

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF ORDINANCES ENTITLED "TRAFFIC AND VEHICLES", ARTICLE XI "WRECKERS AND TOWING SERVICE" BY ADDING DIVISION 3 "NON-CONSENSUAL PRIVATE TOWING SERVICES", SECTIONS 70-701, 70-702, 70-703, 70-704, 70-705, 70-706, 70-707, 70-708, 70-709, 70-710, 70-711, 70-712 AND 70-713 TO PROVIDE FOR AUTHORITY, PURPOSE AND DEFINITIONS IN ENACTING REGULATIONS GOVERNING NONCONSENSUAL TOWS; PROVIDING FOR THE ISSUANCE OF OPERATING PERMITS; PROVIDING FOR THE SETTING OF RATES AND REQUIREMENTS FOR NON-CONSENSUAL TOWS; REQUIRING PRIOR EXPRESS INSTRUCTION OF REAL PROPERTY OWNER OR DULY AUTHORIZED AGENT PRIOR TO TOW; INSTITUTING NOTICE REQUIREMENTS FOR NON-CONSENSUAL TOW SERVICES; REQUIRING MAINTENANCE OF A MANIFEST AND RECORDS RETENTION; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City Commission finds it necessary for the protection of the public's health, safety and welfare to enact regulations governing nonconsensual tows; and

WHEREAS, the City Commission is expressly authorized to enact the provisions below in accordance with Florida Statute Sections 166.043(1)(b) and 715.07.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 70-701 is hereby created as follows:

Sec. 70-701. - Authority.

This division is enacted pursuant to the statutory power of City of Key West to establish and enforce business regulations necessary for the protection of the public, and pursuant to Florida Statutes, Sections 166.043(1)(b) and 715.07.

Section 2: That Section 70-702 is hereby created as follows:

Sec. 70-702. - Short title.

This division shall be known as "The Non-Consensual Private Towing Services Ordinance of the City of Key West."

Section 3: That Section 70-703 is hereby created as follows:

Sec. 70-703. Purpose.

The purpose of this division is to regulate non-consensual tows consistent with Federal and State laws and to create a mechanism for the establishment of maximum permissible rates which may be charged for the towing and storage of motor vehicles by private persons not acting at the behest of local, county, state, or federal government and without the consent of the vehicle owner or custodian of the vehicle.

Section 4: That Section 70-704 is hereby created as follows:

Sec. 70-704. - Definitions.

For purposes of this division, the following definitions shall apply:

Commission shall mean the City Commission of the City of Key West, Florida.

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

Division shall mean the City of Key West Parking Division. The duties of the Division hereunder may also be supplemented and/or exercised by the Key West Police Department and Licensing Department upon the direction of the City Manager.

Immobilizing shall mean rendering a vehicle incapable of being driven by means of a wheel-locking boot or other device.

Non-consent or Nonconsensual private towing services shall mean the immobilizing, towing and/or storage of a vehicle, without the prior express consent of the vehicle owner or custodian of the vehicle, by any person who is not acting pursuant to a contract with a unit of local, county, state, or federal government.

Owner shall mean that person who exercises dominion and control over a vehicle, 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 over 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 which has been towed under the authority of this division.

Towing shall mean taking possession of a vehicle 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, with or without booms, car carriers, winches, or similar equipment.

Vehicle shall mean an automobile, bus, motorcycle, recreational unit primarily designed as temporary living quarters which either has its own motive power or is mounted on or drawn by another vehicle, semi-trailer, semi-trailer combination, trailer, truck, truck tractor, van, or any other mechanized conveyance used to transport persons or property and designed to operate on public roads without a fixed track.

Section 5: That Section 70-705 is hereby created as follows:

Sec. 70-705. OPERATING PERMIT REQUIRED.

(a) It shall be unlawful for any person to recover, tow, remove or store a vehicle/vessel for compensation in the City or to cause or permit any other person for compensation to recover, tow, remove or store a vehicle/vessel in the City without first obtaining authorization under this division. It shall also be unlawful to advertise said services without first obtaining and maintaining a current and valid operating permit pursuant to the provisions of this division. A person conducting non-consent tows in the City but having his/her primary place of business outside of the City shall be required to obtain an operating permit and shall be subject to all the provisions of this division.

(b) Nothing in this division shall be construed to prohibit the discharge or storage of a vehicle lawfully recovered, towed or removed in another City or County and lawfully transported into the City; nor shall anything in this division be construed to prohibit a vehicle owner or authorized agent from requesting the services of a towing business not regularly doing business in the City (i.e., routinely, contracted, etc.) to tow or transport such vehicle out of the City.

(c) The provisions of this division shall not apply to governmental agencies, vehicle rental companies which tow their own vehicles, to businesses utilizing trucks capable of transporting five (5) or more vehicles at one (1) time, or to persons who use towing vehicles to transport their vehicles solely for personal, family, household or recreational use.

Section 6: That Section 70-706 is hereby created as follows:

Sec. 70-706. New applications/renewals and issuance of operating permit; fees.

(a) The Division shall issue a consent-only towing operating permit to tow truck companies which have met the

standards and requirements for an operating permit as provided for in this division.

(b) Every application/renewal for an operating permit shall be in writing, signed and verified by the applicant, and filed with the Division. The application/renewal shall be on a form prescribed by the Division and shall contain information, including but not limited to:

(1) Sufficient information to identify the applicant, including but not limited to, full legal name, date of birth, telephone numbers, the place of business and residence addresses, a copy of the applicant's City business tax receipt and Florida driver's license number. If the applicant is a corporation, the foregoing information shall be provided for each corporate officer, director, registered agent and shareholder. If the applicant is a partnership, the foregoing information shall be provided for each general and limited partner. Post office box addresses shall not be accepted.

(2) Documentation demonstrating that all corporate or partnership applicants are qualified under the laws of Florida to do business under the trade name or names under which it has applied for an operating permit.

(3) A list of all persons with any ownership interest in the company who have previously been denied an operating permit from this or any other jurisdiction.

(4) Verification of the business' current corporate status and fictitious name registration (if applicable) with the State of Florida.

(5) Any trade name under which the business operates, intends to operate, or has previously operated.

(6) The location and physical addresses of all places of business including storage facilities.

(7) A description of services proposed to be provided, including, but not limited to, days and hours of operation and types of towing and storage services to be provided.

(8) Proof of insurance. As proof of insurance, a certificate of insurance must be submitted on the company's behalf directly to the Division by the insurance company or agent.

(9) A signature of each individual applicant, president or vice-president of a corporation and of all the general and limited partners of a partnership having twenty-five (25) percent or greater ownership in the company.

(10) The submission of a statement assuring that each tow truck is commercially manufactured, meets the specifications listed herein, is in safe operating condition and receives routine service/maintenance.

(11) An agreement on the part of the applicant to abide by the provisions of this division and the laws of the State of Florida.

(12) Such additional information required by the Division to process the application/renewal.

(c) The Division shall review and investigate each application/renewal of an operating permit and shall deny any application/renewal that is incomplete or untrue in whole or in part, or which fails in any way to meet the requirements of this division including but not limited to the following:

(1) The applicant has been convicted of, found guilty of, or pled guilty or nolo contendere to, regardless of the adjudication of guilt, within the last ten (10) years involving: repossession of a motor vehicle under Florida Statutes, ch. 493, repair of a motor vehicle under Florida Statutes, §§ 559.901--559.9221, theft of a motor vehicle under Florida Statutes, § 812.014, carjacking under Florida Statutes, § 812.133, operation of a chop shop under

Florida Statutes, § 812.16, failure to maintain records of motor vehicle parts and accessories under Florida Statutes, § 860.14, airbag theft or use of fake airbags under Florida Statutes, § 860.145 or § 860.146, overcharging for repairs and parts under Florida Statutes, § 860.15, or violation of the towing or storage requirements for a motor vehicle under Florida Statutes, § 321.051, ch. 323, § 713.78, § 715.07, or any felony where use of a vehicle was involved in theft of property. In the case of a corporate or partnership applicant, all corporate officers and directors, or partners shall provide all such information, as the case may be.

(2) Any unsatisfied civil fines or penalties arising out of an administrative or enforcement action brought by the Division (including any cease and desist orders and/or assurances of voluntary compliance issued by the Division, Administrative or Judicial Tribunal) or another governmental agency based upon conduct involving a violation of this article or other towing regulations.

(3) Any criminal, administrative, or enforcement proceeding in any jurisdiction based upon conduct involving a violation of this article or other towing regulations. This paragraph shall apply to consent-only towing companies

when such proceedings from other jurisdictions relate to public safety.

(4) Any unsatisfied judgments entered in an action brought under this article.

(5) Has had its operating permit previously revoked by action of the Division or any other jurisdiction within two (2) years of the date of application. This paragraph shall apply to consent-only towing companies when such proceedings relate to public safety.

(d) All tow truck companies which desire to operate in the City must secure an operating permit and follow the permitting procedures described in this section prior to conducting business. If there are six (6) months or less remaining before the annual renewal period, the nonrefundable fee for the operating permit shall be fifty (50) percent of the approved fee, otherwise all other fees are applicable.

(e) Each operating permit issued pursuant to this section shall be valid and effective for one (1) year, terminating on December 31 of each year. After the initial implementation of this Ordinance, failure to submit an operating permit application and the required nonrefundable

fee for renewal by September 30 of each year will result in the assessment of a nonrefundable late fee. All fees shall be established by a resolution of the Commission.

(f) Tow truck companies failing to submit a complete and true application within thirty (30) calendar days after the Division's receipt of the application shall be denied an operating permit. Within ten (10) business days of receipt of the Division's notice of denial, such tow truck companies may refile a complete and true application and pay a nonrefundable application re-filing fee established by a resolution of the commission. Failure to refile an application within this ten-day period will result in the tow truck company being required to submit a new application and repaying the nonrefundable application permit fee and applicable tow truck decal fees. The failure to refile and pay the required fees will result in the denial of the operating permit application for that licensing period.

(g) After initial application and upon renewal, the applicant shall submit to a background investigation every other year.

(h) Each operating permit shall be printed on a certificate containing, at a minimum, the name and address of the company, the name of the principal, the dates the operating permit is in effect, and the identifying number assigned by the Division to the company. The operating permit certificate issued by the Division shall remain the property of the City of Key West and shall be used only under the authority of the division.

(i) All operating permits shall be renewed annually. As a part of the renewal process, the original application shall be updated and verified by the applicant. Each updated renewal application shall be accompanied by a nonrefundable fee. All operating permits which are not renewed shall automatically expire upon the expiration date of the operating permit, as stated on the operating permit, and all recovery, towing, removing and storage services permitted shall cease immediately. The Division shall deny each renewal application that is not timely, is incomplete, is untrue in whole or in part, is unaccompanied by the required fees, or results in a determination by the Division that the applicant has failed to satisfy the requirements of this article.

(j) An operating permit issued or renewed pursuant to the provisions of this section shall not be transferable, nor shall the ownership structure of the operating permit be so modified as to constitute a change in the control or ownership of the operating permit. If the business changes its name or ownership structure, a new business permit application and the business application permit fee shall be submitted to the division within forty-five (45) days of said change. In cases where the name of the business changes, the new business will be required to have each vehicle inspected and must also pay decal/vehicle fees.

(k) Failure to comply with the provisions of this division may result in denial of an operating permit, revocation or suspension of the operating permit, a denial of renewal of such operating permit, issuance of a civil citation, a criminal conviction and/or other such remedies available to the Division herein.

Section 7: That Section 70-707 is hereby created as follows:

Sec. 70-707. - Maximum rates for nonconsensual towing services.

(a) The Commission shall, by resolution establish maximum rates, as may be amended from time to time, for non-consent towing services as follows:

(1) Towing service per call, which shall include the first thirty (30) minutes that the tow truck is actually on the scene engaged in the safe removal of a vehicle/vessel.

(2) Mileage (per towed mile) according to Florida Statutes, § 715.07.

(3) Storage may be charged only after the vehicle has been in the storage facility for at least six (6) hours. If the vehicle was not recovered by the vehicle/vessel owner or authorized driver/agent after the six-hour time period has elapsed, then storage charges shall accrue in twenty-four-hour increments from the time the vehicle/vessel arrived in the storage facility.

(4) Indoor storage rates may only be charged upon the express direction and written authorization of the owner/authorized driver/agent, lien holder, insurance company representative or investigating police agency.

The only exceptions to this rule are:

a. When the condition of the vehicle requires indoor storage due to inclement weather

conditions or the vehicle's window(s) and/or convertible top is down and cannot be raised and indoor storage is necessary to protect the vehicle and its contents; or

b. When a municipal or county jurisdiction require indoor storage for towed vehicles.

(5) An administrative/lien fee shall only be charged after the vehicle/vessel has been in the storage facility for at least twenty-four (24) hours and:

a. The non-consent tow truck company must show proof that lien letter(s) have been prepared with the appropriate names/addresses (i.e., U.S. Mail Certification Number, correspondence copies, etc.) and that actual fees for obtaining required ownership information have been expended. Failure to document and provide all of the above required information will result in administrative/lien fee charges being removed from the total cost of the service/invoice and is a violation of this division.

(6) Underwater recovery performed by a certified/professional driver with the written documentation and approval of any investigating law enforcement agency/officer.

(7) Hazardous material clean-up and disposal as required, mandated and/or licensed through federal, state or local laws and approved by the investigating law enforcement agency/officer.

(8) After-hour gate fees may not be applied between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday (excluding federal holidays) and not for six (6) hours after a vehicle has been impounded or when the owner or authorized driver/agent wishes to recover property from an impounded vehicle/vessel.

(9) Extra time at scene/labor charge may be applied when any extra time beyond one-half (1/2) hour, is needed to safely remove a vehicle or 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 time/labor shall be documented by the tow truck driver and shall include the name of the law enforcement agency and the law enforcement agency case number or the officer's name and badge number. The documentation shall also include a detailed explanation of the services rendered which necessitated the charges and if possible photographs of the scene. Extra time shall be charged in 15-minute

increments. Failure to document and provide all of the above required information will result in the extra time/labor charges being removed from the total cost of the service/invoice and is a violation of this division.

(b) Persons who provide services pursuant to this division shall not charge in excess of the maximum allowable rates established by the Commission. No person providing services pursuant to this section shall charge any type of fee other than the rates for which the commission has specifically established. Tow truck companies which tow vehicles/vessels from the City to a location outside the City shall abide by the terms of this division including all rates and charges adopted by the Commission.

(c) Each tow truck company shall maintain, on a form approved by the division, a rate sheet specifying all rates and charges, which shall be given by the tow truck driver to the requesting vehicle/vessel owner or his authorized driver/agent prior to commencing the service.

Section 8: That Section 70-708 is hereby created as follows:

Sec. 70-708. Non-consent tow truck company requirements.

(a) Non-consent tow truck companies providing services pursuant to this division shall not do so when there is a person occupying the vehicle/vessel.

(b) Non-consent tow truck companies providing services pursuant to this division shall transport the vehicle/vessel directly to the storage facility of the tow truck company providing the service, to such other location expressly directed by the vehicle owner or authorized driver/agent. When the vehicle owner or authorized driver/agent expressly authorizes the vehicle to be towed to a location other than the tow truck company storage facility, the tow truck driver must:

(1) Provide a "not to exceed" estimate in writing of all the rates and fees that will be assessed for the tow or negotiate a consent-only towing agreement; and

(2) Disclose in writing the three (3) methods of payment and come to a mutually agreed time as to how and when the towing company will be compensated.

(c) It is a violation of this division for a non-consent tow truck company to keep or stage impounded

vehicles/vessels in any temporary area or holding facility prior to the transportation of the vehicle to its approved storage facility.

(d) Non-consent tow truck companies which provide services pursuant to this division shall file and keep on record with the division a complete copy of all current rates charged for the recovery, towing or removal of vehicles/vessels and storage provided in connection therewith. Such persons shall also display prominently at each storage facility the following information: signage which identifies the name of the towing company, a schedule of all charges and rates for removal of vehicles/vessels for private property impounds; a statement that these rates do not exceed those rates filed with the division and are in accordance with the provisions of this division and the rights afforded to a vehicle owner or authorized driver/agent pursuant to Florida Statutes. The above information shall be posted prominently in the area designated for the vehicle/vessel owner or authorized driver/agent to transact business. Such area shall provide shelter, safety and lighting adequate for the vehicle/vessel owner or authorized driver/agent to read the posted rate schedule. Further, notice shall be posted

advising the vehicle/vessel owner or authorized driver/agent of the right to request and review a complete schedule of charges and rates for towing services for the jurisdiction in which the tow was made, and that the tow truck company is permitted by the Division noting the Division's telephone number, address and business hours.

(e) Non-consent tow truck companies shall provide signage on the property clearly visible from the street, (unless otherwise prohibited by local zoning laws) with at least three (3) inch letters on a contrasting background with the name and phone number of the tow truck company.

(f) Non-consent tow truck companies which provide services pursuant to this division shall advise any vehicle/vessel owner or authorized driver/agent who calls by telephone prior to arriving at the storage facility of the following:

(1) Each and every document or other item which 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; and

(4) The hours and days the storage facility is open for regular business.

(g) Non-consent tow truck companies which provide services pursuant to this division shall allow every vehicle/vessel owner or authorized driver/agent to inspect the interior and exterior of the towed vehicle upon his or her arrival at the storage facility before payment of any charges (except for "after-hour gate fee"). With the exception of vehicle being held pursuant to the specific request or "hold order" of a law enforcement agency, the vehicle/vessel owner or authorized driver/agent shall be permitted to remove the vehicle license tag and any and all personal property inside but not affixed to the vehicle/vessel. A vehicle/vessel owner who shows a government issued photo identification shall be given access to view ownership documents stored in the vehicle/vessel. The vehicle/vessel and/or personal property shall be released to the vehicle/vessel owner if the ownership documents are consistent (name and address) with the photo identification. When a vehicle/vessel owner's government issued identification and ownership documents are stored inside the impounded vehicle due to unforeseen circumstances, the tow truck company shall be required to

recover the ownership documents stored in the impounded vehicle (i.e., glove compartment, sun visors, etc.) upon receipt of a vehicle/vessel key, vehicle access code, or electronic device from the vehicle/vessel owner that would allow entry. The vehicle/vessel and/or personal property shall be released to the vehicle/vessel owner if the ownership documents are consistent with the photo identification.

(h) Non-consent tow truck companies which provide services pursuant to this division shall accept payment for charges from the vehicle/vessel owner or authorized driver/agent in all the following forms:

- (1) Cash, money order or valid traveler's check; and
- (2) Valid bank debit/credit card, which shall include, but not be limited to, MasterCard or VISA, that is in the name of the vehicle/vessel owner or authorized driver/agent; and
- (3) Valid personal check showing on its face the name and county address of the vehicle/vessel owner or authorized driver/agent.

A tow truck company/driver shall not reject any of the above forms of payment. A vehicle/vessel owner or authorized driver/agent shall not be required to furnish

more than one (1) government issued form of picture identification when payment is made by valid bank debit/credit card or personal check, and said presentation shall constitute sufficient identity verification.

(i) Non-consent tow truck companies which provide services pursuant to this division shall not store or impound a towed vehicle/vessel at a distance which exceeds a ten-mile radius of the location from which the vehicle/vessel was recovered, towed or removed unless no towing company providing services under this division is located within a ten-mile radius, in which case a towed or removed vehicle/vessel must be stored at a site within twenty (20) miles of the point of removal.

(j) Non-consent tow truck companies which provide services pursuant to this division shall maintain one or more storage facilities, each of which shall maintain a current business tax receipt and when applicable a municipal business tax receipt. The business shall be open for the purpose of redemption of vehicles/vessels by owners or authorized drivers/agents on any day that the tow truck company is open for towing purposes from at least 8:00 a.m. to 6:00 p.m., Monday through Friday and, when closed, shall

have posted prominently on the exterior of the storage facility and place of business, if different, a notice indicating a telephone number where the tow truck company can be reached at all times. Upon request of the vehicle/vessel owner or authorized driver/agent, the tow truck company shall release the vehicle/vessel to the vehicle/vessel owner or authorized driver/agent within one (1) hour.

(k) Non-consent tow truck companies shall not, as a condition of release of the vehicle/vessel, require a vehicle/vessel owner or authorized driver/agent to sign any release or waiver of any kind which would release the tow truck company from liability for damages noted by the vehicle/vessel owner or authorized driver/agent at the time of the vehicle's/vessel's release. A detailed, signed receipt showing the legal name of the tow truck company removing the vehicle/vessel shall be given to the vehicle/vessel owner or authorized driver/agent at the time of payment, whether requested or not.

(l) Non-consent tow truck companies which provide services pursuant to this division shall release vehicles/vessels towed or removed to the vehicle/vessel

owner or authorized driver/agent provides proof of ownership documents. Proof of ownership documents shall include:

- (1) Current vehicle registration;
- (2) Vehicle title;
- (3) An authorized driver/agent with a notarized release from the vehicle/vessel owner or lien holder. Vehicle/vessel owners have the right to identify/approve designated agents to claim vehicles on their behalf. A facsimile or electronic transfer of a notarized release statement from the vehicle/vessel owner shall be accepted;
- (4) Insurance card with the vehicle/vessel owner's information and vehicle description;
- (5) Licensed dealer in possession of an auction buyer's sales invoice; and/or
- (6) A notarized bill of sale for non-titled vehicles or vessels.

(m) Non-consent tow truck companies which provide services pursuant to this division shall make a "good faith effort" to locate the vehicle/vessel owner or lien holder. For the purposes of this paragraph and subsection, a "good faith effort" means that the required steps have been performed by the tow truck company according to Florida

Statutes, § 713.78(4)(d). Failure to make a "good faith effort" to comply with the notification requirements of this section shall preclude the imposition of any storage charges against such vehicle or vessel.

(n) Non-consent tow truck companies which provide services pursuant to this division and found to be in violation of this division relating to a specific non-consent tow shall be required to immediately reimburse the vehicle/vessel owner all illegal or over charges related to that towing incident. Failure to reimburse the owner of the vehicle/vessel in such cases is a violation of this division.

(o) Any non-consent towing company that has an unusable storage yard or has been evicted from its storage yard is subject to having its operating permit suspended.

(p) It shall be a violation of this division for any non-consent towing company to fail to respond in writing within ten (10) business days to any written inquiry or request for information from the division or any law enforcement agency.

Section 9: That Section 70-709 is hereby created as follows:

Sec. 70-709. Non-consent towing with prior express instruction of real property owner or duly authorized agent and/or law enforcement agency.

In addition to the other requirements of this division, no tow truck company shall, for compensation, recover, tow, or remove a vehicle/vessel or provide storage in connection therewith without the prior express instruction of the vehicle/vessel owner or authorized driver, except in accordance with the following:

(a) Police directed tow. Non-consent tow truck companies, in accordance with applicable provision of the Code of Ordinances of the City of Key West, may for compensation recover, tow or remove a vehicle/vessel based upon a police directed tow without the prior express instruction of the vehicle/vessel owner or authorized driver upon the prior express instruction of a law enforcement agency and in accordance with the terms of any contracts or agreements between the tow truck company and a governmental entity and/or law enforcement agency.

(b) Private/public property impound. Non-consent tow truck companies may for compensation recover, tow or remove

a vehicle/vessel on a private/public property impound without the prior express instruction of the vehicle/vessel owner or authorized driver, upon the prior express instruction of the real property owner or his duly authorized agent on whose property the vehicle/vessel is disabled, abandoned or parked without authorization or whose vehicle/vessel owner or authorized agent is unwilling or unable to remove the vehicle/vessel, provided that the requirements of this division are satisfied. The non-consent tow truck company recovering, towing or removing a vehicle/vessel shall, within thirty (30) minutes of completion of such towing or removal, notify the appropriate law enforcement agency in which jurisdiction the vehicle/vessel was parked of the nature of the service rendered, the name and address of the storage facility where the vehicle/vessel will be stored, the time the vehicle was secured to the towing vehicle, and the make, model, color and vehicle/vessel license plate number (if any). The non-consent tow truck company shall obtain the name of the person at the law enforcement agency to whom such information was reported and note that name on the trip record.

(c) Except as otherwise provided in this division, every prior express instruction made in writing or in person shall indicate the date and time of the instruction and shall be signed by the real property owner/duly authorized agent in the physical presence of the tow truck company providing the service at the time the towing services are performed. The real property owner/the duly authorized agent shall also print his/her full name. Prior express instruction (signed/printed name and date) must be provided on the manifest, towing invoice or tow sheet in the presence of the driver. Pre-authorization or post-authorization for prior express instruction is a violation of this division and shall result in the issuance of a citation and/or suspension or revocation of the operating permit.

(d) Signing in the presence of the non-consent tow truck company/driver shall not be required for an express instruction made by the real property owner or authorized agent forwarded by facsimile transmission. All other requirements of this division shall apply and the real property owner or duly authorized agent shall provide in the facsimile instruction the specific location (i.e., address, parking space, etc.), color of the vehicle, make

and/or model of the vehicle (if visible) and either the license tag number or the vehicle identification number (if available) prior to the vehicle/vessel being towed. Such facsimile instruction shall include the real property owner's or authorized agent's signature and printed or typed full name and title, as well as an electronic confirmation or electronic stamp of the date and time the instruction was sent to the tow truck company. The tow truck company, in compliance with section 70-712 (records required) of this division, shall maintain copies of facsimile instructions. Failure of the non-consent tow truck company to act on a faxed instruction within twenty-four (24) hours of an expressed instruction from the property owner or designee shall require the issuance of a new facsimile or express authorization. Acting on an incomplete facsimile from the property owner is a violation of this division.

(e) No non-consent tow truck company/driver shall pay or rebate money, or solicit or offer the rebate of money, or other valuable consideration in order to obtain the privilege of rendering towing services.

(f) Except as otherwise provided in this division, no such prior express instruction shall be considered to have been given:

1) by the mere posting of signage as required by section 70-710 (notice requirements for providing non-consent tow services at request of real property owners);

2) by virtue of the terms of any contract or agreement between a tow truck company and a real property owner;

3) when the prior express instruction occurs in advance of the actual unauthorized parking of the vehicle/vessel; or

4) where the prior express instruction is general in nature and unrelated to specific, individual and identifiable vehicles/vessels which are already parked without authorization.

(g) Each non-consent tow truck company shall enter into a written contract with every owner or duly authorized agent (as defined herein) of private property that authorizes the non-consent tow truck company to tow vehicles/vessels on or from its property. This written contract shall include the beginning date of said contract, the names of all persons who can authorize prior express instruction to the tow truck company to remove, recover or tow any vehicle/vessel

on or from its property. The written contract shall include the name and current telephone number of the tow truck company performing the towing service, and the name, address and telephone number for any duly authorized agents acting on behalf of the real property owner. The written contract for non-consent towing shall also include a clear understanding of liability for the real property owner as stated in Florida Statutes, § 715.07(4) and shall include the following wording, "When a person improperly causes a vehicle or vessel to be removed, such person shall be liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney's fees; and court costs." No such contract shall state that the non-consent tow truck company assumes the liability for improperly towed vehicles/vessel, contrary to Florida Statutes, § 715.07(4). Any addendum to the contract shall include additional names and titles as necessary. The non-consent tow truck company must keep on file each contract and addendum (if applicable) with the property owner. Such contract shall be maintained for at least twelve (12) months after termination. The Division and law enforcement officers may inspect and request a copy of any and all such

contracts from the non-consent tow truck company during normal business hours. The non-consent tow truck company may not withhold production of the contract upon demand by the Division or law enforcement. Failure to enter into or keep on file a contract with the property owner shall be a violation of this division. All contracts which were entered into prior to the effective date of this division, shall accomplish the requirements of this subsection by entering into an addendum to the current contract within three (3) months following the enactment of this division.

Non-consent tow truck companies may not enter into a written contract with the owner of private property that authorizes the tow truck company to tow vehicles/vessels from the real property owner's property to the storage yard where the mileage restrictions have been exceeded contrary to Florida Statutes, § 715.07(2)(a)1, as may be amended from time to time.

(h) Real property owners or authorized representatives shall not request the recovery, tow or the removal of vehicles/vessels that are reasonably identifiable from markings or equipment as law enforcement, fire fighting, rescue squad, ambulance, or other emergency vehicles/vessels which are marked as such.

(i) Any person who improperly causes a vehicle/vessel to be recovered, towed, removed or stored shall be liable to the vehicle owner or authorized representative for the costs of the services provided, any damages resulting from the recovery, towing, removal or storage and attorney's fees and court costs in accordance with Florida Statutes.

Section 10: That Section 70-710 is hereby created as follows:

Sec. 70-710. Notice requirements for providing non-consent tow services

(a) In addition to the other requirements specified in this division, and subject to the exceptions contained in Section 715.07(2)(1)5 of the Florida Statutes, any person who provides nonconsensual private towing services with respect to the removal of any vehicle located on real property shall comply with the following requirements:

(1) Notice shall be prominently posted on the real property from which the vehicle/vessel is proposed to be removed and shall fulfill the following requirements:

a. A light reflective sign shall be prominently placed at each driveway access/entrance or curb cut allowing vehicular access to the real property, within five (5) feet from the public right-of-way line. If

there are no curbs or access barriers, signs shall be posted not less than one (1) sign each twenty-five (25) feet of lot frontage. The sign shall be permanently installed not less than three (3) feet and not more than six (6) feet above ground level and shall be continuously maintained on the real property for not less than twenty-four (24) hours prior to the towing or removal of any vehicle/vessel(s).

b. The light reflective sign shall clearly display in not less than 2-inch high letters on a contrasting background, the words: "UNAUTHORIZED VEHICLES/VESSELS WILL BE TOWED AWAY AT THE OWNER'S EXPENSE." The words "TOW-AWAY ZONE" must be included on the light reflective sign in not less than four-inch high letters on a contrasting background;

c. The light reflective sign shall clearly indicate, in not less than two-inch high letters on a contrasting background, the days of the week, and hours of the day during which vehicles/vessels will be towed away at the owner's expense; and the name and current telephone number of the tow truck company performing the towing service.

d. Pursuant to Section 715.07(2)(a)5.e of the Florida Statutes and applicable City Ordinances, a

permit is required before the owner or custodian of any real property may erect any sign required by this division.

(2) Light reflective signs must be maintained or replaced so that they are clearly visible, legible and light reflective at all times. The towing company is responsible for maintaining and replacing signs. In the event the tow truck company goes out of business or is no longer performing tow services for the real property owner, the real property owner is responsible for removal of signs. Failing to provide, maintain, replace and/or remove the signs in accordance with this section is a violation of this division and shall preclude the imposition of any charges for vehicles/vessels towed while such defect exists.

(3) The posting of notice requirements of this section shall not be required where:

a. The real property on which a vehicle/vessel is parked is property appurtenant to and obviously part of a single-family type residence;

b. Written notice is personally given to the vehicle/vessel owner or authorized driver/agent that

the real property on which the vehicle/vessel is or will be parked is reserved or otherwise not available for unauthorized vehicles/vessels and is subject to being removed at the vehicle/vessel owner's expense.

c. The vehicle subject to removal is parked in such a manner as to obstruct any driveway or similar entrance or exit for the real property.

(b) Except as otherwise provided herein, when any real property owner instructs that a vehicle/vessel be recovered, towed, removed from his or her property and stored, s/he or a designated representative shall sign the tow ticket authorizing the tow. Immediately upon request, and without demanding compensation, the real property owner shall inform the vehicle/vessel owner or other authorized person in control of the vehicle/vessel of the name and address of the non-consent tow truck company that has recovered, towed or removed the vehicle/vessel.

(c) If the vehicle/vessel owner or authorized driver/agent arrives at the scene prior to the vehicle/vessel being removed or towed from the property, the vehicle/vessel shall be disconnected from the tow truck and the vehicle/vessel owner or authorized driver/agent shall be allowed to remove the vehicle/vessel without

interference upon the payment of a reasonable service fee of not more than one-half (1/2) of the posted rate for such towing service (drop charge), for which a receipt shall be given, unless that person refuses to remove the vehicle/vessel which is unlawfully parked. The bill/invoice must be presented to the vehicle/vessel owner authorized/driver/agent prior to request for the payment. Non-consent tow truck companies are not authorized to apply a fee in cases where the owner of the vehicle/vessel arrives on the scene prior to a complete mechanical hook-up (road-worthy) between the tow truck and the vehicle/vessel. In the event the owner/driver of the vehicle/vessel is occupying the vehicle/vessel and refuses to vacate same, in addition to the drop charge, the tow truck company/driver is permitted to charge extra time at the scene where law enforcement involvement is necessary and the tow truck driver obtains the name of the law enforcement agency, case number of the law enforcement agency and if possible the name and badge number of the investigating law enforcement officer. The tow truck driver shall also prepare detailed documentation/explanation as to why "extra time at scene" charges were required. All documentation shall be provided to the vehicle/vessel owner or representative upon demand. Such fee shall be approved by resolution of the commission.

Section 11: That Section 70-711 is hereby created as follows:

Sec. 70-711. Non-consent manifest, towing invoice, or tow sheet.

(a) It shall be unlawful for any person providing non-consent towing services to recover, tow or remove a vehicle/vessel or provide storage in connection therewith unless the person providing such service shall maintain in his possession a manifest, towing invoice, tow sheet or dispatch records which shall include, but not be limited to, the following information:

- (1) Name of the tow truck company and of the tow truck operator physically providing the service;
- (2) City of Key West Decal number (if instituted) of the towing vehicle used to provide the service;
- (3) Name, address and telephone number of the person requesting the service, except as provided in section 19-194(e) (non-consent towing with prior express instruction of real property owner or duly authorized agent and/or law enforcement agency);
- (4) Prior express instruction (signed and dated) of the real property owner provided in the presence of the tow truck driver recovering, towing or removing

the vehicle/vessel except as provided in subsection (a) above.

(5) Date and time the tow truck arrived at the location where the service is to be performed;

(6) Date and time of release to vehicle/vessel owner or authorized agent;

(7) Location at which the service originated;

(8) Destination to which the vehicle/vessel being provided the service is taken and the time of arrival at the destination;

(9) Description of vehicle/vessel being provided the service, including make, model, year (if known), color, vehicle/vessel identification number (if visible) and license plate number, if any;

(10) Description of services provided;

(11) The total charges listed individually and specifically as well as the description of the services rendered;

(12) When an "extra time/labor at scene" charge is applied, the tow truck driver shall obtain and provide the name of the law enforcement agency and agency case number. In lieu of the case number, the badge number and name of the investigating law enforcement officer on the scene must be provided. A detailed explanation

of the services rendered which necessitated the charges shall also be recorded and provided to the vehicle/vessel owner or representative upon demand.

(13) The following disclosure in bold capitalized letters of at least twelve-point type:

IF YOU HAVE QUESTIONS OR COMPLAINTS ABOUT NON-CONSENT TOWS UNABLE TO BE RESOLVED BY THE TOWING COMPANY MANAGEMENT, CONTACT THE CITY OF KEY WEST PARKING DIVISION, TELEPHONE: (305) 809-3864.

COMPANIES PERFORMING NON-CONSENT TOWS IN THE CITY OF KEY WEST ARE REQUIRED TO ACCEPT ALL OF THE FOLLOWING FORMS OF PAYMENT:

1. CASH, MONEY ORDER OR VALID TRAVELER'S CHECK; AND
2. VALID BANK DEBIT/CREDIT CARD, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, MASTERCARD OR VISA, THAT IS IN THE NAME OF THE VEHICLE/VESSEL OWNER OR AUTHORIZED DRIVER/AGENT; AND
3. VALID PERSONAL CHECK SHOWING ON ITS FACE THE NAME AND FLORIDA ADDRESS OF THE VEHICLE/VESSEL OWNER OR AUTHORIZED DRIVER/AGENT.

(b) Each original manifest, towing invoice, or tow sheet shall be available for inspection and a copy provided upon demand by law enforcement officers, by personnel authorized

by the division to perform enforcement duties or to the vehicle vessel owner or his/her authorized driver/agent.

Section 12: That Section 70-712 is hereby created as follows:

Sec. 70-712. Records required.

Each tow truck company shall maintain accurate and complete records including but not limited to, manifests, towing invoices, or tow sheets for services rendered. When photographs are taken of vehicles/vessels, the vehicle/vessel owner and the division shall have access to such photos for the purpose of inspection and/or copying. Such records and photographs shall be maintained for at least three (3) years for services related to non-consent towing services and for one (1) year for services related to consent-only towing services. The Division shall be granted access to these records for inspection and/or copying, during regular business hours, upon twenty-four-hours prior notice.

Section 13: That Section 70-713 is hereby created as follows:

Sec. 70-713. - Enforcement and penalties for violations.

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

(b) It shall be unlawful for any person or entity to violate or fail to comply with any provision of this division, and any such violation shall be punishable in accordance with section 1-15 of the Code of Ordinances for the City of Key West. Each day that any of the towing or storage rates provisions of this division are violated shall constitute a separate offense hereunder.

(c) The penalties described in subsection (b) of 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. Should any person violate or fail to comply with any provision of this division, the office of the city attorney may make application to the circuit court for the Sixteenth Judicial Circuit of Florida for an order to enjoin such violation or failure of compliance.

Section 14: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent

jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 15: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 16: This Ordinance shall go into effect two months its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a meeting held this _____ day of _____, 2010.

Read and passed on final reading at a meeting held this _____ day of _____, 2011.

Authenticated by the presiding officer and Clerk of the Commission on _____ day of _____, 2011.

Filed with the Clerk _____, 2011.

CRAIG CATES, MAYOR

Attest:

CHERYL SMITH, CITY CLERK