

APPROVED

BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

SEP 09 2014 KH/CAS

EFFECTIVE DATE

NOV 01 2014

ORDINANCE NO. 2014-24

AN ORDINANCE RELATING TO TRESPASS TOWING, NONCONSENSUAL TOWING, AND VEHICLE IMMOBILIZATION IN ORANGE COUNTY, FLORIDA; REPEALING SECTION 35-26 OF THE ORANGE COUNTY CODE REGULATING VEHICLE TOWING AND IMMOBILIZATION; CREATING A NEW DIVISION III IN CHAPTER 35 REGULATING VEHICLE TOWING AND IMMOBILIZATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. Repeal of Section 35-26. Section 35-26 of the Orange County Code, relating to towing and immobilization of vehicles, is hereby repealed and reserved for future use.

Section 2. Creation of new Division III, Article II, Chapter 35. A new Division III, Article II, Chapter 35, Orange County Code, relating to vehicle towing and immobilization, is hereby created to read as follows:

DIVISION 3. – TRESPASS TOWING FROM PRIVATE PROPERTY, NONCONSENSUAL TOWING, AND VEHICLE IMMOBILIZATION

Sec. 35-51. Title.

This Division III of Article II of Chapter 35 of the Orange County Code shall be known as the “trespass towing, nonconsensual towing, and vehicle immobilization” ordinance.

Sec. 35-52. Findings.

(a) The board of county commissioners finds that immobilization and towing of motor vehicles is undertaken at all hours of the day and night and can leave motorists and their passengers, including small children, stranded and vulnerable.

(b) The board finds that towing services frequently are provided without the prior consent of the vehicle owner, or under exigent circumstances that prevent negotiation of the charges, terms, and conditions for the towing service, often resulting in disagreements and complaints between vehicle owners and towing companies.

(c) The board finds that towing companies often hire employees on a commission basis to patrol parking lots, which creates a financial incentive on the part of tow truck operators to tow vehicles in circumstances where towing may not be in the private property owner's interest.

(d) The board finds that the needs of private property owners for relief from unauthorized parking must be balanced with the need to provide appropriate protection to consumers. While private property owners should be able to manage parking issues associated with their property using the services of towing companies, allowing towing companies to manage parking issues or to decide which vehicles are susceptible to trespass towing is not in the public interest.

(e) The board finds that the qualifications of towing or immobilization services and the manner in which towing services are rendered affect the health, safety, and welfare of Orange County residents and visitors.

Sec. 35-53. Scope.

(a) This ordinance shall be effective throughout the unincorporated area of Orange County, and within any municipality as provided by Section 704 of the Orange County Charter, as it may be amended from time to time, unless a municipality chooses to enact an ordinance covering the same subject matter, activity, or conduct as the County ordinance. If a municipality has adopted its own ordinance covering the same subject matter, activity, or conduct as the County ordinance, then the County's ordinance shall not apply within such municipality. Orange County shall not be responsible for enforcing this ordinance within municipalities, but reserves the jurisdiction and right to enforce this ordinance within a municipality as it may deem necessary.

(b) No towing or immobilization service shall immobilize, tow, or otherwise transport a vehicle for compensation when the point of origin of the tow or transportation is within Orange County unless such towing or immobilization service complies with the requirements of chapters 713 and 715, Florida Statutes, and the applicable provisions of this article.

Sec. 35-54. Definitions.

(a) *Authorized driver/agent* shall mean a person legally authorized to be in control of the vehicle or to act on behalf of the vehicle owner, including the registered owner or lessee, contract lessee, operator, lienholder, or person authorized by any of the foregoing to act on behalf of same. Such agency may be

established by any valid or easily verified record form, including but not limited to electronic mail, electronic record, or facsimile transmission.

(b) *Connected* in reference to a vehicle shall mean that at least two of the vehicle's wheels are raised from the ground and the connection is in compliance with the requirements of section 316.222, Florida Statutes (related to stop lamps and turn signals) and section 316.525, Florida Statutes (requirements for vehicles hauling loads).

(c) *Drop* shall mean an instance where the vehicle owner or authorized driver/agent arrives at the scene prior to the complete installation of an immobilization device and the departure of the immobilization agent; it shall also mean an instance in which the vehicle owner or authorized driver/agent arrives at the scene after the vehicle has been connected to the towing or removal apparatus, but before the tow truck has left the premises or parking lot with the vehicle.

(d) *Duly authorized agent* shall mean a person designated by and acting on behalf of a real property owner per contractual agreement to request trespass towing. The duly authorized agent shall have no affiliation with the towing or immobilization service providing the trespass towing service. The real property owner shall only appoint duly authorized agents with a direct connection to the property (e.g., board member, employee of the property management company or home/condo owner's association, employee or lessee of the real property owner, or state of Florida licensed security agency contracted by the real property owner).

(e) *Gross vehicle weight* shall mean the weight of a vehicle as specified by the vehicle's manufacturer.

(f) *Immobilize, immobilizing, and immobilization* shall mean the use of a "boot" or other mechanism that causes a vehicle to be immobile or otherwise renders a vehicle immobile or inoperable.

(g) *Nonconsensual towing* shall mean the removal and storage of wrecked or disabled vehicles from an accident scene or the removal and storage of vehicles in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to removal of the vehicle, excepting, however, all incidents of "trespass towing" as defined herein.

(h) *Property owner* shall mean that person who exercises dominion and control over a parcel of real property,

including but not limited to the legal title holder, lessee, a resident manager, a property manager, or other duly authorized agent who has legal authority to bind the owner. A person providing a towing or immobilization service may not be appointed as a duly authorized agent for a property owner.

(i) *Roam towing* shall mean trespass towing of vehicles by a towing or immobilization service without express written authorization from the property owner for each vehicle removed.

(j) *Storage site* shall mean all sites to which vehicles towed from within Orange County will be stored.

(k) *Tow* shall mean to haul, carry, pull along, or otherwise transport or remove a vehicle by means of another vehicle.

(l) *Towing or immobilization service* shall include any person, company, corporation, or other entity, whether licensed or not, who engages in or owns or operates a business that engages, in whole or in part, in the immobilization, towing, or removal of motor vehicles for compensation.

(m) *Trespass towing* shall mean towing or removal of a vehicle without the consent of the vehicle's owner or operator, as such is authorized by Section 715.07, Florida Statutes, when that vehicle is parked on private real property, excepting, however, all incidents of "nonconsensual towing" as defined herein.

Sec. 35-55. Exemptions.

(a) This article shall not apply to the towing or immobilization of a vehicle that occurs:

(1) At the direction of a law enforcement officer, community service officer, code enforcement officer, or parking specialist of the county pursuant to an agreement or contract between the county and a towing service; or

(2) With the consent of the vehicle's owner or operator; or

(3) At property owned by any governmental entity where the towing or immobilization of motor vehicles has been authorized by said governmental entity or its site manager, duly authorized agent, or lessee.

Sec. 35-56. Prerequisites and requirements for immobilization and trespass towing of vehicles on private property.

(a) *Business tax receipt required.* Every person, company, corporation, or other entity that owns or operates a

service that engages in trespass towing or immobilization of vehicles or vessels for compensation within Orange County must obtain a business tax receipt issued by Orange County, consistent with the provisions of Chapter 205, Florida Statutes, Section 25-53, Orange County Code, and any other applicable provisions of Chapter 25. In addition to the above, any such company that operates or maintains a storage site must obtain a business tax receipt issued by Orange County for the site. A separate business tax receipt is required for each location where towed vehicles and/or immobilization equipment are stored.

(b) *Agreement required.*

(1) Prior to trespass towing or immobilization of any vehicle, the property owner of the real property from which such tow or immobilization is to be made and the towing or immobilization service shall have executed a non-transferable written agreement, which shall contain, at a minimum, the following provisions:

a. The legal name, physical address, telephone number, and email address of the towing or immobilization service and the property owner requesting the towing or immobilization services;

b. The name of the real property owner and the name and individual email address of any duly authorized agent, and the address and/or legal description of the real property from which the vehicle(s) will be towed or at which the vehicle(s) will be immobilized. A property owner with multiple tenants shall list all businesses covered by the agreement;

c. The duration of the agreement;

d. The time of day that such towing or immobilization is authorized;

e. The days of the week that such towing or immobilization is authorized;

f. An enumerated list of all fees to be charged to either the property owner or vehicle owner/operator, which shall not exceed the amounts stated herein;

g. The address and description of the location where the vehicle will be towed/stored or immobilized. Said storage site shall not be more than ten (10) miles from where the tow originates;

h. The exact wording of each sign and a description of the location of each sign on the property, which shall conform to Sections 713.78 and 715.07, Florida Statutes, and this article; and

i. The signature of both the property owner and the owner or authorized representative of the towing or immobilization service, certifying that each has read and is in compliance with the provisions of Sections 713.78 and 715.07, Florida Statutes, and the applicable provisions of this article.

(2) A copy of the agreement must be filed with the Sheriff's Office as per Section 715.07(6), Florida Statutes. All towing or immobilization services shall keep such agreements on file and make them available for inspection and/or copying to any law enforcement officer or code enforcement officer during normal business hours. A copy of the towing or immobilization service's business tax receipt must be attached as an addendum to the agreement.

(3) Along with the agreement, the towing or immobilization service must submit:

a. A map showing the location of the real property from which vehicles will be towed, with a ten-mile radius drawn around such property, and the location of the storage site to which vehicles will be towed;

b. Photos showing the signage at the storage site; and

c. A list of driver names and identification numbers.

(4) Any modification to the agreement on file with the Sheriff's Office, including any change in the ownership of either the towing or immobilization service or the subject property, requires that a new written agreement meeting the requirements of this article be executed and filed with the Sheriff's Office prior to any trespass towing from the subject property. For changes to the list of duly authorized agents, an addendum to the agreement must be executed and filed with the Sheriff's Office.

(5) The above requirement of a written agreement shall not apply to removal of vehicles from property appurtenant to and obviously part of a single-

family residence or where the vehicle is parked in such a way as to obstruct access to private entrances, exits, drives, or loading areas.

(c) **Signage.** Prior to every vehicle trespass tow or immobilization, the towing or immobilizing service shall ensure that notice is posted upon such property that meets the following requirements:

(1) The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property from either the public right-of-way or adjoining private property, and within five (5) feet from the public right-of-way line. If there are no curbs or access barriers, signs must be posted not less than one sign for each twenty-five (25) feet of lot frontage.

(2) The notice must clearly display the following, which shall be visible from the public right-of-way or adjoining private property night or day:

a. The words "Tow-Away Zone" in light-reflective letters not less than four (4) inches high on a contrasting background.

b. In light-reflective letters not less than two (2) inches high on a contrasting background, notice that unauthorized vehicles and vessels will be towed away at the owner's expense.

c. The words "Strictly Enforced" in letters not less than two (2) inches high. If it is a 24-hour enforcement, the words, "Strictly Enforced 24 Hours 7 Days a Week" in letters not less than one and one-half (1½) inches high.

d. In letters not less than one-half inch (½) high, the following: "Chapter 35, Orange County Code and Section 715.07, Florida Statutes."

e. At any place or property where vehicles and vessels are subject to immobilization, the following words in letters not less than two (2) inches high, "Unauthorized vehicles and vessels are subject to being towed or booted."

f. The name and telephone number of the towing or immobilization service must be included on the sign. (A pager number is not sufficient.)

g. A Quick Response (QR) code, provided by the County, must be included on the bottom of the sign or on a second sign placed on the same signpost, facing the same direction as the tow-away sign, alongside the words, "For more information, go to www.ocfl.net/parking or scan this code" in letters not less than one-half (½) inch high. The QR code shall be not less than one (1) inch by one (1) inch in size.

(3) The sign structure must be permanently installed with the words "Tow-Away Zone" not less than three (3) feet and not more than six (6) feet above ground level.

(4) The required signs must be continuously maintained on the property for no fewer than twenty-four (24) hours prior to the towing or immobilization of any vehicle.

(5) The property owner shall be responsible for keeping signs clean of mildew and vegetation and in good repair, and for replacing signs that become faded.

(6) Premises with twenty (20) or fewer parking spaces may satisfy the notice requirements of this section by prominently displaying a sign stating "Reserved Parking for Authorized Persons/Current Customers Only. Unauthorized Vehicles and Vessels Will Be Towed Away or Booted at the Owner's Expense" and the words "Strictly Enforced" in not less than four (4) inch high, light-reflective letters on a contrasting background. The sign also must include the name and telephone number of the towing or immobilization service. (A pager number is not sufficient.)

(7) The notice requirements do not apply to property appurtenant to and obviously a part of a single-family residence, or in instances when notice is personally given to the vehicle owner or person in control of the vehicle that the area is reserved or otherwise unavailable and any unauthorized vehicle is subject to being removed at the owner's or operator's expense.

(8) If a vehicle obstructs access to a private driveway, the property owner, lessee, or duly authorized agent may have the vehicle removed by a towing service upon signing an order that the vehicle be removed without a posted tow-away zone sign. It is prohibited for the towing or immobilization service to tow the vehicle without such

order. Said order shall be kept by the towing or immobilization service for one (1) year from the date of the tow and made available for inspection by the Orange County Sheriff's Office or code enforcement officers.

(9) Except as specifically provided herein, property owners and towing or immobilization services are prohibited from engaging in trespass towing or immobilization from or on any private property where the notice or sign structure is not in compliance with this section.

(d) **Insurance.** Any towing or immobilization service or person engaged in towing or otherwise transporting vehicles for compensation or providing vehicle storage services in connection therewith shall maintain in effect, for each towing vehicle, an insurance policy or policies that meets the following requirements:

(1) The insurance policy or policies indemnify or insure such towing or immobilization service or person for its liability at a minimum of \$300,000 of liability insurance and at least \$50,000 of on-hook cargo insurance.

(2) The insurance carrier or company shall qualify as an insurance company authorized to transact business in the State of Florida pursuant to Chapter 624, Part III, Florida Statutes. The insurance carrier or company must be a participant in the Florida Insurance Guaranty Association.

(3) Policies shall be for a minimum term of six (6) months.

(4) A copy of the insurance certificate must be filed with the Sheriff's Office, and all towing or immobilization services shall keep insurance policy documentation on file and shall make such documentation available for inspection and/or copying to any law enforcement officer or code enforcement officer during normal business hours.

(e) **Storage facility requirements.** Any storage site used in conjunction with vehicles towed pursuant to this ordinance must meet the following requirements:

(1) The facility is surrounded by a chain-link or solid-wall type fence at least 6 feet in height;

(2) The facility is illuminated with lighting of sufficient intensity to reveal persons and vehicles at a distance of at least 150 feet during nighttime;

(3) Signage visible from the public right-of-way line that clearly indicates the name and phone number of the towing or immobilization service. If the facility is shared by more than one towing or immobilization service, the signage must list the name and phone number of every towing or immobilization service using the facility; and

(4) The facility meets all other applicable code requirements, including, but not limited to, development standards for the building, parking, landscaping, and buffering.

(f) *Authorization for each immobilization or tow.*

(1) The property owner or duly authorized agent shall provide authorization in the form of express written instruction to tow or immobilize each vehicle and shall date and sign such instruction in the presence of the person towing or immobilizing the vehicle. Authorization also may be given by electronic mail, provided that the duly authorized agent and his/her individual electronic mail address are currently on file with the Sheriff's Office as part of the agreement to tow from the property. Only the property owner or duly authorized agent can authorize towing of a vehicle or immobilization of a vehicle on the property. No such instruction shall be considered to have been given:

a. by posting of signage as required in this article;

b. by virtue of the mere terms of any contract or agreement between the property owner and the towing or immobilization service;

c. where the instruction occurs in advance of the actual unauthorized parking of the vehicle; or

d. where the instruction is general in nature and unrelated to specific, individual, and identifiable vehicles that are already parked without authorization.

(2) For each vehicle to be towed or immobilized, the owner or duly authorized agent shall issue an authorization form that provides the following information:

a. Name of person authorizing tow;

- b. Vehicle description (license, make, color);
- c. Date and time of authorization; and
- d. Name of towing or immobilization service and the identification number of the tow vehicle operator.

(3) Copies of this authorization shall be kept at both the authorizer's place of business and the towing or immobilization service's place of business for a minimum period of one (1) year and shall be made available to any law enforcement officer or code enforcement officer for inspection during normal business hours. A copy also shall be provided to the vehicle owner or authorized driver/agent upon request.

(g) *Roam towing.* Where private real property is designated for student housing parking, property owners may elect to authorize a towing or immobilization service to tow away or immobilize vehicles without the express written authorization required in subsection (f) between the hours of 12:00 midnight and 7:00 a.m., provided the property owner first complies with the following requirements:

(1) The following language shall be added to each of the existing tow away signs or included as an additional sign, in letters not less than one and one-half (1½)-inches high: "Roam Towing In Effect, 12:00 midnight – 7:00 a.m. Vehicles and vessels may be towed without prior authorization from property management."

(2) The agreement required by Section 35-56(b) of this article shall be amended to provide for roam towing between the hours of 12:00 midnight and 7:00 a.m.

(3) Photographs of the vehicle shall be taken prior to its removal and shall be maintained by the towing or immobilization service for a minimum period of one (1) year. The photographs shall demonstrate the violation of law, rule, or regulation for which the vehicle was towed or immobilized. The photographs also shall show the condition of the vehicle prior to towing or immobilization. The photographs shall be made available to any law enforcement officer or code enforcement officer for inspection during normal business hours. A copy also shall be provided to the vehicle owner or authorized driver/agent upon request.

(4) Lease, rental, or property owners' association documents shall contain a notice provision indicating that the residential property uses roam towing. In the case of properties with existing leases, rental agreements, or property owners' association documents, it shall be sufficient to notify each of the owners and/or tenants of the property by regular mail, at their last known addresses, prior to initiating roam towing. All new leases, rental agreements, and property owners' association documents, or amendments thereto, shall contain a provision giving notice that the property owner uses roam towing, as well as a complete and detailed list of all rule violations that will result in towing. A copy of these provisions must be posted in the rental office, as well as a common or public area of the complex where they can be accessed at all times.

(5) At the entrance or entrances to the residential property, a sign shall be posted stating where the parking rules can be read by residents and guests. Property owners and towing or immobilization services are prohibited from engaging in towing or immobilization from or on any private property where the notice or sign structure is not in compliance with this section.

(6) Exceptions to roam towing. Roam towing is not allowed for the sole reason that a vehicle's registration has expired unless the registration has been expired for a period greater than one (1) month, or unless the property owner or the towing or immobilization service first notifies the vehicle owner by affixing upon the window adjacent to the driver's seat of the vehicle, a sticker with a completely removable adhesive containing a warning that the vehicle will be towed unless the registration is renewed within three (3) business days. A photograph shall be taken documenting that such notice has been provided.

(h) *Notification of towing activity.*

(1) Any towing or immobilization service initiating a trespass tow or immobilization within the unincorporated territory of Orange County shall notify the Orange County Sheriff's Office within thirty (30) minutes of completion of any such trespass tow or immobilization and shall provide, at a minimum, the following information:

a. The name of the towing or immobilization service;

b. The identification number of the driver initiating the tow;

c. The address or location from which the vehicle was towed or at which the vehicle was immobilized;

d. The address of the storage site to which the vehicle was towed;

e. The time the vehicle was immobilized, towed, or removed; and

f. The make, model, year, color, vehicle identification number (VIN), and license plate number of the vehicle.

(2) Further, the towing or immobilization service shall obtain the Orange County Sheriff's Office case number assigned to the trespass tow or immobilization at the time of reporting the aforementioned trespass tow or immobilization information.

(3) This notification is required regardless of whether the vehicle is retrieved within 30 minutes of arriving at the storage facility.

(i) *Return of vehicle owner or authorized driver/agent prior to tow or immobilization.*

(1) A towing or immobilization service in the process of towing, removing, or immobilizing an unauthorized vehicle must stop when a person seeks return of the vehicle.

(2) No towing or immobilization service operating within the unincorporated territory of Orange County shall tow or immobilize a vehicle or charge for its services where the vehicle owner or authorized driver/agent arrives at the scene prior to the towing or immobilization, unless:

a. The registered vehicle owner or authorized driver/agent refuses to remove the vehicle; or

b. The vehicle already has been fully connected to the towing or removal apparatus or the immobilization device, and the vehicle owner or authorized driver/agent refuses to pay a drop fee of not more than one-half ($\frac{1}{2}$) of the rate contained in Section 35-58 for such towing or immobilization service.

(3) The tow truck or immobilization service operator shall wait a minimum of fifteen (15) minutes at the location of the drop to allow the vehicle owner or authorized driver/agent to secure payment of the fees for towing or immobilization services, which are not to exceed the fees enumerated herein. All forms of payment required by Section 35-56(o)(1) shall be accepted.

(4) Within twenty (20) minutes of receiving payment of a drop fee, the tow truck or immobilization operator shall disconnect the vehicle from the tow truck or immobilization device and return control of the vehicle to the owner or authorized driver/agent. The tow truck or immobilization service operator shall provide a written receipt as required in Section 35-56(o)(4).

(5) The towing or immobilization service shall accept payment of any drop fees at the site of the tow or immobilization.

(j) *Towing directly to storage site.* All vehicles towed shall be towed directly and continuously to the storage site owned or leased by the towing service, and the towed vehicle shall not be kept in any temporary holding area.

(k) *Distance requirements.*

(1) No vehicle towed as the result of a trespass towing shall be towed to and/or stored at a storage site located more than ten (10) miles from the point of initiation of such trespass tow.

(2) No person shall be required to travel more than one-half (½) mile to pay fees for a vehicle that has been immobilized. Only persons whose immobilized vehicles are also towed will be required to pay fees at the location of the stored vehicle as described herein. The maximum fee permitted for vehicles that are immobilized and towed is limited to the towing fees set forth herein; a charge to remove the immobilization device shall not be charged for towed vehicles.

(l) *Use of immobilization devices.*

(1) Except to the extent otherwise allowed by law, the practice of placing a boot or immobilization device on a vehicle is prohibited. When placement of a boot or immobilization device is allowed by law, booting or immobilization shall occur in accordance with the provisions of this ordinance and the provisions of any

applicable statute pursuant to which the vehicle is immobilized.

(2) The practice of placing a boot or other immobilization device on a vehicle to hold for towing is strictly prohibited. No immobilized vehicle shall be towed by a towing or immobilization service until at least four (4) hours have elapsed after installation of the immobilization device. In the event that a vehicle is lawfully booted or otherwise immobilized and towed under this article, a separate fee for immobilization may not be charged in addition to the towing fee; the maximum rate shall be limited to that which may be charged for towing said vehicle as set forth herein.

(3) When immobilization is accomplished by the placement of a boot or other wheel-locking device on the vehicle, it shall be placed on the front wheel of the driver's side of the motor vehicle. The boot or wheel-locking device may be placed on any other wheel or vehicle part only if placement on the driver's side front wheel is not feasible.

(4) Once an immobilization device has been placed on a vehicle, the device must be clearly and obviously marked with the name of the towing or immobilization service and a telephone number at which said service may be reached.

(5) Immediately after a vehicle is immobilized, the person immobilizing such vehicle, the owner of the property where the vehicle was immobilized, or an employee or duly authorized agent of such person or owner, shall affix upon the window adjacent to the driver's seat of such vehicle, a sticker with a completely removable adhesive, measuring eight and one-half by eleven (8½ x 11) inches, containing a warning that any attempt to move the vehicle may result in damage to the vehicle and stating the name and business address of the person who immobilized such vehicle, as well as a business telephone number (a pager number is not sufficient) that will facilitate the dispatch of personnel responsible for removing the immobilization device. Such notice also shall include the following: "Towing and immobilization of vehicles is regulated by state law and county ordinance. Any person wishing to file a complaint regarding a violation of a towing or immobilization law may do so by contacting the Orange County Consumer Fraud Unit at www.ocfl.net/consumerprotection or at 407.836.2490."

(m) *Inspecting vehicles; retrieving personal property.*

(1) A towing or immobilization service shall allow the owner or authorized driver/agent of a towed vehicle to park on site at the storage facility while picking up or inspecting the towed vehicle, while retrieving personal property from the vehicle, or while paying a towing, storage, or immobilization fee.

(2) A towing or immobilization service shall allow the vehicle owner or authorized driver/agent to inspect the vehicle and to remove or retrieve personal property or possessions from the vehicle at the scene of the tow or immobilization or at the storage facility, regardless of whether payment is being made. The towing or immobilization service shall release to the vehicle owner or authorized driver/agent all personal property not affixed to the vehicle. The towing or immobilization service is prohibited from charging a fee for such inspection or retrieval or refusing to allow retrieval of personal property.

(3) A towing or immobilization service shall not, as a condition of inspection of a vehicle, retrieval of a vehicle, or retrieval of personal property from a vehicle, require a vehicle owner or authorized driver/agent to sign a release or waiver of any kind that would release the company from liability for damages noted by the vehicle owner or authorized driver/agent at the time of the vehicle's release.

(n) *Towing or immobilization service; hours of operation and required disclosure.*

(1) Each towing or immobilization service that physically relocates vehicles shall maintain one (1) or more storage sites. A current Orange County Business Tax Receipt and, when applicable, a municipal business tax receipt is required for any storage site used in conjunction with vehicles towed pursuant to this ordinance. Such storage sites shall be open for the purpose of retrieval of vehicles by owners or authorized driver/agents on any day that the towing or immobilization service is open for towing purposes, from at least 8:00 a.m. to 6:00 p.m. When closed, the storage site shall have posted prominently on the exterior of the place of business a notice indicating a telephone number (a pager number is not sufficient) where the operator of the site can be reached.

(2) Each towing or immobilization service shall staff or monitor its telephone twenty-four (24) hours a day, seven (7) days a week, including holidays, and immediately advise any vehicle owner or authorized driver/agent who calls prior to arriving at the storage or immobilization site of the following:

a. Each and every document or other item that must be produced to retrieve the vehicle or to release the immobilization device. Proof of vehicle ownership shall not be required of a person who is paying a fee for removal of an immobilization device, unless the subject vehicle has also been towed;

b. The exact charges as of the time of the telephone call, and the rate at which charges will accumulate thereafter;

c. The acceptable methods of payment, which shall include cash, money order, cashier's check, and valid major debit and credit cards, including but not limited to Visa and MasterCard;

d. Whether an automated teller machine (ATM) is located at the storage site and the fee for its use;

e. That the towed vehicle can be picked up within one (1) hour of request; and

f. The location at which payment of any fees may be made.

(o) *Retrieval of vehicles.*

(1) Acceptable methods of payment shall include cash, money order, cashier's check, and valid major debit and credit cards, including but not limited to Visa and MasterCard. If payment is made with cash, the towing or immobilization service shall provide change to the closest whole dollar and shall not condition payment on the owner or authorized driver/agent having exact change. A person paying by cashier's check shall not be required to present more than one (1) form of picture identification. No additional charges may be required if payment is made using a credit card or debit card. All forms of payment shall be accepted at the storage site for vehicles that have been towed.

(2) The towing or immobilization service shall not require that an expired registration be renewed before

releasing the vehicle. The towing or immobilization service may charge a reasonable fee, as provided in Section 35-58(a), to run a check to determine ownership of the vehicle. The check must be through the appropriate state's Department of Motor Vehicles or their authorized data provider, who must have direct, real-time access to vehicle registration and title data. Any check of the National Motor Vehicle Title Information System (NMVTIS) must be through a NMVTIS history provider approved by the NMVTIS administrator, the American Association of Motor Vehicle Administrators (AAMVA).

(3) Upon receiving payment of the authorized towing, storage, or immobilization fees, the towing or immobilization service shall release the towed or immobilized vehicle immediately at the request of the owner or authorized driver/agent whenever possible, but in no event more than thirty (30) minutes after receipt of payment.

(4) Towing or immobilization services shall provide a written bill at the request of the vehicle owner or authorized driver/agent, detailing the charges to date.

(5) Towing or immobilization services shall provide, at the time of payment, whether or not requested, a written receipt for all charges imposed and received from the vehicle owner or authorized driver/agent resulting from the towing or immobilization of a vehicle. Said receipt shall include, at a minimum:

a. The date, time, and location of the tow or immobilization;

b. The total charges, listed individually and specifically;

c. The date and time of payment of the charges;

d. The name of the towing or immobilization service, as well as the identification number and signature of the driver initiating the tow; and

e. The towing rates and standards set forth in Section 35-58.

(p) *Records required for towing or immobilization services.*

(1) The towing or immobilization service shall prepare and maintain a tow and immobilization data record that shall include, at a minimum, the following information for each vehicle towed or immobilized:

- a. The legal name of both the towing or immobilization service and the driver initiating the tow. If not a corporation, the name of the business owner;
- b. The address or location from which the vehicle was towed or immobilized;
- c. Date and time the tow or immobilization was initiated;
- d. The destination to which the vehicle was taken;
- e. The description of the vehicle, including the make, model, year, color, vehicle identification number, and license plate number;
- f. The time and date the Orange County Sheriff's Office was contacted by the towing or immobilization service, and the Orange County Sheriff's Office case number assigned;
- g. A description of the services rendered, including an itemized list of all charges; and
- h. The date and time the vehicle was returned to the owner or authorized driver/agent or the immobilization device removed, and the name, address, and driver's license number of that owner or authorized driver/agent.

(2) All towing or immobilization services shall keep all such tow and immobilization data records on file for a period of three (3) years and shall make them available for inspection and/or copying to any law enforcement officer or code enforcement officer during normal business hours.

Sec. 35-57. Prohibitions.

(a) No towing or immobilization service shall tow or immobilize a vehicle when there is a natural person or live animal occupying the vehicle.

(b) It is unlawful to tow or immobilize an emergency or law enforcement vehicle that is marked unless directed by law

enforcement, code enforcement, or at the request of the owner or operator of the emergency vehicle.

(c) A commercial vehicle that reasonably appears to be of the kind routinely used for delivery of mail, packages, supplies, or other products may not be immobilized or towed if it reasonably appears that the vehicle is parked at the location for purpose of making a routine delivery or providing other service for the property owner or its lessee, unless ordered by a code enforcement or law enforcement officer.

(d) Tampering with an immobilization device that is lawfully attached to a motor vehicle is prohibited.

(e) It is unlawful for a towing or immobilization service operator to tow or immobilize a vehicle from public property unless by written agreement with the governmental real property owner, lessee, or duly authorized agent; by order of law enforcement or code enforcement; or with the consent of the vehicle owner or authorized driver/agent. The towing or immobilization service shall bear the burden of proof of such agreement, order, or consent, except as otherwise allowed herein.

(f) No vehicle parked on a public right-of-way or that obstructs access to a private driveway may be immobilized.

(g) No towing or immobilization service shall pay or rebate money, or solicit or offer the payment or rebate of money or other valuable consideration, to property owners for the right to engage in vehicle immobilization or trespass towing from any property.

(h) No towing or immobilization service shall employ or otherwise compensate individuals, commonly referred to as "spotters," who report the presence of unauthorized parked vehicles for purposes of immobilization or towing.

(i) It is unlawful for any owner, manager, employee, or agent of a towing or immobilization service, while engaged in towing or storing of vehicles, to wear a law enforcement uniform or other indication or logo of law enforcement affiliation.

(j) It is unlawful for any towing or immobilization service to demand a drop fee if the vehicle to which they are physically connected exceeds the gross vehicle weight capability of the tow truck.

(k) It is unlawful for any person or towing or immobilization service to misrepresent, misstate, or provide false information on any documentation required by this article, including the tow data sheet, receipt, or bill issued pursuant to this article.

Sec. 35-58. Establishment of rates.

(a) The maximum rates, applicable until the same are changed by resolution or other official action, for towing or immobilizing a vehicle, for storage of a towed vehicle, or for the rendition of other services involving use of a tow truck or other customary towing or immobilization services when the point of origin of the tow or such services is within the unincorporated territory of Orange County shall be assessed by vehicle type, as follows:

(1) Class A vehicles [gross vehicle weight through ten thousand (10,000) pounds or vehicle carrying a vessel fifteen (15) feet or less in length]

(2) Class B vehicles [gross vehicle weight ten thousand one (10,001) pounds or more but less than nineteen thousand five hundred (19,500) pounds or vehicle carrying a vessel more than fifteen (15) feet but less than twenty-two (22) feet in length]

(3) Class C vehicles [gross vehicle weight nineteen thousand five hundred (19,500) or more pounds but less than twenty-five thousand (25,000) pounds or vehicle carrying a vessel more than twenty-two (22) feet in length]

(4) Class D vehicles [gross vehicle weight more than twenty-five thousand (25,000) pounds]

Rates for Services by Vehicle Type		Class A	Class B	Class C	Class D
1	Trespass tow (flat rate)	\$125.00	\$250.00	\$375.00	\$500.00
2	Nonconsensual tow	\$125.00	\$250.00	\$375.00	\$500.00
3	Nonconsensual tow, per mile	\$3.00	\$4.00	\$5.00	\$6.00
4	Nonconsensual tow, time beyond initial thirty (30) minutes at scene, per fifteen (15) minute block	\$31.25	\$62.50	\$93.75	\$125.00
5	Trespass or nonconsensual tow storage per day (after initial non-fee period)	\$25.00	\$35.00	\$60.00	\$60.00
6	Immobilization per day (includes installation and removal of device)	\$22.00	\$22.00	\$22.00	\$22.00
7	Research fee (actual cost, up to the maximum, for research on vehicle ownership – to be charged if vehicle registration is expired)	\$5.00	\$5.00	\$5.00	\$5.00

(b) No additional fees or charges shall be made for special equipment or services, including but not limited to double hook-up; vehicle entry when locked; dropping transmission linkage; axle or drive shaft removal; dollies; trailer or flat bed; lifts; slim jims; go jacks; removing bumpers; airing up brakes; mileage; fuel charge; copying the vehicle registration or other documents; providing copies of towing statute (Section 715.07, Florida Statutes); returning to the location where the vehicle is stored in order to release the vehicle; gate fees or fees for entering storage facility; fees for driving the vehicle out of the storage facility; additional fees for towing a tractor trailer, which shall be considered the tow of one vehicle; or an additional fee for towing motor vehicles carrying other vehicles (boats, cars, trucks, aircraft, tractors, heavy equipment, ATVs, or motorcycles) that are securely attached, which shall be considered part of that vehicle's load.

(c) No other fees of whatever kind may be charged for services rendered during the first twenty-four (24) hours that the vehicle is in the possession of the towing service in the case of trespass tows, or the first six (6) hours in the case of nonconsensual tows, in both cases beginning from the time the vehicle is delivered to the storage facility. Storage fees as set forth above may be assessed after the initial non-fee periods based on twenty-four (24) hour increments, not on calendar days. An administrative fee of forty five dollars (\$45.00), plus all actual fees imposed by the State of Florida for obtaining ownership information [i.e. actual postage fees, actual advertising fee, and actual cost of title search for out-of-state vehicles (itemization is required)] may be charged only after the first forty-eight (48) hours of fee storage, so long as the towing service has complied with the requirements of Section 713.78, Florida Statutes, including execution and mailing of the lien notice. A one-time "tarpaulin fee" in the amount of fifteen dollars (\$15.00) may be assessed when the towing service reasonably finds it necessary to install and maintain tarpaulin coverage on any stored vehicle in order to protect the interior accessories or upholstery of such vehicle from damage by inclement weather.

(d) The maximum fees set forth herein may be changed from time to time by a resolution adopted by the board of county commissioners.

(e) The towing rates and any fees set forth above in this section shall be prominently posted and clearly legible in not less than two (2)-inch high letters on contrasting background at the point of payment at the storage site. Such notice shall be visible to the person picking up the vehicle from the place where payment is

tendered. The towing service also must prominently post a clearly legible notice at the point of payment at the storage site, in letters not less than one-half (½)-inch high on contrasting background, the following statement: "Towing is regulated by Chapter 35, Orange County Code, and Section 715.07, Florida Statutes, copies of which are available by the towing service at this location upon request." On the same sign, the following language shall be included in letters not less than one-half (½)-inch high:

"TO THE VEHICLE OWNER: If you believe your vehicle was wrongfully towed and/or you have been overcharged for services rendered, you do not have to pay your bill to get your car. Instead, you have the right to post a bond in the circuit court, payable to [name of towing or immobilization service], in the amount of the final bill for services rendered, and the court will decide later who is right. If you show us a valid clerk's certificate showing that you have posted a bond, we must release your vehicle to you immediately. This remedy is in addition to other legal remedies you have pursuant to Chapter 713, Florida Statutes. If you have a complaint about the way services were provided, you may contact the Orange County Consumer Fraud Unit at www.ocfl.net/consumerprotection or 407.836.2490."

(f) A towing or immobilization service is prohibited from engaging in trespass towing within the County unless the above notices are prominently posted, and clearly legible, at the point of payment at the storage site.

Sec. 35-59. Enforcement of violations; penalties.

(a) Each violation of this article shall constitute a separate offense punishable as provided in section 1-9 of this Code by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed sixty (60) days, or by both such fine and imprisonment. All law enforcement officials are hereby authorized to assist in the enforcement of this article to the extent that it is within their respective jurisdictions to do so.

(b) Nothing in this code shall be construed to prohibit the county from enforcing this article by alternate means including, but not limited to: code enforcement or code citations pursuant to Chapter 162, part I or II, Florida Statutes; by criminal action; by civil action, including petitions to enjoin persons violating this article; or by any other means available by law.

(c) Violations of this article enforced pursuant to Chapter 162, pt. I, Florida Statutes, shall be heard before the

special magistrate authorized by Chapter 162, pt. I, Florida Statutes, and Chapter 11, Article II, of this Code. Hearings in front of the special magistrate shall be conducted in accordance with Chapter 162, pt.1, Florida Statutes, and Chapter 11, Article II, of this Code, with all applicable procedures and available penalties as prescribed.

(d) Consumer Investigators assigned to the Orange County Consumer Fraud Investigative Unit shall be considered Code Inspectors for purposes of enforcing this article pursuant to Chapter 162, pt. 1, Florida Statutes, and Chapter 11, Article II, of this Code.

(e) Any towing or immobilization service, its owner, operator, driver, or representative, or any person who violates this article shall be liable to the owner or lessee of the vehicle for all costs of recovery (including all towing, immobilization, storage, and other associated fees and costs) plus attorney's fees and court costs; and, in addition, shall be liable to the owner or lessee of any towed or immobilized vehicle for any damages resulting directly or indirectly from the placement or removal of the immobilization device and/or from the removal, transportation, or storage of the vehicle.

Sec. 35-60. Reserved.

Section 3. Effective date. This ordinance shall become effective on November 1, 2014.

ADOPTED THIS 9th DAY OF September, 2014.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs, County Mayor

TJ

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Martha O. Haynie*
Deputy Clerk

