, or any other condition that the jurisdictional law enforcement officer determines is justification to call a wrecker to tow the vehicle/vessel.

Law Enforcement Officer means every officer (full or part-time) as then defined by federal law or by Florida Statutes, including FS §§112.531(1), 316.1906(1)(d)(1)-(3), or 943.10(1), (6) or (8).

Law Enforcement Tow means any tow authorized by the jurisdictional law enforcement officer using an authorized wrecker operator.

Light Reflective Sign means at minimum an 18" wide by 24" high sign made of aluminum (at least 0.040 thickness) or fiber reinforced plastic (at least 0.090 thickness). The entire background surface and all lettering must at a minimum be type 1 engineered grade sheeting (ASTM D4956-01). The letters may be screen printed on the type 1 sheeting using a compatible transparent ink so that the retro reflective is maintained and visible.

Mileage Charge means allowable charge, consistent with FS §715.07, for each mile from (1) from the scene of a rotation call authorized by a jurisdictional law enforcement agent; (2) from the private property impound/tow; or, (3) to the company storage yard.

Non-Consent Towing means the recovery, towing, removal and storage of a vehicle/vessel without authorization from the vehicle/vessel owner or authorized driver. Nonconsent towing encompasses both a "Law Enforcement Officer Tow" and "Private Property Impounds/Tows".

Operator means any person who provides the services of recovering, towing, immobilizing or removing vehicles/vessels and any related storage services. It includes, without distinction, the owner of the towing/immobilization entity as well as the driver of a tow truck or the employee performing the immobilization.

Person means any natural person, firm, partnership, association, corporation or other entity of any kind whatsoever.

Private Property Impound or Tow means towing or removal of a vehicle/vessel, as authorized by FS §715.07, without the consent of the vehicle/vessel's owner or authorized driver when that vehicle/vessel is parked on real property and the property owner or authorized agent requested the removal in accordance with this ordinance.

Private Rule means a restrictive covenant, deed restriction, parking ticket restriction, and any other private rule or regulation applicable to private property.

Real Property Owner means the person who exercises dominion and control over real property including, but not limited to, the legal titleholder, lessee, designated representative of a condominium or homeowner's association or any person authorized to exercise or share dominion and control over real property. "Real property owner" does not mean a person providing towing services pursuant to this ordinance.

Recover means to take possession of a vehicle/vessel and its contents and to exercise control, supervision and responsibility over it; including removal of vehicles/vessels from a canal or other body of water, wooded area, or any other unpaved area.

Remove means the removal of a vehicle/vessel from a canal or other body of water, a wooded area not readily accessible to a roadway (i.e., within a standard cable length) or when a vehicle/vessel is buried. This includes towing, winching, skating, using "go jacks", or any other method employed by towing companies.

Road means alley, court, drive, driveway, highway, interstate highway, lane, parking lot, street, or any other substantially similar place, public or private.

Scene means a physical location from where a vehicle/vessel is towed following response thereto by a law enforcement officer.

Storage means retaining actual physical possession of a vehicle/vessel at a private storage facility for consideration; to place and leave a towed vehicle/vessel at a location where the person providing the towing services exercises control, supervision and responsibility over the vehicle/vessel.

Storage Facility means the location where towed vehicle/vessels are stored.

Tow means to haul, draw or pull along a vehicle or vessel by means of a tow truck ("wrecker") or vessel for hire equipped with booms, car carriers, winches or similar commercially manufactured equipment.

Towing/Tow or Immobilization Company means a private partnership, corporation or other privately owned business entity, including sole proprietor, engaged in the operation of towing or immobilizing vehicles/vessels by means of a tow truck slide bed, wrecker or any other form of towing apparatus designated for the purpose of transporting or immobilizing motor vehicles or vessels. This definition includes any person, company, corporation, or other entity that engages in, owns or operates a business that provides non-consent towing, recovery, removal and storage of vehicles/vessels for compensation.

Tow Truck Identification means a decal or sign issued by the local government agent, authorized jurisdictional law enforcement agency, or similar governmental body, which is placed upon any tow truck or tow vessel to designate authorization to engage in non-consent tows; and, to allow parking in specially designated areas authorized by the county or jurisdictional governing body.

Unavailable means that no authorized person is physically present at the scene; or, if present, is incapacitated. When no accident scene is involved, an authorized person is unavailable if he or she cannot readily be contacted.

Vehicle means a machine or other substantially similar thing designed with two or more wheels that is propelled by its own engine, motor or pulling animals and is used to transport one or more persons and property over road or land. The term "vehicle" includes a car, truck, trailer, semi-trailer, motorcycle, motor scooter, moped, bus, van, recreational vehicle, all-terrain vehicle, golf cart, animal-drawn vehicle, and every other similar means of wheeled transportation.

Vessel is synonymous with the term "boat" as referenced in s. 1(b), Art. VII of the State Constitution and includes every description of watercraft, barge, and airboat, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Wrecked means a vehicle/vessel that cannot be driven away under its own power from its location due to its physical condition.

Wrecker Classification means the Wrecker Classifications set forth in FAC15B-9.005. In addition to Wrecker Classifications A-C in FAC15B-9.005, a Class D wrecker is added for those specifications exceeding the minimum gross weight and related criteria for Class C wreckers.

Wrecker Operator means any person or firm regularly engaged for hire in the business of towing or removing vehicles/vessels.

SECTION 6: PERMIT REQUIRED

(a) Wrecker Operator Permit. To engage in nonconsent towing a wrecker (or tow truck) operator must have a valid "Wrecker Operator Permit" issued by the Sheriff's Office consistent with this ordinance.

(b) Immobilization Operator Permit. Any immobilization operator, including an individual providing the immobilization service, engaging in the immobilization or booting of a vehicle must have a valid "Immobilization Operator Permit" issued by the Sheriff's Office consistent with this ordinance.

(c) Upon issuance of a permit, the wrecker or immobilization operator is granted the privilege of engaging in nonconsent towing or immobilization within unincorporated Lee County, unless the permit expires, is suspended or revoked pursuant to the terms of this ordinance.

(d) At the time the towing or immobilization services are being performed, the operator must have the permit readily available (at the scene of the activity) for inspection and verification.

(e) A wrecker operator may hold more than one Wrecker Operator Permit, if each individual permit is for purposes of employment with a different towing entity.

SECTION 7: PERMIT APPLICATION; FEES

(a) Every application for a vehicle/vessel towing or immobilization permit must be on the proscribed form signed and verified by the applicant and filed with the Lee County Sheriff's Office, together with the investigative and processing fee established as part of the Lee County Administrative Code or by resolution of the Board of County Commissioners. Statements contained in the application become part of the permit and may be modified only in writing as provided in this ordinance or the established application procedure.

(b) Background Check. Each applicant will be subjected to a state and national criminal background check based upon fingerprinting performed by the Sheriff's Office or pursuant to a vendor approved by the Florida Department of Law Enforcement. The applicant is responsible for the costs associated with fingerprinting. Applicants will be screened using the County or Sheriff's Office "ORI" numbers.

(c) Application. Every application for a wrecker or immobilization operator permit must be submitted on a form proscribed by the Sheriff's office. The form must contain, at minimum, the following information:

- (1) Sufficient information to identify the applicant, including, but not limited to, full legal name, date of birth, date the legal entity was formed, telephone numbers, and all business and residence addresses. If the applicant is a corporation (including a limited liability company), the foregoing information will also be provided for each corporate officer, director, resident agent and shareholder. If the applicant is a partnership, the foregoing information must be provided for each general and limited partner. Post office box addresses are not sufficient.
- (2) Documentation from the State of Florida, Division of Corporations, demonstrating that all corporate or partnership applicants are qualified to do business under the laws of Florida.
- (3) A certified copy of the applicant's driving record from the Florida Department of Highway Safety and Motor Vehicles.
- (4) A photocopy of the applicant's valid Florida Class E or higher driver's license.
- (5) Photo copy of the applicant's occupational license.
- (6) The address and STRAP number of the business location from which the applicant will operate the business activity and storage facility. All business locations must be identified.
- (7) A list of all persons with an ownership interest in the applicant's business operation who have been previously denied an operator permit or had one suspended or revoked.
- (8) Any trade name under which the applicant operates, intends to operate, or has previously operated.
- (9) A description of the services to be provided, including but not limited to hours of operation, procedures for handling complaints and accidents, insurance coverage, and the communication system to be used.
- (10) A list of all felonies or misdemeanors for which the applicant has been adjudicated guilty, or for which adjudication was withheld, within the five years preceding the date of the application. Individual applicants must be fingerprinted and photographed by the Sheriff's office or another law enforcement agency and this information must be included with the application.

For purposes of this subsection, if the applicant is a partnership or corporation, the above information must be provided for all corporate officers, directors, sole proprietors, operations managers, managing general partners and any stockholders that own or control 5% or more of the issued and outstanding stock or other beneficial interest in the business entity.

- (11) Proof of insurance meeting the criteria set forth in this ordinance.
- (12) The signature of each individual applicant, the signature of the president or vice-president of a corporate applicant and the signature of all general partners of a partnership applicant.
- (13) An agreement, signed by the applicant, indicating the applicant will abide by the provisions of this ordinance and the laws of the State of Florida.
- (14) Such additional information as the Sheriff or his designee may deem appropriate.

(d) Application Fee. The permit application fee is \$25.00 and must be paid at the time the application is submitted. The application fee will be deposited into a separate county fund and will be used exclusively to accomplish the purposes of this ordinance. The amount of the application fee must be reasonably related to the cost of the services and regulations set forth in this ordinance.

SECTION 8: ISSUANCE OF PERMIT; APPEAL; RENEWAL

(a) The Sheriff is empowered to issue operator permits to applicants meeting all applicable standards and requirements. The Sheriff may promulgate administrative processes and procedures applicable to the issuance and revocation of a permit.

(b) The Sheriff will review and investigate each application for a license and reject any application that is not properly filed, is incomplete, untrue in whole or in part, or which otherwise fails to meet the requirements set forth in this ordinance.

(c) Criteria for permit issuance. A wrecker or immobilization operator's permit may be issued, in the sole discretion of the Sheriff, if the applicant meets all of the following minimum criteria:

- (1) Filed a true, correct and complete application on the form proscribed by the Sheriff's office, including all proofs of required insurance.
- (2) Holds a valid Florida Class E or higher driver's license.

- (3) Paid the appropriate application fee; and
- (4) The Sheriff determines that:
 - a. The applicant has not been convicted, pled nolo contendere, had adjudication withheld or been incarcerated for any of the following:
 - 1. Any capital felony; any first degree felony; sexual battery; any violent felony involving the use of a gun or other weapon that resulted in great bodily harm.
 - 2. Any crime resulting in a sexual predator or offender registration.
 - 3. Within the previous ten years: any violent felony not referenced in subsection (c)(4)a.1 above.
 - 4. Within the last ten years: any felony or first degree misdemeanor directly related to the business of towing or immobilization of motor vehicles/vessels, repossession of motor vehicles, motor vehicle theft; carjacking or "chop shops"; or, liens for recovering, towing or storing vehicles/vessels.
 - 5. Within the previous five years: driving under the influence (DUI) of alcohol, a controlled substance or a chemical substance to the extent that normal faculties were impaired; reckless driving where the actual DUI charge was reduced to reckless driving, but the DUI sentence was imposed; or, driving with an unlawful blood alcohol level.
 - b. Neither the applicant, nor any officer, director, partner, or stockholder owning, holding, controlling or having a beneficial interest of 5% or more in the business entity:
 - 1. has a currently suspended operator's permit or has had a permit revoked by action of the Sheriff within two years of the date of the application.
 - 2. has outstanding and unsatisfied civil penalties imposed on account of violations of this ordinance.
 - 3. has been convicted of one or more felonies within the preceding five years; or committed three misdemeanors

within the preceding three years, unless the civil rights of such individual or applicant have been restored or such person has completed all sentences of incarceration, probation rehabilitation activities and payment of any fines or penalties imposed. For applicants requesting renewal, the Sheriff may only consider crimes committed after the date the initial permit was issued, unless the crimes were not previously disclosed.

- c. Each corporate or partnership applicant is qualified under the laws of Florida to do business under the name in which the permit application was filed.
- d. No fraud or willful or knowing misrepresentation or false statement was made on the application.
- e. No judgment against the applicant arising out of the activity of immobilization, recovery, towing, removal or storage of a vehicle/vessel remains unsatisfied.
- f. There are no outstanding arrest warrants against the applicant or any officer, director, partner or stockholder.

(d) Review. Permit applications will be reviewed and granted or denied in writing within five business days. A permit may be granted with conditions, as deemed appropriate by the Sheriff. If a permit application is denied, the reason for denial will be provided in writing and advise the applicant may correct deficiencies in the application within seven days of the notice of denial without incurring an additional application fee.

(e) Appeal. If an application is denied (including a denial after the applicant unsuccessfully attempts to correct application deficiencies), the denial may be appealed to the Lee County Board of County Commissioners upon a written request to the Lee County Attorney's Office, if filed within 10 days following the last written denial. Appeals will be heard by the Board of County Commissioners at a public meeting on the appeals agenda.

(f) Renewal. Renewal applications must be filed 60 days prior to the end of the one year permit effective period on a form proscribed by the Sheriff's office and be accompanied by the appropriate fee. All annual permits that are not properly renewed, will expire on the one year anniversary of the permit effective date. It is the responsibility of the applicant to obtain timely renewal of the permit.

(g) Validity. A permit issued by the Sheriff's office is valid for a period of one year from the date of issuance.

- (h) Permits and renewals issued under this ordinance are not transferable.

SECTION 9: INSURANCE REQUIREMENTS

(a) The wrecker or immobilization operator, or the business entity under which they are doing business, must maintain the following policies of insurance according to the minimum limits set forth in this section or as otherwise required by Lee County Risk Management. Each policy must be in the name of the operator or the business entity under which the operator is doing business and include coverage for towing and storage, as applicable. The policy must be effective throughout the period the operator is qualified to do business under this ordinance. This provision is not intended to limit the operator to the types of insurance set forth below.

- (1) Worker's compensation and employer's liability insurance as required by statute.
- (2) Garage liability insurance in an amount not less than \$300,000 combined single limit.
- (3) Garage keeper's legal liability insurance in an amount not less than \$50,000 for each loss, covering perils of fire and explosion; theft of a vehicle, its parts or contents; riot and civil commotion; vandalism; malicious mischief; and, damage to a vehicle in tow.
- (4) The following minimum levels of bodily injury liability insurance and property damage liability insurance, in accord with FS §627.7415, as follows:
 - a. \$50,000 per occurrence and \$100,000 combined single limit for a wrecker with a gross vehicle weight of less than 35,000 pounds.
 - b. \$100,000 per occurrence and \$300,000 combined single limit for a wrecker with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.
 - c. \$300,000 per occurrence and \$500,000 combined single limit for a wrecker with a gross vehicle weight of 44,000 pounds or more.
 - d. For immobilization activity, liability coverage in an amount no less than \$20,000 for each incident.

(b) The insurance coverage required must include those classifications that are listed in standard liability manuals, which most nearly reflect the operation of the wrecker or immobilization operator.

(c) All required insurance policies must be issued by an insurance company authorized to do business in the State of Florida and be in a form acceptable to Risk Management. Policies valid for less than 6 months duration are not acceptable.

(d) The insurance must be kept in full force and effect by the certificate holder at all times the permit is effective. Failure to maintain appropriate insurance will result in automatic suspension of the permit. The suspension will remain in place until proof of insurance is filed with the Sheriff.

SECTION 10: PERMIT DOCUMENT SPECIFICATIONS

(a) The Wrecker Operator Permit or Immobilization Operator Permit issued by the Sheriff's office must meet the following specifications:

- (1) Be not less than 2 1/8" by 3 3/8" in size.
- (2) Include a photograph of the wrecker or immobilization operator that is not less than 1" by 1 1/2" in size.
- (3) State the name of the wrecker or immobilization service/business entity along with the wrecker or immobilization operator's first name in letters that are not less than 1/4" by 1/4".
- (4) Include a control number (decals number) that is linked to the wrecker or immobilization operator's personal driver's license information.
- (5) Include evidence (ie. a mark or signature) from the Sheriff's office that it is a valid permit.
- (6) State the expiration date of the permit.
- (7) State any conditions, restrictions or limitations on the permit approval.
- (8) A valid permit must be laminated to protect the information on its face.

(b) The permit must be replaced if the permit is lost, damaged, stolen, becomes illegible or the permit holder changes the business entity under which the services are provided.

(c) The cost for a replacement permit is \$5.00 and is valid only for the remainder of the period applicable to the original permit.

SECTION 11: MANIFEST, TRIP RECORD OR TOW SHEET

(a) A person or entity recovering, towing, immobilizing, or removing a vehicle/vessel or providing storage in connection therewith must maintain a manifest, trip record or tow sheet that includes, at minimum, the following information.

- (1) Name of the permit holder as well as the individual person/employee providing the service.
- (2) Decal number of the towing vehicle, equipment or car carrier used to provide the service.
- (3) Date and time that the service was requested.
- (4) Name, address and phone number of the person requesting the service. If law enforcement requested the tow, include the requesting officer's name and agency name.
- (5) Date and time the service was initiated
- (6) Location at which the service originated.
- (7) Destination to which the towed vehicle is taken and the time of arrival at the destination.
- (8) Description of the vehicle that is the subject of the service, including make, model, year, color, vehicle identification number, and state license plate number, if any.
- (9) A statement of any visible damage to the exterior of the vehicle and an inventory of the visible inventory within the vehicle.
- (10) Description of services provided.
- (11) Costs of services provided.
- (12) Date and time the vehicle was delivered to the storage facility.
- (13) Date and time the vehicle was released to the owner or agent.

(b) Each manifest, trip record or tow sheet must be immediately available for inspection by law enforcement officers or by personnel authorized by the Sheriff, at completion of recovery, towing, immobilization or removal of the vehicle.

(c) Each permittee must keep, maintain and retain the original manifest, trip record or tow sheet for at least three years. No person/entity providing the service may destroy, mutilate, alter or deface any manifest, trip record or tow sheet prior to the expiration of the three years. All manifests, trip records and tow sheets must be available for inspection by the Sheriff or authorized personnel during regular business hours.

SECTION 12: REGULATIONS APPLICABLE TO THE TOW OR IMMOBILIZATION OPERATOR AND RELATED BUSINESS ENTITY

(a) The tow or immobilization operator, or the related business entity, must have a valid occupational license (ie. business tax receipt) for the business entity providing the services. This license must be posted and available for viewing on the business site and storage facility.

(b) The tow operator must provide storage for the towed vehicle at a location that is within a 10 mile radius of the location from which the vehicle was removed. However, if a permitted operator providing services in accord with this ordinance is not located within a 10 mile radius, then a removed vehicle may be stored in Lee County at a site within 20 miles of the point of removal.

(c) The tow operator providing services must transport the vehicle directly to the storage site of the towing entity providing the service or to another location as directed by the law enforcement officer authorizing the tow. Vehicles may not be kept or placed in a temporary holding area.

(d) At the tow storage facility or immobilization business location, the operator must maintain prominent clearly visible signs (in no less than 12 point type, unless otherwise indicated) in the area where business is transacted indicating the following:

- (1) The name and phone number of the entity; the hours the storage site is open for regular business; and the phone number to call to obtain after hour services. This information must be clearly visible from the street in at least 3" letters on a contrasting background.
- (2) A schedule of all current rates and charges applicable to tows, removal, impounds and immobilization. This schedule should also include a statement indicating the stated rates and charges do not exceed those established and authorized by this ordinance.
- (3) Notice of the right to request and review a complete schedule of the rates and charges for towing and immobilization services as adopted by Lee County.

- (4) Notice regarding claimed overcharges for nonconsent tows or immobilization indicating: (1) the owner has a right to post security in the amount of the charges for towing, storage or immobilization with the circuit court in order to obtain release of the vehicle/vessel; (2) upon posting of security meeting FS §713.78 and payment of the fees required by FS §28.24, the Clerk of Court will issue a certificate directing release of the vehicle/vessel; and, (3) the operator is obligated to release the vehicle/vessel upon receipt of the certificate as to the posting of bond.
- (e) Any operator or entity providing services pursuant to this ordinance may not do so when there is a person or animal occupying the vehicle/vessel.
- (f) The permitted operator providing the services must maintain a place of business, which:
- (1) Supports an office that has at least one on-duty person from 8am to 6pm Monday through Friday to answer phone calls and serve the public.
 - (2) Maintains a telephone communication system to answer calls from the public 24 hours a day. Provides after hours services that must enable the vehicle/vessel owner/representative to obtain release of the vehicle/vessel within one hour of the phone call.
 - (3) Provides a detailed, signed receipt, at the time payment is made, showing the legal name of the towing or immobilization company, to the person paying the towing, immobilization or storage charges. This receipt must be provided whether requested or not.
- (g) The person/entity providing towing/immobilization services in accordance with this ordinance must advise any vehicle owner or authorized representative that calls by telephone prior to arriving at the storage site the following information:
- (1) Each and every document or other item that must be produced to retrieve the vehicle/vessel.
 - (2) The exact charges as of the time of the telephone call and the rate at which charges accumulate after the call.
 - (3) The acceptable methods of payment.
 - (4) The hours and days the storage site is open for regular business.

(h) The person/entity providing storage services must permit every vehicle/vessel owner or authorized representative, upon presentation of reasonable proof as to ownership or authorization from the owner, to inspect the towed vehicle immediately upon arrival at the storage site and before payment of any charges. Examples of "reasonable proof" under this ordinance include, but are not limited to, a driver's license matching the name on the vehicle registration and proof of authorized representation. With the exception of vehicle/vessels held pursuant to a specific request or "hold order" issued by law enforcement, the vehicle owner or authorized representative must be permitted to remove the vehicle license tag as well as any and all personal possessions inside but not affixed to the vehicle, including but not limited to iPods, cellular phones, computers, and hand held GPS units; and, the storage site operator must assist the vehicle owner or representative in doing so.

(i) The person or entity providing services under this ordinance must accept payment for charges from the vehicle/vessel owner or authorized representative in at least two of the following three categories:

- (1) Cash, money order or valid traveler's check;
- (2) Valid bank credit card or debit card; or
- (3) Valid personal check showing on its face the name and address of the vehicle/vessel owner or authorized representative.

A vehicle owner or authorized representative may not be required to furnish more than one form of picture identification when payment is rendered using a valid bank card, debit card or personal check.

(j) The tow or immobilization entity may not condition release of the vehicle/vessel on a requirement that the owner/agent be required to sign a release or waiver with respect to liability for damages.

(k) The tow operator must complete a tow sheet consistent with Section 11 for every tow performed. For private property tows, the sheet must be signed by the property owner or authorized representative authorizing the tow/removal unless law enforcement requested the tow, then a signature is not required. This tow sheet must include proper verification of the identity of the property owner or agent upon whose property the vehicle is disabled, abandoned or parked without authorization. A driver's license number for the property owner is an example of proper identity verification.

(l) Any person providing services in accord with this section may not pay or rebate money or solicit/offer the rebate of money or other valuable consideration in order to obtain the privilege of providing towing/immobilization services.

SECTION 13: NONCONSENT TOW OR IMMOBILIZATION

A nonconsent tow or immobilization may occur only in compliance with this ordinance and the following:

- (1) The tow or immobilization operator must hold a valid permit in accord with the provisions of this ordinance.
- (2) The vehicle/vessel is not occupied, by a person or animal, at the time the towing, immobilization or removal occurs.
- (3) Law enforcement directed tow. A duly permitted operator is acting upon the express instruction of a law enforcement officer and the activity is conducted in accordance with the contract/agreement between the permitted operator and the governmental entity in whose jurisdiction the law enforcement officer serves.
- (4) Private property impound. A duly permitted operator is acting upon the express instruction of a property owner or authorized agent, or in certain instances a law enforcement officer, on whose property the vehicle is disabled, abandoned or parked without authorization or whose owner/representative is unwilling or unable to remove the vehicle/vessel.
- (5) The operator or entity performing the nonconsent tow or immobilization must, within 30 minutes of completing the activity, notify the law enforcement agency with jurisdiction based upon the location of the vehicle/vessel at the time the service was provided, of the following: (1) the address and time at which the services were rendered (eg. where the vehicle/vessel was located at the time); (2) the name and address of the storage facility; (3) the make, model color and vehicle license plate number or vessel registration number; and, (4) the name of the operator providing the services. The tow manifest must include the name and identification number of the law enforcement officer to whom the information was provided.

SECTION 14: EXPRESS INSTRUCTION BY LAW ENFORCEMENT

(a) Unless otherwise specifically provided in this ordinance, express instruction from law enforcement that may be relied upon as authorization to tow, remove or immobilize a vehicle must be in writing, identify the date and time the instruction was provided, be signed by the law enforcement officer, and include the officer's identification number. The written document may be prepared by someone other than the officer, however, the officer must sign and verify the accuracy of the document and the instructions prior to the tow or immobilization.

(b) The following items alone are not express prior instruction from a law enforcement officer:

- (1) Mere posting of signage as required by this ordinance.
- (2) The terms of a contract or agreement between a towing or immobilization company and a real property owner.
- (3) An attempt to issue prior express instruction in advance or before the actual unauthorized parking of a vehicle occurs.
- (4) Prior express instruction that is general in nature and not specifically related to individual identifiable vehicles that are already parked without authorization.

SECTION 15: REQUIREMENTS FOR NONCONSENT TOWS FROM OR IMMOBILIZATION ON PRIVATE PROPERTY

(a) Tow or immobilization operators holding a valid permit issued under this ordinance may recover, tow, immobilize or remove a vehicle and provide storage in connection therewith upon the instruction of a property owner, or authorized agent, on whose property the vehicle is abandoned or parked without authorization, provided the following requirements are met:

- (1) Notice, meeting the following requirements, must be prominently posted on the property from which the vehicle/vessel will be removed or immobilization will occur:

a. Notice must be provided on a light reflective sign as follows:

1. In not less than two inch high light reflective letters on a contrasting background, the words "UNAUTHORIZED VEHICLES WILL BE TOWED AWAY AT THE OWNER'S EXPENSE".

or

If the property owner has authorized the immobilization of vehicle, then the text should read as follows "UNAUTHORIZED VEHICLES WILL BE TOWED AWAY OR IMMOBILIZED AT THE OWNER'S EXPENSE".

2. The words, "TOW-AWAY ZONE" must be included in not less than four inch light reflective letters on a contrasting background.
 3. In not less than one inch high light reflective letters on a contrasting background, the days of the week and hours of the day during which vehicles may be towed or immobilized, the name and phone number of the towing or immobilization entity performing the service.
- b. The sign must be prominently placed at each driveway access or curb cut allowing vehicle access to the property, setback five feet from the right-of-way line. If there are no curbs or access barriers, signs must be placed at 25 foot intervals along the property frontage. The signs must be permanently installed not less than four feet, but not more than 6 feet, above ground level and be continuously maintained on the real property for a period of not less than 24 hours prior to the towing, immobilization or removal of any vehicle.
 - c. Light reflective signs must be maintained or replaced so as to remain clearly visible, legible and light reflective at all times. The property owner is responsible for providing, maintaining, replacing and removing the signs as necessary.
 - d. Failure to maintain the appropriate signing is a violation of this ordinance.
 - e. The posting of notice, as set forth in this section, is not required where:
 1. The real property upon which the vehicle is parked is property appurtenant to and obviously a part of a single-family residence.
 2. Written notice is personally given to the vehicle/vessel owner or authorized driver/agent indicating that the property upon which the vehicle/vessel is parked is reserved or otherwise not available for unauthorized vehicles/vessels; and, the vehicle/vessel is subject to removal or immobilization at the vehicle/vessel owner's expense.
- (2) The real property owner or authorized agent must provide express instruction to recover, tow, immobilize or remove the vehicle. Evidence of the express instruction must include the property owner or authorized

agent's signature, along with the date, on the tow sheet. The person preparing the tow sheet must verify the identity of the property owner or authorized agent before accepting the signature.

- (3) Immediately upon request, and without demanding compensation, the real property owner must inform the vehicle/vessel owner or authorized representative of the name and address of the tow truck or immobilization entity that recovered, towed, immobilized or removed the vehicle/vessel.
- (4) Persons or entities providing services pursuant to this section may recover, immobilize, tow or remove a vehicle/vessel or provide storage in connection therewith if the vehicle/vessel owner or authorized representative arrives at the scene prior to recovery, towing, immobilization or removal, AND:
 - a. The registered owner or other legally authorized representative in control of the vehicle/vessel refuses or is unable to remove the vehicle/vessel; or
 - b. A complete mechanical connection exists between the vehicle/vessel, the towing or removal apparatus, or the immobilization boot, and the vehicle/vessel owner or authorized representative refuses to pay a reasonable service fee of not more than one half of the posted/established rate (drop charge) for the services as required under this ordinance.
 - c. No service fee may be demanded if the vehicle/vessel was in the process of being towed or immobilized, but not yet connected to the wrecker or immobilization device.
- (5) Drop charges. If the vehicle/vessel owner or authorized representative arrives at the scene and is willing and able to remove the vehicle/vessel, but for the complete mechanical connection, a drop charge consistent with this ordinance may be charged.
- (b) **Agreement to Tow.**
 - (1) Unless the tow/immobilization meets one of the sign notice exceptions set forth in subsection (c) below, the towing or immobilization company must enter into a written contract with each private property owner that authorizes the towing or immobilization company to tow, immobilize, remove and store vehicles from its property. The contract must include:
 - a. Contract term (beginning and end date);

- b. The names and titles of those persons (eg. owner, property manager, condominium president) with the authority to appoint or delegate others (eg. security guard, onsite manager) that can act on behalf of the property owner to provide express authorization to tow, remove or immobilize a vehicle from its property; and,
 - c. The name and contact information of the towing or immobilization company performing the services.
- (2) The agreement may not include a provision designating liability for the improper towing, immobilization, removal or storage of a vehicle to the towing or immobilization company.
 - a. This provision may not be used by a towing or immobilization company to avoid liability for damages to a vehicle caused by the towing or immobilization operator's negligence in providing services.
 - b. Any person or entity improperly causing a vehicle/vessel to be recovered, towed, immobilized, removed or stored is liable to the vehicle/vessel owner for the costs of the services provided; any damages resulting from the removal, immobilization, towing and storage of the vehicle/vessel; and, attorney's fees and court costs.
- (3) The towing or immobilization company must keep and maintain a copy of each agreement, including any addendums or amendments, on file for at least 12 months after the agreement terminates. Law enforcement officers and agencies have the right to request and inspect all agreements during normal business hours. Towing and immobilization companies must produce the documents upon reasonable request by the law enforcement agency.
- (4) The agreement may not authorize the recovery, tow, removal or immobilization of vehicles/vessels that are reasonably identifiable from markings or equipment as law enforcement, fire fighting, rescue squad, ambulance or other emergency vehicles or property owned by a government entity.
- (5) The agreement may not include terms and conditions that are contrary to the provisions of this ordinance.
- (6) Any contract existing prior to the date this section was enacted must be consistent with this section by January 1, 2014.

(c) **Exception to sign notice requirement.** The removal of a vehicle/vessel by a towing company may occur without a posted tow-away zone sign in place, when

- (1) Authorized by a business owner or lessee due to the fact that the vehicle/vessel is parked in such a way as to restrict the normal operation of a business.
- (2) Authorized by an owner, lessee or agent due to the fact that the vehicle/vessel is parked on a public right-of-way in a manner that obstructs access to a private driveway.
- (3) The property on which the vehicle/vessel is parked is appurtenant to and obviously a part of a single-family residence.
- (4) The vehicle/vessel owner/agent has been given personal notice that the area in which the vehicle/vessel is parked is reserved or otherwise unavailable for unauthorized vehicle/vessels and that the vehicle/vessel is subject to removal at the owner's/operator's expense.

SECTION 16: DROP CHARGES

(a) If the vehicle/vessel owner or authorized representative arrives at the scene prior to recovery, towing, immobilization or removal and is willing and able to remove the vehicle/vessel, but for the complete mechanical connection, a drop charge consistent with this ordinance may be charged.

(b) An invoice detailing the charges must be presented by the operator prior to the request for payment.

(c) If the owner/driver is in the vehicle/vessel and refuses to vacate, then in addition to the drop charge, the tow or immobilization operator may charge for extra time at the scene. This additional charge is permitted if law enforcement involvement is necessary and the operator obtains the investigating law enforcement officer's name and badge number. The operator must also provide a detailed written explanation for "extra time at the scene" charges. All documentation must be provided to the vehicle/vessel owner upon request.

(d) If a tow company, at the request of Law Enforcement, is required to perform and has performed a service, including but not limited to: towing, removal, movement of vehicles, roadway or scene cleanup or other services required at the scene prior to making a complete mechanical connection, and the owner/operator seeks to remove the vehicle/vessel using means other than the tow company providing services at the scene, the tow company that has acted at the direction of Law Enforcement has the right to obtain payment for services rendered at the scene from the owner/operator. Under

these circumstances, charges for the services rendered at the scene will be based upon the hourly rate charge for the wrecker class on scene plus any exceptional charges (ie. underwater recovery charges or hazardous waste cleanup) authorized by Law Enforcement.

For purposes of this section the term "*Mechanical Connection*" means all of the following criteria are met:

- (1) For a flat bed truck tow: four wheels are on the flat bed; OR
For a wheel lift tow: two wheels are off the ground; AND
- (2) The vehicle to be towed is completely secured with safety chains or a safety strap; AND
- (3) The tower is in complete control of the vehicle/vessel to be towed.

SECTION 17: IMMOBILIZATION

(a) Except as otherwise provided in this ordinance or specifically allowed by law, the practice of placing a "boot" or other immobilization device on a vehicle is prohibited.

- (b) The immobilization can only occur in a manner consistent with the following:
 - (1) Immobilization of a vehicle may only be performed by a duly permitted operator.
 - (2) Placing a boot or other immobilization device on a vehicle to hold it for later towing is strictly prohibited. An immobilized vehicle may not be removed by a towing company until at least six hours after the initial "booting" of the vehicle occurs. If a vehicle is lawfully booted and then towed, a separate fee for the immobilization may not be charged in addition to the towing fee. The maximum rate is limited to the charges applicable to towing the vehicle to the storage location.
 - (3) Immobilization A "boot" or other device must be placed on the driver's side front wheel, unless placement on the driver's side front wheel is not feasible because of the vehicle's location.
 - (4) Immediately after the vehicle is immobilized, a sticker must be placed on the window adjacent to the driver's seat by the operator performing the immobilization. The sticker must:

- a. Be affixed with completely removable adhesive.
 - b. Be highly visible.
 - c. Measure 8 ½ x 11".
 - d. Contain a warning that any attempt to remove the vehicle will result in damage to the vehicle.
 - e. State the name, business address and business phone number of the person that immobilized the vehicle; contact information to dispatch personnel responsible for removing the immobilization device.
 - f. Reference this ordinance.
- (5) Upon request of the immobilized vehicle's owner or authorized representative and payment of applicable fees, the immobilization operator must release the vehicle to the owner/representative within one hour.

SECTION 18: TOW TRUCK CLASS SPECIFICATIONS

All tow truck vehicles must meet the requirements set forth in Florida Administrative Code Rule 15B-9.005.

SECTION 19: BUSINESS INSPECTION REQUIREMENTS

Towing and immobilization operators providing services controlled under the provisions of this ordinance may be subject to annual inspection by the Lee County Sheriff's Office. The purpose of the inspection will be to ensure compliance with the provisions of this ordinance. Entities or operators not meeting the requirements of this ordinance may be cited for violations discovered during the annual inspection.

SECTION 20: TOWING SAFETY STANDARDS

(a) It is unlawful for any person to recover, tow, or remove a vehicle/vessel, using a towing vehicle, equipment or car carrier in a manner that violates the standards for use of such towing vehicle, equipment or car carrier as set by the manufacturers thereof.

(b) It is unlawful to tow without the use of safety chains or safety straps.

(c) It is unlawful to operate a tow truck without the required insurance coverage.

(d) It is unlawful for a tow truck operator working within the right-of-way areas to do so without wearing high-visibility safety apparel consistent with the Code of Federal Regulations (23 CFR 634).

SECTION 21: MAXIMUM RATES FOR NON-CONSENT SERVICES

(a) The maximum rates for nonconsent towing and immobilization services are set forth on Attachment A to this ordinance.

(b) The County may, by resolution, amend Attachment A and revise, decrease, increase or establish maximum rates for nonconsent immobilization, recovery, towing, removal and storage services.

(c) The criteria for establishing the maximum rates for nonconsent law enforcement towing, private property towing, storage, immobilization and related services are:

- (1) Towing services per call means and includes the time from arrival on scene through the first 30 minutes the tow truck is actively engaged in the safe removal of a vehicle/vessel.
- (2) Mileage charges.
 - a. A mileage charge may not be imposed/charged for the first 10 miles from the non-consent tow location.
 - b. A mileage charge for private property impound/tow must be consistent with FS §715.07, which requires storage within a 10 mile radius of the removal site.
 - c. A mileage charge for each mile over the initial 10 miles as measured from the location of an accident scene or rotation call authorized by a jurisdictional law enforcement agency.
 - d. Mileage is measured as the shortest distance ("as the crow flies"), between the location or scene of the tow's origination and the storage facility.
- (3) Storage charges must be based upon a 24-hour calendar day, beginning at 12:01am and ending at midnight. A vehicle/vessel in storage for six hours or longer, in any 24-hour calendar day, will accrue storage charges for that 24-hour calendar day. A vehicle/vessel in storage for less than six hours, in any 24-hour calendar day, will not accrue storage charges for that

24-hour calendar day. Example: Vehicle arrives in storage at 6:30pm, Monday, and is picked up by 6:30am, Tuesday. No charges accrue for storage on Monday because storage on Monday was only 5 ½ hours; storage charges do accrue for Tuesday, as storage on Tuesday was for 6 ½ hours. These storage rates are applicable when:

- a. Law enforcement has authorized the vehicle to be impounded; or
 - b. The appropriate law enforcement agency has been notified by the tow operator, within 30 minutes after the completion of the tow/removal, that the towing company is in possession of a vehicle resulting from a private property impound tow in accord with FS §715.07.
- (4) Indoor storage rates may be charged only upon the express direction, accompanied by written authorization, from the vehicle owner (or authorized representative), lienholder, insurance company representative, or investigating law enforcement agency, unless the condition of the vehicle requires indoor storage due to an inclement weather condition, or the vehicle windows or convertible top is down and cannot be raised, and storage is necessary to protect the vehicle and its contents.
- (5) Administrative fees, including any lien fees, may be charged only after the vehicle has been in storage for at least three full calendars days; and
- a. The law enforcement agency has prepared an incident report authorizing the vehicle impoundment; or
 - b. The appropriate law enforcement agency has been notified by the tow operator, within 30 minutes after completion of the tow/removal, that the towing company is in possession of a vehicle resulting from a private property impound tow in accord with FS §715.07; and
 - c. The towing company provides proof that the lien notices have been prepared and sent in accordance with FS §713.78, including the appropriate names and addresses of the owner and lienholder, and the certified mail information and has otherwise complied with the provisions of FS §§713.58 and 713.78.

- (6) Underwater recovery fees may be charged if the recovery activity is performed by a certified or professional diver, upon the written authorization and approval of the investigating law enforcement agency or officer on the scene.
- (7) A "late hour gate period" may be established by the tow operator between the hours of 6pm and 8am daily and between the hours of 12:01 a.m. and 12:00 midnight on Lee County government observed holidays. Late hour gate fees may be charged when:
 - a. An impounded vehicle is recovered by the owner or authorized representative during the late hour gate period or Lee County government observed holiday.
 - b. The owner or authorized representative seeks to recover property from an impounded vehicle during the late hour gate period or Lee County government observed holiday. However, no charges are permitted for removal/recovery of prescription medication or prescription eyeglasses from an impounded vehicle by the owner or authorized representative. If the towing company/storage entity determines that the owner or authorized representative made a false request to recover prescription medications or eyeglasses in order to recover other items, the towing operator may impose a late hour gate fee that is double the rate adopted by the County under this ordinance. The towing company/storage entity may request that a law enforcement officer be present at a time agreed for the recovery of prescription items under this section.
- (8) Hazardous material clean-up and disposal, if required, by a duly permitted operator, in accordance with federal, state and local laws and upon the approval of the investigating law enforcement agency or officer.

SECTION 22: VIOLATIONS; PENALTIES AND ENFORCEMENT

(a) It is unlawful for any person, as part of a regularly conducted business activity to immobilize, recover, tow, remove a vehicle/vessel or store a vehicle/vessel in connection therewith or to cause or permit any other person to immobilize, recover, tow, remove or store a vehicle/vessel without first obtaining and maintaining a current and valid operator permit pursuant to the provisions of this ordinance. A property owner may cause or permit the removal of a vehicle from their property in accordance with the provisions of this ordinance. This ordinance does not apply to persons using a towing vehicle to transport a vehicle/vessel for personal, family, household or recreational use.

(b) It is unlawful for any person, as part of a regularly conducted business activity, to advertise to immobilize, recover, tow, remove or store a vehicle/vessel in connection therewith or to cause or permit any other person to immobilize, recover, tow,

remove a vehicle/vessel or provide storage without first obtaining and maintaining a current and valid operator permit pursuant to the provisions of this ordinance. Any advertisement in any media form, including advertisements and telephone listings in all "yellow pages", must include the permit number issued in accordance with this ordinance.

(c) It is unlawful for the owner of any wrecker service to permit any person to be employed as a wrecker operator conducting nonconsent towing services within unincorporated Lee County, unless such person holds a valid wrecker operator permit consistent with the provisions of this ordinance.

(d) Nothing in this ordinance may be construed to prohibit the discharge or storage of a vehicle/vessel lawfully recovered, towed or removed in another county and lawfully transported to Lee County; nor may anything in this ordinance be construed to prevent the immobilization of vehicles by a governmental agency.

(e) Nothing in this ordinance may be construed to prevent a natural person from working in an employment relation with another person holding a valid permit under this ordinance. Any person that is an independent contractor, and not an employee of a duly permitted operator, will be subject to compliance with the requirements and provisions of this ordinance.

(f) Any person who improperly causes a vehicle/vessel to be recovered, towed, immobilized, removed or stored is liable to the vehicle/vessel owner or authorized representative for the costs of services provided, any damages resulting from the recovery, towing, immobilization, removal or storage, and attorney's fees and costs.

(g) Each violation of this ordinance is subject to the maximum fines and penalties specified in the law under which the enforcement action is based including, but not limited to, FS §125.69, FS ch. 162, FS §715.07 FS ch. 775 and, the Lee County Administrative Code.

(h) Notwithstanding the imposition of any other penalty by the County or other entity, three or more separate incidents involving violations of this ordinance committed by the same towing or immobilization operator or entity within a 365 day time period will be deemed a *per se* sufficient basis for forfeiture of the towing or immobilization operator permit for a period of 60 days.

(i) This section does not apply to the towing of a vehicle/vessel that occurs with the consent of the vehicle/vessel owner or authorized representative.

(j) The provisions of this ordinance will be enforced by the Lee County Sheriff.

SECTION 23: ADMINISTRATION; DISPOSITION OF FEES AND FINES; AUDIT

(a) The Sherriff is responsible for the administration of this ordinance.

(b) The Sheriff has the authority to compromise assessments of fines imposed for violations of this ordinance.

(c) The Sheriff may use any legal means to collect unpaid fees and fines.

(d) Fees and fines collected by the Sheriff under this ordinance will be deposited by the Sheriff into the Lee County general revenue fund to be used exclusively for the administration and operations under this ordinance.

(e) The monies collected under this ordinance will be audited in compliance with FS ch. 219.

SECTION 24: **REPEALER**

This ordinance hereby repeals and replaces Lee County Resolution 10-03-25 and Ordinances 94-27 and 00-13 in their entirety.

SECTION 25: **CONFLICTS OF LAW**

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 26: **SEVERABILITY**

It is the Board of County Commissioners' intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION 27: **CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager or designee, without the need for a public hearing.

SECTION 28: **EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State.

Commissioner Mann made a motion to adopt the foregoing ordinance, seconded by Commissioner Pendergrass. The vote was as follows:

JOHN E. MANNING	Absent
CECIL L PENDERGRASS	Aye
LARRY KIKER	Aye
DISTRICT 4	Vacant
FRANK MANN	Aye

DULY PASSED AND ADOPTED THIS 8th day of October, 2013.

ATTEST: LINDA DOGETT
CLERK OF COURT

By: Marcia Wilson
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Larry Kiker *vice chair*
for Cecil L Pendergrass, Chair

APPROVED AS TO FORM:

By: Dawn E. Perry-Lehnert
Dawn E. Perry-Lehnert
Office of the County Attorney



"ATTACHMENT A"
2013 – MAXIMUM RATE SCHEDULE
LEE COUNTY, FLORIDA

WRECKER RATES

<u>CLASS A WRECKERS:</u> (including Roll-back or Slide-back Carriers)	RATE
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Base Rate (private property tow)	\$125.00
Rotation Tow (Law Enforcement Tow)	\$150.00

Mileage Charge	\$4.00
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- Per mile charge beyond initial 10 miles for Law Enforcement
tows from scene or location, consistent with FS §715.07(2).

Hourly Rate (for waiting or working time on scene after first 30 minutes)	\$80.00
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CLASS B WRECKERS:

Base Rate (private property tow)	\$150.00
Rotation Tow (Law Enforcement tow)	\$200.00

Mileage Charge	\$5.00
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- Per mile charge beyond initial 10 miles for Law Enforcement
tows from scene or location consistent with FS §715.07(2).

Hourly Rate	\$105.00
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CLASS C WRECKERS:

Base Rate (private property tow)	\$300.00
Rotation Tow (Law Enforcement tow)	\$400.00

Mileage Charge	\$6.00
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- Per mile charge beyond initial 10 miles for private
property tows, if permitted by FS §715.07(2).
- Per mile charge beyond initial 10 miles for Law Enforcement
tows from scene or location consistent with FS §715.07(2).

Hourly Rate	\$200.00
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CLASS D WRECKERS:

Base Rate (private property tow)	\$400.00
Rotation Tow (law Enforcement tow)	\$400.00

Mileage Charge \$7.00

- Per mile charge beyond initial 10 miles for private property tows, if permitted by FS §715.07(2).
- Per mile charge beyond initial 10 miles for Law Enforcement tows from scene or location consistent with FS §715.07(2).

Hourly Rate \$280.00

SEPARATE CHARGES

1 Removal of Drive Shaft*	*Minimum ¼ hour applicable rate or actual time-worked at applicable hourly rate
2 Air Hook-up*	
3 Remove/Pull Axle*	
4 Remove Bumper*	
5 Removal Air Foils*	
6 Landoll Trailer – Semi roll back or drop back trail or truck	\$200.00
7 Air Bags	\$2,200.00
8 Extra Manpower – Per man hour charge	\$65.00

STORAGE RATES

DAILY MAXIMUM URBAN STORAGE TO 25 FEET IN LENGTH:

Inside	\$40.00
Outside	\$35.00

DAILY MAXIMUM URBAN STORAGE OVER 25 FEET IN LENGTH:

Inside	\$55.00
Outside	\$50.00

Storage charges must be based upon a 24-hour calendar day, beginning at 12:01am and ending at midnight. A vehicle/vessel in storage for six hours or longer, in any 24-hour calendar day, will accrue storage charges for that 24-hour calendar day. A vehicle/vessel in storage for less than six hours, in any 24-hour calendar day, will not accrue storage charges for that 24-hour calendar day. (e.g. Vehicle arrives in storage at 6:30pm, Monday, and is picked up 6:30am, Tuesday. No charges accrue for storage on Monday because storage on Monday was only 5 ½ hours; storage charges do accrue for Tuesday, as storage on Tuesday was for 6 ½ hours.)

GATE FEES

Except as otherwise provided in the Ordinance, the maximum rate chargeable for late hour gate fees is as follows:

Monday – Friday Late Hour Gate Fee Rate

If an owner or authorized agent seeks to recover a towed/impounded vehicle/vessel or property within such vehicle/vessel during the weekdays of Monday through Friday between the hours of 6:00 p.m. and 8:00 a.m., the following late hour gate fee will apply: \$35.00.

Saturday - Sunday Late Hour Gate Fee Rate

If an owner or authorized agent seeks to recover a towed/impounded vehicle/vessel or property within such vehicle/vessel after 6:00 p.m., Friday through 8:00 a.m., Monday, the following late hour gate fee will apply: \$35.00.

Lee County Government Observed Holidays

If an owner or authorized agent seeks to recover a towed/impounded vehicle/vessel or property within such vehicle/vessel after 12:01 a.m. and before 12:00 midnight on a Lee County government observed holiday, the following gate fee will apply: \$35.00.

Additional Gate Fees

Additional gate fees may be charged if the owner/agent arrives at the storage facility without the appropriate documentation and payment, as identified by the storage entity contacted to allow recovery within the time frame late hour gate fees are applicable, and the owner/agent leaves and returns with the appropriate documentation and payment during the time in which late hour gate fees are applicable.

ADMINISTRATIVE LIEN FEE

The maximum rate chargeable as an Administrative Lien Fee are as follows:

An administrative lien fee may be charged only after the vehicle has been in the storage facility or immobilized for at least three calendar days and after all other requirements as provided in the Lee County Towing and Immobilization ordinance have been met. The maximum rate that may be charged as an administrative lien fee is the sum of \$75.00, plus recovery of the costs and fees imposed by the state of registration for obtaining ownership information.

UNDERWATER RECOVERY FEE

An underwater recovery fee of \$100.00 plus actual costs may be charged when performed by a certified/professional diver if supported by written documentation approved by the investigating law enforcement officer.

HAZARDOUS MATERIAL CLEAN-UP AND DISPOSAL FEE

The prevailing rate for cleaning up and disposing of hazardous materials when mandated or required through State or Local laws will be permitted upon written approval by the investigating law enforcement officer.

IMMOBILIZATION

Maximum Rate Chargeable for Releasing an Immobilized Vehicle on Private Property:

\$75.00 for each immobilization properly conducted in accordance with the Lee County Towing and Immobilization ordinance and Florida law.



FLORIDA DEPARTMENT *of* STATE

RICK SCOTT
Governor

KEN DETZNER
Secretary of State

October 10, 2013

Honorable Linda Doggett
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attention: Lisa Pierce, Deputy Clerk

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 13-19, which was filed in this office on October 10, 2013.

Sincerely,

Liz Cloud
Program Administrator

LC/elr

