

PROPOSED

ORDINANCE NO. 2016-

1 AN ORDINANCE OF THE BOARD OF COUNTY
2 COMMISSIONERS OF BROWARD COUNTY, FLORIDA,
3 PERTAINING TO REGULATION OF VEHICLE TOWING
4 AND IMMOBILIZATION; AMENDING VARIOUS SECTIONS
5 OF CHAPTER 20 OF THE BROWARD COUNTY CODE OF
6 ORDINANCES ("CODE"); UPDATING TERMINOLOGY,
7 CHANGING ENFORCEMENT PROCEDURES, AND
8 EFFECTUATING OTHER CHANGES, INCLUDING THE
9 ADDITION OF A HEARING OFFICER, NEW GROUNDS
10 FOR LICENSURE REVOCATION OR NONRENEWAL,
11 REQUIREMENTS FOR REIMBURSEMENT OF
12 EXCESSIVE OR UNAUTHORIZED FEES, AND ALLOWING
13 CREDIT CARD FEES; AND PROVIDING FOR
14 SEVERABILITY, INCLUSION IN THE CODE, AND AN
15 EFFECTIVE DATE.

16 (Sponsored by the Board of County Commissioners)

17 WHEREAS, the Board of County Commissioners of Broward County, Florida
18 ("Board"), on October 14, 2014, repealed Sections 20-176.12 through 20-176.35 of the
19 Broward County Code of Ordinances ("Code") and enacted new towing and
20 immobilization regulations ("Towing and Immobilization Ordinance"); and

21 WHEREAS, the Board desires to amend the Towing and Immobilization
22 Ordinance to update terminology, change enforcement procedures, including the
23 addition of a hearing officer, and effectuate other changes; and

24 WHEREAS, the Board finds that the implementation of this Ordinance, as set
forth herein, promotes, protects, and improves the health, safety, and welfare of the
people of Broward County, Florida.

25 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
26 BROWARD COUNTY, FLORIDA:

1 Section 1. Section 20-176.12 of the Broward County Code of Ordinances is
2 hereby amended to read as follows:

3 **Sec. 20-176.12. Definitions.**

4 (a) Advertise shall mean to describe or draw attention to a commercial service
5 in a public medium, whether electronic, on the internet, or otherwise, and includes, but
6 is not limited to, business cards, business stationery, business proposals, contracts,
7 construction site signs, all newspapers, airwave transmissions (other than internal
8 company communications), classified telephone directories, handbills, billboards, flyers,
9 shopping and service guides (coupon offerings), magazines (including trade association
10 publications), classified advertisements, and signs on vehicles.

11 (a) (b) Board shall mean the Board of County Commissioners of Broward County,
12 Florida.

13 (b) (c) Consent tow shall mean the towing of a vehicle with the consent of the
14 vehicle owner.

15 (c) Consumer Protection Board shall mean the board established by
16 Section 20-167 of the Broward County Code of Ordinances.

17 (d) Director shall mean the Director of the Broward County Environmental
18 Licensing and Building Permitting Division or any successor agency, or the Director's
19 designee.

20 (e) Division shall mean the Broward County Environmental Licensing and
21 Building Permitting Division, or any successor Broward County agency.

22 (f) Employee shall mean any natural person who is compensated financially
23 and issued an annual federal tax statement of earnings (W-2 Form).

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(g) *Immobilize* shall mean the act of installing a mechanical device to the wheel or tire of a parked vehicle so as to prevent its usual manner of movement.

(h) *Lot monitoring services* shall mean the surveillance of a parking lot for the purpose of determining if vehicles are parking in violation of the rules of the subject parking lot, the regulations provided herein, or any other local rule, law, or ordinance.

(h) (i) *Nonconsent tow* shall mean the towing of a vehicle without the consent of the vehicle owner.

(ii) *Person* shall mean any natural person, firm, partnership, association, corporation, or other legal entity of any kind whatsoever, including government agencies.

(4) (k) *Police directed tow* shall mean the towing of a vehicle at the direction of a police officer or police agency.

(k) (1) *Property owner* shall mean any person who exercises lawful dominion and control over real property upon which a vehicle is parked, including, but not limited to, the legal title holder or lessee, and any person designated by and acting on behalf of such person pursuant to a contractual, employment, or fiduciary relationship to such person relating to the towing or immobilization of vehicles (e.g., board member of a homeowner's association or employee of a property management company).

(4) (m) *Store* shall mean to place and leave a towed vehicle at a location where the person providing towing service exercises control, supervision, and responsibility over the vehicle.

(m)(n) *Tow* shall mean to remove, haul, draw, or pull along a vehicle by means of another vehicle equipped with booms, car carriers, winches, or similar equipment.

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1 (n) (o) *Towing class* shall mean the type of towing vehicle, equipment, or
2 apparatus used to tow vehicles. The towing classes shall be distinguished as follows:

3 (1) *Class A* tow truck, including flatbed slideback carrier: minimum ratings (as
4 applicable):

a.	Gross vehicle weight ratings	10,000 lbs.
b.	Boom capacity	8,000 lbs.
c.	Winching capacity	8,000 lbs.
d.	Cable size and length	3/8" x 100'
e.	Wheel lift retracted rating	6,000 lbs.
f.	Wheel lift extended ratings	4,000 lbs.
g.	Tow sling safe lift rating	3,500 lbs.
h.	Safety chains (2 each)	5/16" high test
i.	Cab to axle dimension	58"

15 (2) *Class B* tow truck, including flatbed slideback carrier: minimum ratings (as
16 applicable):

a.	Gross vehicle weight ratings	19,000 lbs.
b.	Boom capacity	24,000 lbs.
c.	Winching capacity	24,000 lbs., <u>except only</u> <u>8,000 lbs. for flatbed</u> <u>slideback carrier</u>
d.	Cable size and length	1/2" x 200'
e.	Under-reach retracted rating	9,000 lbs.

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1	f.	Under-reach extended ratings	7,000 lbs.
2	g.	Tow sling safe lift rating	8,500 lbs.
3	h.	Safety chains (2 each)	3/8" alloy
4	i.	Cab to axle dimension	84"

5 (3) Class C tow truck, including flatbed slideback carrier: minimum ratings (as
6 applicable):

7	a.	Gross vehicle weight ratings	30,000 lbs.
8	b.	Boom capacity	50,000 lbs.
9	c.	Winching capacity	50,000 lbs., <u>except only</u> <u>15,000 lbs. for flatbed</u> <u>slideback carrier</u>
10	d.	Cable size and length	5/8" × 200'
11	e.	Under-reach retracted rating	25,000 lbs.
12	f.	Under-reach extended ratings	12,000 lbs.
13	g.	Tow sling safe lift rating	12,000 lbs.
14	h.	Safety chains (2 each)	1/2" alloy
15	i.	Cab to axle dimension	144"

19 (4) Class D tow truck, including flatbed sidecar carrier: minimum ratings (as
20 applicable):

21	a.	Gross vehicle weight ratings	58,000 lbs.
22	b.	Boom capacity	70,000 lbs.
23	c.	Winching capacity	70,000 lbs., <u>except only</u>

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		<u>15,000 lbs. for flatbed sideback carrier</u>
d.	Cable size and length.....	3/4" x 200'
e.	Wheel lift retracted rating	45,000 lbs.
f.	Wheel lift extended rating	15,000 lbs.
g.	Tow sling safe lift rating	12,000 lbs.
h.	Safety chains (2 each)	1/2" alloy
i.	Cab to axle dimension	180"

(e) (p) *Tow truck* shall mean any vehicle used to tow, haul, or carry a vehicle.

(q) Unauthorized vehicle shall mean any vehicle that is parked in violation of the rules of the subject parking lot, the regulations provided herein, or any other local rule, law, or ordinance.

(p) (r) *Vehicle* shall mean any automobile, truck, bus, trailer, semitrailer, or any other mobile item using wheels and being operated on the roads of Broward County, which is used to transport persons or property and which is propelled by power other than muscular power, provided, however, that the term does not include bicycles, mopeds, traction engines, road rollers, or vehicles that run only upon a track.

(q) (s) *Vehicle owner* shall mean any owner of a vehicle and any person who is empowered to act on behalf of a vehicle owner or lien holder.

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1 Section 2. Section 20-176.13 of the Broward County Code of Ordinances is
2 hereby amended to read as follows:

3 **Sec. 20-176.13. Operating license required to tow or immobilize a vehicle in
4 Broward County; exemptions.**

5 (a) Except as provided in paragraph (b), below, no person shall immobilize or
6 tow a vehicle in Broward County, store a towed vehicle in Broward County, or advertise
7 such services, regardless of whether that person's primary place of business is inside or
8 outside Broward County, without first obtaining and maintaining a current and valid
9 operating license for the applicable service. All advertisement of such services shall
10 include the operating license number.

11 (b) The regulations provided herein do not apply to trucks capable of
12 transporting five (5) or more vehicles at one (1) time; persons transporting vehicles
13 solely for personal, family, household, or recreational uses; or persons transporting their
14 own vehicles. The regulations provided herein shall also not apply to any person
15 providing consent tows in Broward County if that person's principal place of business is
16 located outside Broward County, unless such person picks up and drops off vehicles
17 solely within Broward County as one (1) complete service. Government agencies
18 directly performing their own towing or immobilization services, as opposed to
19 contracting with private companies to perform the services for them, are exempt from
20 the licensure requirements of this Section, the insurance requirements of Section 20-
21 176.16, the tow truck registration requirements of Section 20-176.18, and the
22 immobilization requirements of Section 20-176.21(a), but must otherwise comply with
23 the regulations provided herein.

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(c) Nothing in the regulations provided herein shall be construed to require licensing of a natural person who works as an employee for another person holding a valid operating license, provided, however, that any natural person who is an independent contractor and not an employee of a licensed person is required to be licensed. An operating license may be used only by the licensee and its employees.

Section 3. Section 20-176.14 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 20-176.14. Application for and issuance of operating license.

(a) Every application for an operating license shall be in writing on a form prescribed by the Division, signed and verified by the applicant, and filed with the Division, together with the applicant's payment of a nonrefundable operating license application fee established by resolution of the Board.

(b) On the application, in addition to any other requirements established by the Division, the applicant must indicate whether it seeks licensing to immobilize or tow vehicles, or both, and if it seeks licensing to tow vehicles, the applicant must indicate whether it seeks to conduct consent tows or nonconsent tows, or both.

(1) If the applicant seeks a license to perform immobilization services, the applicant must demonstrate verifiable, real life experience in immobilizing vehicles, and must demonstrate financial trustworthiness in accordance with the standards established by the Division.

(2) If the applicant seeks a license to perform nonconsent tows of vehicles, the Division shall inspect the applicant's storage facilities and public office areas prior to issuance of the license to and determine whether that the

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applicant is in compliance with all applicable law and the regulations provided herein. If a storage facility or public office fails inspection and a reinspection is required, a reinspection fee must be paid to the Division. Such fee shall be established by resolution of the Board.

(c) To obtain a license, in addition to any other requirements established by the Division and the requirements of paragraph (b), above, the applicant, or, in the case of a corporate or partnership applicant, all officers, directors, partners, and stockholders owning, holding, or controlling twenty-five percent (25%) or more of the ownership interest, such as the issued and outstanding stock in a corporation:

(1) Must undergo a criminal background check, which shall reveal that none of the above mentioned persons have been found guilty of, or pled guilty or nolo contendere to (regardless of adjudication of guilt, including adjudication withheld) criminal charges involving repossession of a motor vehicle under F.S. ch. 493 Chapter 493, Florida Statutes; repair of a motor vehicle under F.S. §§ 559.901 through 559.9221 Sections 559.901 through 559.9221, Florida Statutes; theft of a motor vehicle under F.S. § 812.014 Section 812.014, Florida Statutes; carjacking under F.S. § 812.133 Section 812.133, Florida Statutes; operation of a chop shop under F.S. § 812.16 Section 812.16, Florida Statutes; failure to maintain records of motor vehicle parts and accessories under F.S. § 860.14 Section 860.14, Florida Statutes; airbag theft or use of fake airbags under F.S. § 860.145 or § 860.146 Sections 860.145 or 860.146, Florida Statutes; overcharging for repairs and parts under F.S. § 860.15 Section 860.15, Florida Statutes; or violation of the towing or storage requirements

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1 for a motor vehicle under F.S. §§ 321.051, 713.78, and 715.07, or F.S. ch.
2 ~~323 Sections 321.051, 713.78, and 715.07, or Chapter 323, Florida~~
3 ~~Statutes~~, or any felony in which use of a motor vehicle was involved in
4 theft of property. The applicant shall pay the amounts required to secure
5 the criminal history and records report(s);

6 (2) Must have no unsatisfied final civil fines or penalties arising out of an
7 administrative or enforcement action brought by the Division (including
8 any cease and desist orders or assurances of voluntary compliance
9 issued by the Division) or another governmental agency based upon
10 conduct involving a violation of the regulations provided herein or other
11 laws or regulations relating to towing or immobilization; and

12 (3) Must have not, within two (2) years prior to the date of application, or
13 during the Division's review of any pending application, had an operating
14 license revoked or suspended by action of the Division or any other
15 jurisdiction where the applicant towed or immobilized vehicles, and which
16 revocation or suspension was either (a) not contested by the applicant and
17 sixty (60) days have passed since the date of the revocation or
18 suspension or (b) upheld after review by an administrative board, hearing
19 officer, or a court.

20 (d) No application for an operating license shall be approved where the
21 applicant fails to meet the requirements of paragraphs (b) or (c), above. Any applicant
22 denied an operating license shall be provided with a written notice of denial, via U.S.
23 mail, setting forth the facts, law, and reason(s) upon which the denial is predicated. The
24 notice shall also contain a statement that the applicant has the right to a hearing before

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1 a hearing officer and that in order to be granted such a hearing, the applicant must file a
2 written request to the Director within thirty (30) calendar days after the date of the
3 mailing of the notice. Any hearing by a hearing officer shall be conducted in accordance
4 with Section 20-176.25, below.

5 (d) (e) Each operating license shall be printed on a certificate containing, at a
6 minimum, the name and address of the applicant, the name of the applicant's
7 principal(s), the effective dates of the operating license, and the identifying number
8 assigned by the Division. The operating license shall also indicate whether the licensee
9 may immobilize or tow vehicles, or both, and, if licensed to tow vehicles, whether the
10 licensee may perform consent tows or nonconsent tows, or both. The operating license
11 certificate issued by the Division shall remain the property of Broward County and shall
12 be used only as directed by the Division.

13 (e) (f) An operating license shall be effective from its date of issuance through
14 the end of the calendar year in which it is issued, provided, however, that if the
15 operating license is obtained within sixty (60) days before the end of a calendar year,
16 then the operating license shall be effective until the end of the calendar year following
17 the year of issuance if the applicant pays a nonrefundable extended application fee
18 established by resolution of the Board.

19 (f) (g) An operating license issued pursuant to the regulations provided herein is
20 not transferable, nor shall the ownership structure of the licensee be so modified as to
21 constitute a change in the control or ownership of the operating license. The ownership
22 structure of the licensee is considered to be so modified as to constitute a change in the
23 control or ownership of the operating license when as a result of a change, there is a
24 new officer, director, partner, or stockholder who owns, holds, or controls twenty-five

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1 percent (25%) or more of the ownership interest, such as the issued and outstanding
2 stock in a corporation. If the licensee changes its ownership structure, all services
3 permitted by the operating license shall thereupon cease immediately and a new
4 application for an operating license must be submitted, together with the appropriate
5 fee.

6

7 Section 4. Section 20-176.15 of the Broward County Code of Ordinances is
8 hereby amended to read as follows:

9 **Sec. 20-176.15. Renewal of operating license.**

10 (a) An applicant may apply for a renewal of its operating license prior to the
11 expiration of its then current operating license. If the operating license is not renewed,
12 all services permitted by the operating license shall ~~thereupon~~ cease immediately upon
13 expiration of the license.

14 (b) During the renewal process, the original application shall be updated and
15 verified by the applicant on forms prescribed by the Division. Each renewal application
16 shall be submitted sixty (60) days prior to expiration of the then current license and shall
17 be accompanied by a nonrefundable renewal application fee established by resolution
18 of the Board. If the licensee fails to submit its renewal application sixty (60) days prior
19 to expiration of the then current license, such renewal application may be submitted
20 within the sixty (60) day period upon payment of an expedited renewal application fee
21 established by resolution of the Board, ~~provided, however, that all services after the end~~
22 ~~of a calendar year must cease until a pending renewal application is granted.~~

23 (c) ~~No renewal application that is untimely or fails to meet the requirements of~~
24 ~~the regulations provided herein shall be granted. All services permitted by the operating~~

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1 license shall cease immediately upon the expiration of the operating license,
2 notwithstanding the filing of a renewal application, unless the Division, in writing and on
3 forms prescribed and executed by the Division, expressly allows the operating license to
4 remain effective pending its review of the submitted renewal application.

5 (d) An applicant for renewal shall submit to a criminal background check
6 every three (3) years after the date of issuance of the original operating license, and
7 shall pay the amounts required to secure the criminal history and records report(s).

8 (e) An applicant that seeks to perform nonconsent tows shall, upon
9 application for a renewed operating license, allow the Division to (re)inspect the
10 applicant's storage facilities and public office areas, for a fee established by resolution
11 of the Board, to determine whether and the Division must determine that the applicant is
12 in compliance with all applicable law and the regulations provided herein before a
13 renewed operating license may be granted.

14 (e) No renewal application for an operating license shall be approved where
15 the application is untimely or fails to meet the requirements of this Section or Section
16 20-176.14(b) or (c), above, except that an applicant for renewal shall submit to a
17 criminal background check only every three (3) years after the date of issuance of the
18 original operating license, and shall pay the amounts required to secure the criminal
19 history and records report(s). Any applicant denied a renewed operating license shall
20 be provided with a written notice of denial, via U.S. mail, setting forth the facts, law, and
21 reason(s) upon which the denial is predicated. The notice shall also contain a
22 statement that the applicant has the right to a hearing before a hearing officer and that
23 in order to be granted such a hearing, the applicant must file a written request to the
24 Director within thirty (30) calendar days after the date of the mailing of the notice. Any

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1 hearing by a hearing officer shall be conducted in accordance with Section 20-176.25,
2 below.

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4 Section 5. Section 20-176.17 of the Broward County Code of Ordinances is
5 hereby amended to read as follows:

6 **Sec. 20-176.17. Revocation and suspension of license; enforcement.**

7 (a) An operating license ~~may must~~ be suspended or revoked by the Division,
8 ~~after following the rules and procedures set forth in Chapter 20, Article VII, Division 1, of~~
9 ~~the Broward County Code of Ordinances, when it is determined by the Division that,~~
10 ~~while holding a valid operating license,~~ the licensee, or, in the case of a corporate or
11 partnership applicant, any officer, director, partner, or stockholder owning, holding, or
12 controlling twenty-five percent (25%) or more of the ownership interest, such as the
13 issued and outstanding stock in the corporation:

14 (1) ~~Violated any requirement of Section 20-176.14(c) while holding an~~
15 ~~operating license Was found guilty of, or pled guilty or nolo contendere to~~
16 ~~(regardless of adjudication of guilt, including adjudication withheld) any~~
17 ~~criminal charges listed in Section 20-176.14(c)(1);~~

18 (2) Violated the terms of a cease and desist order, notice to correct a
19 violation, written assurance of voluntary compliance, or any other lawful
20 order of the Director, the Division, or the Consumer Protection Board ~~a~~
21 hearing officer;

22 (3) Engaged in any conduct as a part of the performance of any contract for
23 service that constitutes a deceptive and unfair trade practice or fraud;

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(4) Had an operating license revoked or suspended by action of any other jurisdiction where the licensee towed or immobilized vehicles and such revocation or suspension was either (a) not contested by the applicant and sixty (60) days have passed since the date of the revocation or suspension or (b) upheld after review by an administrative board, hearing officer, or a court;

(5) Misstated or omitted any material fact in the application or renewal application process;

(4) (6) Aided or abetted a person who has not obtained a license to evade or avoid the regulations provided herein; or

(5) (7) Violated any regulations provided herein three (3) or more times in a calendar year.

licensee that has had an operating license revoked shall be provided with written notice of such revocation, via U.S. mail, setting forth the facts, law, and reason(s) upon which the revocation is predicated. The notice shall also contain a statement that the licensee has the right to a hearing before a hearing officer and that in order to be entitled such a hearing, the licensee must file a written request to the Director within thirty (30) calendar days after the date of the mailing of the notice. Any hearing by a hearing officer shall be conducted in accordance with Section 20-176.25, below.

(b) In addition to suspension and revocation, violations of the regulations provided herein shall be subject to civil penalties as provided by Chapter 8½, Article II, the Broward County Code of Ordinances, and penalties shall be imposed as set forth in the schedule of penalties therein. Each day of continuing violation shall be considered a separate offense. When imposing a citation, the Division is authorized to

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1 compel a licensee to reimburse a vehicle owner all unauthorized or excessive charges
2 related to the services provided. Unauthorized charges include any charges to vehicle
3 owners that are neither authorized by the regulations herein or by resolution of the
4 Board. Excessive charges include any charges to vehicle owners in excess of the
5 maximum fees authorized by resolution of the Board. Any reimbursement requirement
6 authorized by this Section shall be in addition to any fine. Any licensee that has been
7 cited shall be provided with written notice of such citation, via U.S. mail, setting forth the
8 facts, law, and reason(s) upon which the citation is predicated. The notice shall also
9 contain a statement that the licensee has the right to (1) pay the citation, thereby
10 admitting the truth of the facts cited therein, or (2) request a hearing before a hearing
11 officer and that in order to be granted such a hearing, the licensee must file a written
12 request to the Director within thirty (30) calendar days after the date of the mailing of the
13 notice. Any hearing by a hearing officer shall be conducted in accordance with Section
14 20-176.25, below.

15 (c) The appeal to a hearing officer of the Division's decision to revoke an
16 operating license or to impose a civil penalty shall stay the effective date of the
17 revocation or civil penalty until the hearing officer issues an order.

18 (e) (d) In addition to the sanctions contained herein, Broward County may take
19 any other appropriate legal action, including, but not limited to, seeking cease and
20 desist orders, other administrative actions, and requests for temporary and permanent
21 injunctions to enforce the provisions of the regulations provided herein.

22 (d) (e) The regulations provided herein shall be enforced by personnel authorized
23 by the Division, Broward County, municipal code enforcement officials, the police

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1 agencies of the various municipalities in Broward County, and by the Broward County
2 Sheriff's Office.

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4 Section 6. Section 20-176.18 of the Broward County Code of Ordinances is
5 hereby amended to read as follows:

6 **Sec. 20-176.18. Tow truck registration; tow truck standards; decals.**

7 (a) Each tow truck used to provide towing services in Broward County shall
8 display a current, valid Division tow truck decal in the lower left corner of the driver's
9 ~~side window~~ vehicle's front windshield (driver's side). The tow truck decal remains the
10 property of the Division and shall only be used under the authority of the Division.

11 (b) The Division is authorized to issue a tow truck decal for each separate tow
12 truck upon application and completion or satisfaction of all of the following:

13 (1) Inspection by personnel authorized by the Division to ensure that the tow
14 truck clearly displays the company name on the exterior of both sides of
15 the tow truck in permanently affixed letters in contrasting colors at least
16 three (3) inches in size. The inspector must also ensure that the tow truck
17 clearly displays the physical address, telephone number, and operating
18 license number of the business on the exterior of both sides of the tow
19 truck in permanently affixed letters in contrasting colors at least one (1)
20 inch in size. Magnetic signage of any type may not be used to meet the
21 above requirements.

22 (2) Inspection by personnel authorized by the Division to ensure that the tow
23 truck meets the safety and equipment standards established by the

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Division, including the towing class specifications in Section 20-176.12(no).

- (3) Submission of a notarized affidavit to the Division assuring that each tow truck is commercially manufactured and is in safe operating condition.
- (4) An application form prepared by the Division and completed by the applicant correctly indicating the year, make, model, vehicle identification number, State of Florida motor vehicle license plate number, and the expiration date of the license plate of the tow truck. A copy of the State of Florida Vehicle Registration shall be provided for each vehicle to be registered or licensed with the Division.
- (5) Payment of a nonrefundable tow truck decal fee established by resolution of the Board.

(c) A tow truck decal shall be effective from its date of issuance through the calendar year in which it is issued, provided, however, that if the tow truck is obtained within sixty (60) days before the end of a calendar year, then the tow decal shall be effective until the end of the calendar year following the year of issuance if the applicant pays a nonrefundable extended decal fee established by resolution of the Board. The tow truck decal holder may apply for a renewal of its tow decal as long as such renewal application is submitted at least sixty (60) days prior to the expiration of the then current tow truck decal. If the tow truck decal holder fails to submit its renewal application sixty (60) days prior to expiration of the then current tow truck decal, such renewal application may be submitted within the sixty (60) day period upon payment of an expedited renewal application fee established by resolution of the Board, ~~provided, however, that all services provided by the tow truck~~

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1 after the end of a calendar year must cease until a pending renewal application is
2 granted. The Division is authorized to issue a renewed tow truck decal for each
3 separate tow truck upon application and further completion or satisfaction of the
4 requirements set forth in Section 20-176.18(b), including a nonrefundable renewal tow
5 truck decal fee established by resolution of the Board. If a tow truck decal is not
6 renewed, all towing services by the tow truck shall thereupon cease immediately upon
7 expiration of the tow truck decal. All services provided by a tow truck shall cease
8 immediately upon the expiration of its tow truck decal, notwithstanding the filing of a
9 renewal application, unless the Division, in writing and on forms prescribed and
10 executed by the Division, expressly allows the tow truck decal to remain effective
11 pending its review of the submitted renewal application. Expired tow truck decals shall
12 be surrendered to the Division.

13 (d) No person shall alter or transfer ownership of any tow truck decal. If a tow
14 truck is destroyed or sold, the tow truck decal holder must remove the tow truck decal
15 and surrender the removed tow truck decal to the Division unless the tow truck decal
16 holder signs a notarized affidavit stating that the tow truck decal was destroyed.

17 (e) Each tow truck decal shall be affixed to the tow truck by personnel
18 authorized by the Division and shall at all times be displayed and available for
19 inspection by law enforcement or by personnel authorized by the Division to perform
20 enforcement duties.

21 (f) Replacement or duplicate tow truck decals may be authorized by the
22 Division upon the completion of an application and notarized affidavit of the tow truck
23 decal holder stating that such replacement or duplicate tow truck decal is necessary,
24

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1 identifying the reasons for such request, and upon submission of a fee established by
2 resolution of the Board.

3 (g) A towing company that provides documentation to the Division that its tow
4 trucks have been inspected by a municipal or other law enforcement agency whose
5 inspection requirements satisfy those of the regulations provided herein shall be exempt
6 from the inspection requirements of Section 20-176.18(b)(1-2), provided that the
7 inspection occurred no more than ninety (90) days prior to the required Division
8 inspection.

9 (h) Tow truck decals ~~may~~ must be suspended or revoked by the Division,
10 ~~after following the rules and procedures set forth in Chapter 20, Article VII, Division 1, of~~
11 ~~the Broward County Code of Ordinances, when it appears~~ is determined by the Division
12 that the tow truck no longer complies with the requirements of the regulations provided
13 herein, and the tow truck remains in such condition for seven (7) days after receipt of a
14 written warning from the Division. If a tow truck decal is suspended or revoked, the tow
15 truck decal holder must remove the tow truck decal and surrender the removed tow
16 truck decal to the Division. Any licensee that has had a tow truck decal revoked shall
17 be provided with written notice of such revocation, via U.S. mail, setting forth the facts,
18 law, and reason(s) upon which the revocation is predicated. The notice shall also
19 contain a statement that the licensee has the right to a hearing before a hearing officer
20 and that in order to be granted such a hearing, the licensee must file a written request to
21 the Director within thirty (30) calendar days after the date of the mailing of the notice.
22 Any hearing by a hearing officer shall be conducted in accordance with Section 20-
23 176.25, below. The appeal to a hearing officer of the Division's decision to revoke a tow

24
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1 truck decal shall stay the effective date of the revocation until the hearing officer issues
2 an order.

3

4 Section 7. Section 20-176.19 of the Broward County Code of Ordinances is
5 hereby amended to read as follows:

6 **Sec. 20-176.19. Towing and immobilization requirements.**

7 (a) No person shall tow or immobilize a vehicle without the prior written
8 consent of the vehicle owner, except in accordance with ~~F.S. ch. 715 Chapter 715,~~
9 Florida Statutes, and the following:

10 (1) Persons may tow or immobilize a vehicle without the prior written consent
11 of the vehicle owner upon the written instruction of a police officer.

12 (2) Persons may tow or immobilize a vehicle without the prior written consent
13 of the vehicle owner upon the written instruction of the property owner on
14 whose property the unauthorized vehicle is parked, but only when the
15 following have been met:

16 a. Notice shall be prominently posted on the property from which the
17 vehicle is proposed to be towed or immobilized, and shall be
18 continuously maintained on the property for not less than twenty-
19 four (24) hours prior to the towing or immobilization of the vehicle.

20 1. Such notice, in the form of a sign structure, shall be
21 prominently placed at each driveway access or curb cut
22 allowing vehicle access to the property, within five (5) feet
23 from the public right-of-way line. If there are no curbs or
24 access barriers, not fewer than one (1) sign shall be posted

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1 for each twenty-five (25) feet of lot frontage. The sign
2 structure shall be permanently installed with the bottom of
3 the sign not less than three (3) feet above ground level and
4 the top of the sign not more than six (6) feet above ground
5 level.

6 2. The notice shall clearly display:

7 a) In light-reflective letters not less than two (2) inches
8 high, on a contrasting background, a warning that
9 unauthorized vehicles will be towed or immobilized,
10 as applicable, at the vehicle owner's expense;

11 b) In light-reflective letters not less than four (4) inches
12 high, on a contrasting background, the words "tow-
13 away zone" or "subject to immobilization," as
14 applicable;

15 c) In light-reflective letters not less than two (2) inches
16 high, on a contrasting background, the days of the
17 week and the hours of the day during which vehicles
18 will be towed or immobilized at the vehicle owner's
19 expense; and

20 d) In light-reflective letters not less than two (2) inches
21 high, on a contrasting background, the name and
22 telephone number of the person performing the
23 towing or immobilization if there exists a written

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contract between the property owner and that person for the towing or immobilization of vehicles.

3. A business with twenty (20) or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only - Unauthorized Vehicles Will be Towed Away At the Owner's Expense" in light-reflective letters not less than four (4) inches high, on a contrasting background, on the parking spot from which the vehicle is proposed to be towed or immobilized, for not less than twenty-four (24) hours prior to the towing or immobilization of the vehicle.
4. The posting of notice shall not be required where:
 - a) The property on which the vehicle is parked is appurtenant to and obviously a part of a single-family residence; or
 - b) Oral or written notice is personally given to the vehicle owner that the property on which the vehicle is to be parked is reserved or unavailable for unauthorized vehicles and is subject to being removed at the vehicle owner's expense.

A business owner or lessee may authorize the removal of a vehicle by a towing company, without the prior written consent of the vehicle owner, when the vehicle is parked in such a manner that restricts the normal operation of business; and if a vehicle parked

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1 on a public right-of-way obstructs access to a private driveway, the
2 owner, lessee, or agent may have the vehicle removed by a towing
3 company without a posted tow-away zone sign upon signing an
4 order that the vehicle be removed.

5 c. When ordering the towing or immobilization of a vehicle without the
6 prior written consent of the vehicle owner, the property owner shall
7 provide written instruction specific to each individual vehicle to be
8 towed or immobilized, and shall date and sign such instruction.
9 Such instruction may be sent by electronic facsimile only if the date
10 and time of instruction can be verified on the facsimile. No such
11 instruction shall be considered to have been given:

- 12 1. By the posting of notice required by the regulations provided
13 herein;
- 14 2. By the existence of a contract or agreement between the
15 person providing the service and the property owner;
- 16 3. Where the instruction occurs in advance of the actual
17 unauthorized parking of the vehicle; or
- 18 4. Where the instruction is general in nature and unrelated to
19 specific, individual, and identifiable vehicles.

20 d. The property owner may not be an owner, officer, employee, or
21 agent of the person requested to tow or immobilize the vehicle.

22 e. The person towing or immobilizing the vehicle must have a written
23 contract with the property owner that authorizes such person to tow
24 vehicles from, or immobilize vehicles on, his, her, or its property.

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1 The written contract shall include the name and current telephone
2 number of the person performing the towing or immobilization
3 service, and the name, address, and telephone number for any duly
4 authorized agents acting on behalf of the property owner. In the
5 case of the towing of vehicles, the written contract shall also include
6 a clear description of the property owner's liability as stated in
7 Section 715.07(4), Florida Statutes, and shall include the following
8 wording: "When a person improperly causes a vehicle to be towed,
9 such person shall be liable to the owner or lessee of the vehicle for
10 the cost of removal, transportation, and storage; any damages
11 resulting from the removal, transportation, or storage of the vehicle;
12 attorney's fees; and court costs."

13 (b) Persons who immobilize or tow vehicles in Broward County without the
14 consent of the vehicle owner, or store towed vehicles in Broward County without the
15 consent of the vehicle owner, shall comply with the provisions of F.S. ch. 715 Chapter
16 715, Florida Statutes, and shall:

17 (1) Not pay or rebate money, or solicit or offer the rebate of money or other
18 valuable consideration to obtain the privilege of rendering such services.
19 (2) Accept, at a minimum, cash, credit card, and debit card payments from the
20 vehicle owner. If payment is made in cash, change shall be provided to
21 the closest whole dollar. ~~Additional charges or fees shall not be assessed~~
22 ~~when payments are made by credit card or debit card. If payment is made~~
23 ~~by credit card, a credit card fee in the amount of 2.5% may be charged to~~
24 ~~the vehicle owner in addition to the other fees authorized by resolution of~~

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the Board. A vehicle owner shall not be required to furnish more than one (1) form of government-issued picture identification when payment is made by credit card or ~~personal check~~ debit card, and the government-issued identification shall constitute sufficient identity verification.

- (3) Not charge for the service if the vehicle owner arrives at the scene prior to the service being completed, except when:
 - a. The vehicle owner refuses or is unable to remove the vehicle;
 - b. A complete mechanical connection exists between the vehicle and the towing or immobilization apparatus, and the vehicle owner refuses to pay a reasonable service fee of not more than one-half (½) of the posted rate for such service in the manner specified in Section 20-176.19(b)(2); or
 - c. Directed by a police officer or government agency to complete the service.
- (4) File and keep on record with local law enforcement a complete copy of all current rates charged for the towing or immobilization of vehicles.
- (5) Maintain a towing or immobilization invoice or manifest approved by the Division, or tow sheet issued by a police agency, for each tow and immobilization undertaken. A copy of the applicable invoice, manifest, or tow sheet shall be given to the vehicle owner at the time of payment.
- (6) Charge the vehicle owner for just one (1) of the services when a vehicle is immobilized and then towed from the same location where originally immobilized.

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- (7) Act in a professional manner when performing licensed services, be knowledgeable of the rights of the individual who has had or is about to have a vehicle towed or immobilized, and answer any and all questions to the best of their ability.
- (8) Prior to performing the tow or immobilization service, take a photograph of the front of the vehicle being towed or immobilized, a photograph of the back of the vehicle being towed or immobilized, a photograph of any existing damage that is readily seen on the vehicle being towed or immobilized, and a photograph demonstrating the violation for which the vehicle is being towed or immobilized. The photographs must be time and date stamped. The above-mentioned photographs are not required when towing or immobilizing a vehicle upon the instruction of a police officer or other government agency. If the licensee fails to take and retain any of the above-mentioned photographs, the licensee, in addition to any fines imposed by the Division, must reimburse the vehicle owner the applicable towing fee.
- (9) Not tow or immobilize a vehicle when a visible, valid, and paid receipt is on the front or back windshield (if towing or immobilizing for failure to pay), notwithstanding the rules of the subject parking lot. This subsection (9) does not apply when a licensee is directed to tow or immobilize a vehicle by a police officer or other government agency.
- (10) Not provide lot monitoring services, whether free of charge, at a reduced rate, or at full price, to a property owner, or reimburse a property owner for

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1 such services, for the privilege of towing vehicles from or immobilizing
2 vehicles on the property owner's property.

3 (c) Each natural person acting on behalf of persons who provide towing or
4 immobilization services shall wear an identification tag stating the full name of the
5 company and the natural person performing the service. Such identification shall be
6 displayed on the natural person's shirt.

7 (d) No licensee shall refuse or neglect to provide vehicle immobilization or
8 towing services to any orderly person requesting such services and able and willing to
9 pay for such services, on account of that person's race, sex, religion, national origin,
10 age, marital status, sexual orientation, or disability.

11 (e) Any bid for the award of any contract or agreement with Broward County
12 for services to immobilize or tow vehicles shall be subject to the requirement that the
13 person seeking to obtain such contract or agreement hold or obtain a valid and current
14 operating license. Any bids not in compliance with this subparagraph shall be null and
15 void.

16

17 Section 8. Section 20-176.20 of the Broward County Code of Ordinances is
18 hereby amended to read as follows:

19 **Sec. 20-176.20. Additional nonconsent towing requirements.**

20 (a) Persons who provide nonconsent towing services shall inform any person
21 inhabiting the vehicle that the vehicle must be moved. If such person fails to move the
22 vehicle, then the person instructed to tow the vehicle shall offer and provide said
23 inhabitant transportation to the nearest homeless assistance center. The vehicle may
24 be towed only when the inhabitant of the vehicle, if homeless, has been transported to

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1 the nearest homeless assistance center. No vehicle shall be towed when there is a
2 living natural person occupying the vehicle.

3 (b) Persons who provide nonconsent towing services shall transport the
4 towed vehicle directly to the storage site of the person providing the service, or, if
5 conducting a police directed tow, to such other location as the police officer may direct,
6 and shall not keep the vehicle in any temporary holding area.

7 (c) Persons who provide nonconsent towing services at the request of a
8 property owner shall, within thirty (30) minutes after the completion of the service, notify
9 the Broward County Sheriff's Office or the police department with jurisdiction over the
10 property from which the vehicle was towed, of the following: (i) the storage site to which
11 the vehicle was transported, (ii) the time the service was rendered, and (iii) the make,
12 model, color, vehicle identification number, and license plate number of the vehicle.
13 The reporting individual shall obtain the name of the person to whom such information
14 was reported and note that name on the trip record.

15 (d) Persons who provide nonconsent towing services shall maintain a place of
16 business with a sign that clearly and conspicuously identifies the business to the public.
17 The place of business shall be open to the public, shall maintain a telephone
18 communication system to answer telephone calls twenty-four (24) hours per day, and
19 shall have office space with at least one (1) natural person on duty from 8:00 a.m.
20 through 6:00 p.m., Monday through Friday. The office may be closed only to observe
21 holidays observed by Broward County government. When closed, the office shall
22 prominently post a sign indicating a telephone number where the operator of the site
23 may be reached at all times. Upon receipt of a telephoned request to open the site to
24 redeem a vehicle, the operator shall return to the site within one (1) hour to release the

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1 vehicle to the vehicle owner upon payment of the appropriate fee(s), unless the tow was
2 performed by or at the direction of police officers for accident or criminal investigation
3 purposes or resulted from an arrest of the vehicle owner or driver.

4 (e) Persons who provide nonconsent towing services shall prominently
5 display at each vehicle storage site a schedule of all rates for the recovery of vehicles.

6 The rate schedule must also state the following:

7 "TO THE VEHICLE OWNER

8 If you believe that you have been overcharged for the services rendered,
9 you do not have to pay your bill to get your car. Instead, you have the
10 right to post a bond in the circuit court, payable to [name of person
11 providing service], in the amount of the final bill for services rendered, and
12 the court will decide later who is right. If you show us a valid clerk's
13 certificate showing that you have posted a bond, we must release your
14 vehicle to you immediately. This remedy is in addition to other legal
15 remedies you may have pursuant to ~~F.S. § [Ch.] 713~~ Chapter 713, Florida
16 Statutes. If you have a complaint about the way services were provided,
17 you may call the Broward County Environmental Licensing and Building
18 Permitting Division."

19 The rate schedule shall be posted in the area designated for the vehicle owner to
20 transact business. Such area shall provide shelter, safety, and lighting adequate for the
21 vehicle owner to read the posted rate schedule. Notice shall be posted advising the
22 vehicle owner of the right to request and review a complete schedule of rates for
23 services provided.

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(f) Persons who provide nonconsent towing services shall advise any vehicle owner who calls by telephone prior to arriving at the storage site of all of the following:

(1) Each and every document or other item that must be produced to retrieve the vehicle.

(2) The exact charges as of the time of the telephone call and the rate at which charges accumulate after the call.

(3) The acceptable methods of payment.

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

(g) Unless otherwise directed by a police officer, persons who provide consent towing services shall permit every vehicle owner to inspect the towed vehicle immediately upon such person's arrival at the storage site and before payment of charges. The vehicle owner shall be permitted to remove from the vehicle any personal possessions inside, but not affixed to, the vehicle, including, but not limited to, radios and telephones. The person working at the site shall assist any vehicle owner in doing so.

(h) No release or waiver of any kind, which would release the person providing the nonconsent towing services of liability of any kind, may be required as a condition of the release of the vehicle.

(i) Persons who provide nonconsent towing services shall, upon payment for recovery of a towed vehicle, provide the vehicle owner a consumer bill of rights, approved by the Division, which delineates all of the vehicle owner's rights, including, but not limited to, the rights to contest fees and retrieve items from his or her vehicle. A separate sheet of paper must be attached to the consumer bill of rights that says the following sentence in at least size 36 font: "If you have a complaint about the way

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1 services were provided, you may call the Broward County Environmental Licensing and
2 Building Permitting Division at 954-765-4400." The vehicle owner shall be asked to sign
3 proof of delivery of the consumer bill of rights, and the accompanying disclosure sheet,
4 at the time of payment. This subsection (i) does not apply when a licensee is directed
5 to tow or immobilize a vehicle by a police officer or other government agency.

6 (i) Persons who provide nonconsent towing shall release the vehicle to the
7 vehicle owner upon payment of the applicable fee.

8
9 Section 9. Section 20-176.23 of the Broward County Code of Ordinances is
10 hereby amended to read as follows:

11 **Sec. 20-176.23. Records retention; inspection.**

12 Each licensee shall maintain accurate and complete records of all operating
13 information as the Division may require, including, but not limited to, immobilization and
14 towing invoices, records of payment, the required photographs, and signed copies of
15 the consumer bill of rights and accompanying disclosure sheet required by the
16 regulations provided herein, for at least three (3) years after creation. The Division shall
17 be granted access, during regular business hours and upon five (5) calendar days' prior
18 notice, to inspect or copy records maintained by a licensee.

19
20 Section 10. Section 20-176.25 of the Broward County Code of Ordinances is
21 hereby created to read as follows:

22 **Sec. 20-176.25. Hearings; hearing officer; appeals.**

23 (a) Any person may appeal a denial of an application for an operating license,
24 a denial of an application for a renewed operating license, a revocation of an operating

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1 license or tow truck decal, or a civil penalty to a hearing officer, which position is hereby
2 created for such purposes. The hearing officer shall be selected by the County Attorney
3 from a list of candidates approved by the Board of County Commissioners of Broward
4 County and shall be a member in good standing with The Florida Bar, engaged in the
5 practice of law in Broward County.

6 (b) Upon receipt of a timely request for a hearing before a hearing officer, the
7 matter shall be set on the next regularly scheduled hearing date or as soon thereafter
8 as possible.

9 (c) The County shall serve a notice of hearing to the person requesting the
10 hearing, which notice shall include, but not be limited to, the following:

- 11 (1) Place, date, and time of the hearing.
- 12 (2) Right of the person requesting the hearing to be represented by an
13 attorney, at that person's option and cost.
- 14 (3) Right of the person requesting the hearing to present witnesses and
15 evidence and conduct cross examination.
- 16 (4) A conspicuous statement reflecting the requirements of Chapter 286,
17 Florida Statutes, that a person deciding to appeal any decision of a
18 hearing officer will need to ensure that a verbatim record of the
19 proceedings is made.

20 (d) All hearings shall be open to the public. All testimony shall be under oath,
21 minutes shall be taken, and the proceedings shall be recorded.

22 (e) The County shall provide clerical and administrative personnel as may be
23 reasonably required by each hearing officer.

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(f) Each case before a hearing officer shall be presented and prosecuted by personnel designated by the County Administrator or the Division Director.

(g) Formal rules of evidence do not apply, but fundamental principles of due process shall be observed and govern the proceedings. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible whether or not such evidence would be admissible in a State of Florida court.

(h) Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross examine opposing witnesses on any relevant matter.

(i) The hearing officer shall make findings of fact based on evidence presented and issue an order.

(i) If the Division's decision is upheld, the person requesting the hearing will be required to pay for the reasonable costs of the administrative hearing.

(k) The hearing officer shall have the power to:

(1) Hold hearings, conduct investigations, provide for the administration of oaths, and take testimony under oath.

(2) Determine whether the person requesting the hearing was properly notified of the hearing.

(3) Determine whether the cited violations occurred and whether any requirement to reimburse a vehicle owner for unauthorized or excessive charges was proper.

(4) Determine whether the revocation of the operating license or tow truck decal was proper.

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1 (5) Determine whether the denial of the operating license application or
2 renewal application was proper.

3 (6) Assess and order the payment of fines, which may include civil penalties
4 and administrative costs as provided under this article.

5 (7) Assess and order the payment of unauthorized or excessive fees to
6 consumers.

7 (8) Subpoena persons and evidence for the purpose of discovery in a pending
8 action, and subpoena evidence, alleged violators, and witnesses to its
9 hearings. A subpoena may be served by any person authorized by law to
10 serve process. Service shall be made as provided by law. Witness fees
11 shall be paid as provided by law.

12 (I) The person requesting the hearing before the hearing officer or the County
13 may appeal a decision of a hearing officer as provided by the Florida Rules of Appellate
14 Procedure.

15

16 Section 11. SEVERABILITY.

17 If any portion of this Ordinance is determined by any Court to be invalid, the
18 invalid portion shall be stricken, and such striking shall not affect the validity of the
19 remainder of this Ordinance. If any Court determines that this Ordinance, or any portion
20 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),
21 or circumstance(s), such determination shall not affect the applicability hereof to any
22 other individual, group, entity, property, or circumstance.

23

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1 Section 12. INCLUSION IN CODE.

2 It is the intention of the Board of County Commissioners that the provisions of
3 this Ordinance shall become and be made a part of the Broward County Code; and that
4 the sections of this Ordinance may be renumbered or relettered and the word
5 "ordinance" may be changed to "section," "article," or such other appropriate word or
6 phrase in order to accomplish such intentions.

7

8 Section 13. EFFECTIVE DATE.

9 This Ordinance shall become effective as provided by law.

10

11 ENACTED

12 FILED WITH THE DEPARTMENT OF STATE

13 EFFECTIVE

14

15

16 Approved as to form and legal sufficiency:
17 Joni Armstrong Coffey, County Attorney

18 By /s/ Carlos Rodriguez-Cabarrocas 05/18/16
19 Carlos Rodriguez-Cabarrocas (Date)
20 Assistant County Attorney

21 CRC/ch
22 05/18/16
23 TowingAndImmobilizationOrd.
24 #16-414.00

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