

Sec. 106-31.5. Nonconsensual private towing service rates.

(a) *Authority.* This section is enacted pursuant to the statutory power of the county to establish and enforce business regulations necessary for the protection of the public, and pursuant to F.S. §§ 125.0103(1)(c) and 715.07(2)(b).

(b) *Short title.* This section shall be known as the nonconsensual private towing services ordinance of the county.

(c) *Purpose.* The purpose of this section is to create a mechanism for the establishment of maximum permissible rates which may be charged for the towing, immobilization and storage of motor vehicles and vessels without the consent of the vehicle owner or custodian of the vehicle.

(d) *Definitions.* For purposes of this section, the following definitions shall apply:

Board shall mean the Board of County Commissioners of Pasco County, Florida.

Custodian shall mean one lawfully authorized and entrusted to possess, guard, maintain, and/or operate the property of another.

Immobilize or *immobilizing*, also known as "boot" or "booting," shall mean the act of placing, on a parked vehicle or vessel, a mechanical device that is designed to be attached to the wheel or tire so as to prohibit its usual manner of movement.

Immobilization services shall include any person, company, corporation, or other entity, whether licensed or not, who engages in or owns or operates a business which engages, in whole or in part, in the immobilization or booting of vehicles or vessels for compensation.

Nonconsensual towing services shall mean the towing of vehicles or vessels from or immobilization of vehicles on private property; removal and storage of wrecked or disabled vehicles or vessels from an accident scene or for the removal and storage of vehicles or vessels, 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 the removal of the vehicle or vessel.

Owner shall mean that person who exercises dominion and control over a vehicle or vessel, other personal property, or real property, including, but not limited to, the legal titleholder, lessee, designated representative of a condominium association, or any other person authorized to share dominion and control of the property.

Person shall mean any natural person, or any association, corporation, firm, joint venture, partnership, or other entity.

Storage shall mean the safekeeping of a vehicle or vessel which has been towed under the authority of this section.

Towing shall mean taking possession of a vehicle or vessel and its contents, exercising control, supervision and responsibility over it, and changing its location by immobilizing, hauling, drawing, or pulling it by means of another vehicle or vessel, with or without booms, car carriers, winches, or similar equipment.

Vehicle shall mean any mobile item which normally uses wheels, whether motorized or not.

Vessel shall mean every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in F.S. § 327.02(9).

Wrecker means any truck or other vehicle which is used to tow, carry, or otherwise transport motor vehicles or vessels upon the streets and highways of this state and which is equipped for that purpose with a boom, winch, car carrier, or other similar equipment.

(e) *Requirements for immobilizing vehicles.* The immobilization services shall not, without the prior express consent of the vehicle owner or custodian of the vehicle, immobilize a vehicle, unless the following requirements are satisfied:

(1) The vehicle is unlawfully parked and notice shall be prominently posted on the property on which the vehicle immobilized.

(2) The vehicle is not occupied by a living natural person or animal.

(3) The persons providing the immobilization service shall comply with all sections of this section.

(4) Immobilization shall be accomplished by placing a steel boot on the front wheel of the driver's side of the vehicle. The steel boot may be placed on any other wheel if placement on the front wheel on the driver's side is not feasible.

(5) Immediately after a vehicle is booted, the person booting such vehicle, the owner of the property where such vehicle was booted, or an employee or agent of such person or owner, shall affix at the rearmost portion of the window adjacent to the driver's seat of such vehicle, a sticker with a completely removable adhesive, measuring 8 1/2 by 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 booted such vehicle as well as a business telephone number which will facilitate the dispatch of personnel responsible for removing the boot.

(6) Any person who had booted a vehicle shall release such vehicle as soon as practical, but not to exceed thirty (30) minutes of receiving a request for such vehicle's release; provided however that payment of any charge for booting is made at or prior to the time of such vehicle's release.

(f) *Maximum rates for nonconsensual towing services.*

(1) The board shall establish by resolution maximum rates for nonconsensual towing services. The maximum rates established shall be uniform throughout unincorporated areas of the county. From time to time, the rates established by the board may be by resolution altered, revised, increased, or decreased.

(2) Persons who engage in nonconsensual towing services as described in and governed by this section shall not charge in excess of the maximum allowable rates established by the board, nor shall they charge any type of fees other than those for which the board has established maximum rates.

(3) Persons providing towing services on a rotation basis for third parties (such as law enforcement agencies) may be required by that third party to charge less than the maximum rates, or may be prohibited from charging for some of the types of services otherwise permitted by the county's maximum fee schedule. The county's rate schedule is not intended to serve as a minimum rate guarantee. A person providing towing services pursuant to a rotation schedule by a public service entity (such as a law enforcement agency) shall not charge in excess of the rates established by that entity, nor shall they charge any type of fees other than those for which the entity has established rates.

(g) *Signs and other notification to vehicle and vessel owners.*

(1) Subject to the exception contained in F.S. § 715.07(2)(a)5, any person who shall provide nonconsensual towing services with respect to the removal or immobilization of any vehicle located on real property shall meet the requirements set forth in F.S. § 715.07(2)(a)(5), and in addition must meet the following requirements:

a. *Notice on real property.*

1. The owner or custodian of the real property must post notice that maximum rates for all non-consensual towing services have been fixed by ordinance.

2. The notice must be prominently displayed at each, driveway access or curb cut allowing vehicular access to the property, within five feet of the public right-of-way line. If

there are no curbs or access barriers, not less than one (1) sign must be posted for each twenty-five (25) feet of lot frontage.

3. The notice must indicate clearly, in light-reflective letters, not less than one (1) inch high, on a contrasting background, the following: "Maximum Rates set by County Ord."

4. The notice must also provide the name and current telephone number of all persons authorized by the owner of the real property to perform nonconsensual towing services with respect to said real property.

5. The sign structure containing the required notices must be installed as a permanent fixture on the property, with the notices appearing not less than three feet and not more than six (6) feet above ground level, and must be installed prior to the entry on the real property of any vehicle to be immobilized or towed. The signs shall be posted on the right side of the entry (i.e., on the passenger side of a vehicle approaching the entrance), within five (5) feet of the entrance to the property.

6. The owner or custodian of real property may authorize the towing of a vehicle or vessel in the absence of any notice otherwise required to be posted on said real property if the vehicle or vessel is parked in such a manner as to obstruct any driveway or similar entrance or exit for the real property.

b. *Notice from persons providing nonconsensual towing services.*

1. Prior to imposing any charge involving the impounding, towing, immobilization or storage of a vehicle or vessel, persons performing nonconsensual towing services must provide to the owner or custodian of the vehicle a legible copy of this section and of the most recent resolution of the county board of county commissioners establishing maximum rates for nonconsensual towing services; and

2. Persons engaged in or advertising the business of performing nonsensual towing services must post at the storage site in a conspicuous location a legible copy of this section and of the most recent resolution of the county board of county commissioners establishing maximum rates for nonconsensual towing services. The ordinance and resolution must be posted in a manner such that the owner or custodian of the vehicle can readily examine the ordinance and resolution in their entirety prior to paying any charges.

(h) *Persons required to give written permission for towing services.* The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may give written permission to cause any vehicle or vessel parked on such property without his or her permission to be removed by a person regularly engaged in the business of towing vehicles or vessels. Law enforcement and emergency services personnel may give written permission for nonconsensual towing services when required for a public purpose. No person may cause any vehicle or vessel to be removed without such prior written permission as described in this section.

(i) *Storage location.* Any towed or removed vehicle or vessel must be stored at a site within a 15-mile radius of the point of removal. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle or vessel is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within one (1) hour or she or he will be in violation of this section. If no towing business providing such service has a storage facility located within a 15-mile radius of the point of removal, any towed or removed vehicle or vessel must be stored at a site within a 30-mile radius of the point of removal.

(j) *Notification to the county sheriff's department of towed vehicles.* The person or firm towing or removing the vehicle or vessel shall, within thirty (30) minutes after completion of such towing or removal, notify the sheriff of such towing or removal, the storage site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

(k) *Requirement to stop tow upon request.* A person in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is not lawfully parked must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in the resolution adopting maximum rates. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is unable to pay the service fee. If the vehicle or vessel is redeemed, a detailed signed receipt must be given to the person redeeming the vehicle or vessel.

(l) *Paying, accepting, or soliciting consideration for the right to tow.* A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location.

(m) *Providing rate schedules and contracts to the sheriff.* Any person or firm that tows or removes vehicles or vessels and proposes to require an owner, operator, or person in control of a vehicle or vessel to pay the costs of towing and storage prior to redemption of the vehicle or vessel must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles or vessels as provided in this section.

(n) *Identification of vehicles.* Any person or firm towing or removing any vehicles or vessels from private property without the consent of the owner or other legally authorized person in control of the vehicles or vessels shall, on any trucks, wreckers, or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least three-inch permanently affixed letters, and the address and telephone number shall be in at least one-inch permanently affixed letters.

(o) *Release of vehicles.* When a vehicle or vessel has been towed or removed pursuant to this section, it must be released to its owner or custodian within one hour after requested. No person shall inhibit or impede a vehicle or vessel owner or agent from inspecting the vehicle or vessel before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or other legally authorized person at the time of the redemption may be required from any vehicle or vessel owner, custodian, or agent as a condition of release of the vehicle or vessel to its owner. A detailed, signed receipt showing the legal name of the company or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges at the time of payment, whether requested or not. If an administrative fee is charged for the preparation, filing, or mailing of any required forms, the person paying the towing or storage charges shall be given a copy of the forms for which a charge was imposed.

(p) *Exemptions.* The requirements of this section do not apply to law enforcement, firefighting, rescue squad, ambulance, or other emergency vehicles or vessels that are

marked as such or to property owned by any governmental entity. The county administrator or his designee is expressly authorized to establish locations or spaces on county property where parking of vehicles or vessels is prohibited or restricted for certain designated persons or purposes, and to remove or have removed vehicles or vessels parked in violation. Such vehicles may be towed without the owners' consent by a private towing company, and such owners may be charged in accordance with the resolution setting maximum rates for nonconsensual private towing.

(q) *Enforcement and penalties for violations.*

(1) All law enforcement officials are hereby authorized to assist in the enforcement of this section to the extent that it is within their respective jurisdictions to do so.

(2) Should any person violate or fail to comply with any provision of this section, the state attorney or the office of the county attorney may make application to the circuit court for the Sixth Judicial Circuit of Florida for an order to enjoin such violation or failure of compliance, which order may be granted without the necessity of posting a bond.

(3) It shall be unlawful for any person or entity to violate or fail to comply with any provision of this section, any such violation shall be punishable by a fine not exceeding five hundred dollars (\$500.00) per violation or imprisonment for a term not to exceed six (6) months or both. Each day that any of the towing or storage rate provisions of this section are violated shall constitute a separate offense hereunder. Each unauthorized charge and/or overcharge shall constitute a separate offense.

(4) When a person, in violation of this section, improperly causes a vehicle to be removed, such person shall be liable to the owner or custodian of the vehicle for any cost of removal, transportation, and storage; any damage resulting from the removal, transportation, or storage of the vehicle, attorney's fees and court costs.

(5) The penalties described in this section shall be in addition to the abatement of the violating condition, any other equitable relief, or revocation of any permit or license by any governmental entity.

(Ord. No. 00-19, §§ 1--7, 11-21-00; Ord. No. 07-05, § 2, 3-27-05)