

ORDINANCE # 2024-22

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF SURPRISE, ARIZONA, ADOPTING SURPRISE MUNICIPAL CODE CHAPTER 54, ARTICLE IV, DIVISION 2, SECTIONS 54-116 – 54-124, TOWING FROM PRIVATE PROPERTY; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE AND PENALTIES.

WHEREAS, Arizona Revised Statutes § 9-499.05(A) authorizes the City to regulate, among other things, the maximum rate and charge for towing, transporting or impounding a motor vehicle from private property;

WHEREAS, the City seeks to regulate the maximum rate and charge for towing, transporting or impounding of a motor vehicle from private property and establish reasonable regulations for the protection of owners and operators of vehicles within the boundaries of the City of Surprise;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Surprise, Arizona, as follows:

Section 1. Surprise Municipal Code, Chapter 54, Article 9, Division 2, Sections 54-116 – 54-124 is hereby created as set forth in Exhibit A.

Section 2. If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of these amendments to the municipal code adopted herein is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision will not be read to affect the validity of the remaining portions thereof.

Section 3. This ordinance will become effective at the time and manner prescribed by law.

Section 4. Any person found guilty of violating any provision of this ordinance shall be subject to the penalties set forth in Section 1-7 of the Surprise Municipal Code, except for violations of Section 54-119, which shall be subject to a minimum civil fine/penalty of two hundred fifty dollars (\$250.00) and a maximum civil fine/penalty of one thousand dollars (\$1,000.00).

SIGNATURES ON THE FOLLOWING PAGE

PASSED AND ADOPTED this 17th day of September, 2024.

Skip Hall, Mayor

Attest:

Approved as to form:

Kristi Passarelli, City Clerk

Robert Wingo, City Attorney

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EXHIBIT A

DIVISION 3. -TOWING FROM PRIVATE PROPERTY

State Law reference- Authority to regulate maximum rates of towing motor vehicles from private property, A.R.S. § 9-499.05.

SEC. 54-116.- DEFINITION.

FOR THE PURPOSES OF THIS CHAPTER, "PRIVATE TOWING CARRIER" MEANS ANY PERSON WHO COMMERCIALY OFFERS SERVICES TO TOW, TRANSPORT, IMMOBILIZE OR IMPOUND MOTOR VEHICLES FROM PRIVATE PROPERTY WITHOUT THE PRIOR PERMISSION OF THE OWNER OR OPERATOR OF SUCH VEHICLE BY MEANS OR USE OF A TRUCK OR OTHER VEHICLE OR DEVICE DESIGNED FOR OR ADOPTED TO THAT PURPOSE.

SEC. 54-117. - MAXIMUM CHARGES AND FEES; RELEASE OF VEHICLES.

- a) PURSUANT TO A.R.S. § 9-499.05 AND THIS CHAPTER, PRIVATE TOWING CARRIERS WITHIN THIS CITY SHALL BE SUBJECT TO SUCH MAXIMUM CHARGES AND FEES AS THE COUNCIL SHALL ESTABLISH BY RESOLUTION (*SEE FEE SCHEDULE*) AT LEAST EVERY FIVE (5) YEARS. A PRIVATE TOWING CARRIER IS SUBJECT TO SUCH MAXIMUM CHARGES AND FEES AND OTHER REGULATIONS ESTABLISHED IN THIS SECTION IF THE VEHICLE IS BEING TOWED, TRANSPORTED, IMMOBILIZED OR IMPOUNDED WITHOUT THE PRIOR PERMISSION OF THE OWNER OR OPERATOR FROM PRIVATE PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THIS CITY. NO FEES OTHER THAN THOSE SPECIFIED IN *FEE SCHEDULE* SHALL BE PERMITTED.

- b) A PRIVATE TOWING CARRIER MAY REQUIRE ANY CLAIMANT TO SIGN A RECEIPT FOR THE VEHICLE CLAIMED; HOWEVER, SUCH RECEIPT SHALL CONTAIN NO LANGUAGE OTHER THAN THE FOLLOWING:
 - (1) THE NAME AND ADDRESS OF THE CLAIMANT;
 - (2) THE NAME, ADDRESS AND LETTERHEAD OF THE PRIVATE TOWING CARRIER;
 - (3) THE DATE AND TIME AT WHICH THE VEHICLE WAS CLAIMED;
 - (4) A DESCRIPTION, INCLUDING THE LICENSE NUMBER, OF THE CLAIMED VEHICLE; AND
 - (5) A STATEMENT OF THE UNPAID BALANCE, IF ANY.

- c) NO PRIVATE TOWING CARRIER SHALL RELEASE ANY VEHICLE AFTER HAVING BEEN ADVISED BY ANY LAW ENFORCEMENT AGENCY THAT SUCH VEHICLE HAS BEEN REPORTED AS STOLEN.

- d) A PRIVATE TOWING CARRIER SHALL RELEASE AN IMPOUNDED VEHICLE FROM THE LOCATION WHERE THE CLAIMANT IS DIRECTED BY SIGNS, PURSUANT TO SECTION 54-120, TO RETRIEVE THE VEHICLE. THE VEHICLE SHALL BE RELEASED AT (1) THE TIME THE TOWING AND IMPOUND FEE IS PAID AND (2) PROOF OF OWNERSHIP IS PROVIDED.
- e) THE PRIVATE TOWING CARRIER, ITS AGENTS AND EMPLOYEES SHALL ALLOW THE CLAIMANT IMMEDIATELY UPON REQUEST TO RETRIEVE ANY PROPERTY FROM THE IMPOUNDED VEHICLE.
- f) THE PRIVATE TOWING CARRIER SHALL POST A SIGN WITH A MINIMUM ONE (1) INCH LETTERING WITH THE MAXIMUM CHARGES AND FEES AS ESTABLISHED BY COUNCIL RESOLUTION (*SEE FEE SCHEDULE*) AT THE MAIN BUSINESS ENTRY OF THE IMPOUND LOCATION.
- g) A PRIVATE TOWING CARRIER SHALL POST SIGNS VISIBLE TO CUSTOMERS AT THE LOCATION OF PAYMENT NO SMALLER THAN TWELVE (12) INCHES BY EIGHTEEN (18) INCHES AT THEIR PLACE OF BUSINESS WITH THE FOLLOWING INFORMATION:
 - (1) SURPRISE CITY CODE SECTIONS 54-116 THROUGH 54-124;
 - (2) A LIST OF SPECIFIC FEES AUTHORIZED BY SURPRISE CITY CODE, INCLUDING TOWING FEES, STORAGE FEES AND ANY OTHER CHARGES THAT COULD RESULT FROM THE DISPOSITION OF THE VEHICLE; AND
 - (3) NAME OF PRIVATE TOWING CARRIER, RESPONSIBLE PARTY AND BUSINESS TELEPHONE NUMBER.
- h) A PRIVATE TOWING CARRIER SHALL ACCEPT CREDIT AND DEBIT CARD PAYMENTS FOR ALL LISTED FEES. THERE SHALL BE NO ADDITIONAL CHARGES FOR SUCH PAYMENT METHODS.

SEC. 54-118. - NOTICE TO POLICE.

NO PRIVATE TOWING CARRIER SHALL TOW, IMMOBILIZE OR TRANSPORT ANY VEHICLE WITHOUT THE EXPRESS PERMISSION OF THE OWNER THEREOF, UNLESS THE PRIVATE TOWING CARRIER HAS NOTIFIED THE CITY POLICE DEPARTMENT PRIOR TO TOWING, IMMOBILIZING OR TRANSPORTING THE VEHICLE AND PROVIDED THE FOLLOWING INFORMATION:

- (1) THE NAME AND ADDRESS OF THE OWNER OF THE VEHICLE, IF KNOWN;
- (2) THE VEHICLE LICENSE NUMBER, VEHICLE IDENTIFICATION NUMBER (VIN) AND

DESCRIPTION;

- (3) THE REASON THE VEHICLE WAS MOVED OR IMMOBILIZED WITHOUT THE OWNER'S PERMISSION;
- (4) THE LOCATION WHERE THE VEHICLE WAS IMMOBILIZED OR TAKEN; AND
- (5) THE NAME AND DRIVER'S LICENSE NUMBER OF THE PERSON THAT TOWED OR IMMOBILIZED THE VEHICLE AND THE NAME AND ADDRESS OF THE COMPANY THAT TOWED, IMMOBILIZED OR TRANSPORTED THE VEHICLE.

SEC. 54-119. - AUTHORITY TO TOW.

- a) IT SHALL BE UNLAWFUL FOR A PRIVATE TOWING CARRIER TO TOW OR TRANSPORT A MOTOR VEHICLE FROM PRIVATE PROPERTY OR IMMOBILIZE A VEHICLE ON PRIVATE PROPERTY WITHOUT THE PERMISSION OF THE OWNER OR OPERATOR OF THE VEHICLE UNLESS SUCH PRIVATE TOWING CARRIER RECEIVES A REQUEST FROM A LAW ENFORCEMENT AGENCY OR THE EXPRESS WRITTEN PERMISSION FROM THE OWNER OF THE PROPERTY OR THE AGENT OF THE OWNER, WHO HAS COMPLIED WITH REQUIREMENTS OF THIS SECTION. THE OWNER OR THE OWNER'S AGENT SHALL EITHER SIGN EACH TOWING ORDER OR AUTHORIZE THE TOW BY A WRITTEN CONTRACT WHICH IS VALID FOR A SPECIFIC LENGTH OF TIME. THE PRIVATE TOWING CARRIER MAY NOT ACT AS THE AGENT OF THE OWNER. A COPY OF THE WRITTEN CONTRACT SHALL BE MADE READILY AVAILABLE TO THE LAW ENFORCEMENT AGENCY UPON REQUEST AND INCLUDE THE OWNER'S OR OWNER'S AGENT NAME AND CURRENT TELEPHONE NUMBERS.
- b) A PRIVATE TOWING CARRIER SHALL ONLY BE AUTHORIZED TO TOW OR TRANSPORT A MOTOR VEHICLE FROM THE TOW LOCATION TO THE CARRIER'S DESIGNATED LOT.

SEC. 54-120. - NOTICE TO PUBLIC OF RIGHT TO TOW.

- a) THE OWNER OR PERSON IN POSSESSION OF ANY PRIVATE PARKING AREA SHALL BE DEEMED TO HAVE GIVEN CONSENT TO UNRESTRICTED PARKING BY THE GENERAL PUBLIC IN SUCH PARKING AREA UNLESS SUCH PARKING AREA IS POSTED WITH SIGNS AS PRESCRIBED BY THIS SECTION WHICH ARE CLEARLY VISIBLE AND READABLE FROM ANY POINT WITHIN THE PARKING AREA AND AT EACH ENTRANCE. THE OWNER OF A SUBDIVISION OR AREA CONTAINING PRIVATE STREETS MAY PROHIBIT PARKING ON ONE (1) OR BOTH SIDES OF THE STREET IF SIGNS AS PRESCRIBED BY THIS SECTION ARE POSTED AT EACH ENTRANCE TO THE SUBDIVISION OR AREA AND NEAR EVERY INTERSECTING STREET AT A LOCATION WHERE THE SIGN IS

VISIBLE AND READABLE UPON ENTRY TO ANY SUCH STREET FROM THE INTERSECTING STREET. SUCH SIGNS SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

- (1) RESTRICTIONS ON PARKING;
 - (2) DISPOSITION OF VEHICLES FOUND IN VIOLATION OF PARKING RESTRICTIONS;
 - (3) MAXIMUM COST TO THE VIOLATOR, INCLUDING STORAGE FEES AND ANY OTHER CHARGES THAT COULD RESULT FROM THE DISPOSITION OF A VEHICLE PARKED IN VIOLATION OF PARKING RESTRICTIONS;
AND
 - (4) TELEPHONE NUMBER AND ADDRESS WHERE THE VIOLATOR CAN LOCATE THE VIOLATOR'S VEHICLE.
- b) SIGNS AT THE ENTRANCE OF THE PARKING AREA WILL BE A MINIMUM OF TWELVE (12) INCHES BY EIGHTEEN (18) INCHES IN SIZE AND WILL BE MOUNTED AT A MINIMUM HEIGHT OF THREE (3) FEET AND A MAXIMUM HEIGHT OF TEN (10) FEET ABOVE THE GROUND. SIGNS WITHIN THE PARKING AREA WILL BE A MINIMUM OF SIX INCHES BY NINE (9) INCHES IN SIZE AND MUST BE VISIBLE FROM ANY LOCATION WITHIN THE PARKING AREA. ALL SIGNS PURSUANT TO THIS SUBSECTION SHALL CONSIST OF A WHITE BACKGROUND WITH RED LETTERING.
- c) NO PRIVATE TOWING CARRIER SHALL TOW A VEHICLE FROM A PRIVATE PARKING AREA OR IMMOBILIZE THE VEHICLE UNLESS THE SIGNS CONFORM WITH AND ARE POSTED AS REQUIRED BY THIS SECTION.
- d) THIS SECTION SHALL NOT APPLY TO ANY VEHICLE LEFT IN A PRIVATE PARKING AREA FOR OVER SEVENTY-TWO (72) CONSECUTIVE HOURS. THE OWNER OR PERSON IN POSSESSION OF ANY PRIVATE PARKING AREA IN WHICH A VEHICLE HAS BEEN LEFT FOR OVER SEVENTY-TWO (72) CONSECUTIVE HOURS SHALL COMPLY WITH SECTION 54-118 PROVISIONS OF THIS CHAPTER BEFORE TOWING OR IMMOBILIZING SUCH VEHICLE.

SEC. 54-121. - CHARGING EXCESS FEES.

- a) NO PRIVATE TOWING CARRIER SHALL CHARGE ANY FEE OR CHARGE IN EXCESS OF THOSE ESTABLISHED BY RESOLUTION ENACTED PURSUANT TO THIS CHAPTER.
- b) IGNORANCE OF THE MAXIMUM CHARGE OR FEE ESTABLISHED BY COUNCIL RESOLUTION SHALL NOT BE A DEFENSE IN ANY PROSECUTION

BROUGHT UNDER THIS CHAPTER.

- c) NO PRIVATE TOWING CARRIER SHALL CHARGE FOR OR SEEK COMPENSATION FOR ANY SERVICE NOT SPECIFICALLY LISTED OR SET FORTH IN A RESOLUTION ENACTED PURSUANT TO THIS CHAPTER.

SEC. 54-122. - SERVICE CALLS.

FOR THE PURPOSES OF THIS CHAPTER AND OF ANY RESOLUTION ADOPTED PURSUANT TO SECTION 54-117, THE PHRASE "SERVICE CALL NOT RESULTING IN THE TOWING OF A VEHICLE" SHALL MEAN ANY OCCURRENCE OR SET OF CIRCUMSTANCES WHEREIN THE VEHICLE SUBJECT TO TOWING HAS NOT BEEN REMOVED FROM THE PROPERTY UPON WHICH SUCH VEHICLE WAS UNLAWFULLY OR IMPROPERLY PARKED PRIOR TO DEMAND FOR THE RELEASE OF SUCH VEHICLE BY THE OWNER OR OPERATOR THEREOF. IF THE DRIVER OR OWNER OF THE VEHICLE RETURNS PRIOR TO THE REMOVAL OF THE VEHICLE FROM THE PROPERTY, THE PRIVATE TOW CARRIER SHALL RELEASE THE VEHICLE AND NO FEE SHALL BE CHARGED.

SEC. 54-123. -APPLICATION OF LAW.

A PRIVATE TOWING CARRIER IS SUBJECT TO THE PROVISIONS OF THIS CHAPTER IF IT TOWS, IMMOBILIZES OR TRANSPORTS A VEHICLE WITHIN THE CITY LIMITS REGARDLESS OF THE IMPOUND LOCATION.

SEC. 54-124. - VIOLATION; PENALTIES.

VIOLATIONS OF THIS CHAPTER SHALL BE PUNISHABLE AS SET FORTH IN SECTION 1-7 OF THIS CODE, EXCEPT FOR VIOLATIONS OF SECTION 54-119, WHICH SHALL BE SUBJECT TO A MINIMUM CIVIL FINE/PENALTY OF TWO HUNDRED FIFTY DOLLARS (\$250.00) AND A MAXIMUM CIVIL FINE/PENALTY OF ONE THOUSAND DOLLARS (\$1,00000).