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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2019 - 18

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AMENDING
MOTOR VEHICLES AND TRAFFIC PROVISIONS OF
THE CODE PREVIOUSLY ADOPTED BY REFERENCE;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014; and

WHEREAS, the Charter of the Village of Estero ("Charter") at Section 11, "General Provisions," paragraph (5) "Transitional Ordinances and Resolutions," provides that all applicable lawful Lee County ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to revise certain provisions of the Lee County Code to specifically apply to the Village.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

Section 1. Lee County Code Sections amended.

The following sections were included in the Code of Laws and Ordinances, of the Village of Estero, Florida by virtue of their inclusion in the Lee County Code and are hereby amended as ordinances of the Village of Estero. These amendments are not intended to affect the validity of these provisions as laws of Lee County.

Lee County Code Chapter 24 Motor Vehicles and Traffic, previously adopted by reference is amended to read as follows:

Sec. 24-21. Title.

The provisions set out in this division shall be known as, referred to and cited as the "Estero Parking Ordinance."

46 **Sec. 24-22. Definitions.**

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The following terms shall have the following meanings when used in this division:

Fire lane: The twelve-foot-wide strip of pavement immediately adjacent to the building of a business center together with a twelve-foot-wide strip of pavement providing ingress and egress from public roads to the buildings of a business center, which is appropriately marked as a "Fire Lane."

MUTCD: The Manual on Uniform Traffic Control Devices for Streets and Highways.

Officer: The law enforcement officer or parking enforcement specialist of the Lee County Sheriff's Department designated by the village as the inspecting authority to enforce parking regulations and issue summons.

Operator: Every individual who shall operate a vehicle as the owner thereof, or as the agent, employee or permittee of the owner, or is in actual physical control of the vehicle.

Owner: The individual to whom such vehicle is registered with the State Department of Highway Safety and Motor Vehicles.

Park or parking or stopping or standing: The standing of a vehicle, whether occupied or not, upon a street otherwise than temporarily for the purpose of, and while actually engaged in, receiving or discharging passengers or loading or unloading merchandise or in obedience to traffic regulations, signs or signals, or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator of the vehicle.

Person: Any individual, firm, copartnership, association or corporation and shall include the owner and/or operator of the vehicle.

Safety zone: The area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart as a safety zone.

Street or roadway (used interchangeably): Any public right-of-way, any public beach or any public park located in Estero and established for the use of the public for purposes of vehicular traffic.

Summons: The citation form used by Estero.

Vehicle: Any device in, upon or by which any person or property is or may be transported upon a highway, except a device which is operated upon rails or tracks.

91 **Sec. 24-23. Application.**

92
93 (a) Application to unincorporated areas. It is hereby provided this division shall
94 constitute a uniform law applicable in Estero, to the extent permitted by the Florida
95 Constitution, Article VIII, Section 2.

96
97 **Sec. 24-24. Administrative procedure.**

98
99 Procedure for issuance of summons, amounts and disposition of fines collected for
100 violations may be established by resolution of the village council.

101
102 **Sec. 24-25. Criteria in issuance of summons.**

103
104 Any officer enforcing the provisions of this division may issue a summons to any
105 person or operator of a vehicle for such nonmoving offense in violation of the provisions of
106 these provisions on citations as required by law.

107
108 **Sec. 24-26. Nonliability of Village.**

109
110 Nothing in this division shall be deemed to impose any liability upon the village or
111 upon any of its officers or employees, nor to relieve the owner and/or operator of such motor
112 vehicle of any private duty to keep such motor vehicle legally parked.

113
114 **Sec. 24-27. Violation, enforcement, penalties.**

115
116 It shall be unlawful for any person to violate the provisions of this division. It shall be
117 the duty of any law enforcement official or parking enforcement specialist having jurisdiction
118 in Estero to enforce the provisions of these sections. Any officer or parking enforcement
119 specialist who discovers a vehicle parked in violation of these sections may:

120 (1) Issue a summons used by the village for such violation to the driver;
121 (2) If the vehicle is unattended, attach such summons to the vehicle in a
122 conspicuous place;

123 (3) In cases of violators illegally parked in parking spaces provided for by
124 governmental agencies, such vehicles may be removed by a law enforcement officer having
125 jurisdiction in Estero to a storage lot, garage or other safe parking space, the cost of such
126 removal and parking shall be a lien against the vehicle, and the law enforcement official shall
127 charge the owner and/or operator in charge of the vehicle in violation with a noncriminal traffic
128 infraction.

129 (4) Any person who violates section 24-32, disabled persons parking, shall be
130 punished by a fine of two hundred fifty dollars (\$250.00). The fines collected for a violation
131 of the disabled persons parking section shall be deposited in a separate Estero account to be
132 used in accordance with F.S. § 316.008(4), as amended.

133 (5) Any person who violates the provisions of this section, except section 24-32,
134 shall be punished by a fine of thirty-two dollars (\$32.00). Any person who fails to satisfy the
135 provisions contained in the Estero summons for violations of parking contained in this section

136 and elects to appear before a designated official to present evidence shall be deemed to have
137 waived his right to the civil penalty provisions of the ticket. The official, after a hearing, shall
138 make a determination as to whether a parking violation has been committed and may impose
139 a fine not to exceed one hundred dollars (\$100.00) plus court costs.

140 (6) No person shall, without authority, attempt to or in fact alter, deface, injure,
141 knock down or remove any official traffic-control device or sign. Any violation of this
142 provision shall constitute a misdemeanor. In addition, a violation of this provision may be
143 enforced through the village code enforcement process.

144
145 **Sec. 24-28. Exercise of police power.**

146
147 This division shall be deemed and construed to be an exercise of the police power of
148 the village or the preservation and protection of public safety and all of these provisions shall
149 be liberally construed with a view to the effectuation of such purpose.

150
151 **Sec. 24-29. Stopping, standing, parking prohibited in specified places.**

152
153 Except when necessary to avoid conflict with other traffic, or in compliance with law
154 or the directions of a police officer or official traffic-control device, no person or operator shall:

- 155
156 (1) Stop, stand or park a vehicle on any street as follows:
- 157 a. On the roadway side of any vehicle stopped or parking at the edge or curb
158 of a street;
 - 159 b. On a sidewalk;
 - 160 c. Within an intersection;
 - 161 d. On a crosswalk;
 - 162 e. Between a safety zone and the adjacent curb or within thirty (30) feet of
163 points on the curb immediately opposite the end of a safety zone, unless
164 the traffic division of the department indicates a different length by
165 posting official signs or installing pavement markings;
 - 166 f. Alongside or opposite any street excavation or obstruction when stopping,
167 standing or parking would reduce the number of lanes of moving traffic
168 to less than two (2) lanes (one ten-foot-wide lane of moving traffic in each
169 direction) on streets with two-way traffic flow, or to less than one ten-
170 foot-wide lane of moving traffic on a street with one-way traffic flow;
 - 171 g. Upon any bridge or other elevated structure on a highway or within a
172 highway tunnel;
 - 173 h. On any railroad track(s);
 - 174 i. At any place where official signs prohibit stopping;
 - 175 j. In any area designated as a fire lane, except for the purpose of loading or
176 unloading handicapped passengers and then only while actually engaged
177 in the process of loading or unloading such passengers.

178 (2) No person or operator of a vehicle shall stand or park a vehicle, whether
179 occupied or not, except momentarily to pick up or discharge a passenger or passengers, on any
180 street as follows:

- 181 a. In front or within five (5) feet of the end of the driveway radius or edge
182 of a public or private driveway so as to prevent proper ingress or egress;
183 b. Within fifteen (15) feet of a fire hydrant;
184 c. Within twenty (20) feet of a crosswalk at an intersection;
185 d. Within thirty (30) feet upon the approach to any flashing signal, yield sign,
186 stop sign or traffic-control signal located beside or over the intersection
187 of two (2) or more roadway(s);
188 e. Within twenty (20) feet of the driveway entrance to any fire station and
189 on the side of a street opposite the entrance to any fire station within
190 seventy-five (75) feet of such entrance when official signs prohibiting
191 such parking, standing or stopping are installed;
192 f. At any place where official signs prohibit standing;
193 g. In any lane designated as a fire lane.

194 (3) No person or operator shall park a vehicle, whether occupied or not, except
195 temporarily for the purpose of, and while actually engaged in, loading or unloading
196 merchandise or passengers, on any street as follows:

- 197 a. Within fifty (50) feet of the nearest rail of a railroad crossing unless the
198 department establishes a different distance due to unusual circumstances;
199 or
200 b. At any place where official signs prohibit parking.

201 (4) No person shall move a vehicle not lawfully under his control to such prohibited
202 area or away from a curb such a distance as is unlawful. Any person who is in violation of this
203 subsection shall be punished as provided for in section 24-27.
204

205 **Sec. 24-30. Parallel and angle parking regulations.**
206

207 (a) Parallel parking:

208 (1) Except as otherwise provided in this section, every vehicle stopped or parked
209 upon a two-way roadway shall be so stopped or parked with the right-hand wheels parallel to
210 and within twelve (12) inches of the right-hand curb or edge of the roadway;

211 (2) Every vehicle stopped or parked upon a one-way roadway shall be so stopped
212 or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic
213 movement, with its right-hand wheels within twelve (12) inches of the right-hand curb or edge
214 of the roadway, or its left wheels within twelve (12) inches of the left-hand curb or edge of the
215 roadway.

216 (b) Angle parking. Angle parking may be permitted on streets and/or roadways
217 within the village; provided, that a proper and documented traffic engineering study is
218 performed, either by the public works department or by a private consultant, and approved by
219 the public works department or as provided by the Village's land development regulations.
220

221 **Sec. 24-31. Parking for certain purposes prohibited.**
222

223 (a) It is unlawful for any person to park a motor vehicle, as defined in Florida
224 Statutes, section 320.01, for a continuous period in excess of twenty-four (24) hours, after
225 written notice, upon a public street or highway, upon a public parking lot, or other public

226 property, or upon private property where the public has the right to travel by motor vehicle, for
227 the principal purpose and intent of displaying the motor vehicle thereon for sale, hire or rental
228 unless the sale, hire or rental of the motor vehicle is specifically authorized on such property
229 by a village regulation and the person is duly licensed as a motor vehicle dealer in accordance
230 with Florida Statute, section 320.27, and the person is in compliance with all licensing
231 regulations.

232 (b) The provisions of subsection (a) above do not prohibit a person from parking
233 his own motor vehicle or his other personal property on any private property which he owns
234 or leases, or any private property for which he obtains the permission of the owner, for the
235 principal purpose and intent of sale, hire or rental.

236 (c) A law enforcement officer may cause to be removed at the owner's expense any
237 motor vehicle found upon a public street, public parking lot, other public property, or private
238 property where the public has the right to travel by motor vehicle which is in violation of
239 subsection (a). Every written notice issued pursuant to this section shall be affixed in a
240 conspicuous place upon a vehicle by a law enforcement officer.

241 (d) Any other provision of law to the contrary notwithstanding, a violation of
242 subsection (a) shall subject the owner of the motor vehicle to owing the applicable agency the
243 fees reasonably incurred by removal and storage of the motor vehicle.

244

245 **Sec. 24-32. Disabled persons parking.**

246

247 (a) Governmental agencies. It shall be a violation of this division for any person to
248 park in properly marked handicap parking spaces required by governmental agencies.

249 It is unlawful for any person to stop, stand or park a vehicle within any such specially
250 designated and marked parking space provided in accordance with this section, unless such
251 vehicle displays a parking permit issued pursuant to Chapters 316 or 320, Florida Statutes, and
252 such vehicle is transporting a person eligible for the parking permit. Whenever a law
253 enforcement officer or a parking enforcement specialist finds a vehicle in violation of this
254 subsection, that officer shall:

255 (1) Have the vehicle in violation removed to any lawful parking space or facility,
256 or require the operator or other person in charge of the vehicle immediately to remove the
257 unauthorized vehicle from the parking space. Whenever a vehicle is removed by a law
258 enforcement officer or parking enforcement specialist to a storage lot, garage or other safe
259 parking space, the cost of such removal and parking shall be a lien against the vehicle.

260 (2) Charge the owner or operator in charge of the vehicle in violation with a
261 noncriminal traffic infraction. Any person who is in violation of this subsection shall be
262 punished as provided for in section 24-27.

263 (b) Nongovernmental agencies. It shall be a violation for any person to park in
264 properly marked handicap spaces as provided for by nongovernmental entities for certain
265 disabled persons. Any commercial real estate property owner offering parking for the general
266 public shall provide specially designed and marked motor vehicle parking spaces for the
267 exclusive use of physically disabled persons who were issued parking permits pursuant to
268 section 316.1958 or section 320.0848, Florida Statutes, or a license plate pursuant to sections
269 320.084, 320.0842, 320.0843 or 320.0845, Florida Statutes. The minimum number of such
270 parking spaces shall be as provided in Florida Statutes, section 316.1955(2)(c). Each such

271 parking space shall conform to the requirements of Florida Statutes, section 316.1956 and shall
272 be posted and maintained with a permanent sign bearing the internationally accepted
273 wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY." Any
274 person who parks a vehicle in any parking space designated with the internationally accepted
275 wheelchair symbol and the caption "PARKING BY DISABLED PERMIT ONLY" is guilty of
276 a traffic infraction, unless such vehicle displays a parking permit issued pursuant to F.S. §
277 320.0848, and such vehicle is transporting a person eligible for such parking permit. However,
278 any person who is chauffeuring a disabled person shall be allowed, without need for any
279 identification parking permit, momentary parking in any such parking space for the purpose of
280 loading or unloading a disabled person. No penalty shall be imposed upon the driver for such
281 momentary parking. Any person who is in violation of this subsection shall be punished as
282 provided for in section 24-27.

283

284 **Sec. 24-33. Posting of no parking signs.**

285

286 It shall be the responsibility of the public works department to post official no parking
287 signs conforming with the Manual of Uniform Traffic Control Devices (MUTCD) on streets
288 in certain designated areas prohibiting stopping, standing and/or parking in Estero.

289

290 **Sec. 24-95. Authority.**

291

292 The provisions of this article are enacted pursuant to the statutory and home rule powers
293 of the village to establish and enforce business regulations necessary for the protection of the
294 public.

295

296 **Sec. 24-96. Title.**

297

298 This article is titled and may be cited as the "Estero Towing and Immobilization Code".

299

300 **Sec. 24-97. Applicability.**

301

302 The article applies to the towing and storage of vehicles/vessels removed from property
303 without the vehicle/vessel owner's prior consent; the towing of vehicles/vessels from, or the
304 immobilization of vehicles on, private property; the removal and storage of wrecked or
305 disabled vehicles/vessels from an accident scene; and, the removal and storage of
306 vehicles/vessels in the event the owner or operator is incapacitated, unavailable or leaves the
307 procurement of wrecker service to the law enforcement officer at the scene; or, otherwise does
308 not consent to removal of the vehicle/vessel.

309

310 **Sec. 24-98. Findings, purpose and intent.**

311

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

313 (b) The village council finds that providing for and safeguarding the life, health, safety,
314 property and welfare of its citizens, the regulation of business enterprises engaged in the
315 practice of recovering, towing, immobilizing, removing and storing vehicles/vessels is a

- 316 matter affecting the public interest; and, in order to protect visitors and citizens within
317 Estero, business entities engaged in these activities must be required to comply with the
318 regulations set forth in this article.
- 319 (c) This article is intended to supplement the provisions of F.S. §§ 125.0103, 316.193, 713.78,
320 715.07 and Florida Administrative Code (FAC) Rule 15B-9.
- 321 (d) The primary purpose of this article is to:
- 322 (1) Provide a uniform system for the regulation of business entities engaged in, or that
323 intend to engage in, the practice of recovering, towing, immobilizing, removing or
324 storing vehicles/vessels;
- 325 (2) Set maximum public service rates;
- 326 (3) State solicitation restrictions and permit requirements; and
- 327 (4) Establish minimum insurance requirements.
- 328 (e) This article is not intended to create additional operations standards or safety criteria; and,
329 assumes no legislative or regulatory responsibility there for. Nothing in this article may
330 be construed to alleviate the need of entities and operators to be familiar and comply with
331 the Florida Uniform Traffic Control laws, as well as other applicable laws, rules and
332 regulations, including but not limited to, F.S. § 715.07, FAC Rule 15B-9.001 et seq., and
333 Florida Highway Patrol requirements.
- 334 (f) Except for setting the maximum service rates, this article may not be construed to
335 supersede other Lee County Sheriff and Florida Highway Patrol call allocation rules and
336 procedures.

337

338 **Sec. 24-99. Definitions.**

339

340 As used in the article, the respective word or phrase means:

341

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

344

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

349

350 *Authorized agent (for a property)* means any agent or authorized agent for a property
351 owner who has written authority to sign for an absentee owner or property association board
352 for the removal or immobilization of a vehicle or vessel parked on private property.

353

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

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

366
367 *Disabled* means a vehicle/vessel that cannot be moved by its own power because the
368 physical condition resulting from, but not limited to, non-use, lack of fuel or mechanical
369 malfunction prevents movement by the owner. A vehicle/vessel may also be deemed disabled
370 if it cannot be legally operated on the roadways or waterways.

371
372 *Extra time at scene* means any extra time beyond one-half (1/2) hour at an accident scene
373 that is needed to safely remove a vehicle/vessel and includes the amount of time spent at a
374 scene when a tow truck has been summoned and is on scene but unable to proceed through no
375 fault of the tow truck operator. All extra billable time must be documented by the tow truck
376 operator and include the following information: (a) the name of the law enforcement agency;
377 (b) the officer's name; and, (c) a detailed explanation of why the extra time at the accident
378 scene was required or necessary along with detail regarding the specific services rendered.
379 Extra time on scene will be charged in 15-minute increments.

380
381 *Gross weight* means the weight of a tow truck in pounds, plus the weight of the
382 vehicles/vessels or other machinery and the contents being towed.

383
384 *Immobilization* means the utilization of a "boot" or other mechanism, as defined herein,
385 which causes a vehicle to be immobile or otherwise renders a vehicle immobile or inoperable.

386
387 *Immobilization company* means the private partnership, corporation or other privately
388 owned business entity, including sole proprietor, engaged in the immobilization of vehicles,
389 including the utilization of a "boot" or other mechanism that causes a vehicle to be immobile
390 or otherwise renders a vehicle immobile or inoperable.

391
392 *Immobilization device or boot* means any device attached to a vehicle designed to prevent
393 the vehicle from being operated.

394
395 *Immobilization operator* means any individual engaged in the immobilization of vehicles,
396 including the utilization of a "boot" or other mechanism that causes a vehicle to be immobile
397 or otherwise renders a vehicle immobile or inoperable.

398
399 *Incapacitated* means any person who, at the time the wrecker request is made by law
400 enforcement, is physically or legally unable to operate the vehicle/vessel due to the person's
401 physical condition, including but not limited to sickness, injury, being under the influence of
402 alcohol or controlled substance, being under arrest, being detained, revocation or suspension
403 of the person's operator's license or permit, or any other condition that the jurisdictional law
404 enforcement officer determines is justification to call a wrecker to tow the vehicle/vessel.

405

406 *Law enforcement officer* means every officer (full or part-time) as then defined by federal
407 law or by Florida Statutes, including F.S. § 112.531(1), 316.1906(1)(d)(1)—(3), or 943.10(1),
408 (6) or (8).

409
410 *Law enforcement tow* means any tow authorized by the jurisdictional law enforcement
411 officer using an authorized wrecker operator.

412
413 *Light reflective sign* means at minimum an eighteen (18) inches wide by twenty-four (24)
414 inches high sign made of aluminum (at least 0.040 thickness) or fiber reinforced plastic (at
415 least 0.090 thickness). The entire background surface and all lettering must at a minimum be
416 type 1 engineered grade sheeting (ASTM D4956-01). The letters may be screen printed on the
417 type 1 sheeting using a compatible transparent ink so that the retro reflective is maintained and
418 visible.

419
420 *Mileage charge* means allowable charge, consistent with F.S. § 715.07, for each mile (1)
421 from the scene of a rotation call authorized by a jurisdictional law enforcement agent; (2) from
422 the private property impound/tow; or, (3) to the company storage yard.

423
424 *Nonconsent towing* means the recovery, towing, removal and storage of a vehicle/vessel
425 without authorization from the vehicle/vessel owner or authorized driver. Nonconsent towing
426 encompasses both a "law enforcement officer tow" and "private property impounds/tows".

427
428 *Operator* means any person who provides the services of recovering, towing,
429 immobilizing or removing vehicles/vessels and any related storage services. It includes,
430 without distinction, the owner of the towing/immobilization entity as well as the driver of a
431 tow truck or the employee performing the immobilization.

432
433 *Person* means any natural person, firm, partnership, association, corporation or other
434 entity of any kind whatsoever.

435
436 *Private property impound or tow* means towing or removal of a vehicle/vessel, as
437 authorized by F.S. § 715.07, without the consent of the vehicle/vessel's owner or authorized
438 driver when that vehicle/vessel is parked on real property and the property owner or authorized
439 agent requested the removal in accordance with this article.

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

442
443 *Real property owner* means the person who exercises dominion and control over real
444 property including, but not limited to, the legal titleholder, lessee, designated representative of
445 a condominium or homeowner's association or any person authorized to exercise or share
446 dominion and control over real property. "Real property owner" does not mean a person
447 providing towing services pursuant to this article.

448

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

452
453 *Remove* means the removal of a vehicle/vessel from a canal or other body of water, a
454 wooded area not readily accessible to a roadway (i.e., within a standard cable length) or when
455 a vehicle/vessel is buried. This includes towing, winching, skating, using "go jacks", or any
456 other method employed by towing companies.

457
458 *Road* means alley, court, drive, driveway, highway, interstate highway, lane, parking lot,
459 street, or any other substantially similar place, public or private.

460
461 *Scene* means a physical location from where a vehicle/vessel is towed following response
462 thereto by a law enforcement officer.

463
464 *Storage* means retaining actual physical possession of a vehicle/vessel at a private storage
465 facility for consideration; to place and leave a towed vehicle/vessel at a location where the
466 person providing the towing services exercises control, supervision and responsibility over the
467 vehicle/vessel.

468
469 *Storage facility* means the location where towed vehicle/vessels are stored.

470
471 *Tow* means to haul, draw or pull along a vehicle or vessel by means of a tow truck
472 ("wrecker") or vessel for hire equipped with booms, car carriers, winches or similar
473 commercially manufactured equipment.

474
475 *Towing/tow or immobilization company* means a private partnership, corporation or other
476 privately owned business entity, including sole proprietor, engaged in the operation of towing
477 or immobilizing vehicles/vessels by means of a tow truck slide bed, wrecker or any other form
478 of towing apparatus designated for the purpose of transporting or immobilizing motor vehicles
479 or vessels. This definition includes any person, company, corporation, or other entity that
480 engages in, owns or operates a business that provides nonconsent towing, recovery, removal
481 and storage of vehicles/vessels for compensation.

482
483 *Tow truck identification* means a decal or sign issued by the local government agent,
484 authorized jurisdictional law enforcement agency, or similar governmental body, which is
485 placed upon any tow truck or tow vessel to designate authorization to engage in nonconsent
486 tows, and, to allow parking in specially designated areas authorized by the village or
487 jurisdictional governing body.

488
489 *Unavailable* means that no authorized person is physically present at the scene; or, if
490 present, is incapacitated. When no accident scene is involved, an authorized person is
491 unavailable if he or she cannot readily be contacted.

492

493 *Vehicle* means a machine or other substantially similar thing designed with two (2) or
494 more wheels that is propelled by its own engine, motor or pulling animals and is used to
495 transport one (1) or more persons and property over road or land. The term "vehicle" includes
496 a car, truck, trailer, semi-trailer, motorcycle, motor scooter, moped, bus, van, recreational
497 vehicle, all-terrain vehicle, golf cart, animal-drawn vehicle, and every other similar means of
498 wheeled transportation.

499
500 *Vessel* is synonymous with the term "boat" as referenced in section 1(b), Art. VII of the
501 State Constitution and includes every description of watercraft, barge, and airboat, other than
502 a seaplane on the water, used or capable of being used as a means of transportation on water.

503
504 *Wrecked* means a vehicle/vessel that cannot be driven away under its own power from its
505 location due to its physical condition.

506
507 *Wrecker classification* means the wrecker classifications set forth in FAC15B-9.005. In
508 addition to Wrecker Classifications A—C in FAC15B-9.005, a Class D wrecker is added for
509 those specifications exceeding the minimum gross weight and related criteria for Class C
510 wreckers.

511
512 *Wrecker operator* means any person or firm regularly engaged for hire in the business of
513 towing or removing vehicles/vessels.

514
515 **Sec. 24-100. Permit required.**

- 516
517 (a) *Wrecker operator permit.* To engage in nonconsent towing a wrecker (or tow truck)
518 operator must have a valid "wrecker operator permit" issued by the clerk's office
519 consistent with this article.
520 (b) *Immobilization operator permit.* Any immobilization operator, including an individual
521 providing the immobilization service, engaging in the immobilization or booting of a
522 vehicle must have a valid "immobilization operator permit" issued by the clerk's office
523 consistent with this article.
524 (c) Upon issuance of a permit, the wrecker or immobilization operator is granted the privilege
525 of engaging in nonconsent towing or immobilization within Estero, unless the permit
526 expires, is suspended or revoked pursuant to the terms of this article.
527 (d) At the time the towing or immobilization services are being performed, the operator must
528 have the permit readily available (at the scene of the activity) for inspection and
529 verification.
530 (e) A wrecker operator may hold more than one (1) wrecker operator permit, if each individual
531 permit is for purposes of employment with a different towing entity.

532
533 **Sec. 24-101. Permit application; fees.**

- 534
535 (a) Every application for a vehicle/vessel towing or immobilization permit must be on the
536 proscribed form signed and verified by the applicant and filed with the clerk's office,
537 together with the investigative and processing fee established by resolution of the village

538 council. Statements contained in the application become part of the permit and may be
539 modified only in writing as provided in this article or the established application
540 procedure.

541 (b) *Background check.* Each applicant will be subjected to a state and national criminal
542 background check based upon fingerprinting performed by the sheriff's office or pursuant
543 to a vendor approved by the Florida Department of Law Enforcement. The applicant is
544 responsible for the costs associated with fingerprinting. Applicants will be screened using
545 the village or sheriff's office "ORI" numbers.

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

549 (1) Sufficient information to identify the applicant, including, but not limited to, full legal
550 name, date of birth, date the legal entity was formed, telephone numbers, and all
551 business and residence addresses. If the applicant is a corporation (including a limited
552 liability company), the foregoing information will also be provided for each corporate
553 officer, director, resident agent and shareholder. If the applicant is a partnership, the
554 foregoing information must be provided for each general and limited partner. Post
555 office box addresses are not sufficient.

556 (2) Documentation from the State of Florida, Division of Corporations, demonstrating
557 that all corporate or partnership applicants are qualified to do business under the Laws
558 of Florida.

559 (3) A certified copy of the applicant's driving record from the Florida Department of
560 Highway Safety and Motor Vehicles.

561 (4) A photocopy of the applicant's valid Florida Class E or higher driver's license.

562 (5) Photo copy of the applicant's occupational license.

563 (6) The address and STRAP number of the business location from which the applicant
564 will operate the business activity and storage facility. All business locations must be
565 identified.

566 (7) A list of all persons with an ownership interest in the applicant's business operation
567 who have been previously denied an operator permit or had one (1) suspended or
568 revoked.

569 (8) Any trade name under which the applicant operates, intends to operate, or has
570 previously operated.

571 (9) A description of the services to be provided, including but not limited to, hours of
572 operation, procedures for handling complaints and accidents, insurance coverage, and
573 the communication system to be used.

574 (10) A list of all felonies or misdemeanors for which the applicant has been adjudicated
575 guilty, or for which adjudication was withheld, within the five (5) years preceding the
576 date of the application. Individual applicants must be fingerprinted and photographed
577 by the sheriff's office or another law enforcement agency and this information must
578 be included with the application.

579 For purposes of this subsection, if the applicant is a partnership or corporation, the
580 above information must be provided for all corporate officers, directors, sole
581 proprietors, operations managers, managing general partners and any stockholders

- 582 that own or control five (5) percent or more of the issued and outstanding stock or
583 other beneficial interest in the business entity.
- 584 (11) Proof of insurance meeting the criteria set forth in this article.
- 585 (12) The signature of each individual applicant, the signature of the president or vice-
586 president of a corporate applicant and the signature of all general partners of a
587 partnership applicant.
- 588 (13) An agreement, signed by the applicant, indicating the applicant will abide by the
589 provisions of this article and the laws of the State of Florida.
- 590 (14) Such additional information as the clerk or designee may deem appropriate.
- 591
- 592 (d) *Application fee.* The permit application fee is twenty-five dollars (\$25.00) and must be
593 paid at the time the application is submitted. The application fee will be deposited into a
594 separate village fund and will be used exclusively to accomplish the purposes of this
595 article. The amount of the application fee must be reasonably related to the cost of the
596 services and regulations set forth in this article.
- 597

598 **Sec. 24-102. Issuance of permit; appeal; renewal.**

599

- 600 (a) The sheriff is empowered to issue operator permits to applicants meeting all applicable
601 standards and requirements. The sheriff may promulgate administrative processes and
602 procedures applicable to the issuance and revocation of a permit.
- 603 (b) The sheriff will review and investigate each application for a license and reject any
604 application that is not properly filed, is incomplete, untrue in whole or in part, or which
605 otherwise fails to meet the requirements set forth in this article.
- 606 (c) *Criteria for permit issuance.* A wrecker or immobilization operator's permit may be
607 issued, in the sole discretion of the sheriff, if the applicant meets all of the following
608 minimum criteria:
- 609 (1) Filed a true, correct and complete application on the form proscribed by the sheriff's
610 office, including all proofs of required insurance.
- 611 (2) Holds a valid Florida Class E or higher driver's license.
- 612 (3) Paid the appropriate application fee; and
- 613 (4) The sheriff determines that:
- 614 a. The applicant has not been convicted, pled nolo contendere, had adjudication
615 withheld or been incarcerated for any of the following:
- 616 1. Any capital felony; any first degree felony; sexual battery; any violent felony
617 involving the use of a gun or other weapon that resulted in great bodily harm.
- 618 2. Any crime resulting in a sexual predator or offender registration.
- 619 3. Within the previous ten (10) years: Any violent felony not referenced in
620 subsection (c)(4)a.1. above.
- 621 4. Within the last ten (10) years: Any felony or first degree misdemeanor
622 directly related to the business of towing or immobilization of motor
623 vehicles/vessels, repossession of motor vehicles, motor vehicle theft;
624 carjacking or "chop shops"; or, liens for recovering, towing or storing
625 vehicles/vessels.

- 626 5. Within the previous five (5) years: Driving under the influence (DUI) of
627 alcohol, a controlled substance or a chemical substance to the extent that
628 normal faculties were impaired; reckless driving where the actual DUI
629 charge was reduced to reckless driving, but the DUI sentence was imposed;
630 or, driving with an unlawful blood alcohol level.
- 631 b. Neither the applicant, nor any officer, director, partner, or stockholder owning,
632 holding, controlling or having a beneficial interest of five (5) percent or more in
633 the business entity:
- 634 1. Has a currently suspended operator's permit or has had a permit revoked by
635 action of the clerk within two (2) years of the date of the application.
- 636 2. Has outstanding and unsatisfied civil penalties imposed on account of
637 violations of this article.
- 638 3. Has been convicted of one (1) or more felonies within the preceding five (5)
639 years; or committed three (3) misdemeanors within the preceding three (3)
640 years, unless the civil rights of such individual or applicant have been
641 restored or such person has completed all sentences of incarceration,
642 probation rehabilitation activities and payment of any fines or penalties
643 imposed. For applicants requesting renewal, the clerk may only consider
644 crimes committed after the date the initial permit was issued, unless the
645 crimes were not previously disclosed.
- 646 c. Each corporate or partnership applicant is qualified under the Laws of Florida to
647 do business under the name in which the permit application was filed.
- 648 d. No fraud or willful or knowing misrepresentation or false statement was made
649 on the application.
- 650 e. No judgment against the applicant arising out of the activity of immobilization,
651 recovery, towing, removal or storage of a vehicle/vessel remains unsatisfied.
- 652 f. There are no outstanding arrest warrants against the applicant or any officer,
653 director, partner or stockholder.
- 654 (d) *Review.* Permit applications will be reviewed and granted or denied in writing within five
655 (5) business days. A permit may be granted with conditions, as deemed appropriate by the
656 clerk. If a permit application is denied, the reason for denial will be provided in writing
657 and advise the applicant may correct deficiencies in the application within seven (7) days
658 of the notice of denial without incurring an additional application fee.
- 659 (e) *Appeal.* If an application is denied (including a denial after the applicant unsuccessfully
660 attempts to correct application deficiencies), the denial may be appealed to the Estero
661 village council upon a written request to the Estero Attorney's Office, if filed within ten
662 (10) days following the last written denial. Appeals will be heard by the village council at
663 a public meeting on the appeals agenda.
- 664 (f) *Renewal.* Renewal applications must be filed sixty (60) days prior to the end of the one
665 (1) year permit effective period on a form proscribed by the clerk's office and be
666 accompanied by the appropriate fee. All annual permits that are not properly renewed, will
667 expire on the one (1) year anniversary of the permit effective date. It is the responsibility
668 of the applicant to obtain timely renewal of the permit.
- 669 (g) *Validity.* A permit issued by the clerk's office is valid for a period of one (1) year from the
670 date of issuance.

671 (h) Permits and renewals issued under this article are not transferable.

672

673 **Sec. 24-103. Insurance requirements.**

674

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

683 (1) Worker's compensation and employer's liability insurance as required by statute.

684 (2) Garage liability insurance in an amount not less than three hundred thousand dollars
685 (\$300,000.00) combined single limit.

686 (3) Garage keeper's legal liability insurance in an amount not less than fifty thousand
687 dollars (\$50,000.00) for each loss, covering perils of fire and explosion; theft of a
688 vehicle, its parts or contents; riot and civil commotion; vandalism; malicious
689 mischief; and, damage to a vehicle in tow.

690 (4) The following minimum levels of bodily injury liability insurance and property
691 damage liability insurance, in accord with F.S. § 627.7415, as follows:

692 a. Fifty thousand dollars (\$50,000.00) per occurrence and one hundred thousand
693 dollars (\$100,000.00) combined single limit for a wrecker with a gross vehicle
694 weight of less than thirty-five thousand (35,000) pounds.

695 b. One hundred thousand dollars (\$100,000.00) per occurrence and three hundred
696 thousand dollars (\$300,000.00) combined single limit for a wrecker with a gross
697 vehicle weight of thirty-five thousand (35,000) pounds or more, but less than
698 forty-four thousand (44,000) pounds.

699 c. Three hundred thousand dollars (\$300,000.00) per occurrence and five hundred
700 thousand dollars (\$500,000.00) combined single limit for a wrecker with a gross
701 vehicle weight of forty-four thousand (44,000) pounds or more.

702 d. For immobilization activity, liability coverage in an amount no less than twenty
703 thousand dollars (\$20,000.00) for each incident.

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

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

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

714

715 **Sec. 24-104. Permit document specifications.**

- 716
- 717 (a) The wrecker operator permit or immobilization operator permit issued by the sheriff's
- 718 office must meet the following specifications:
- 719 (1) Be not less than 21/8 inches by 33/8 inches in size.
- 720 (2) Include a photograph of the wrecker or immobilization operator that is not less than
- 721 one (1) inch by one and one-half (1½) inches in size.
- 722 (3) State the name of the wrecker or immobilization service/business entity along with
- 723 the wrecker or immobilization operator's first name in letters that are not less than ¼
- 724 inch by ¼ inch.
- 725 (4) Include a control number (decals number) that is linked to the wrecker or
- 726 immobilization operator's personal driver's license information.
- 727 (5) Include evidence (i.e. a mark or signature) from the sheriff's office that it is a valid
- 728 permit.
- 729 (6) State the expiration date of the permit.
- 730 (7) State any conditions, restrictions or limitations on the permit approval.
- 731 (8) A valid permit must be laminated to protect the information on its face.
- 732 (b) The permit must be replaced if the permit is lost, damaged, stolen, becomes illegible or
- 733 the permit holder changes the business entity under which the services are provided.
- 734 (c) The cost for a replacement permit is five dollars (\$5.00) and is valid only for the remainder
- 735 of the period applicable to the original permit.
- 736

737 **Sec. 24-105. Manifest, trip record or tow sheet.**

- 738
- 739 (a) A person or entity recovering, towing, immobilizing, or removing a vehicle/vessel or
- 740 providing storage in connection therewith must maintain a manifest, trip record or tow
- 741 sheet that includes, at minimum, the following information:
- 742 (1) Name of the permit holder as well as the individual person/employee providing the
- 743 service.
- 744 (2) Decal number of the towing vehicle, equipment or car carrier used to provide the
- 745 service.
- 746 (3) Date and time that the service was requested.
- 747 (4) Name, address and phone number of the person requesting the service. If law
- 748 enforcement requested the tow, include the requesting officer's name and agency
- 749 name.
- 750 (5) Date and time the service was initiated.
- 751 (6) Location at which the service originated.
- 752 (7) Destination to which the towed vehicle is taken and the time of arrival at the
- 753 destination.
- 754 (8) Description of the vehicle that is the subject of the service, including make, model,
- 755 year, color, vehicle identification number, and state license plate number, if any.
- 756 (9) A statement of any visible damage to the exterior of the vehicle and an inventory of
- 757 the visible inventory within the vehicle.
- 758 (10) Description of services provided.
- 759 (11) Costs of services provided.

- 760 (12) Date and time the vehicle was delivered to the storage facility.
761 (13) Date and time the vehicle was released to the owner or agent.
762 (b) Each manifest, trip record or tow sheet must be immediately available for inspection by
763 law enforcement officers or by personnel authorized by the sheriff, at completion of
764 recovery, towing, immobilization or removal of the vehicle.
765 (c) Each permittee must keep, maintain and retain the original manifest, trip record or tow
766 sheet for at least three (3) years. No person/entity providing the service may destroy,
767 mutilate, alter or deface any manifest, trip record or tow sheet prior to the expiration of
768 the three (3) years. All manifests, trip records and tow sheets must be available for
769 inspection by the sheriff or authorized personnel during regular business hours.
770

771 **Sec. 24-106. Regulations applicable to the tow or immobilization operator and related**
772 **business entity.**
773

- 774 (a) The tow or immobilization operator, or the related business entity, must have a valid
775 occupational license (i.e. business tax receipt) for the business entity providing the
776 services. This license must be posted and available for viewing on the business site and
777 storage facility.
778 (b) The tow operator must provide storage for the towed vehicle at a location that is within a
779 ten-mile radius of the location from which the vehicle was removed. However, if a
780 permitted operator providing services in accord with this article is not located within a ten-
781 mile radius, then a removed vehicle may be stored in Lee County at a site within twenty
782 (20) miles of the point of removal.
783 (c) The tow operator providing services must transport the vehicle directly to the storage site
784 of the towing entity providing the service or to another location as directed by the law
785 enforcement officer authorizing the tow. Vehicles may not be kept or placed in a
786 temporary holding area.
787 (d) At the tow storage facility or immobilization business location, the operator must maintain
788 prominent clearly visible signs (in no less than twelve (12) point type, unless otherwise
789 indicated) in the area where business is transacted indicating the following:
790 (1) The name and phone number of the entity; the hours the storage site is open for regular
791 business; and the phone number to call to obtain after hour services. This information
792 must be clearly visible from the street in at least three (3) inch letters on a contrasting
793 background.
794 (2) A schedule of all current rates and charges applicable to tows, removal, impounds and
795 immobilization. This schedule should also include a statement indicating the stated
796 rates and charges do not exceed those established and authorized by this article.
797 (3) Notice of the right to request and review a complete schedule of the rates and charges
798 for towing and immobilization services as adopted by Estero.
799 (4) Notice regarding claimed overcharges for nonconsent tows or immobilization
800 indicating: (1) the owner has a right to post security in the amount of the charges for
801 towing, storage or immobilization with the circuit court in order to obtain release of
802 the vehicle/vessel; (2) upon posting of security meeting F.S. § 713.78 and payment of
803 the fees required by F.S. § 28.24, the clerk of court will issue a certificate directing

- 804 release of the vehicle/vessel; and, (3) the operator is obligated to release the
805 vehicle/vessel upon receipt of the certificate as to the posting of bond.
- 806 (e) Any operator or entity providing services pursuant to this article may not do so when there
807 is a person or animal occupying the vehicle/vessel.
- 808 (f) The permitted operator providing the services must maintain a place of business, which:
809 (1) Supports an office that has at least one (1) on-duty person from 8:00 a.m. to 6:00 p.m.
810 Monday through Friday to answer phone calls and serve the public.
811 (2) Maintains a telephone communication system to answer calls from the public twenty-
812 four (24) hours a day. Provides after hours services that must enable the vehicle/vessel
813 owner/representative to obtain release of the vehicle/vessel within one (1) hour of the
814 phone call.
815 (3) Provides a detailed, signed receipt, at the time payment is made, showing the legal
816 name of the towing or immobilization company, to the person paying the towing,
817 immobilization or storage charges. This receipt must be provided whether requested
818 or not.
- 819 (g) The person/entity providing towing/immobilization services in accordance with this
820 article must advise any vehicle owner or authorized representative that calls by telephone
821 prior to arriving at the storage site the following information:
822 (1) Each and every document or other item that must be produced to retrieve the
823 vehicle/vessel.
824 (2) The exact charges as of the time of the telephone call and the rate at which charges
825 accumulate after the call.
826 (3) The acceptable methods of payment.
827 (4) The hours and days the storage site is open for regular business.
- 828 (h) The person/entity providing storage services must permit every vehicle/vessel owner or
829 authorized representative, upon presentation of reasonable proof as to ownership or
830 authorization from the owner, to inspect the towed vehicle immediately upon arrival at the
831 storage site and before payment of any charges. Examples of "reasonable proof" under
832 this article include, but are not limited to, a driver's license matching the name on the
833 vehicle registration and proof of authorized representation. With the exception of
834 vehicle/vessels held pursuant to a specific request or "hold order" issued by law
835 enforcement, the vehicle owner or authorized representative must be permitted to remove
836 the vehicle license tag as well as any and all personal possessions inside but not affixed to
837 the vehicle, including but not limited to iPods, cellular phones, computers, and hand held
838 GPS units; and, the storage site operator must assist the vehicle owner or representative in
839 doing so.
- 840 (i) The person or entity providing services under this article must accept payment for charges
841 from the vehicle/vessel owner or authorized representative in at least two (2) of the
842 following three (3) categories:
843 (1) Cash, money order or valid traveler's check;
844 (2) Valid bank credit card or debit card; or
845 (3) Valid personal check showing on its face the name and address of the vehicle/vessel
846 owner or authorized representative.

- 847 A vehicle owner or authorized representative may not be required to furnish more
848 than one (1) form of picture identification when payment is rendered using a valid
849 bank card, debit card or personal check.
- 850 (j) The tow or immobilization entity may not condition release of the vehicle/vessel on a
851 requirement that the owner/agent be required to sign a release or waiver with respect to
852 liability for damages.
- 853 (k) The tow operator must complete a tow sheet consistent with section 24-106 for every tow
854 performed. For private property tows, the sheet must be signed by the property owner or
855 authorized representative authorizing the tow/removal unless law enforcement requested
856 the tow, then a signature is not required. This tow sheet must include proper verification
857 of the identity of the property owner or agent upon whose property the vehicle is disabled,
858 abandoned or parked without authorization. A driver's license number for the property
859 owner is an example of proper identity verification.
- 860 (l) Any person providing services in accord with this section may not pay or rebate money or
861 solicit/offer the rebate of money or other valuable consideration in order to obtain the
862 privilege of providing towing/immobilization services.

863
864 **Sec. 24-107. Nonconsent tow or immobilization.**

865
866 A nonconsent tow or immobilization may occur only in compliance with this article and
867 the following:

- 868 (1) The tow or immobilization operator must hold a valid permit in accord with the
869 provisions of this article.
- 870 (2) The vehicle/vessel is not occupied, by a person or animal, at the time the towing,
871 immobilization or removal occurs.
- 872 (3) Law enforcement directed tow. A duly permitted operator is acting upon the express
873 instruction of a law enforcement officer and the activity is conducted in accordance
874 with the contract/agreement between the permitted operator and the governmental
875 entity in whose jurisdiction the law enforcement officer serves.
- 876 (4) Private property impound. A duly permitted operator is acting upon the express
877 instruction of a property owner or authorized agent, or in certain instances a law
878 enforcement officer, on whose property the vehicle is disabled, abandoned or parked
879 without authorization or whose owner/representative is unwilling or unable to remove
880 the vehicle/vessel.
- 881 (5) The operator or entity performing the nonconsent tow or immobilization must, within
882 thirty (30) minutes of completing the activity, notify the law enforcement agency with
883 jurisdiction based upon the location of the vehicle/vessel at the time the service was
884 provided, of the following: (1) the address and time at which the services were
885 rendered (e.g. where the vehicle/vessel was located at the time); (2) the name and
886 address of the storage facility; (3) the make, model color and vehicle license plate
887 number or vessel registration number; and, (4) the name of the operator providing the
888 services. The tow manifest must include the name and identification number of the
889 law enforcement officer to whom the information was provided.
- 890

891 **Sec. 24-108. Express instruction by law enforcement.**
892

- 893 (a) Unless otherwise specifically provided in this article, express instruction from law
894 enforcement that may be relied upon as authorization to tow, remove or immobilize a
895 vehicle must be in writing, identify the date and time the instruction was provided, be
896 signed by the law enforcement officer, and include the officer's identification number. The
897 written document may be prepared by someone other than the officer, however, the officer
898 must sign and verify the accuracy of the document and the instructions prior to the tow or
899 immobilization.
- 900 (b) The following items alone are not express prior instruction from a law enforcement
901 officer:
- 902 (1) Mere posting of signage as required by this article.
 - 903 (2) The terms of a contract or agreement between a towing or immobilization company
904 and a real property owner.
 - 905 (3) An attempt to issue prior express instruction in advance or before the actual
906 unauthorized parking of a vehicle occurs.
 - 907 (4) Prior express instruction that is general in nature and not specifically related to
908 individual identifiable vehicles that are already parked without authorization.
909

910 **Sec. 24-109. Requirements for nonconsent tows from or immobilization on private**
911 **property.**
912

- 913 (a) Tow or immobilization operators holding a valid permit issued under this article may
914 recover, tow, immobilize or remove a vehicle and provide storage in connection therewith
915 upon the instruction of a property owner, or authorized agent, on whose property the
916 vehicle is abandoned or parked without authorization, provided the following
917 requirements are met:
- 918 (1) Notice, meeting the following requirements, must be prominently posted on the
919 property from which the vehicle/vessel will be removed or immobilization will occur:
 - 920 a. Notice must be provided on a light reflective sign as follows:
 - 921 1. In not less than two (2) inch high light reflective letters on a contrasting
922 background, the words "UNAUTHORIZED VEHICLES WILL BE
923 TOWED AWAY AT THE OWNER'S EXPENSE".
924 or
925 If the property owner has authorized the immobilization of vehicle, then the
926 text should read as follows "UNAUTHORIZED VEHICLES WILL BE
927 TOWED AWAY OR IMMOBILIZED AT THE OWNER'S EXPENSE".
 - 928 2. The words, "TOW-AWAY ZONE" must be included in not less than four
929 (4) inch light reflective letters on a contrasting background.
 - 930 3. In not less than one (1) inch high light reflective letters on a contrasting
931 background, the days of the week and hours of the day during which vehicles
932 may be towed or immobilized, the name and phone number of the towing or
933 immobilization entity performing the service.
 - 934 b. The sign must be prominently placed at each driveway access or curb cut
935 allowing vehicle access to the property, setback five (5) feet from the right-of-

936 way line. If there are no curbs or access barriers, signs must be placed at 25-foot
937 intervals along the property frontage. The signs must be permanently installed
938 not less than four (4) feet, but not more than six (6) feet, above ground level and
939 be continuously maintained on the real property for a period of not less than
940 twenty-four (24) hours prior to the towing, immobilization or removal of any
941 vehicle.

942 c. Light reflective signs must be maintained or replaced so as to remain clearly
943 visible, legible and light reflective at all times. The property owner is responsible
944 for providing, maintaining, replacing and removing the signs as necessary.

945 d. Failure to maintain the appropriate signing is a violation of this article.

946 e. The posting of notice, as set forth in this section, is not required where:

947 1. The real property upon which the vehicle is parked is property appurtenant
948 to and obviously a part of a single-family residence.

949 2. Written notice is personally given to the vehicle/vessel owner or authorized
950 driver/agent indicating that the property upon which the vehicle/vessel is
951 parked is reserved or otherwise not available for unauthorized
952 vehicles/vessels; and, the vehicle/vessel is subject to removal or
953 immobilization at the vehicle/vessel owner's expense.

954 (2) The real property owner or authorized agent must provide express instruction to
955 recover, tow, immobilize or remove the vehicle. Evidence of the express instruction
956 must include the property owner or authorized agent's signature, along with the date,
957 on the tow sheet. The person preparing the tow sheet must verify the identity of the
958 property owner or authorized agent before accepting the signature.

959 (3) Immediately upon request, and without demanding compensation, the real property
960 owner must inform the vehicle/vessel owner or authorized representative of the name
961 and address of the tow truck or immobilization entity that recovered, towed,
962 immobilized or removed the vehicle/vessel.

963 (4) Persons or entities providing services pursuant to this section may recover,
964 immobilize, tow or remove a vehicle/vessel or provide storage in connection
965 therewith if the vehicle/vessel owner or authorized representative arrives at the scene
966 prior to recovery, towing, immobilization or removal, and:

967 a. The registered owner or other legally authorized representative in control of the
968 vehicle/vessel refuses or is unable to remove the vehicle/vessel; or

969 b. A complete mechanical connection exists between the vehicle/vessel, the towing
970 or removal apparatus, or the immobilization boot, and the vehicle/vessel owner
971 or authorized representative refuses to pay a reasonable service fee of not more
972 than one-half (½) of the posted/established rate (drop charge) for the services as
973 required under this article.

974 c. No service fee may be demanded if the vehicle/vessel was in the process of being
975 towed or immobilized, but not yet connected to the wrecker or immobilization
976 device.

977 (5) *Drop charges.* If the vehicle/vessel owner or authorized representative arrives at the
978 scene and is willing and able to remove the vehicle/vessel, but for the complete
979 mechanical connection, a drop charge consistent with this article may be charged.
980

- 981 (b) *Agreement to tow.*
- 982 (1) Unless the tow/immobilization meets one (1) of the sign notice exceptions set forth
- 983 in subsection (c) below, the towing or immobilization company must enter into a
- 984 written contract with each private property owner that authorizes the towing or
- 985 immobilization company to tow, immobilize, remove and store vehicles from its
- 986 property. The contract must include:
- 987 a. Contract term (beginning and end date);
- 988 b. The names and titles of those persons (e.g. owner, property manager,
- 989 condominium president) with the authority to appoint or delegate others (e.g.
- 990 security guard, onsite manager) that can act on behalf of the property owner to
- 991 provide express authorization to tow, remove or immobilize a vehicle from its
- 992 property; and,
- 993 c. The name and contact information of the towing or immobilization company
- 994 performing the services.
- 995 (2) The agreement may not include a provision designating liability for the improper
- 996 towing, immobilization, removal or storage of a vehicle to the towing or
- 997 immobilization company.
- 998 a. This provision may not be used by a towing or immobilization company to avoid
- 999 liability for damages to a vehicle caused by the towing or immobilization
- 1000 operator's negligence in providing services.
- 1001 b. Any person or entity improperly causing a vehicle/vessel to be recovered, towed,
- 1002 immobilized, removed or stored is liable to the vehicle/vessel owner for the costs
- 1003 of the services provided; any damages resulting from the removal,
- 1004 immobilization, towing and storage of the vehicle/vessel; and, attorney's fees and
- 1005 court costs.
- 1006 (3) The towing or immobilization company must keep and maintain a copy of each
- 1007 agreement, including any addendums or amendments, on file for at least twelve (12)
- 1008 months after the agreement terminates. Law enforcement officers and agencies have
- 1009 the right to request and inspect all agreements during normal business hours. Towing
- 1010 and immobilization companies must produce the documents upon reasonable request
- 1011 by the law enforcement agency.
- 1012 (4) The agreement may not authorize the recovery, tow, removal or immobilization of
- 1013 vehicles/vessels that are reasonably identifiable from markings or equipment as law
- 1014 enforcement, fire fighting, rescue squad, ambulance or other emergency vehicles or
- 1015 property owned by a government entity.
- 1016 (5) The agreement may not include terms and conditions that are contrary to the
- 1017 provisions of this article.
- 1018 (c) *Exception to sign notice requirement.* The removal of a vehicle/vessel by a towing
- 1019 company may occur without a posted tow-away zone sign in place, when:
- 1020 (1) Authorized by a business owner or lessee due to the fact that the vehicle/vessel is
- 1021 parked in such a ways as to restrict the normal operation of a business.
- 1022 (2) Authorized by an owner, lessee or agent due to the fact that the vehicle/vessel is
- 1023 parked on a public right-of-way in a manner that obstructs access to a private
- 1024 driveway.

- 1025 (3) The property on which the vehicle/vessel is parked is appurtenant to and obviously a
1026 part of a single-family residence.
1027 (4) The vehicle/vessel owner/agent has been given personal notice that the area in which
1028 the vehicle/vessel is parked is reserved or otherwise unavailable for unauthorized
1029 vehicle/vessels and that the vehicle/vessel is subject to removal at the
1030 owner's/operator's expense.

1031

1032 **Sec. 24-110. Drop charges.**

1033

- 1034 (a) If the vehicle/vessel owner or authorized representative arrives at the scene prior to
1035 recovery, towing, immobilization or removal and is willing and able to remove the
1036 vehicle/vessel, but for the complete mechanical connection, a drop charge consistent with
1037 this article may be charged.
1038 (b) An invoice detailing the charges must be presented by the operator prior to the request for
1039 payment.
1040 (c) If the owner/driver is in the vehicle/vessel and refuses to vacate, then in addition to the
1041 drop charge, the tow or immobilization operator may charge for extra time at the scene.
1042 This additional charge is permitted if law enforcement involvement is necessary and the
1043 operator obtains the investigating law enforcement officer's name and badge number. The
1044 operator must also provide a detailed written explanation for "extra time at the scene"
1045 charges. All documentation must be provided to the vehicle/vessel owner upon request.
1046 (d) If a tow company, at the request of law enforcement, is required to perform and has
1047 performed a service, including but not limited to: towing, removal, movement of vehicles,
1048 roadway or scene cleanup or other services required at the scene prior to making a
1049 complete mechanical connection, and the owner/operator seeks to remove the
1050 vehicle/vessel using means other than the tow company providing services at the scene,
1051 the tow company that has acted at the direction of law enforcement has the right to obtain
1052 payment for services rendered at the scene from the owner/operator. Under these
1053 circumstances, charges for the services rendered at the scene will be based upon the hourly
1054 rate charge for the wrecker class on scene plus any exceptional charges (i.e. underwater
1055 recovery charges or hazardous waste cleanup) authorized by law enforcement.

1056 For purposes of this section the term "mechanical connection" means all of the following
1057 criteria are met:

- 1058 (1) For a flatbed truck tow: Four (4) wheels are on the flat bed; or for a wheel lift tow:
1059 two (2) wheels are off the ground; and
1060 (2) The vehicle to be towed is completely secured with safety chains or a safety strap;
1061 and
1062 (3) The tower is in complete control of the vehicle/vessel to be towed.

1063

1064 **Sec. 24-111. Immobilization.**

1065

- 1066 (a) Except as otherwise provided in this article or specifically allowed by law, the practice of
1067 placing a "boot" or other immobilization device on a vehicle is prohibited.
1068 (b) The immobilization can only occur in a manner consistent with the following:
1069 (1) Immobilization of a vehicle may only be performed by a duly permitted operator.

- 1070 (2) Placing a boot or other immobilization device on a vehicle to hold it for later towing
1071 is strictly prohibited. An immobilized vehicle may not be removed by a towing
1072 company until at least six (6) hours after the initial "booting" of the vehicle occurs. If
1073 a vehicle is lawfully booted and then towed, a separate fee for the immobilization may
1074 not be charged in addition to the towing fee. The maximum rate is limited to the
1075 charges applicable to towing the vehicle to the storage location.
- 1076 (3) Immobilization. A "boot" or other device must be placed on the driver's side front
1077 wheel, unless placement on the driver's side front wheel is not feasible because of the
1078 vehicle's location.
- 1079 (4) Immediately after the vehicle is immobilized, a sticker must be placed on the window
1080 adjacent to the driver's seat by the operator performing the immobilization. The
1081 sticker must:
- 1082 a. Be affixed with completely removable adhesive.
 - 1083 b. Be highly visible.
 - 1084 c. Measure eight and one-half (8½) by eleven (11) inches.
 - 1085 d. Contain a warning that any attempt to remove the vehicle will result in damage
1086 to the vehicle.
 - 1087 e. State the name, business address and business phone number of the person that
1088 immobilized the vehicle; contact information to dispatch personnel responsible
1089 for removing the immobilization device.
 - 1090 f. Reference this article.
- 1091 (5) Upon request of the immobilized vehicle's owner or authorized representative and
1092 payment of applicable fees, the immobilization operator must release the vehicle to
1093 the owner/representative within one (1) hour.

1094
1095 **Sec. 24-112. Tow truck class specifications.**

1096
1097 All tow truck vehicles must meet the requirements set forth in Florida Administrative
1098 Code Rule 15B-9.005.

1099
1100 **Sec. 24-113. Business inspection requirements.**

1101
1102 Towing and immobilization operators providing services controlled under the provisions
1103 of this article may be subject to annual inspection by the Lee County Sheriff's Office. The
1104 purpose of the inspection will be to ensure compliance with the provisions of this article.
1105 Entities or operators not meeting the requirements of this article may be cited for violations
1106 discovered during the annual inspection.

1107
1108 **Sec. 24-114. Towing safety standards.**

- 1109
1110 (a) It is unlawful for any person to recover, tow, or remove a vehicle/vessel, using a towing
1111 vehicle, equipment or car carrier in a manner that violates the standards for use of such
1112 towing vehicle, equipment or car carrier as set by the manufacturers thereof.
- 1113 (b) It is unlawful to tow without the use of safety chains or safety straps.
- 1114 (c) It is unlawful to operate a tow truck without the required insurance coverage.

1115 (d) It is unlawful for a tow truck operator working within the right-of-way areas to do so
1116 without wearing high-visibility safety apparel consistent with the Code of Federal
1117 Regulations (23 CFR 634).
1118

1119 **Sec. 24-115. Maximum rates for nonconsent services.**
1120

1121 (a) The maximum rates for nonconsent towing and immobilization services are set forth on
1122 Attachment A to this article.

1123 (b) The village may, by resolution, amend Attachment A and revise, decrease, increase or
1124 establish maximum rates for nonconsent immobilization, recovery, towing, removal and
1125 storage services.

1126 (c) The criteria for establishing the maximum rates for nonconsent law enforcement towing,
1127 private property towing, storage, immobilization and related services are:

1128 (1) Towing services per call means and includes the time from arrival on scene through
1129 the first thirty (30) minutes the tow truck is actively engaged in the safe removal of a
1130 vehicle/vessel.

1131 (2) Mileage charges.

1132 a. A mileage charge may not be imposed/charged for the first ten (10) miles from
1133 the nonconsent tow location.

1134 b. A mileage charge for private property impound/tow must be consistent with F.S.
1135 § 715.07, which requires storage within a 10-mile radius of the removal site.

1136 c. A mileage charge for each mile over the initial ten (10) miles as measured from
1137 the location of an accident scene or rotation call authorized by a jurisdictional
1138 law enforcement agency.

1139 d. Mileage is measured as the shortest distance ("as the crow flies"), between the
1140 location or scene of the tow's origination and the storage facility.

1141 (3) Storage charges must be based upon a 24-hour calendar day, beginning at 12:01 a.m.
1142 and ending at midnight. A vehicle/vessel in storage for six (6) hours or longer, in any
1143 24-hour calendar day, will accrue storage charges for that 24-hour calendar day. A
1144 vehicle/vessel in storage for less than six (6) hours, in any 24-hour calendar day, will
1145 not accrue storage charges for that 24-hour calendar day. Example: Vehicle arrives in
1146 storage at 6:30 p.m., Monday, and is picked up by 6:30 a.m., Tuesday. No charges
1147 accrue for storage on Monday because storage on Monday was only five and one-half
1148 (5½) hours; storage charges do accrue for Tuesday, as storage on Tuesday was for six
1149 and one-half (6½) hours. These storage rates are applicable when:

1150 a. Law enforcement has authorized the vehicle to be impounded; or

1151 b. The appropriate law enforcement agency has been notified by the tow operator,
1152 within thirty (30) minutes after the completion of the tow/removal, that the
1153 towing company is in possession of a vehicle resulting from a private property
1154 impound tow in accord with F.S. § 715.07.

1155 (4) Indoor storage rates may be charged only upon the express direction, accompanied
1156 by written authorization, from the vehicle owner (or authorized representative),
1157 lienholder, insurance company representative, or investigating law enforcement
1158 agency, unless the condition of the vehicle requires indoor storage due to an inclement

- 1159 weather condition, or the vehicle windows or convertible top is down and cannot be
1160 raised, and storage is necessary to protect the vehicle and its contents.
- 1161 (5) Administrative fees, including any lien fees, may be charged only after the vehicle
1162 has been in storage for at least three (3) full calendars days; and
- 1163 a. The law enforcement agency has prepared an incident report authorizing the
1164 vehicle impoundment; or
- 1165 b. The appropriate law enforcement agency has been notified by the tow operator,
1166 within thirty (30) minutes after completion of the tow/removal, that the towing
1167 company is in possession of a vehicle resulting from a private property impound
1168 tow in accord with F.S. § 715.07; and
- 1169 c. The towing company provides proof that the lien notices have been prepared and
1170 sent in accordance with F.S. § 713.78, including the appropriate names and
1171 addresses of the owner and lienholder, and the certified mail information and has
1172 otherwise complied with the provisions of F.S. §§ 713.58 and 713.78.
- 1173 (6) Underwater recovery fees may be charged if the recovery activity is performed by a
1174 certified or professional diver, upon the written authorization and approval of the
1175 investigating law enforcement agency or officer on the scene.
- 1176 (7) A "late hour gate period" may be established by the tow operator between the hours
1177 of 6:00 p.m. and 8:00 a.m. daily and between the hours of 12:01 a.m. and 12:00
1178 midnight on a Village of Estero government observed holidays. Late hour gate fees
1179 may be charged when:
- 1180 a. An impounded vehicle is recovered by the owner or authorized representative
1181 during the late hour gate period or Village of Estero government observed
1182 holiday.
- 1183 b. The owner or authorized representative seeks to recover property from an
1184 impounded vehicle during the late hour gate period or Village of Estero
1185 government observed holiday. However, no charges are permitted for
1186 removal/recovery of prescription medication or prescription eyeglasses from an
1187 impounded vehicle by the owner or authorized representative. If the towing
1188 company/storage entity determines that the owner or authorized representative
1189 made a false request to recover prescription medications or eyeglasses in order
1190 to recover other items, the towing operator may impose a late hour gate fee that
1191 is double the rate adopted by the village under this article. The towing
1192 company/storage entity may request that a law enforcement officer be present at
1193 a time agreed for the recovery of prescription items under this section.
- 1194 (8) Hazardous material clean-up and disposal, if required, by a duly permitted operator,
1195 in accordance with federal, state and local laws and upon the approval of the
1196 investigating law enforcement agency or officer.

1197
1198
1199

Sec. 24-116. Violations; penalties and enforcement.

- 1200 (a) It is unlawful for any person, as part of a regularly conducted business activity to
1201 immobilize, recover, tow, remove a vehicle/vessel or store a vehicle/vessel in connection
1202 therewith or to cause or permit any other person to immobilize, recover, tow, remove or
1203 store a vehicle/vessel without first obtaining and maintaining a current and valid operator

1204 permit pursuant to the provisions of this article. A property owner may cause or permit the
1205 removal of a vehicle from their property in accordance with the provisions of this article.
1206 This article does not apply to persons using a towing vehicle to transport a vehicle/vessel
1207 for personal, family, household or recreational use.

1208 (b) It is unlawful for any person, as part of a regularly conducted business activity, to advertise
1209 to immobilize, recover, tow, remove or store a vehicle/vessel in connection therewith or
1210 to cause or permit any other person to immobilize, recover, tow, remove a vehicle/vessel
1211 or provide storage without first obtaining and maintaining a current and valid operator
1212 permit pursuant to the provisions of this article. Any advertisement in any media form,
1213 including advertisements and telephone listings in all "yellow pages", must include the
1214 permit number issued in accordance with this article.

1215 (c) It is unlawful for the owner of any wrecker service to permit any person to be employed
1216 as a wrecker operator conducting nonconsent towing services within the village, unless
1217 such person holds a valid wrecker operator permit consistent with the provisions of this
1218 article.

1219 (d) Nothing in this article may be construed to prohibit the discharge or storage of a
1220 vehicle/vessel lawfully recovered, towed or removed outside of the village limits and
1221 lawfully transported to Estero; nor may anything in this article be construed to prevent the
1222 immobilization of vehicles by a governmental agency.

1223 (e) Nothing in this article may be construed to prevent a natural person from working in an
1224 employment relation with another person holding a valid permit under this article. Any
1225 person that is an independent contractor, and not an employee of a duly permitted operator,
1226 will be subject to compliance with the requirements and provisions of this article.

1227 (f) Any person who improperly causes a vehicle/vessel to be recovered, towed, immobilized,
1228 removed or stored is liable to the vehicle/vessel owner or authorized representative for the
1229 costs of services provided, any damages resulting from the recovery, towing,
1230 immobilization, removal or storage, and attorney's fees and costs.

1231 (g) Each violation of this article is subject to the maximum fines and penalties specified in the
1232 law under which the enforcement action is based and as provided by either by resolution
1233 of the Village Council or state law.

1234 (h) Notwithstanding the imposition of any other penalty by the village or other entity, three
1235 (3) or more separate incidents involving violations of this article committed by the same
1236 towing or immobilization operator or entity within a 365-day time period will be deemed
1237 a per se sufficient basis for forfeiture of the towing or immobilization operator permit for
1238 a period of sixty (60) days.

1239 (i) This section does not apply to the towing of a vehicle/vessel that occurs with the consent
1240 of the vehicle/vessel owner or authorized representative.

1241 (j) The provisions of this article will be enforced by the Lee County sheriff.

1242

1243 **Sec. 24-117. Administration; disposition of fees and fines; audit.**

1244

1245 (a) The sheriff is responsible for the administration of this article.

1246 (b) The sheriff has the authority to compromise assessments of fines imposed for violations
1247 of this article.

1248 (c) The sheriff may use any legal means to collect unpaid fees and fines.

1249 (d) Fees and fines collected by the sheriff under this article will be deposited by the sheriff
1250 into the Estero general revenue fund to be used exclusively for the administration and
1251 operations under this article.
1252

1253 **Section 2. Effective Date.**
1254

1255 This ordinance shall become effective immediately upon adoption.
1256

1257 **PASSED** on first reading this 10th day of July, 2019.
1258

1259 **PASSED AND ADOPTED BY THE VILLAGE COUNCIL** of the Village of Estero,
1260 Florida this 2nd day of October, 2019.
1261

1262 Attest:

VILLAGE OF ESTERO, FLORIDA

1263
1264
1265 By: 
1266 Kathy Hall, MMC, Village Clerk
1267

1265 By: 
1266 Bill Ribble, Mayor
1267

1268
1269 Reviewed for legal sufficiency:
1270

1271
1272 By: 
1273 Derek Rooney, Esq., Assistant Village Attorney
1274
1275

1276	Vote:	AYE	NAY
1277	Mayor Ribble	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1278	Vice Mayor Errington	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1279	Councilmember Batos	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1280	Councilmember Boesch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1281	Councilmember Levitan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1282	Councilmember McLain	<input checked="" type="checkbox"/>	<input type="checkbox"/>
1283	Councilmember Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>