

04-13-82

(See also 05-13-10, adopted simultaneously on 1/29/13)

*ADOPTION OF AN AMENDMENT TO
CHAPTER 82 (MOTOR VEHICLES AND TRAFFIC)
OF THE 1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, January 29, 2013, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 82 (Motor Vehicles and Traffic) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to-wit:

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX

COUNTY, VIRGINIA:

That Chapter 82 (Motor Vehicles and Traffic), Article 5, Section 32 – 32.2, is amended as follows:

Article 5. – Stopping, Standing and Parking.

Section 82-5-32. – Removal, immobilization, and disposition of Vehicles unlawfully parked on private or County property.

(A) Applicability.

Sections 82-5-32 through 32.2 establishes the minimum requirements for all trespass towing initiated in Fairfax County. Fairfax County Code shall also apply to a trespassing Vehicle towed from Fairfax County and stored outside the County.

(AB) Definitions.

The following words and phrases shall have the meanings respectively ascribed to them in this Section:

“Advisory Board” or “TTAB” means the Fairfax County Trespass Towing Advisory Board;

“Board” means the Fairfax County Board of Supervisors;

~~“BTRO” means the Virginia Board of Towing and Recovery Operators.~~

“Commission” means the Fairfax County Consumer Protection Commission.

“County” means the County of Fairfax, Virginia.

“Department” or “DCCS” means the Fairfax County Department of Cable and Consumer Services.

“Director” means the Director of the Fairfax County Department of Cable and Consumer Services or delegatee.

“Driver” means a person who drives or is in actual physical control of a Tow Truck. A Driver shall have obtained all required an authorization documents issued by the ~~BTRO~~State in order to operate a Tow Truck while providing Towing services.

“Drop Fee” means a fee that is charged a Vehicle Owner for disconnecting a Tow Truck from a Vehicle prior to leaving private property.

"Equipment" means any Tow Truck, Vehicle or related machinery or tools used to provide Towing.

"Immobilize" means a procedure or piece of Equipment, such as a boot, used to prevent a Vehicle from moving. Immobilization does not include attachment to a tow truck.

"Law-Enforcement Officer" means any officer authorized by law to direct or regulate traffic or to make arrests for violations of the Code of Virginia or local ordinances.

"Locality" means the geographical area of control of a county, city, or town.

"Locality Permit" means a document indicating an Operator has been approved to Immobilize or trespass Tow Vehicles in Fairfax County and store Vehicles either inside or outside of Fairfax County.

"Operator" or "Towing and Recovery Operator" means any person, including a business, corporation, or sole proprietor, offering services involving the use of a Tow Truck and services incidental to the use of a Tow Truck.

"Personal Property" means any property in a Vehicle which is not attached to or considered to be necessary for the proper operation of the Vehicle.

"Private Property Tow" or "Trespass Tow" means requests for Towing services made by the owner, manager, or lessee of private property, or the authorized agent thereof, or under contract between such person and a Towing and Recovery Operator that specifies what Tows are to be made from the property when a Vehicle is on the property in violation of law or rules promulgated by the owner, manager, or lessee of the private property.

"Property Owner" means the owner, operator, authorized agent, or lessee of any land, space, or area used for parking, including any county, city, or Town, or authorized agent of the person having control of such premises.

"Registration Certificate" means a document indicating an Operator has been approved to trespass Tow and store Vehicles within Fairfax County.

"State" means the Commonwealth of Virginia.

"Storage Site" means a location where Vehicles are taken until the owner reclaims the Vehicle or it is sold. The location must meet all requirements specified in this Section.

"Tow" or "Towed" means when the Tow Truck has engaged a Vehicle by a physical or mechanical means that causes the Towed Vehicle to be removed from private property.

"Tow Truck" or "Truck" means a motor Vehicle for hire (i) designed to lift, pull, or carry another Vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross Vehicle weight rating of at least 10,000 pounds.

"Tow truck" also includes Vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or Tow another Vehicle, commonly referred to as "rollbacks."

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks.

"Vehicle Owner" means the owner, operator, authorized agent, or lessee of a Vehicle.

(B) Exclusions.

(1) This sSection shall not apply to:

(a) Federal, State, or local public service Vehicles.

(b) Vehicle repossession activities.

(c) Vehicles Towed, moved, or stored at the request of a Law-Enforcement officer.

(2) The provisions of this Section shall not be construed to prohibit Vehicles from being Towed when such Towing is otherwise permitted by law.

(C) Signs.

- (1) Permanent signs, clearly visible during daytime and nighttime hours, shall be posted at all entrances to the parking area that conspicuously disclose that such Vehicle willshall be Towed or Immobilized.
- (2) Such signs, at a minimum, shall: (all measurements are approximate)
 - (a) Be made of metal.
 - (b) Be 18 inches high and 12 inches wide.
 - (c) Contain reflective red letters and red reflective graphics on a reflective white background with a 3/8 inch reflective red trim strip 3/8 inch in from the entire outer edge of the sign.
 - (d) Contain the international Towing symbol that is at least 5 inches high by 11 inches wide as found in the Federal Highway Administration, "*Manual on Uniform Traffic Control Devices*".
 - (e) Use Series B or Clearview lettering found in the Federal Highway Administration, "*Manual on Uniform Traffic Control Devices*".
 - (f) Contain "Towing Enforced" in a font size of 2 inch letters.
 - (g) Contain "If Towed Call 703-691-2131" in a font size of 1 inch letters, which is the Fairfax County Department of Public Safety Communications' (DPSC) telephone number. However, if the Tow originated in the Town of Vienna, the sign shall contain, "If Towed Call 703-255-6366" and if the Tow originated in the Town of Herndon, the sign shall contain, "If Towed Call 703-435-6846".
 - (h) Paragraphs (2)(a) through (2)(e)f willshall be effective January 1, 2015.
- (3) Signs posted in a government road right-of-way must meet Virginia Department of Transportation standards and all applicable Virginia laws to include the bottom of the sign mounted at least 7 feet above the ground. Signs posted on private property are not required to meet this height requirement as long as they are clearly visible.

(4) Sign contents may also include additional information such as, but not limited to, the name of the property or name and telephone number of the designated Operator in a font size of 19/32 inch letters.

(5) In addition to the mandatory entrance signs, other area signs may be used to specify any other requirements for parking.

(6) The requirement for signs shall not apply to single-family residence or ~~two-family residence~~ properties not subject to common interest community regulations (as defined in Virginia Code Section 55-528).

(7) No signage of the type required in this sSection shall be required to effect the Towing of a Vehicle unlawfully parked in a spot reserved for persons with disabilities or in a "Fire Lane" that is approved and marked in accordance with County and state requirements.

(8) Trespassing Vehicle on property not marked by signs.

(a) Business properties

(i) A notice must be conspicuously affixed to a trespassing Vehicle with a warning the Vehicle is liable to be towed 48 hours after such notice is posted.

(ii) The notice must contain the date and time of posting.

(iii) A vehicle found to be trespassing a second time on the same unmarked property may be Towed immediately. A warning notice is not required.

(b) Vehicles trespassing on single-family residence properties not subject to common interest community regulations may be towed immediately. No notice is required.

(DE) Property Owner.

(1) A Property Owner may have a Vehicle Towed to a Storage Site or Immobilized without the permission of the Vehicle Owner if the Vehicle is occupying property without permission of the Property Owner, and if conditions set forth in this sSection are met.

- (a) The Property Owner must give written approval for the Tow or Immobilization of a Vehicle parked in violation of the Property Owner's parking policy.
- (b) Copies of such written approvals shall be retained for three years after the date of the last Tow or Immobilization approved by the agreement.

(2) In lieu of having such Vehicle Towed or Immobilized, the Property Owner on which the Vehicle is located may request a Law Enforcement Officer issue, on the premises, a citation to the Vehicle Owner.

(EE) Operator.

Trespass Tow Operators must comply with all requirements of this Section.

- (1) Registration Certificate.
 - (a) All Operators engaged in immobilizing or Towing Vehicles without the consent of the Vehicle Owner in Fairfax County must shall register with the Department of Cable and Consumer Services prior to the initiation of any such operations and duringby January 31 of each subsequent year.
 - (b) To obtain a Registration Ceertificate, the following information and documents must be provided to the Department:
 - (i) Name, address and telephone number of the business engaged in immobilizing or Towing;
 - (ii) Name and telephone number of the business owner or chief executive officer (CEO);
 - (iii) Copy of the Operator's business' Fairfax County ~~Business, Professional and Occupational License (BPOL)~~;
 - (iv) Address, telephone number, and Vehicle storage capacity of each Storage Site to which Vehicles will be Towed;

(v) Copy of each office and Storage Site Non-Residential Use Permit (~~Non RUP~~); and,

(vi) Number of Tow Trucks to be operated in Fairfax County.

(vii) Proof of insurance as required by Virginia Code 46.2-2143 and shall include provisions for notice by the insurance carrier to the Director prior to termination of such coverage.

(c) The Department must be notified of any changes to information previously provided by the Operator within 30 calendar days of the change.

(2) Locality Permit.

(a) All Operators engaged in Towing Vehicles without the consent of the Vehicle Owner in Fairfax County and storing those vehicles outside of Fairfax County must obtain an approved Locality Permit prior to the initiation of any such operations and by January 31 of each subsequent year.

(i) The initial application and annual renewal fee for each Operator shall be \$150.00.

(ii) The initial inspection fee for each Storage Site outside of Fairfax County shall be \$450.00.

(b) An Operator identified on the non-residential use permit of a Storage Site shall be responsible for application and inspection fees.

(3) Registration Certificates and Locality Permits.

(a) It shall be unlawful for any person to procure, or assist another to procure, through theft, fraud, or other illegal means, a Registration Certificate or Locality Permit from the Department. Any violation of any provision of this Section shall be punishable as a Class 2 misdemeanor.

(b) Any person or entity other than the Department that sells, gives, or distributes, or attempts to sell, give or distribute any document purporting to be a Registration Certificate or Locality Permit to

conduct a trespass towing business in Fairfax County is guilty of a Class 1 misdemeanor.

(24) Operational Requirements.

- (a) The Operator ~~will~~shall be open for business 24 hours a day and seven days per week unless the Operator has no ~~cars~~ vehicles Immobilized or in his possession.
- (b) All Tow Truck safety devices must be operational, used, and comply with local, state, and federal laws and regulations.
- (c) An Operator shall not Tow a Vehicle from private property or Immobilize a Vehicle on private property unless the Vehicle is parked in violation as specified by the Property Owner.
- (d) All Tow Trucks shall have the following identifying markings of a contrasting color to the truck body on both sides of each Tow Truck:
 - (i) The Operator's business name as registered with the Department in a font not less than three inches in height.
 - (ii) The Operator's telephone number in a font not less than three inches in height.
 - (iii) Truck number in a font not less than four inches in height.
- (e) Each ~~t~~Tow ~~vehicle~~Truck, while trespass towing, shall have a copy of the current Fairfax County Trespass Towing ~~r~~Registration ~~e~~Certificate or Locality Permit in the Tow Truck.
- (f) Each Immobilization device ~~will~~shall have a label, clearly visible while the device is in position Immobilizing a Vehicle, that lists the Operator's name and telephone number, Immobilization fee, and the Department's name and telephone number.
- (g) The Fairfax County Department of Public Safety Communications (DPSC) ~~will~~shall be notified no later than 30 minutes after initiating the Immobilization or Towing of a Vehicle. However, whenever a Vehicle is Towed or Immobilized from sites

within the Town of Herndon or the Town of Vienna, the Operator, shall notify the law enforcement agency in those jurisdictionslocalities as applicable.

(h) Such notification shall include the:

- (i) Operator name and Driver employee number who Towed or Immobilized the Vehicle;
- (ii) Make, model, color, year, vehicle identification number of the Towed or Immobilized Vehicle;
- (iii) License plate type (such as passenger car, truck, dealer, taxi, disabled), number, state, and year of license of the Towed or Immobilized Vehicle;
- (iv) Address where the Vehicle was Towed or Immobilized from;
- (v) Reason for the Tow or Immobilization;
- (vi) Time such Tow or Immobilization was initiated; and
- (vii) Storage Site address where the Vehicle is located and the Operator's telephone number.

(i) It shall be unlawful to fail to report a Tow or Immobilization as required by this sSection. Violation of the reporting requirements of this sSection shall constitute an invalid Tow resulting in no charge to the owner for the release of the Vehicle.

(j) Upon leaving private property, aAn Operator Driver must Tow each Vehicle directly to a Storage Site located within the boundaries of Fairfax County. Changing the Towing Vehicle shall not be permitted unless the original Towing Vehicle becomes non-operational.

(i) The vehicle must remain in that lot for 30 calendar days if the owner fails to claim the vehicle.

(ii) A vehicle towed outside of Fairfax County may not be towed more than ten miles from the origin of the tow and must remain in the Commonwealth. The straight line 10-mile radius from a Storage Site outside of Fairfax County shall be determined by the Director using the Fairfax County GIS & Mapping Services Branch data.

(k) Photographic evidence clearly substantiating the Vehicle's condition, location, and reason for the Vehicle's Tow or Immobilization must be made prior to connecting the Tow Truck to the Vehicle.

~~(l) Once an Operator connects to a vehicle violating parking rules and Tows a Vehicle from private property, the Vehicle must be taken directly to a Tow Storage Site registered with the Department. Changing the Towing Vehicle shall not be permitted unless the original Towing Vehicle becomes non operational.~~

(m) While being Towed, Vehicles shall be properly secured in accordance with all laws, regulations, and Tow Truck Vehicle manufacturer recommendations.

(n) Nothing in this ~~s~~Section shall release the Tower from liability for failure to use reasonable care to prevent the load from shifting or falling.

(o) Records.

An Operator shall maintain written and electronic records for each Towed or Immobilized Vehicle for a period of three years after such Tow or Immobilization. Records to be retained shall include;

- (i) A record of the Property Owner's approval;
- (ii) The information required to be provided to the DPSC and other local law enforcement agencies pursuant to this Section;
- (iii) A legible copy of the receipt provided to Vehicle Owner; and

(iv) Photographs and any other documentation supporting the tow.

(35) Storage Site Requirements.

(a) Every site to which Trespassing Vehicles are Towed, stored, and available for return to the Vehicle Owner shall comply with the following requirements:

(i) An Operator must Tow each Vehicle to a properly zoned Storage Site ~~located registered within the boundaries of Fairfax County~~ Department.

(ii) A Storage Site shall be lighted during the hours of darkness to afford clear visibility to all portions of the Storage Site.

(iii) A Towed Vehicle shall not be stored more than a reasonable walking distance from the area where Towing and storage fee payments are received.

(iv) The Operator shall exercise reasonable care to keep the Towed Vehicle and its contents safe and secure at all times, which shall include appropriate permanent fencing.

(v) No Operator may take a Vehicle to a Storage Site which does not meet these standards and all other applicable ordinances and regulations:

(A) A clearly visible sign must be posted at the entrance of the Storage Site that provides instructions and a local telephone number for obtaining release of a Vehicle; and

(B) The telephone for the posted number shall be answered 24 hours a day.

(C) A clearly visible sign with a list of all of the Operator's fees for trespass Immobilization, Towing

and storage services, and the Operator's contact information.

(D) A clearly visible sign available from the Department of Cable and Consumer Services, listing the Department's Web site, office address, and telephone number.

(46) Personal Property.

- (a) Nothing shall be removed from the Vehicle without the express consent of the Vehicle Owner
- (b) Personal Property must be released immediately upon the Vehicle Owner's request without charge, and it shall be the duty of the Operator to return it to the Vehicle Owner if the Vehicle Owner claims the items prior to auction. Any lien created under this ~~s~~Section shall not extend to any Personal Property.

(57) Vehicle Release.

- (a) If the Vehicle Owner of the Vehicle is present and removes the Vehicle from the property or corrects the violation before the Vehicle is connected to the Towing Vehicle, no fee ~~will~~shall be charged the Vehicle Owner;
- (b) If the Vehicle has been connected to the Towing Vehicle and has not yet left private property, the Vehicle shall not be Towed upon request of the Vehicle Owner. The Vehicle Owner shall be liable for a Drop Fee, as set forth in this Section, in lieu of Towing, provided that the Vehicle Owner or representative is present and ready, willing, and able to pay the required Drop Fee and removes the Vehicle from the property or corrects the violation.
- (c) An Immobilized or a Towed Vehicle moved to a Storage Site shall be immediately available for release at the request of the Vehicle Owner.
- (d) The Operator shall accept the following forms of payment for any trespass Towing services:

- (i) Cash;
- (ii) Two major national credit cards;
- (iii) MasterCard or Visa debit cards; and
- (iv) Personal checks shall be accepted when credit/debit card machines are not available or are inoperable.

(e) In all cases when a Vehicle is Immobilized, Towed, or fees charged, the Operator ~~will shall~~ provide the Vehicle Owner with a receipt that bears the:

- (i) Complete name, address, and telephone number of the Operator that Towed the Vehicle;
- (ii) Time the Vehicle was Towed;
- (iii) Address from which the Vehicle was Towed;
- (iv) Authority for the Tow (Entity or person authorizing the tow);
- (v) Reason for the Tow;
- (vi) Driver employee number; (the corresponding Driver's name shall be provided to the Fairfax County Police Department (FCPD) and/or the Director upon request)
- (vii) Time the Vehicle was released;
- (viii) An itemized list of all fees assessed in the Immobilization, Towing, storage, and/or release of the Vehicle;
- (ix) The printed name of the person to whom the Vehicle was released; and
- (x) The Department contact information.

(f) If any requirements of this Section are not met, for such Immobilization or Tow, no fee shall be charged.

(68) Compliance.

(a) The Operator ~~will~~shall provide to the Vehicle Owner upon request, a copy of the authority for the Tow; including, without limitation, photographs and other documentation supporting the tow.

(b) Right of Entry. Whenever it is necessary for the purposes of this Section, the duly authorized agent of the Director may enter any trespass Towing business, business establishment, or Storage Site property to obtain information, conduct surveys, audits, compliance reviews, or investigations.

(F) Rates and Charges.

(1) Change to Rates and Charges.

(a) Changes in rates and charges for trespass Towing services rendered by Operators shall be approved by the Board.

(b) The Board may consider changes in rates or charges upon recommendation of the Director or the Advisory Board.

(c) The Director shall conduct a review of rates every two years.

(d) Any review of rate changes as well as any recommended change to any rule, regulation, or practice thereto shall come before the Advisory Board pursuant to a public hearing, which shall be scheduled as soon as analysis, investigation, and administration ~~permit~~allow. All recommendations of the Advisory Board and the Director shall be conveyed to the Board for its consideration and determination.

(e) Whenever the Director or Advisory Board determines a rate change is warranted, all registered Operators shall provide notice to the public of proposed changes in rates and charges thereto, by

means of a sign posted in a clearly visible place at each of their fixed places of business in Fairfax County. Such notice shall be on a document no smaller than 8.5 by 11.0 inches, printed in no smaller than 12-point type, and shall contain substantially the following information:

Notice of Proposed Rate Change
(Insert the Name of the trespass Tower)

A proposed change in trespass Towing rates is under consideration by the Fairfax County government. The proposed rates are: (Insert description of the proposed changes).

The proposed trespass Towing rate change ~~will~~shall be considered by the Trespass Towing Advisory Board at a public hearing. The date, time and location of the public hearing may be obtained by calling the Department of Cable and Consumer Services. Any interested person may appear before the Advisory Board to be heard on this proposed change. Persons who wish to be placed on the speakers' list or who wish further information should call the Department of Cable and Consumer Services at 703-324-5966.

(f) Notices with respect to a proposed rate change shall be posted within ten days of the staff report for such change and shall remain posted until the change in rates is denied or becomes effective.

(2) Rates and Charges.

- (a) It shall be unlawful for an Operator to charge any fees exceeding the fees set forth in this Section.
 - (i) Immobilization. An Operator may charge a Vehicle Owner a maximum fee of \$75.00 for the release of a Vehicle when it is Immobilized. No other fee of any type may be charged.
 - (ii) Drop Fee. An Operator may charge a Vehicle Owner a maximum fee of \$50.00 for the release of a Vehicle prior to

Towing the Vehicle from private property. No other fee of any type may be charged.

(iii) Hookup and initial Towing fee shall not exceed:

A. \$125.00 for Vehicles with a gross vehicle weight rating (GVWR) of 7,500 pounds or less.

B. \$250.00 for Vehicles with a GVWR of 7,501 pounds through 10,000 pounds.

C. \$500.00 for Vehicles with a GVWR greater than 10,000 pounds.

D. For towing a vehicle between seven o'clock p.m. and eight o'clock a.m. or on any Saturday, Sunday, or holiday, a maximum additional fee of \$25 per instance may be charged; however, in no event shall more than two such fees be charged for towing any such vehicle.

E. No other fees or charges shall be imposed during the first 24 hour period.

(iv) Storage fee for the safekeeping of Vehicles:

A. No charge shall be made for storage and safekeeping of a Vehicle for the first 24 hours the Vehicle is on the Storage Site.

B. After the Vehicle is on the Storage Site for more than 24 hours, a Vehicle storage fee may be charged for each subsequent 24-hour period, or any portion thereof, at a rate not to exceed:

1. \$50.00 for any Vehicle 22 feet long or less.

2. \$5.00 per foot for any Vehicle over 22 feet in length.

(v) If an administrative fee for notification of lien holder, owner, agent or other interested party is charged, it shall not exceed \$75.00. This fee may only apply after the Vehicle is on the Storage Site over three full business days. If an administrative fee is charged, a copy of the Virginia Department of Motor Vehicles report will shall be attached to the receipt given to the Vehicle Owner.

(vi) No other administrative fees will shall be charged, or any other charges unless expressly set forth herein.

(b) Upon Vehicle release, the Operator will shall give the Vehicle Owner a receipt itemizing all charges.

(c) An Operator shall not require a Vehicle Owner to sign any waiver of the Vehicle Owner's right to receive compensation for damages to the owner's Vehicle as a condition of the owner retrieving the Towed Vehicle.

(GH) Penalties and Remedies for Violations.

(1) All Trespass Towing.

(a) It shall be unlawful for any person to violate any of the provisions of this Section, or any regulation adopted pursuant to this Section. Unless otherwise stated, these violations shall constitute traffic infractions punishable by a fine of not more than that provided for a Class 4 misdemeanor.

(b) It shall be unlawful for any person to make or cause to be made any false statement in writing for the purpose of procuring a Registration Certificate or Locality Permit, or to make any false statements or entry on records required to be kept by this Section. These violations are a violation of Virginia Code Section 18.2-498.3.

(c) An Operator shall be suspended if the Operator's insurance is no longer in effect. Suspension shall be in accordance with Section 82-5-32.(H)(2)(b) and (d).

(2) Locality Permit Operators.

(a) Denial.

(i) The Director may deny an Operator's Locality Permit application to conduct a trespass towing business in Fairfax County if the Operator:

- A Does not have an approved Storage Site; or
- B Does not possess a valid business license; or
- C Is not properly licensed by the State; or
- D Provides false information on the application.

(ii) The Operator may reapply after application deficiencies are corrected. If the denial is based on 82-5-32.(H)(2)(a)(i)D., the denial shall remain in force for one year from the date of denial.

(b) Suspension.

(i) The Director may suspend an Operator's Fairfax County Locality Permit for a period of one to 60 days and/or until proof of compliance is provided to the satisfaction of the Director for any of the following reasons, but not limited to:

- A Operating a tow vehicle that fails to meet federal, State, and local codes.
- B Any violations of this Section which regulate conduct, reporting, and record-keeping.
- C Occurrence of any of the grounds for denial of a registration application or Locality Permit, listed in Section 82-5-32.(H)(2)(a).
- D Failure to maintain the Storage Site(s) and/or operation(s) in good order and repair.
- E Failure to pay all fees and taxes imposed insofar as such fees relate to operation of a trespass towing business.
- F Failure to maintain proper insurance.
- G Valid consumer complaints regarding trespass towing operation.

(ii) The suspension will become effective 45 days after the Operator receives the suspension notice unless an appeal is filed in accordance paragraph (e) below.

(iii) However, any suspension for a violation of Sections 82-5-32.(H)(2)(b)(i)A and F shall become effective upon the date of any such violation without notification pursuant to paragraph (d) below.

(c) Revocation.

(i) An Operator's Locality Permit may be revoked by the Director for, but not limited to, any of the following reasons:

- A. If an Operator fails to correct deficiencies for which the Operator was suspended.
- B. The Operator makes or causes or allows to be made any false statement in writing for the purpose of procuring a Locality Permit; or
- C. If an Operator makes or causes or allows to be made any false statement or entry on records required to be kept by this Section; or
- D. Conducts operations in the County while under suspension; or
- E. At the discretion of the Director for multiple violations by the Locality Permit holder of any of the provisions of this Section within a twelve-month period.

(ii). The revocation will become effective 45 days after the Operator receives the revocation notice unless an appeal is filed in accordance paragraph (e) below.

(d) Notification.

(i) Written notice of any denial, suspension, or revocation under the above provisions of this Section shall be given by the Director to the Operator in person, or by email, and by certified mail. Such suspension or revocation shall be effective seven calendar days after the deposit of

such notice in the US mail unless otherwise specified in this Section.

NOTE: It shall be unlawful for an Operator to conduct a trespass towing business in the County when the Locality Permit under which the trespass towing operation was placed in service is under suspension or revocation.

(ii) Locality Permits that have been suspended or revoked shall be returned to the Director within seven calendar days from the effective date of the suspension or revocation.

(e) Appeal

Procedure for appeal of action by the Director.

- i. If the Director denies, suspends or revokes any Operator's Locality Permit, any party aggrieved thereby may appeal such decision to the Commission.
- ii. An appeal shall be filed with the Department of Cable and Consumer Services by the appellant or by the legal representative of the appellant. Appeals shall be in writing, and appeals shall include a brief statement of the reasons thereof. Appeals shall be filed within 45 calendar days of receipt of the notice of denial, suspension, or revocation, and signed by the appellant or the legal representative of the appellant.
- iii. Upon receipt of notice of appeal, the Commission shall set a time and place for such hearing and shall give the appellant or legal representative and the Director reasonable notice thereof. All hearings on appeals shall be scheduled and determined as promptly as practicable and in no event more than 60 calendar days from the date the notice of appeal is filed.
- iv. An appeal may be withdrawn at any time by the appellant or his agent prior to the Commission meeting by giving written notice to the Director.
- v. An appeal may also be administratively withdrawn by the Director if it is determined that the appeal was the result of an error.

- vi. The Commission shall consider the case record as well as the statements offered by any interested party and shall consider the matter *de novo*, and the Commission shall, upon the basis of the record before it, affirm, modify or reverse the decision of the Director.
- vii. If the Commission affirms the decision of the Director to suspend or revoke an Operator's Certificate or Locality Permit, then the suspension or revocation shall be effective from the date of the Commissioner's order.
- viii. If the Commission reverses the decision of the Director, the Director shall issue or restore the Operator's permit, in accordance with its order.
- ix. Except as otherwise provided in this Section, an appeal of the decision of the Director to suspend or revoke a Operator's Locality Permit shall stay the effective date of the suspension or revocation.
- x. However, if any suspension or revocation of an Operator's Locality Permit is based on failure to follow appropriate safety procedures or falsifying documents, then the order of the Director shall remain in effect until the Commission has rendered its decision on the appeal.

- (f) The provisions of this Section are not exclusive and do not relieve the parties or the contracts subject thereto from compliance with all other applicable provisions of law.

(H) Code or Regulatory Conflict.

In the event of a conflict between an action of the BTROState and the County, the County ordinance shall be controlling, provided such provisions are no less stringent than requirements imposed by action of the BTROState.

Section 82-5-32.1. – Trespass Towing Advisory Board.

(A) Definitions.

“Citizen Member” means a Member who has no direct or indirect interest, other than as a consumer, in or relating to the Towing and recovery industry.

“Law-Enforcement Member” means a member who is a Fairfax County police officer and appointed by the Fairfax County Chief of Police to the Advisory Board.

“Member” means a Fairfax County resident appointed or confirmed by the Board of Supervisors to the Trespass Towing Advisory Board.

“Towing Member” means an individual who, prior to appointment, and throughout the appointment term, shall be an Operator of a Towing business in Fairfax County.

(B) Members; Staff; and Meetings

(1) There shall be a Trespass Towing Advisory Board (“Advisory Board”). The Advisory Board shall be composed of five members, two of whom shall represent, two of whom shall represent local law-enforcement agencies, and one of whom shall represent the community at large. All members shall be residents of Fairfax County, Virginia. Members of the Advisory Board shall be appointed or confirmed by the Board of Supervisors for terms of three years each. The terms shall be staggered with no more than two terms and no less than one term to commence in any one year. Vacancies shall be filled by the Board of Supervisors as they arise. A Chairperson shall be elected by the Trespass Towing Advisory Board from among the members of the Advisory Board. The Advisory Board may adopt bylaws and rules and regulations governing the conduct of its responsibilities and duties hereinunder.

(2) The Advisory Board shall meet at the call of the Chairperson, or two members of the Advisory Board after notice to all Members, or upon request of the Board of Supervisors, or upon the request of the Director. The staff of the Advisory Board shall be from the Department of Cable and Consumer Services. The Director of the Department of Cable and Consumer Services, or the Director’s designee, shall attend all meetings of the Advisory Board.

(3) A quorum ~~will shall~~ consist of a Towing Member, a Law-Enforcement Member and a Citizen Member.

(B) Duty of the Trespass Towing Advisory Board

The Advisory Board shall advise the Board and provide recommendation(s) to proposed changes related to the trespass Towing code.

Section 82-5-32.1.a. – Consumer Protection Commission duties and hearings.

(A) In addition to all other duties, the Commission shall act upon appeals from actions taken by the Director.

(B) All hearings or other public proceedings conducted by the Commission in accordance with this Section shall be conducted in an informal manner. The Commission shall have the discretion to admit all evidence which may be of probative value even if that evidence is not in accord with formal rules of legal practice and procedure. Applicants and appellants may appear, either by personal appearance, legal counsel, or other representation, to present argument and evidence on their behalf. In addition, the Commission may establish rules of procedure for the conduct of hearings. Any interested party may record all public proceedings of any hearing in any manner which shall not impede the orderly conduct of the hearing.

(C) The Commission shall report all recommendations and/or decisions in writing, and the Commission shall furnish copies of those decisions to the Director and to any applicant or appellant affected thereby.

Section 82-5-32.2. – Department of Cable and Consumer Services.

DCCS shall have the following duties:

(A) Receive, investigate, record, and attempt to resolve Towing complaints.

(B) Forward complaints that cannot be successfully mediated to the ~~BTR~~appropriate State agency.

(C) Refer suspected violations of law to the proper enforcing agency.

(D) Maintain records of Towing complaints and their disposition.

(E) Develop programs of Towing education and information and disseminate such information.

- (F) Provide advice and information on trespass Towing matters to judicial, legislative, administrative, and other public and private bodies.
- (G) Analyze the nature of trespass Towing problems in Fairfax County and recommend to the Board legislative and administrative changes.
- (H) ~~Receive, and process, and act on annual Operator Registration Certificates and Locality Permit applications.~~
- (I) Conduct reviews, inspections, and investigations of Towing ~~sStorage facilities~~Sites and operations.

This amendment shall become effective upon adoption.

GIVEN under my hand this 29th day of January, 2013.

CATHERINE A. CHIANESE
Clerk to the Board of Supervisors