ORDINANCE NO. 08-_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 9 (LICENSES AND BUSINESS REGULATIONS) OF THE COSTA MESA MUNICIPAL CODE REGARDING NONCONSENSUAL TOWING OF VEHICLES AND ROTATIONAL TOW OPERATIONS

WHEREAS, the City Council finds that the safety and welfare of the general public is promoted by regulating tow truck service companies and operators by requiring licensure, insurance, and proper training in the safe operation of towing equipment, thereby ensuring against towing mistakes that may lead to violent confrontation, stranding motorists in dangerous situations, impeding the expedited recovery of vehicles, and wasting law enforcement's limited resources; and

WHEREAS, pursuant to 49 U.S.C. § 14501(c) the State of California has the authority to regulate tow operators, specifically, as to rates charged for nonconsensual tows and as to safety regulations; and

WHEREAS, pursuant to Section 21100 of the California Vehicle Code, the State of California has delegated the authority to regulate tow operators to city and county governments; and

WHEREAS, the City Council finds that the City's existing regulatory scheme for tow operators has become obsolete following recent amendments made to 49 U.S.C. 14501(c) and Section 22658 of the California Vehicle Code.

THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Sections 9-271 to 9-284, Title 9, Chapter II, Article 18 of the Costa Mesa Municipal Code are hereby repealed.

Section 2. Sections 9-271 to 9-296, Title 9, Chapter II, Article 18 of the Costa Mesa Municipal Code are adopted as follows:

Sec. 9-271. Definitions.

(a) "Tow operation or service" means any activity of towing and/or storing of vehicles, including the removal of vehicles from private property and the performance of other

services incidental to towing, for compensation within the city, and shall include rotational tow operators, designated by an agreement with the Costa Mesa Police Department.

(b) "Tow operator" means an individual, entity, group of persons, or a business, that obtains a tow operation permit and performs tow services in the City of Costa Mesa. "Tow operator" shall also include the permit holder's agents, assignees or employees.

(c) "Tow permit applicant" means an individual, entity, group of persons, or business, that applies for a tow operation permit and to perform tow services in the City of Costa Mesa. "Tow permit applicant" shall also include the permit holder's agents, assignees or employees.

(d) "Tow unit" means any vehicle which is used to tow a motor vehicle as part of a tow operations business.

(e) "Tow unit driver" means the driver of a tow unit.

(f) "Rotational tow operator" means a tow operator under contract to the City of Costa Mesa to respond to police-initiated requests for tow services.

(g) "Chief of police" means the Chief of Police of the Costa Mesa Police Department, or his/her designee.

Sec. 9-272. Applicability -- Exceptions.

(a) The owner or person in lawful possession of private property, including an association of a common interest development as defined in Section 1351 of the Civil Code, may cause the removal of a vehicle parked on the property to a storage facility that meets the requirements of Section 9-294(i) under any of the following circumstances:

(1) There is displayed, in plain view at all entrances to the property, a sign not less than 17 inches by 22 inches in size, with lettering not less than one (1) inch in height, prohibiting public parking and indicating that vehicles will be removed at the owner's expense, and containing the telephone number of the local traffic law enforcement agency and the name and telephone number of each towing company that is a party to a written general towing authorization agreement with the owner or person in lawful possession of the property. The sign may also indicate that a citation may also be issued for the violation.

(2) The vehicle has been issued a notice of parking violation, and 96 hours have elapsed since the issuance of that notice.

(3) The vehicle is on private property and lacks an engine, transmission, wheels, tires, doors, windshield, or any other major part or equipment necessary to operate safely on the highways, the owner or person in lawful possession of the private property has notified the local traffic law enforcement agency, and 24 hours have elapsed since that notification.

(4) The lot or parcel upon which the vehicle is parked is improved with a single-family dwelling.

Sec. 9-273. Permit required -- Display.

(a) No person shall operate, or cause to be operated, nor shall any person employ, permit or allow another to operate or cause to be operated a tow unit on the streets of the city, including towing and/or storing of vehicles from private property without first having obtained a towing operator permit in accordance with the requirements of this article.

(b) (1) The tow operator permit holder shall carry in each tow truck an original or a photocopy of a current business license and a valid tow operator permit.

(2) The tow operator permit holder or its drivers shall on demand show the current business license and a valid tow operator permit to a Costa Mesa police officer or a person duly authorized to enforce this code.

Sec. 9-274. Tow operator permit application.

An application for a tow operator permit shall be filed with the chief of police upon forms provided by the city, which shall be verified and shall contain the following information:

(a) If a sole proprietor, the full name, date of birth, driver's license number, business and residence address of the applicant; or if a corporation, its name, date and place of incorporation, address, and the names of its principal officers, together with their respective residence addresses; or if a partnership, association or unincorporated company, the name of the partners, or the persons comprising such association or company, and the business and residence address of each partner and person; or if the applicant proposes to conduct business under a fictitious name, the applicant shall state the name, address and telephone number of each person owning a financial interest in the business;

(b) The name, address and telephone number of the person or persons who will have general management responsibility for the applicant's business;

(c) Written proof that the applicant is over eighteen (18) years of age;

(d) The name, date of birth, address, driver's license number, and all other information required of all tow drivers employed by the applicant under subdivisions (g), (h), and (i) of this Section. The applicant will provide this information for any change in employee

status within ten (10) business days from the date of the change, after the issuance of the permit;

(e) The year of manufacture, make, model, Vehicle Identification Number, state license number, unladen weight, load capacity weight (GVWR) and type of each tow unit which the applicant proposes to use in the operation of its business;

(f) The addresses and a description of all available public automotive storage facilities that the applicant will use for the storage of towed vehicles;

(g) The business, occupation or employment history of the applicant for the three (3) years immediately preceding the date of application;

(h) The business license and permit history of the applicant (and of the tow service owner, if different from the applicant);

(i) All criminal convictions or proceedings in which a conviction, or a plea of guilty or nolo contendere, was entered, including Vehicle Code violations, of the applicant and of any other person or entity having a financial and/or ownership interest in the tow service;

(j) A certificate of insurance pursuant to Section 9-291;

(k) A description of the color scheme, monogram, advertising, or other distinguishing characteristics to be used to designate the applicant's tow units;

(*l*) Any other identification and documentation that is reasonably necessary to effectuate the purpose of this article.

Sec. 9-275. Tow operator permit application filing fee.

An application as required by section 9-274 shall be accompanied by a filing fee set by resolution of the city council for each tow unit which applicant proposes to operate

within the city to cover the administrative cost to the city for processing the application.

Sec. 9-276. Towing operator permit procedures -- Denial of permit; grounds.

(a) Any applicant for a permit pursuant to these provisions shall submit a completed business license application to the tax collector, as defined in Title 9, Article I, Section 9-15 of this Code.

(b) The applicant shall submit a tow operator permit application to the Police Department. The chief of police shall have a reasonable time in which to investigate the application and the background of the applicant. Based upon such investigation, the chief of police shall issue a permit or deny same.

(c) The Chief Building Official or his or her designee and the Fire Department, on request of the chief of police, shall inspect the premises proposed to be devoted to a public automobile storage facility within the city limits and shall make recommendations to the chief of police.

(d) The Costa Mesa Police Department shall inspect the tow units and towing equipment and make recommendations to the chief of police.

(e) The chief of police shall not issue a permit if, based upon his/her investigation, he/she finds any one or more of the following:

(1) Evidence shows that the permit applicant has deliberately falsified or not completed the application;

(2) The permit applicant fails to furnish the information and documents required by this article;

(3) The permit applicant has been convicted (including a plea of guilty or no contest) of a misdemeanor or felony crime involving registerable sexual offenses (pursuant to

Penal Code Section 290) or moral turpitude;

(4) The permit applicant has been convicted (including a plea of guilty or no contest) of a felony involving sale or use of a controlled substance, within the last five (5) years;

(5) The applicant has been convicted (including a of plea guilty or no contest) to a misdemeanor or a felony crime involving theft or embezzlement within the last five (5) years;

(6) The permit applicant, through an act of omission or commission, engaged in any type of offense, misdemeanor, or felony, involving moral turpitude. Under such circumstances, the conduct of the applicant's employee, if such conduct resulted in a conviction or a plea of nolo contendere or guilty, will be considered imputed to the permit applicant for the purpose of permit denial;

(7) An inspection or investigation by the Building Official, Police Department or Fire Department reveals a deficiency, violation or course of conduct that endangers the peace, health, safety, and general welfare of the public;

(8) The operation as proposed by the applicant, if permitted, would not comply with all applicable laws including, but not limited to, this code;

(9) The applicant is not eighteen (18) years old or older;

(10) The applicant (or the applicant's employees) has a record of excessive violations of the Vehicle Code which has resulted in the suspension or revocation of his/her driver's license or a driving under the influence, reckless driving, or wet reckless conviction within the last three (3) years;

(11) The applicant is unable to produce an insurance policy as described in Section 9-291;

(12) The tow units or towing equipment of the applicant failed the initial inspection by the Costa Mesa Police Department, and the applicant was unable to make the necessary repairs to pass a re-inspection;

(13) The applicant, or any person connected or associated with the applicant as partner, director, officer, stockholder, associate or manager has been refused a tow operation permit or had a permit suspended or revoked by another city, within a year of applying for a tow operation permit with the city;

(f) In the event the permit is denied by the chief of police, written notice of such denial shall be given to the applicant specifying the grounds for such denial. Notice of the denial of the permit shall be deemed to have been served upon personal service of the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at his/her last known address. Within fifteen (15) business days from the date of denial, any person denied a permit pursuant to these provisions may request a hearing, as described in Section 9-294.

Sec. 9-277. Tow operator permit renewal -- Permit amendment.

(a) A permit shall expire after a term of one (1) year for private property impounds, and two (2) years for rotational tow services. The permit can thereafter be renewed.

(b) In the event any permit holder desires to change any facts included upon his/her original application required by section 9-274, the permit holder shall submit a renewal application, indicating any changes in information.

(c) Applications for renewal shall be subject to all provisions of this article.

(d) The decision of the chief of police can be appealed or reviewed as provided in Title 2, Article IX of the Costa Mesa Municipal Code.

Sec. 9-278. Suspension or revocation of towing operator permit ; Notice -- Appeal.

(a) Any permit granted pursuant to the provisions of this article may be suspended or revoked by the chief of police, either in whole or in part, upon written notice to the permit holder.

(b) The permit holder shall be provided with written notice specifying the grounds for such suspension or revocation, by first class mail, postage prepaid, or by personal delivery to the permit holder, or by leaving the notice at the permit holder's place of business or residence.

(c) The permit holder may request a hearing, in writing, within fifteen (15) business days of the mailing of the notice of suspension or revocation, as described in Section 9-279. In the event an appeal is timely filed, the suspension or revocation shall not take effect until a decision has been rendered by the chief of police, the City Manager or his designee, or the appellate body where an appeal has been filed, unless it is necessary to immediately suspend or revoke the permit in order to protect evidence of a crime or to preserve the public health, safety or welfare. If no appeal is filed, the suspension or revocation shall become effective upon expiration of the period for filing the appeal.

(d) It is unlawful for any person to conduct or carry on a tow operation business until the suspended or revoked permit has been reinstated by the chief of police, the City Manager or his designee or by the appellate body.

Sec. 9-279. Grounds for suspension or revocation of towing operator permit.

A tow operator permit may be suspended or revoked by the chief of police on any of the following grounds.

(a) The permit holder has not filed adequate evidence of liability insurance coverage

with the chief of police or has allowed its insurance coverage to lapse or be cancelled;

(b) For the violation of any rule, regulation, or condition set forth in or authorized by section 9-271 through 9-296.

(c) For the violation of any laws of the state or city including zoning laws, with respect to the operation of the business by the permit holder;

(d) For rotational tow operators, failure to comply with the regulations set forth in the Tow Policy Guidelines and Requirements;

(e) If any permit holder's employee, or any person connected or associated with the permit holder as an operator, director, officer, stockholder, general manager, or person who is exercising managerial authority on behalf of the permit holder, has committed any one of the following acts:

(1) Has been convicted of a felony or any crime involving theft, embezzlement, stolen property, fraud or crimes of violence within the last five (5) years;

(2) Has committed any false, fraudulent, deceptive or dangerous act while conducting towing service business;

(3) Has published, uttered or disseminated any false, deceptive or misleading statements or advertisement in connection with the operation of the towing service;

(4) Has conducted the towing service in a manner contrary to the peace, health, safety and general welfare of the public;

(5) Has violated or permitted other persons to violate, through an act of omission or commission, any felony or misdemeanor crime involving registerable sexual offenses (pursuant to Penal Code Section 290);

(6) Has violated or permitted other persons to violate, through an act of omission or

commission, any felony or misdemeanor crime involving or moral turpitude, or a felony involving sale or use of a controlled substance, or any act of dishonesty or fraud within the last five years;

(7) Had an inspection or investigation by the Building Official, Police Department or Fire Department which revealed a deficiency, violation or conduct that endangers the peace, health, safety and general welfare of the public;

(8) Employs tow truck drivers under eighteen (18) years of age;

(9) Fails to notify the Costa Mesa Police Department in writing of the name, address and driver's license number of any newly employed tow truck driver within ten (10) business days of the hire date, or fails to notify the Costa Mesa Police Department within ten (10) business days of any tow truck driver who is no longer employed by the permit holder;

(10) Fails to obtain and maintain a current Costa Mesa business license;

(11) Has charged fees in excess of the schedule of rates set by city council resolution, or for rotational tow services, or in excess of any applicable federal, State or county laws or regulations for towing and/or storage of vehicles or any service incidental to towing;

(12) Has allowed the services of a driver with a record of excessive violations of the Vehicle Code which has resulted in the suspension or revocation of their driver's license or a driving under the influence, reckless driving or wet reckless conviction within the last three (3) years, to remain in its employment as a driver;

(13) Fails to comply with any California Vehicle Code, federal, State, or county regulations and laws relating to towing and/or storing of vehicles, including the

impounding and storing of vehicles from private property;

(14) Fails to maintain control of any personal property, vehicle accessories and vehicles that have been towed;

(15) Has knowingly made false, misleading or fraudulent statements of a material fact in a report or record required to be filed with the Costa Mesa Police Department, or any other law enforcement agency;

(16) Has obtained a tow contract by use of fraud, trick, dishonesty or forgery;

(17) Has stopped and solicited on any street, highway or public thoroughfare the rendering of assistance to a person or disabled vehicle without first being requested to do so, except to render emergency aid when there exists an imminent peril to life or property;

(18) Has towed a vehicle to a location other than that listed as the business address of such permit holder without first receiving authorization to do so by the person authorizing the tow and by the Costa Mesa Police Department;

(19) Has conspired with any person to defraud any owner of any vehicle, or any insurance company, or any person financially interested in the cost of the towing or storage of any vehicle, by making false or deceptive statements relating to the towing or storage of any vehicle;

(20) Has removed a vehicle involved in a collision prior to arrival of police and a person, as a result of such collision, suffered death or injury; or the driver of an involved vehicle, or a party to such collision, was under the influence of a drug or intoxicate of any nature; or there is evidence that such vehicle was involved in a hit and run collision;

(21) Has charged for services not performed, service or equipment not employed, used

or needed, or has otherwise materially misstated the nature of any service performed or equipment used.

Sec. 9-280. Hearing.

In the event the chief of police suspends or revokes a tow operator permit, the permit holder may appeal the chief of police's decision or pursuant to Title 2, Article IX of the Costa Mesa Municipal Code.

Sec. 9-281. New application after denial or revocation.

When the tow operator permit of any person, company or corporation is suspended, revoked or denied for cause, no new or other application for a permit shall be accepted within one (1) year after such revocation or denial.

Sec. 9-282. Transfer of towing operator permit.

No permit issued pursuant to the provisions of this article shall be transferable, either by assignment, sale, hypothecation, operation of law or otherwise, without the permission of the chief of police having been first obtained. Application for transfer of any permit shall be subject to the same terms, conditions and requirements as in an application for an original permit.

Sec. 9-283. Business location.

(a) Any person conducting a towing operation shall maintain a physical location from which the business is conducted. The physical location shall provide an office with an adjacent yard for vehicle storage. The location, which must be within five (5) miles of the Costa Mesa Police Department (99 Fair Drive, Costa Mesa, California 92626), shall be approved by the chief of police, prior to a permit being issued. A permit holder may establish and maintain an additional location within the city as a yard for vehicle

storage. Any additional location shall be approved by the chief of police.

(b) No tow operator permit holder shall conduct a towing operation at a location other than the one(s) specified in the permit.

(c) Where no conflict exists with the city's zoning regulation or other provisions of this code, a change of location may be endorsed on the permit by the chief of police. A change of location form must be submitted to the tax collector and to the Costa Mesa Police Department.

Sec. 9-284. Inspection.

(a) All tow operator permit holders' towing equipment, facility or facilities will be inspected one (1) time per year (annually) with notice, during normal business hours by the Costa Mesa Police Department, or its designated agent, and a report filed thereon.

(b) Any tow operator permit holder's towing equipment, facility or facilities can be inspected with or without cause, without notice, during normal business hours by the Costa Mesa Police Department, or its designated agent, and a report filed thereon.

(c) If any deficiencies or equipment violations are discovered, the tow operator will be so advised in writing. The tow operator will be given ten (10) business days to rectify the deficiency or violation. Failure to comply will result in the tow operator permit being suspended until all violations are corrected.

(d) If, in the opinion of the Costa Mesa Police Department, the deficiencies or equipment violations which are discovered prevent any vehicle from being operated in a safe manner, the unsafe vehicle(s) will be taken out of service. Failure to comply will result in the tow operator permit being suspended until the unsafe vehicle(s) passes inspection.

Sec. 9-285. Independent contractor.

In the performance of tow services for the city, the tow permit holder shall act and be an independent contractor and not an agent or employee of the city, and shall obtain no rights or any benefits that accrue to the city's employees.

Sec. 9-286. Limitations upon subcontracting.

The tow operator will not contract with any other entity to perform any type of tow services as described in this article. In the event that a private property impound is requested, the tow operator will remove the vehicle(s) with legal authorization. If the tow operator receives authorization and then discovers that the vehicle(s) to be removed is of a type for which the tow operator's tow trucks are not legally equipped, or of the size required by the California Vehicle Code to remove such vehicle(s), the vehicle(s) shall not be removed.

Sec. 9- 287. Applicability of regulations to existing businesses.

The provisions of this article shall be applicable to all tow services and tow unit operators, whether established before or after the effective date of the ordinance codified in this article, except that those in business as of the date of the enactment of the ordinance codified in this article shall have thirty (30) days to comply with the terms herein.

Sec. 9-288. Information regarding new or terminated tow truck drivers.

(a) Each tow operator permit holder under this article shall file with the Costa Mesa Police Department the name, address, date of birth, driver's license number, and all other information required of any tow unit driver employed by the permit holder subsequent to the date of the tow operator permit application, which information shall be

filed not later than ten (10) business days following the effective date of hiring.

(b) Each tow operator permit holder under this article shall notify the Costa Mesa Police Department of the name of any tow truck driver no longer employed by such permit holder. This notification shall be given to the Costa Mesa Police Department no later than ten (10) business days following the last date of the driver's employment by the permit holder.

Sec. 9-289. Tow driver training.

Tow drivers shall be proficient in the use of the tow truck they are driving and related equipment, but limited to the procedure necessary for the safe towing and recovery of various types of vehicles. It is the responsibility of the tow operator permit holder to ensure its drivers are qualified and competent employees of the business. The training procedures will be in writing and the permit holder will provide a copy to the Costa Mesa Police Department.

Sec. 9-290. Compliance with State regulations and California Vehicle Code.

This code does not replace the California Vehicle Code or any federal, county or State regulations and laws relating to the towing, impounding and storage of vehicles from private property. Any person, association, firm or corporation shall conduct or carry on the business of towing, impounding and storing illegally parked vehicles from private property located within the city pursuant to this article, the California Vehicle Code, and/or any State, federal or county laws and regulations.

Sec. 9-291. Public liability insurance for towing services.

No holder of a permit to conduct a tow operation shall drive or operate a tow unit, or cause the same to be driven or operated in the city, unless there is on file with the chief

of police, and in full force and effect at all times while such tow unit is being operated, a policy of insurance, or satisfactory evidence of such insurance, approved by the city attorney or risk manager, evidencing that the certificate holder is insured under a policy of liability insurance for personal injury, including death and property damage, providing minimum coverage of one million dollars ($1,000,000.00) combined single limit per occurrence. The permit holder's policy of insurance shall also include coverage for garage keeper's legal liability, or the equivalent, in amounts satisfactory to the city's insurance committee. The permit holder's policy of insurance shall further provide that the city shall be given thirty (30) days' prior written notice of any cancellation, termination or change in the amount of such insurance coverage. The permit holder's policy of insurance shall be executed by a company duly licensed under the laws of the State of California to be an insurance business. Annual or periodic renewal certificates shall be filed with the chief of police upon renewal or change in coverage.

Sec. 9-292. Rules and regulations for towing service operations: Rates and charges -- Signs -- Change of rates -- Itemized statement.

(a) The permit holder shall maintain on file with the Costa Mesa Police Department a current schedule of rates and charges for each offered service. No charge other than the rates and charges specified in such schedule shall be made except:

(1) The rates for towing and storage of illegally parked vehicles removed from private property shall not exceed the rates established by city council resolution.

(2) All tow operators on the Costa Mesa Police Department tow rotation list shall charge reasonable fees for the police rotation calls. All fees charged will be at or below the rates set by resolution of the City Council. The fees charged by the tow operator for

rotational towing will be those fees agreed upon with the Costa Mesa Police Department, following an RFP process. Rates or fees per tow shall include all clean-up per California Vehicle Code Section 27700.

(b) A tow operator shall post and maintain, conspicuously, in the office and/or any location where customers' financial transactions take place, a list of the rates and charges for all services offered.

(c) When a tow operator makes a change in rates and charges, but not in excess of the rates established by Council resolution, it shall provide the Costa Mesa Police Department a copy of the new schedule of rates, at least ten (10) business days prior to the new rate schedule becoming effective. A duplicate copy of such notice shall be posted in the office of the tow operator permit holder next to the schedule of the existing rates and charges, at least ten (10) business days prior to the new rate schedule becoming effective.

(d) Each tow unit shall carry a printed copy of the current rate schedule, listing the charge rates for each service provided by the tow operator for the general public.

(e) When requested, the tow truck driver shall allow a citizen whose car is being towed, or a police officer or other designated employee of the city, to review the rate list.

(f) Rates for lien fees are to comply with California Vehicle Code Section 22851.12.

(g) Payment of tow fees shall be accepted as prescribed within California Vehicle Code 22651.1 by cash or a valid bank card or, at the option of the tow operator, by check or other acceptable form of payment.

(h) The tow operator shall keep a reasonable amount of cash on hand to make change for cash transactions during normal business hours.

(i) (1) A tow operator shall furnish an itemized statement to the person authorizing the towing operator, or his agent. The permit holder shall furnish an itemized statement of service performed including labor and special equipment used in towing the vehicle upon the request of: (1) The registered owner; or (2) The legal owner; or (3) The insurance carrier of either (1) or (2); or (4) The duly authorized agent of any of the foregoing.

(2) The tow operator shall furnish a copy of the statement to any person authorized to receive the statement without demanding payment as a condition precedent.

Sec. 9-293. Rules and regulations for towing service operations: Maximum rate for towing services.

(a) The city council may from time to time adopt by resolution a maximum rate schedule applicable to the towing services covered by this article. The rate schedule will be at a level to ensure competition, provide a fair return on investment, and provide a high quality tow service to the public.

(b) The rate schedule will automatically be adjusted on its anniversary date based on the percentage change in the cost of doing business as measured by the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index, for All Urban Consumers for the Los Angeles--Long Beach Area, All Items, (1967=100) for the preceding twelve (12) months.

(c) Any tow operator permit holder may request an adjustment to the rate schedule, over and above any adjustment made by the City Council, by filing a written request with the director of finance. A permit holder may not make more than one annual

request. Any such request must be made no later than December 1st of each year, and each request shall specifically detail the basis of the request.

(d) When establishing or considering changes to the rate schedule, the council shall consider any written evidence submitted by any interested party. Notice that the council will consider a change to the rate schedule shall be published in a newspaper of general circulation in the city at least once, not less than ten (10) days before the hearing, and written notice shall be sent to all certificate holders.

(e) The city council may, by resolution, establish a fee to defray the cost of logging and creating computer entries for vehicles stored from private property. The fee shall be paid by the towing operation holding a certificate under this article, and may be added as a proper charge to the person causing the vehicle removal from private property or to the person owning such vehicle.

Sec. 9-294. Rules and regulations for towing service operations: Removal of vehicles from private property.

The following rules and regulations shall be observed by all tow operations conducting business within the city:

(a) (1) The tow unit operator removing the vehicle, if the operator knows or is able to ascertain from the property owner, person in lawful possession of the property, or the registration records of the Department of Motor Vehicles the name and address of the registered and legal owner of the vehicle, shall immediately give, or cause to be given, notice in writing to the registered and legal owner of the fact of the removal, the grounds for the removal, and indicate the place to which the vehicle has been removed.

(2) If the vehicle is stored in a storage facility, a copy of the notice shall be given to the

proprietor of the storage facility. The notice provided for in this section shall include the amount of mileage on the vehicle at the time of removal, if reasonably ascertainable, and the time of the removal from the property. If the tow unit operator does not know and is not able to ascertain the name of the owner or for any other reason is unable to give the notice to the owner as provided in this section, the tow unit operator shall comply with the requirements of California Vehicle Code Section 22853(c) relating to notice in the same manner as applicable to an officer removing a vehicle from private property.

(b) (1) An owner or person in lawful possession of private property, or an association of a common interest development, causing the removal of a vehicle parked on that property shall notify by telephone or, if impractical, by the most expeditious means available, the local traffic law enforcement agency within one hour after authorizing the tow.

(2) An owner or person in lawful possession of private property, an association of a common interest development, causing the removal of a vehicle parked on that property, or the tow truck operator who removes the vehicle, shall state the grounds for the removal of the vehicle if requested by the legal or registered owner of that vehicle.

(c) (1) Upon the request of the owner of the vehicle or that owner's agent, the towing company or its driver shall immediately and unconditionally release a vehicle that is not yet removed from the private property and in transit.

(2) If a vehicle is released to a person in compliance with subsection (c)(1), above, the vehicle owner or authorized agent shall immediately move that vehicle to a lawful location.

(3) A towing company may impose a charge of not more than one-half of the regular towing charge for the towing of a vehicle at the request of the owner, the owner's agent, or the person in lawful possession of the private property pursuant to this section if the owner of the vehicle or the vehicle owner's agent returns to the vehicle after the vehicle is coupled to the tow truck by means of a regular hitch, coupling device, drawbar, portable dolly, or is lifted off the ground by means of a conventional trailer, and before it is removed from the private property. The regular towing charge may only be imposed after the vehicle has been removed from the property and is in transit.

(4) A towing operator shall make available for inspection and copying his or her rate schedule within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(d) If a vehicle is released within 24 hours from the time the vehicle is brought into the storage facility, regardless of the calendar date, the storage charge shall be for only one day. Not more than one day's storage charge may be required for a vehicle released the same day that it is stored.

(e) If a request to release a vehicle is made and the appropriate fees are tendered and documentation establishing that the person requesting release is entitled to possession of the vehicle, or is the owner's insurance representative, is presented within the initial 24 hours of storage, and the storage facility fails to comply with the request to release the vehicle or is not open for business during normal business hours, then only one day's storage charge may be required to be paid. A business day is any day in which the lienholder is open for business to the public for at least eight hours. If a request is made more than 24 hours after the vehicle is placed in storage, charges may be

imposed on a full calendar day basis for each day, or part thereof, that the vehicle is in storage.

(f) (1) A permit holder shall accept a valid credit card or cash for payment of towing and storage by a registered owner or the owner's agent claiming the vehicle. "Credit card" means "credit card" as defined in subdivision (a) of Section 1747.02 of the Civil Code, except for the purposes of this section, credit card does not include a credit card issued by a retail seller.

(2) A permit holder shall conspicuously display, in that portion of the storage facility office where business is conducted with the public, a notice advising that all valid credit cards and cash are acceptable means of payment.

(3) Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code.

(g) (1) (A) A towing company shall not remove or commence the removal of a vehicle from private property without first obtaining the written authorization from the property owner or lessee, including an association of a common interest development, or an employee or agent thereof, who shall be present at the time of removal and verify the alleged violation, except that presence and verification is not required if the person authorizing the tow is the property owner, or the owner's agent who is not a tow operator, of a residential rental property of 15 or fewer units that does not have an onsite owner, owner's agent or employee, and the tenant has verified the violation, requested the tow from that tenant's assigned parking space, and provided a signed request or electronic mail, or has called and provides a signed request or electronic mail within 24 hours, to the property owner or owner's agent, which the owner or agent shall

provide to the towing company within 48 hours of authorizing the tow. The signed request or electronic mail shall contain the name and address of the tenant, and the date and time the tenant requested the tow. A towing company shall obtain within 48 hours of receiving the written authorization to tow a copy of a tenant request required pursuant to this subparagraph.

(B) The written authorization under subparagraph (A) shall include all of the following:

(i) The make, model, vehicle identification number, and license plate number of the removed vehicle.

(ii) The name, signature, job title, residential or business address and working telephone number of the person, described in subparagraph (A), authorizing the removal of the vehicle.

(iii) The grounds for the removal of the vehicle.

(iv) The time when the vehicle was first observed parked at the private property.

(v) The time that authorization to tow the vehicle was given.

(C) (i) When the vehicle owner or his or her agent claims the vehicle, the towing company prior to payment of a towing or storage charge shall provide a photocopy of the written authorization to the vehicle owner or the agent.

(ii) If the vehicle was towed from a residential property, the towing company shall redact the information specified in subparagraph (B)(ii) in the photocopy of the written authorization provided to the vehicle owner or the agent pursuant to subparagraph (C)(i).

(iii) The towing service shall also provide to the vehicle owner or the agent a separate notice that provides the telephone number of the appropriate local law enforcement or

prosecuting agency by stating "If you believe that you have been wrongfully towed, please contact the Costa Mesa Police Department at (714) 754-5280." The notice shall be in English and in the most populous language, other than English, that is spoken in the jurisdiction.

(D) A towing company shall not remove or commence the removal of a vehicle from private property described in Section 9-272 unless the towing company has made a good faith inquiry to determine that the owner or the property owner's agent complied with California Vehicle Code 22953.

(E) (i) General authorization to remove or commence removal of a vehicle at the towing company's discretion shall not be delegated to a towing company or its affiliates except in the case of a vehicle unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner which interferes with an entrance to, or exit from, the private property.

(ii) In those cases in which general authorization is granted to a towing company or its affiliate to undertake the removal or commence the removal of a vehicle that is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or that interferes with an entrance to, or exit from, private property, the towing company and the property owner, or owner's agent, or person in lawful possession of the private property shall have a written agreement granting that general authorization.

(2) If a towing company removes a vehicle under a general authorization described in subsection (g) (1) (E) and that vehicle is unlawfully parked within 15 feet of a fire hydrant or in a fire lane, or in a manner that interferes with an entrance to, or exit from, the private property, the towing company shall take, prior to the removal of that vehicle,

a photograph of the vehicle that clearly indicates that parking violation. Prior to accepting payment, the towing company shall keep one copy of the photograph taken pursuant to this paragraph, and shall present that photograph and provide, without charge, a photocopy to the owner or an agent of the owner, when that person claims the vehicle.

(3) A towing company shall maintain the original written authorization, or the general authorization described in subsection (g) (1) (E) and the photograph of the violation, required pursuant to this section, and any written requests from a tenant to the property owner or owner's agent required by subsection (g) (1) (E) for a period of three years and shall make them available for inspection and copying within 24 hours of a request without a warrant to law enforcement, the Attorney General, district attorney, or city attorney.

(h) (1) A towing company that removes a vehicle from private property under this section shall notify the local law enforcement agency of that tow after the vehicle is removed from the private property and is in transit.

(2) Notification must be made within 60 minutes after the vehicle is removed from the private property and is in transit or 15 minutes after arriving at the storage facility, whichever time is less.

(3) If notification is impracticable, the times for notification, as required pursuant to paragraphs (2), shall be tolled for the time period that notification is impracticable. This paragraph is an affirmative defense to a claimed violation of this subsection (h).

(i) A vehicle removed from private property pursuant to this section shall be stored in a facility that meets all of the following requirements:

(1) (A) Is located within five (5) miles from the Costa Mesa Police Station (99 Fair Drive, Costa Mesa, California 92626), except as may be otherwise directed by the registered owner of the vehicle.

(B) The 5-mile radius requirement of subparagraph (A) does not apply if a towing company has prior written approval from the Costa Mesa Police Department.

(2) (A) Remains open during normal business hours and releases vehicles after normal business hours.

(B) A gate fee may be charged for releasing a vehicle after normal business hours, weekends, and state holidays. However, the maximum hourly charge for releasing a vehicle after normal business hours shall be one-half of the hourly tow rate charged for initially towing the vehicle, or less.

(C) Notwithstanding any other provision of law and for purposes of this paragraph, "normal business hours" are Monday to Friday, inclusive, from 8 a.m. to 5 p.m., inclusive, except state holidays.

(3) Shall be adequately fenced with gates locked and secured and reasonably well-lit to maintain a maximum of security for stored and impounded vehicles. Perimeter gates and fencing shall be maintained to ensure security and discourage unauthorized access.

(4) All vehicle storage lots must be inspected and approved by the Costa Mesa Police Department.

(5) Open area storage yard(s) shall comply with all requirements of the zoning and building codes of the jurisdiction of the facility.

(6) Has a public pay telephone in the office area that is open and accessible to the

public.

(7) Any damage to wall structures shall be repaired within 24 hours to ensure proper protection for the stored/impounded vehicles.

(8) Prior to the utilization of a new storage facility, the tow service operator shall obtain the approval of the Chief of Police or his designee and furnish the new address thirty (30) days in advance for inspection.

Sec. 9-295. Additional requirements for rotational tow service.

Costa Mesa Police rotational tow service providers shall comply will all the provisions of this article, as well as the Tow Policy Guidelines and Requirements, and any amendments made thereto from time to time.

Sec. 9-296. Violations and Penalties.

(a) Every person, whether acting as an individual owner, employee of the owner, operator or employee of the operator, or whether acting as a participant or worker in any way, who operates or conducts a towing service pursuant to this article without first obtaining a permit from the city or who shall violate any provision of this article, shall be guilty of a misdemeanor.

(b) Each person shall be guilty of a separate offense for each and every day, or portion thereof, during which any violation of any of the provisions of this article is committed, continued, or permitted to be committed or continued.

(c) Any tow operator establishment operated, conducted or maintained contrary to the provisions of this article is unlawful and will be considered a public nuisance. The City Attorney may prosecute a criminal action hereunder, commence an action or actions, proceedings for the abatement, and removal from, in the manner provided by law. The

City Attorney shall take any action deemed necessary and shall apply to such court or courts having jurisdiction to grant such relief to abate or remove such tow operators from the city.

(d) Nothing is this article shall absolve a tow operator from any civil and/or criminal liability incurred by the failure of the tow operator or his/her agents and employees to comply with the provisions of California Vehicle Code 22658. All civil or criminal remedy under California Vehicle Code Section 22658 shall be in addition to all penalties under this article.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

Section 5. This Ordinance shall take effect and be in full force thirty (30) days from and after the passage thereof, and prior to the expiration of fifteen (15) days from its passage shall be published once in the DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post in the office of the City Clerk a certified copy of this Ordinance together with the names and member of the City Council voting for and against the same.

PASSED AND ADOPTED this _____ day of _____, 2008.

_____
Mayor of the City of Costa Mesa

ATTEST:

_____
City Clerk of the City of Costa Mesa

APPROVED AS TO FORM:

_____
City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)ss
CITY OF COSTA MESA)

I, Julie Folcik, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 08-__ was introduced and considered section by section at a regular meeting of said City Council held on the ____ day of _____, 2008, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the ____ day of _____, 2008, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this ____ day of _____, 2008.

_____
City Clerk and ex-officio Clerk of the
City Council of the City of Costa Mesa