

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas
J. Durham Cole, Circuit Court Judge

Case No. 2017-CP-42-01468
Appellate Case No. 2017-002585

Cole Towing and Recovery, LLC, ... Appellant,

v.

City of Spartanburg and Spartanburg City Council, ... Respondents.

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Cole Towing and Recovery, LLC,
Plaintiff,
vs.
City of Spartanburg and Spartanburg City
Council,
Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-42-01468

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

This case came before the Court on August 2, 2017, for a hearing on cross motions of the Plaintiff Cole Towing and Recovery, LLC, ("Cole") and the Defendants City of Spartanburg and Spartanburg City Council (the "City") seeking summary judgment pursuant to Rule 56, SCRPC. After careful consideration of the evidence, law, memoranda, affidavits, exhibits and oral arguments, the Court issued a Form 4C Order, filed on October 16, 2017, denying Cole's motion for summary judgment and granting the City's motion for summary judgment.

The Court now issues this more formal final Order setting out the basis for those rulings. For the reasons set forth below, the Court finds and concludes that there are no genuine issues of material fact and that the City is entitled to judgment as a matter of law. The Court, accordingly, denies Cole's motion for summary judgment and grants the City's motion for summary judgment.

NATURE OF THE CASE AND PROCEDURAL BACKGROUND

By Complaint filed on April 27, 2017, Cole, a towing company operating within the geographical limits of the City, challenged the constitutionality and legality of an Ordinance, enacted by the City Council on April 10, 2017, that regulated aspects of the nonconsensual towing of motor vehicles from privately-owned property. The Complaint prays for a declaration by the Court that the Ordinance is invalid on the grounds that it (1) conflicts with and is preempted by

S.C. Code §16-11-760, (2) violates the Contracts Clause of the United States Constitution, (3) violates 49 U.S.C. §14501(c)(1), and (4) deals with subject matter beyond its authority and police power by imposing price controls, burdening interstate commerce, and violating Cole's equal protection and due process rights. The Complaint further seeks a declaration that the Ordinance, by its language, does not apply to multi-family residential property. In addition to this declaratory relief, the Complaint also asserts causes of action for monetary damages for (1) interference with contractual relations, (2) gross negligence, and (3) inverse condemnation.

Concurrent with its Complaint, Cole moved for temporary injunctive relief with regard to enforcement of the Ordinance. Cole's motion for temporary relief was denied, after hearing, by Order of Circuit Court Judge R. Keith Kelly, filed on June 23, 2017. In that Order, the Court determined that Cole failed to make a showing of irreparable harm or of lack of adequate remedy sufficient to justify a temporary injunction. The Court also concluded that it was unnecessary to decide, for purposes of the motion, whether Cole was or was not likely to succeed on the merits.

On June 29, 2017, Cole filed a motion for summary judgment "on the invalidity of the Defendant's Ordinance." The City, on July 18, 2017, filed a motion for summary judgment in its favor on all of Cole's causes of action for declaratory and monetary relief.

THE ORDINANCE AND ADDITIONAL FACTUAL BACKGROUND

The Ordinance at issue in this case regulates certain aspects of, and predatory practices related to, nonconsensual booting and towing of motor vehicles on privately-owned commercial property within the City limits. A copy of the Ordinance is attached to the Complaint, to the Affidavit of Cole's principal, Christopher M. Cole, filed on July 25, 2017, and to the Affidavit of City Manager Ed Memmott, filed on May 26, 2017. The Ordinance received the first of two required readings by the City Council on March 20, 2017, and the second and final reading on

April 10, 2017. By its terms, the Ordinance became effective thirty days after enactment by the second and final reading.

The Ordinance amends the City Code chapter on “Wreckers and Wrecking Services” by adding Sections 23-14 through 23-19 concerning “Nonconsensual Booting and Towing.” Importantly, nonconsensual towing is not prohibited in its entirety by the Ordinance, and nonconsensual towing, within the framework of the Ordinance, is permitted. A detailed summary of the entire Ordinance is not necessary; however, the pertinent provisions can be briefly summarized as follows:

- The WHEREAS provisions refer to the City’s previous setting of maximum rate schedules for towing from public rights-of-way, relate that the City Police Department has become aware of incidents of towing from privately-owned commercial property in which vehicle owners were charged significantly higher rates than those permitted for towing from public rights-of way, and provide that “a modification of the Code is desired to protect the public and reasonably balance the property rights and interests associated with” towing from privately- owned commercial property.
- Section 23-14 begins with an acknowledgement of the rights of property owners and of the misdemeanor created by S.C. Code § 16-11-760 of parking on privately-owned commercial property without the property owner’s consent if the owner has posted notice at a conspicuous place. Section 23-14 then sets out twelve legislative findings that detail the perceived imbalance between the rights of property owners and the existence of circumstances of notice issues, predatory practices involving towing from private property (particularly, on “lots associated with residential properties, primarily apartment complexes”), and excessive charges.
- Section 23-15 provides definitions of ten words or terms, including the definition of “Nonconsensual towing” as “the towing of a vehicle from property other than a public right-of-way which is authorized or directed by a person other than the vehicle owner, its authorized operator or an authorized agent of the owner.”
- Section 23-16 provides that it is unlawful to charge “for the nonconsensual towing of any motor vehicle from any parking lot located upon privately-owned commercial property without authorization from the owner of the motor vehicle or of the city” unless certain specified requirements are met. The requirements relate to the size, location and approval of notice signs. The Section further provides that the requirements “are in addition to, and not in lieu of, the provisions of S.C. Code 1976, § 16-11-760(A) . . .”

- Section 23-17 sets certain procedures for towing and payment of towing charges. A towing company may not tow without prior written authorization from the property owner (although the authorization may be a written agreement for a specific property and term). The towing company must report all tows to the City police department within 60 minutes. If the vehicle owner arrives prior to vehicle removal, the towing operator must accept tendered payment (of no more than one-half of the maximum towing fee set by §23-19) and release the vehicle immediately.
- Section 23-18 requires a City permit in order for towing companies to tow from privately-owned commercial property. The Section further requires the City Manager to develop permit application forms containing certain information specified in the Section. The Section also requires certain insurance coverage for towing companies and subjects books and records of towing companies to inspection and audit.
- Section 23-19 sets maximum charges for towing and storage. The fees are subject to revision over time by the City Manager and should be high enough to allow for timely service from competent providers but should not be so high as to be punitive. The Section also requires towing companies to provide invoices and receipts for services. Finally, the Section provides that violations of the Ordinance are punishable by fines up to \$500 and/or 30 days in jail or revocation of business license.

The May 2017 Affidavit of City Manager Ed Memmott included minutes from the two Council meetings at which the ordinance was read. The Supplemental Affidavit of the City Manager, filed with the City's Motion on July 18, 2017, included a transcription of the "Public Comments" section of the City Council meeting on April 10, 2017, at which the Ordinance was given second reading. These items reflect comments to the Council from members of the public related to the subject matter of the Ordinance. These comments fully support the statement in the City Manager's first Affidavit that the Ordinance was adopted against a background of citizen complaints about predatory nonconsensual towing practices.

The Affidavit of Christopher M. Cole, and its Exhibits, set out, among other things, certain allegations concerning Cole's claimed lost income and certain allegations concerning the conduct of the City. The Affidavit of the City's Paul Smith, filed on May 26, 2017, includes, as Exhibits,

copies of the three nonconsensual towing permit applications (including that of Cole) then received by the City.

STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRCP; Etheredge v. Richland School District One, 341 S.C. 307, 311, 534 S.E. 2d 275, 277 (2000). “For purposes of summary judgment, an issue is ‘material’ if the facts alleged are such as to constitute a legal defense or are of such a nature as to affect the result of the action.” Nelson v. Piggly Wiggly Central, Inc., 390 S.C. 382, 388, 701 S.E.2d 776, 779 (Ct. App. 2010).

The party seeking summary judgment bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E. 2d 537 (1991). “The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” Carolina Alliance for Fair Employment v. S.C. Department of Labor, Licensing and Regulation, 337 S.C. 476, 485, 523 S.E. 2d 795, 800 (Ct. App. 1999).

A party opposing summary judgment may not rest on the mere allegations of the pleadings, but must set forth or point to specific facts in the record showing that there is a genuine issue of material fact. Rule 56(e), SCRCP. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to

withstand a motion for summary judgment. Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). It is well established that the Court, in considering a motion for summary judgment, must view the facts and reasonable inferences therefrom in the light most favorable to the nonmoving party. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment is warranted. Ellis v. Davidson, 358 S.C. 509, 517-518, 595 S.E.2d 817, 821 (Ct. App. 2004).

Cross motions for summary judgment “authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties.” Alltel Communications, Inc. v. S.C. Department of Revenue, 399 S.C. 313, 319 n.2, 731 S.E. 2d 869, 872 n.2 (2012). “Where cross motions for summary judgment are filed, the parties concede the issue before us should be decided as a matter of law.” Wiegand v. U.S. Auto Association, 391 S.C. 159, 163, 705 S.E. 2d 432, 434 (2011).

LEGAL DISCUSSION AND ANALYSIS

I. The Ordinance is within the City’s power and authority.

“A municipal ordinance is a legislative enactment and is presumed to be constitutional.” Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 366, 660 S.E.2d 264, 270 (2008). Under the Constitution of this State, “all laws concerning local government shall be liberally construed in their favor.” S.C. Const. art. VIII, §17. Municipalities have broad powers under State law and may enact regulations, and ordinances, not inconsistent with the Constitution and general law of this State. S.C. Code Ann. §5-7-30. Determining the validity of a local ordinance is a two-step test: (1) Did the municipality have the power to enact the ordinance? (2) Is the ordinance inconsistent with the Constitution or general law of the State? Hospitality Association of S.C. v. County of Charleston, 320 S.C. 219, 224, 464 S.E.2d 113, 116 (1995).

Cole argues that the City can cite to no law that allows for price controls for nonconsensual towing; however, Cole offers no authority for the placing of such a requirement on the City. This argument by Cole is particularly misplaced here when South Carolina courts consistently declare that the *attacking* party bears the burden of proving the invalidity of a challenged ordinance. See Whaley v. Dorchester County Zoning Board of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999); Peterson Outdoor Advertising v. City of Myrtle Beach, 327 S.C. 230, 489 S.E.2d 630 (1997).

Cole's reliance on R.L. Jordan Co. v. Boardman Petroleum, 338 S.C. 475, 527 S.E.2d 763 (2000), is also misplaced. R.L. Jordan holds that economic or social welfare legislation "is not overturned unless the law has no rational relationship to any legitimate interest of government." R.L. Jordan, 338 S.C. at 477, 527 S.E.2d at 765. R.L. Jordan also squarely supports the position of the City that "great deference" is given to legislative judgment on what is reasonable to promote the public welfare. Id. Appropriately, the City relies upon the affidavits, and meeting minutes and transcript in the record reflecting the statements by community members voicing a concern for their own health and safety or the health and safety of loved ones, and concern for the welfare of vehicle owners and their families. See the Affidavit of City Manager Ed Memmott and the Supplemental Affidavit of City Manager Ed Memmott (Ex. 5, April 10, 2017, City Council meeting transcript). The Court concludes, based on the evidence, that the activity of towing of motor vehicles from privately-owned commercial property over public roads has a rational relationship to a legitimate governmental interest. This conclusion satisfies the R.L. Jordan standard and also disposes of Cole's substantive due process claim.

A municipality is within its authority to enact an ordinance if it is consistent with State law. "In order for there to be a conflict between a State statute and municipal ordinance, both must contain either express or implied conditions which are inconsistent and irreconcilable with each

other. If either is silent where the other speaks, there is no conflict.” Bugsy’s, Inc. v. The City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000), quoting Barnhill v. City of North Myrtle Beach, 333 S.C. 482, 511 S.E.2d 361 (1999)); Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. at 553, 397 S.E.2d at 664 (1990), quoting McAbee v. Southern Rwy. Co., 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932)) (where no conflict exists, both laws stand).

The City correctly urges that the South Carolina Supreme Court previously has analyzed these questions of municipal authority and ordinance consistency with State law in the context of a nonconsensual towing ordinance. In Quality Towing v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (2000), the Court held that municipal regulation of aspects of nonconsensual towing from private property did not conflict with State law. The Court rejected the argument of the towing company that Myrtle Beach lacked the authority to regulate nonconsensual towing permits, sign content, price controls and records on the grounds that such regulations conflicted with S.C. Code Ann. §16-11-760. Here, Cole employs the rejected Quality Towing argument using the same State statute.

Cole has pointed to no State law calling into question the power of the City to adopt the Ordinance and Cole has pointed to no State law inconsistent or irreconcilable with the provisions of the Ordinance. The circumstance that the City legislated in subject matter areas in which State law was silent does not establish inconsistency or irreconcilability with State law. As in Quality Towing, the Spartanburg Ordinance establishes certain requirements for property owners and towing operators for nonconsensual booting and towing. Similar ordinances have been enacted in a number of jurisdictions throughout the State as referenced in the Supplemental Affidavit of City Manager Ed Memmott, including Greenville, Myrtle Beach, Florence and Charleston. This Court concludes that the Ordinance is a valid exercise of power and authority by the City.

II. The Ordinance is not preempted by State law.

Under our case law, a municipality can be preempted from enacting an ordinance in three ways. First, “express preemption” occurs when the General Assembly declares in express terms its intention to preclude local action in a given area. South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006). Second, “implied preemption” exists when an ordinance hinders the accomplishment of the statute’s purpose such that compliance with both is impossible. Peoples Program for Endangered Species v. Sexton, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996). Third, “field preemption” occurs when a statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity. Denene, Inc. v. City of Charleston, 352 S.C. 208, 574 S.E.2d 196 (2002); Bugsy’s v. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000).

Cole first argues the Ordinance is expressly preempted because several State statutes regulate the towing of vehicles from private property. On this issue, Cole relies on Diamonds v. Greenville County, 352 S.C. 154, 480 S.E.2d 718 (1997), which involved State statutes that criminalized public nudity and a County ordinance that deemed all nude or semi-nude dancing unlawful. However, the ordinance declared invalid in Diamonds was expressly preempted by the state criminal statute because the ordinance imposed inconsistent penalties on the person committing the nudity. Here, while the State has indeed imposed criminal penalties through a statute on drivers/owners for improper parking under §16-11-760, the Spartanburg Ordinance does **not** impose penalties on the person committing the parking. See Bugsy’s, Inc. v. City of Myrtle Beach, 340 S.C. 87, 530 S.E.2d 890 (2000) (an ordinance criminalizing the failure to follow the requirements of an ordinance to operate video game machines does not criminalize the same conduct addressed by state law and is not preempted). The Spartanburg Ordinance addresses the

conduct of tow operators, a conduct that is not otherwise addressed by State law. Accordingly, the express preemption analysis does not apply. Town of Hilton Head Island v. Fine Liquors, 302 S.C. 550, 397 S.E.2d 662 (1990) (mere differences in detail do not render a conflict with state law and an ordinance will be upheld if either is silent where the other speaks).

Cole presented no argument in its pleadings or motion that the Ordinance is impliedly preempted. Nevertheless, it is clear to the Court that the Ordinance does not hinder, or render impossible, compliance with §16-11-760 as is required. See Peoples, 323 S.C. at 530, 476 S.E.2d at 480.

Cole does allege State field preemption by §16-11-760, a statute that, again, makes it a criminal offense for the driver/owner of a vehicle to park on commercial property without the property owner's consent. Cole's position is that the requirements in the Ordinance related to signage, signage placement, permits and unhooking are invalid on the ground that the State has "pre-empted the field of regulation of motor carriers and more particularly non-consensual tows from commercial property." (Complaint, paragraphs 12-22). Counsel for Cole made this identical argument previously in the case of Quality Towing and the argument was expressly rejected. The Court determined that there was no preemption or conflict with state law when the "focus of the state statute [§16-11-760] is on the conduct of the vehicle owner, whereas the focus of the city ordinance is on the conduct of the property owner and towing company." Quality Towing, 340 S.C. at 37, 530 S.E.2d at 372. Here, the Spartanburg Ordinance is identical in subject matter to the Myrtle Beach ordinance scrutinized by the Quality Towing court. As with the Myrtle Beach ordinance, the Spartanburg Ordinance is not preempted by § 16-11-760.

III. The Ordinance is not preempted by Federal law.

Cole argues that Federal statutory law preempts the Ordinance. The Federal statute cited

by Cole for this argument is 49 U.S.C. §14501 entitled “Federal authority over intrastate transportation” which provides in its subsection (c) in pertinent part:

(1) **General Rule.** -Except as provided in paragraphs (2) and (3), a State, political subdivision of a State or political authority of 2 or more States may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of any motor carrier... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property”.

(2)(C) **Matters Not Covered.** -Paragraph (1) ... does **not** apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation or other provision relating to the regulation of **tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.** (Emphasis added).

This Federal statute does not preempt the Ordinance for two reasons. First, there is no expressed legislative intent to preempt the entire field of nonconsensual towing as is required for preemption. Second, the language of subsection (2)(C) plainly provides that this statute does not abrogate the power and authority of a State or a “political subdivision of a State” to enact or enforce a law to regulate tow truck operations that are “performed without the prior consent or authorization of the owner or operator of the motor vehicle.” If anything can be gleaned from this Federal statute for purposes of this analysis, it is that there is a manifest legislative intent to **allow** political subdivisions of a state, such as the City, to enact laws such as the Ordinance. The City is not preempted by the Federal law relied upon by Cole from regulating tow operators performing nonconsensual towing.

IV. The Ordinance is not an unlawful criminalization of lawful conduct.

Cole argues the Ordinance is in conflict with State law by criminalizing conduct that is otherwise legal under statewide criminal law. It is undisputed that the Ordinance contains a provision (§23-19(e)) that “[a]ny violation of this Ordinance may subject the offender” to criminal

penalties. However, this language is not sufficient to establish unlawful criminalization.

Cole relies on Connor v. Town of Hilton Head for the principle that an ordinance will be invalidated for criminalizing conduct deemed valid by state law. Connor v. Town of Hilton Head, 314 S.C. 251, 256, 442 S.E.2d 608, 610 (1994) (holding an ordinance criminalizing nude dancing invalid). The Connor holding creates a useful distinction but undercuts Cole's position. The Connor court held that an ordinance is invalid when it criminalizes the totality of the conduct. In that case, the conduct subjecting someone to criminal penalties was nude dancing. It is not the existence of a criminal penalty that invalidated the Connor ordinance; rather, the ordinance was invalid because it was a complete prohibition of the conduct.

State law expressly provides that municipal governments may "fix fines and penalties for the violation of municipal ordinances or regulations not exceeding five hundred dollars or imprisonment exceeding thirty days, or both". S.C. Code Ann. §5-7-30. The South Carolina Supreme Court has upheld ordinances containing criminal penalties for violations of an ordinance pertaining to lawful conduct. In Bugsy's, the Court held that an ordinance regulating the operation of video game machines is valid if "[s]o long as businesses comply with the zoning ordinance, they can operate video game machines." Bugsy's, 340 S.C. at 97, 530 S.E.2d at 895. The Bugsy's court explicitly rejected the Connor analysis relied upon by Cole because the Bugsy's ordinance did not criminalize the totality of the conduct. Criminal penalties in an ordinance do not, by their presence alone, render the ordinance invalid so long as the conduct can continue to occur through compliance with the ordinance.

As in Bugsy's, the Ordinance involved here does not criminalize the totality of the conduct of nonconsensual towing. Rather, the Ordinance criminalizes the failure by a property owner or towing company to comply with its requirements related to nonconsensual towing. So long as Cole

complies with the provisions of the Ordinance, it is permitted to operate its tow trucks. The Ordinance is valid since it imposes penalties consistent with statutory law and does not criminalize the entirety of nonconsensual towing.

V. The Ordinance does not violate Equal Protection.

To satisfy the Equal Protection Clause, a classification must 1) bear a reasonable relation to the legislative purpose sought to be achieved, 2) members of the class must be treated alike under similar circumstances, and 3) the classification must rest on some rational basis. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (2004), citing R.L. Jordan Co. v. Boardman Petroleum, Inc., 338 S.C. 475, 477, 527 S.E.2d 763, 765 (2000). The Court must give great deference to a legislative body's classification decisions. Foster v. S.C. Dept. of Highways and Public Transportation, 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992).

Under South Carolina law, simply treating members of a similar class differently does not violate Equal Protection rights, so long as there is a rational basis to make the distinction between the classes. Jenkins v. Mears, 302 S.C. 142, 394 S.E.2d 317 (1990). In Jenkins, a statute treating claims for medical malpractice differently depending on the type of malpractice alleged (foreign object vs. negligent conduct) withstood constitutional challenge. The Court determined that a direct causal connection existed when the shortened statute of limitations for foreign object claims was directly related to the ability of a plaintiff to discover the harm.

The express legislative purpose of the Ordinance in this case is to regulate nonconsensual towing to protect the public from predatory towing practices. See the Affidavit of City Manager Ed Memmott and Supplemental Affidavit of City Manager Ed Memmott. The City specifically created the Ordinance requirements in order to address citizen complaints brought to the City and City Council related to nonconsensual towing. Id. Some of the many citizen complaints brought

to the City raised serious concerns of price gouging, questionable towing, failure to return vehicles to citizens, failure to provide receipts, and failure to allow retrieval of personal items from towed vehicles. See the Supplemental Affidavit of City Manager Ed Memmott. As a result, the Ordinance specifies price controls, towing guidelines, signage, procedure for return of vehicles, record keeping and permit requirements. The Ordinance is based on the City of Greenville Ordinance and is similar to other nonconsensual towing ordinances in the State. Id.

The Ordinance applies to all nonconsensual towing companies operating within the City and, plainly, is intended for the protection of that portion of the public that is subjected to the towing of their vehicles without their consent. Clearly, towing companies that provide voluntary or requested (consensual) tows for vehicle owners provide a completely different kind of towing service and have a completely different relationship with the vehicle owners. This different relationship is illustrated by the circumstance that there were no comments related to consensual towing at the April 10, 2017, "Public Comment" portion of the City Council meeting. See the Supplemental Affidavit of City Manager Ed Memmott (Ex. 5, April 10, 2017, City Council meeting transcript).

Just as the Jenkins court observed, it is not a violation of Equal Protection to treat different groups of the same class differently when a rational basis exists. Here, the Ordinance was narrowly tailored to address predatory nonconsensual towing practices by property owners and towing operators for the protection of citizens and visitors to the City.

VI. The Ordinance is not an unconstitutional market regulation.

Cole's assertion of unconstitutional market regulation by price control is set out in the Complaint at paragraph 44. In its motion for summary judgment and supporting memoranda on this issue, Cole relies on Retail Services & Systems, Inc. v. South Carolina Department of

Revenue, 419 S.C. 469, 799 S.E.2d 665 (2017). This reliance is misplaced. The Spartanburg Ordinance plainly does not present a situation of “economic protectionism for a certain class of retailers” as the Supreme Court determined was involved in Retail Services. 799 S.E.2d at 667. Additionally, Quality Towing, *supra*, stands as solid on-point authority for the validity of the Ordinance at issue here.

VII. The Ordinance does not constitute an inverse condemnation or result in an unconstitutional impairment of contract.

a. Inverse Condemnation

Cole’s eighth cause of action is denominated as one for “inverse condemnation” and alleges a taking of Cole’s private property. (Complaint, paragraphs 57-61). Cole’s supporting evidence is the Affidavit of its principal that it has suffered money damages due to alleged restrictions on business activities arising from the Ordinance. However, Cole presented no evidence that any real (or personal) property has been physically appropriated or that Cole has been deprived of the ordinary beneficial use and enjoyment of any property. Sea Cabin on the Ocean IV Homeowners Association v. City of North Myrtle Beach, 828 F. Supp. 1241 (D.S.C. 1993); Hill v. The City of Hanahan, 281 S.C. 527, 316 S.E.2d 681 (Ct. App. 1984); South Carolina State Highway Department v. Wilson, 254 S.C. 360, 175 S.E.2d 391 (1970). See also, Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 38, 530 S.E.2d 369, 373-374 (2000). The Ordinance does not constitute an inverse condemnation.

b. Impairment of Contract

Cole’s second cause of action alleges that the Ordinance operates as “a substantial impairment to contractual relationships of the Plaintiff” by affecting pre-existing contracts between private parties, altering “the reasonable expectations of these private parties,” and,

therefore, violating the Contract Clause of the United States Constitution. (Complaint, paragraphs 23-27). Article I, §10 of the United States Constitution provides in relevant part: “No state shall... pass any... law impairing the obligation of contracts...”. Although the South Carolina Constitution contains a similar provision, Cole, in its Complaint, does not assert a violation of the State Constitution.

As explained by the United States Supreme Court in Allied Structural Steel Company v. Spannaus, 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978), the Contract Clause, despite the absolute appearance of its language, is not “the Draconian provision that its words seem to imply,” and “the Contract Clause does not operate to obliterate the police power of the States.” 98 S.Ct. at 2720 and 2721. Quoting previous authority, the Supreme Court stated that:

It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected . . . One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them.
Id. (Internal citations omitted).

Rather, according to the Spannaus court, the initial inquiry is whether the law under challenge operated as a “substantial impairment” of a contractual relationship:

The severity of the impairment measures the height of the hurdle the State legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Spannaus, 98 S.Ct. at 2722-2723.

If a law substantially impairs a contractual relationship, the State must have a significant and legitimate public purpose behind the regulation. Once a legitimate public purpose has been

identified, the next inquiry for a claim under the Contracts Clause is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. Unless the State itself is a contracting party, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-413, 103 S.Ct. 697, 704, 74 L.Ed.2d 596 (1983). (Quotes and internal cites omitted).

Here, Cole has presented no evidence of substantial contractual impairment. Indeed, no towing contracts between Cole and any commercial properties were provided to the Court. Cole has failed to establish its claim that the Ordinance impairs any of its contracts in violation of the United States Constitution.

Similarly, Cole's sixth cause of action for inference with contractual relations (Complaint, paragraphs 46-51) fails for want of proof of the particular contracts claimed, and the want of evidence of any intentional procurement by the City of the breach of any contract. Intentional procurement of a breach is a necessary element of this cause of action. See Edens & Avant Investment Properties, Inc. v. Amerada Hess Corporation, 318 S.C. 134, 456 S.E.2d 406 (Ct. App. 1995).

VIII. The South Carolina Tort Claims Act bars Cole's claim for gross negligence.

The gravamen of Cole's seventh cause of action for gross negligence is that the City enacted an "invalid and unlawful ordinance" and its "effects" result in past, present and future economic damage to Cole. (Complaint, paragraphs 52-56). Pursuant to S.C. Code Ann. §15-78-60 of the Tort Claims Act, a governmental entity is not liable for loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction; and/or (4) adoption, enforcement, or compliance with

any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies. See Health Promotion Specialists, LLC v. South Carolina Board of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (2013).

Cole's cause of action for gross negligence and its claimed damages related to the enactment, adoption or enforcement of an ordinance are precisely the type of situation contemplated by § 15-78-60(1) and (4). The enactment of an ordinance is a legislative or quasi-legislative act and the City (and its legislative component, the City Council) are entitled to immunity from liability and suit as provided in the Tort Claims Act.

IX. The City Council is the governing/legislative body of the City and is not separate from the City for purposes of suit.

The Spartanburg City Council is the governing/legislative body of the City by operation of S.C. Code §5-7-160 and City of Spartanburg Code of Ordinances §2-21 through §2-65. In its Complaint, Cole acknowledges that the two defendants are the same entity, setting forth that the City is a body politic governed by the City Council. (Complaint, paragraph 2). In the Answer, the defendants admit such allegations but deny that the City Council is a proper party to this action. (Answer, paragraph 3). Accordingly, there seems to be no genuine issue as to whether or not the City Council is a separate legal entity amenable to suit.

X. The Ordinance applies to multi-family dwellings.

Cole's third cause of action requests a declaration that the Ordinance does not apply to multi-family residential properties. (Complaint, paragraphs 28-31). Cole argues that the Ordinance's reference to "privately-owned commercial property" necessitates the exclusion of "limited commercial general business or heavy commercial districts" as defined by the zoning

portion of the City's code. The legal basis for this grafting of zoning provisions into the towing provisions of the City Code is not provided or indicated by Cole.

Cole is correct that the Ordinance specifically references "privately-owned commercial property" in §23-14(a). However, a less cursory reading of the entire Ordinance provides context. Section 23-14(b)(5) illustrates the clear intent to address predatory towing problems particular to multi-family dwellings such as apartment complexes. The "Definitions" subdivision of §23-15 also is instructive in defining "[n]onconsensual towing" as "the towing of a vehicle from property other than the public right-of-way." Clearly, when the Ordinance is read as a whole, multi-family dwellings are included in its scope.

DECISION AND ORDER

The Ordinance at issue in this case was enacted pursuant to the lawful power and authority of the City, is not preempted by or in conflict with State or Federal law, and is constitutional. Plaintiff's claims for inverse condemnation, impairment of contract, and gross negligence, as well as all claims against the Spartanburg City Council as a separate entity from the City, are not supported by the facts and law.

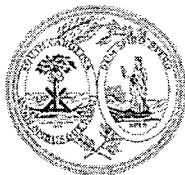
For the reasons discussed above, the Court finds and concludes that there are no genuine issues of material fact and the City is entitled to judgment as a matter of law. Additionally, further inquiry into the facts at trial is not necessary to clarify the application of the law or to determine the conclusions to be drawn from the facts. Summary judgment in favor of the City is appropriate on all causes of action in the Complaint.

Accordingly, **IT IS ORDERED** that the motion for summary judgment of the Plaintiff Cole Towing is **DENIED** and that the motion for summary judgment by the City of Spartanburg and Spartanburg City Council is **GRANTED**.

AND IT IS SO ORDERED.

J. Derham Cole, Circuit Court Judge

November ____, 2017



Spartanburg Common Pleas

Case Caption: Cole Towing And Recovery, Llc VS City Of Spartanburg ,
defendant, et al
Case Number: 2017CP4201468
Type: Order/Summary Judgment

IT IS SO ORDERED !

s/ J. Derham Cole

Electronically signed on 2017-12-05 10:47:11 page 21 of 21

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-42-01468

COLE Towing and Recovery, LLC,

CITY of SPARTANBURG and Spartanburg
City COUNCIL,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : ☐ Plaintiff ☐
Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other Rule 56, SCRPC
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE

BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (**formal order to follow**) ☒
Statement of Judgment by the Court:

This matter is before this court on cross motions of the plaintiff and the defendant seeking summary judgment pursuant to Rule 56, SCRPC.

After a consideration of the argument of counsel, memorandum submitted, and the applicable law, this Court finds that the **defendant's motion** for summary judgment should be and is therefore **granted** and the **plaintiff's motion** for summary judgment should be and is therefore **denied**.

Counsel for the defendant is requested to submit a proposed formal final order for the court's consideration.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the
Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

J. Derham Cole

Circuit Court Judge

2053

Judge Code

10/13/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or
to parties (when appearing pro se) as follows:

Robert C. Childs, III, Esq.2100 Poinsett Highway, Suite D
Greenville, South Carolina 29609**ATTORNEY(S) FOR THE PLAINTIFF(S)****Danny C. Crowe, Esq.**Post Office Box 1149
Columbia, South Carolina 27101**ATTORNEY(S) FOR THE DEFENDANT(S)**

Hope M. Blackley, CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Cole Towing And Recovery, Llc VS City Of Spartanburg ,
defendant, et al
Case Number: 2017CP4201468
Type: Order/Form 4

IT IS SO ORDERED !

s/ J. Derham Cole

Electronically signed on 2017-10-13 17:16:26 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Cole Towing and Recovery, LLC,	)	C. A. No.: 2017-CP-42-
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Requested)
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendants.	)	

TO: DEFENDANTS IN THE ABOVE CAPTIONED CASE:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2100 Poinsett Highway, Suite D, Greenville, SC 29609, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Robert C. Childs, III
 Robert C. Childs, III, #1218
 Attorney for Plaintiff
 2100 Poinsett Hwy, Suite D
 Greenville, SC 29609
 (864) 242-9997
 Fax (864) 242-9914

Greenville, South Carolina
 Date: 4/27/17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Cole Towing and Recovery, LLC,	)	C. A. No.: 2017-CP-42-
Plaintiff,	)	
	)	VERIFIED
v.	)	COMPLAINT
	)	(Jury Trial Requested)
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendant.	)	

PARTIES AND BACKGROUND

The Plaintiff, complaining of the Defendants above named, would respectfully show unto the Court as follows:

1. The Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina and doing business in the County of Spartanburg and City of Spartanburg, State of South Carolina.
2. The Defendant City of Spartanburg is a political subdivision of the State of South Carolina governed by the Defendant Spartanburg City Council which is a body politic and incorporates under the laws of the State of South Carolina.
3. The Plaintiff is a "motor vehicle carrier" with "respect to the transportation of property" pursuant to 49 U.S.C. Section 14501(c)(1).
4. The Plaintiff is a "motor vehicle carrier" with respect to "transportation of...." "property for compensation" as defined by S.C. Code 58-23-10
5. SC Code 16-11-760 provides the following:

(A) It is unlawful for a person to park a vehicle, as defined in Section 56-5-5630, on the private property of another without the owner's consent. If the property is for commercial use, the owner must post a notice in a conspicuous place on the borders of the property near each entrance

prohibiting parking. Proof of the posting is considered notice conclusive against the person making entry.

(B) A vehicle found parked on private property may be towed and stored at the expense of the registered owner or lienholder; and charges for towing, storing, preserving the vehicle, and expenses incurred if the owner and lienholder are notified pursuant to Section 29-15-10 constitute a lien against the vehicle, provided that the towing company makes notification to the law enforcement agency pursuant to Section 56-5-2525.

(C) If the vehicle is not claimed by the owner, lienholder, or his agent, the vehicle must be sold pursuant to Section 29-15-10 by a magistrate in the county in which the vehicle was towed or stored.

(D) A person violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not less than twenty-five dollars nor more than one hundred dollars or imprisoned for not more than thirty days. This punishment is in addition to the other remedies authorized in this section.

6. Prior to April of 2017 the Plaintiff contracted with Woodland Apartments, the Reserve at Hillcrest, Cannon Point Apartments and Shops at Woodcreek to tow away designated vehicles from those premises. These contracts provide or provided a significant source of revenue for the Plaintiff. All of those premises are within the City of Spartanburg.
7. On or about April 10, 2017 the Defendants passed the attached and herein incorporated ordinance (hereinafter referred to as the "Ordinance") that purports to regulate nonconsensual towing from privately owned commercial property. Said ordinance is allegedly effective on May 10, 2017.
8. Venue is properly placed in Spartanburg County.
9. This Court has jurisdiction pursuant to the South Carolina Code of Laws, the South Carolina Rules of Civil Procedure and South Carolina Code Section 15-53-10 *et seq*, known as the Uniform Declaratory Judgment Act.
10. All claims for damages are brought pursuant to The South Carolina Torts Claim Act and/or the Constitution of the State of South Carolina.

FIRST CAUSE OF ACTION

(ORDINANCE INVALID BASED UPON STATE LAW CONFLICT AND PRE-EMPTION)

11. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
12. State law as set forth in SC Code 16-11-760 makes it a criminal offense to park on commercial property without the owner's consent
13. The Ordinance attempts to make it legal for a person to park on commercial property without the owner's consent under certain circumstances that are contrary to the state law.
14. The Ordinance specifies certain signage to be approved by the City Manager when state law simply requires a notice be posted.
15. The Ordinance requires approval by the City Manager of sign placement when state law merely requires notice on the borders near each entrance.
16. The Ordinance requires a permit when state law does not.
17. The Ordinance requires unhooking of vehicles when the owner arrives when state law does not.
18. The Ordinance requires the purchase of signs from the City when state law does not.
19. The Ordinance makes unlawful what state law permits.
20. By the adoption of S.C. Code 16-11-760, 58-23-10 et. seq. and 56-1-5 et. seq. the State of South Carolina Legislature has manifested a legislative intent that no other local enactment may touch upon the subject of the regulation of motor carriers in any way.
21. The State has pre-empted the field of regulation of motor carriers and more particularly non-consensual tows from commercial property.
22. Wherefore, the Plaintiff is informed and believes that the ordinance is void, invalid and unlawful.

**FOR A SECOND CAUSE OF ACTION
(ORDINANCE INVALID AS CONFLICTING WITH CONTRACT CLAUSE)**

23. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
24. The Ordinance has operated as a substantial impairment to contractual relationships of the Plaintiff.
25. The Ordinance affects pre-existing contracts between private parties.
26. The Ordinance has altered the reasonable expectations of these private parties.
27. Wherefore, Plaintiff is informed and believes that The Ordinance is invalid as violative of the Contract Clause of the United States Constitution.

**FOR A THIRD CAUSE OF ACTION
(ORDINANCE INAPPLICABLE)**

28. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
29. Some premises from which the Plaintiff tows vehicles are not from commercial property but from multi-family residential property.
30. Some of the premises from which the Plaintiff tows vehicles have had the owners of said vehicles expressly consent to the removal of their vehicles under certain conditions.
31. The Plaintiff is informed and believes that he is entitled to a determination by the court that such operations are not subject to the provisions of The Ordinance.

**FOR A FOURTH CAUSE OF ACTION
(VIOLATION OF 49 U.S.C. 14501(c)(1))**

32. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
33. The Ordinance purports to regulate the price and service of a "motor carrier".

34. This is in violation of 49 U.S.C. 14501(c)(1).
35. The Ordinance attempts to enact a law, regulation and other provisions beyond that of “operations performed without the prior consent or authorization of the owner or operator of the motor vehicle” as contemplated by 49 U.S.C. 14501 (c)(2)(C).
36. More particularly the Ordinance exceeds the provisions of 49 U.S.C. 14501(c)(2)(C) as follows;
- a. By imposing application and licensing requirements on motor carriers which tow from privately-owned commercial property.
 - b. By regulating the amount and form of insurance on motor carriers which tow from privately-owned commercial property.
 - c. By requiring books and records to be maintained and available for inspection and audit on motor carriers which tow from privately-owned commercial property.
 - d. By limiting the amount and manner of charges that may be imposed for booting and towing vehicles for tows from privately-owned commercial property.
 - e. By regulating Storage Fees for vehicles towed from privately-owned commercial Property
37. Wherefore, the Plaintiff is informed and believes the Ordinance is pre-empted by Federal Law and violates The Supremacy Clause in Article VI of the United States Constitution.

**FOR A FIFTH CAUSE OF ACTION
(ORDINANCE IN EXCESS OF AUTHORITY)**

38. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.

39. The towing of vehicles from private property is not affected with any public interest as would justify governmental price regulations or controls and such regulations are violative of the Equal Protection Clause of the United States Constitution.
40. The Ordinance also imposes an impermissible burden on interstate commerce in violation of Article I, Section 8 of the United States and South Carolina Constitution.
41. The Ordinance exceeds the scope of the police power of the Defendant, creates arbitrary distinctions and unfairly discriminates between tow companies that do not perform tows from private property.
42. The classification created by the Ordinance bears no reasonable relation to the legislative purpose sought, members of the class are treated dissimilarly and the classification rests on no reasonable basis.
43. The Ordinance violates the Plaintiff's due process rights in that it declares a business a nuisance merely by declaring it to be such and deprives the Plaintiff of unrestricted use, enjoyment and disposal of its assets.
44. The price controls delineated by the Ordinance are not justifiable under the police power of the Defendant because the industry cannot be said to have been devoted to the public use.
45. Wherefore, the Plaintiff is informed and believes that the Ordinance is void, invalid and unlawful.

**FOR A SIXTH CAUSE OF ACTION
(INTERFERENCE WITH CONTRACTUAL RELATIONS)**

46. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.

47. The Defendants, their agents and employees, have knowledge that the Plaintiff has existing contractual relationships with various facilities.
48. The Defendants, their agents and employees through their actions above and other actions related to those matters have or are attempting to procure the breach of those contracts by those various facilities.
49. The Defendants are not justified in their procurement or attempts at procurement of those breaches.
50. As a direct and proximate result thereof the Plaintiff has suffered the loss or reduction in income from those contracts.
51. The Plaintiff is informed and believes it is entitled to actual, incidental and consequential damages for the Defendants' conduct.

**FOR A SEVENTH CAUSE OF ACTION
(GROSS NEGLIGENCE)**

52. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
53. The Ordinance enacted by the Defendants was intended to solely injure the Plaintiff's business. No other business is similarly affected.
54. The Defendants have intentionally and with conscious disregard failed to consider the effects of their ordinance and have been willful, reckless and grossly negligent in the following:
 - a. In enacting an unlawful and invalid ordinance;
 - b. In failing to ascertain and protect the Plaintiff from the financial impact of their decisions;
 - c. In contacting the Plaintiff's customers and contractors;

- d. In taking Plaintiff's property rights;
 - e. In depriving the Plaintiff of the economic benefit of its business;
 - f. In slandering Plaintiff's business reputation;
 - g. In impairing existing contractual relationships of the Plaintiff;
 - h. In harassing the Plaintiff and its customers;
 - i. In doing such other and further things that a reasonably prudent entity would not have done under the circumstances then and there existing.
55. As a direct and proximate result thereof the Plaintiff has suffered a loss of income from the operation of its business.
56. The Plaintiff is informed and believes it is entitled to actual, incidental and consequential damages for the Defendant's conduct.

**FOR AN EIGHT CAUSE OF ACTION
(INVERSE CONDEMNATION)**

57. The Plaintiff reiterates and incorporates the preceding allegations into this cause of action where not inconsistent herewith.
58. The South Carolina Constitution provides that, "private property shall not be taken . . . for public use without just compensation being first made for the property." Art. I, § 13(A).
59. The Defendants have taken the Plaintiff's private property by affirmatively imposing limitations on the Plaintiff's use of its private property.
60. As a direct and proximate result thereof the Plaintiff has suffered a loss of income from the operation of its business.
61. The Plaintiff is informed and believes it is entitled to actual, incidental and consequential damages for the Defendant's conduct.

WHEREFORE, having fully plead, the Plaintiff requests the following:

1. Invalidation of the subject Ordinance.
2. Temporary, preliminary and permanent restraining orders/injunctive relief/mandamus against the Defendants.
3. That the Court determine the respective rights, obligations, duties and liabilities of the parties.
4. For a jury trial on all issues so triable.
5. For attorney's fees and costs of this action pursuant to S.C. Code Ann. Section 15-77-300 and Rule 54 SCRPC.
6. For actual, incidental and consequential damages against the Defendants.
7. For such other and further relief as the court deems just and proper.

s/Robert C. Childs, III
Robert C. Childs, III, #1218
Attorney for Plaintiff
2100 Poinsett Hwy, Suite D
Greenville, SC 29609
(864) 242-9997
Fax (864) 242-9914

Greenville, South Carolina

Date: 4/27/217

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs.

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-42-01468

**ANSWER TO PLAINTIFF'S
COMPLAINT BY DEFENDANTS CITY
OF SPARTANBURG AND
SPARTANBURG CITY COUNCIL**

Defendants City of Spartanburg and Spartanburg City Council, by and through their undersigned counsel, hereby answer the Plaintiff's Complaint in the above-captioned case as follows:

FOR A FIRST DEFENSE

1. Except as is hereinafter specifically admitted, the Defendants deny each and every allegation contained in the Plaintiff's Complaint.
2. Defendants are without sufficient information at this time to admit or deny the allegations of Paragraph 1 pertaining to Plaintiff's organization and incorporation, and, therefore, deny the same.
3. Defendants admit the allegations of Paragraph 2 but deny Spartanburg City Council (hereafter "the Council") is a proper party to this action.
4. The allegations of Paragraph 3 are predicated upon legal conclusions that do not require a response.

5. The allegations of Paragraph 4 are predicated upon legal conclusions that do not require a response.

6. Paragraph 5 purports to be a recitation of South Carolina Code. Ann. §16-11-760 and, in the absence of allegations, it appears no response is required; however, to the extent that a response is required, Defendants crave reference to the actual text of §16-11-760 for an accurate statement of its provisions.

7. Answer Paragraph 6, the Defendants have insufficient information at this time to admit or deny the allegations, and, therefore, those allegations are denied.

8. Answering Paragraph 7, the Defendants admit only that the Ordinance attached applies as stated in its text and as provided by law and the Defendants crave reference to the text of the Ordinance at issue adopted by the Defendants.

9. Answering Paragraph 8, the Defendants admit that venue is proper in Spartanburg County.

10. Answering Paragraph 9, the Defendants admit the subject matter jurisdiction of this Court.

11. The allegations of Paragraph 10 are denied.

12. Answering Paragraph 11, the Defendants reiterate and reallege Paragraphs 1 through 11 of this Answer as fully and to the same extent as if here repeated word for word.

13. Answering Paragraph 12, the Defendants deny the same as alleged and crave reference to the text of S.C. Code §16-11-760 for an accurate statement of its provisions.

14. Answering Paragraphs 13 through 18 of the Complaint, the Defendants deny the same as alleged and crave reference to the City Ordinance at issue and S.C. Code §16-11-760 for an accurate statement of their provisions.

15. The allegations of Paragraph 19 are denied and the Defendants crave reference to the City Ordinance at issue and S.C. Code §16-11-760 for an accurate statement of their provisions.

16. The allegations of Paragraph 20, 21 and 22 are denied.

17. Answering Paragraph 23, the Defendants reiterate and reallege Paragraphs 1 through 16 of this Answer as fully and to the same extent as if here repeated word for word.

18. The allegations of Paragraphs 24, 25, 26 and 27 are denied.

19. Answering Paragraph 28, the Defendants reiterate and reallege Paragraphs 1 through 18 of this Answer as fully and to the same extent as if here repeated word for word.

20. The allegations of Paragraphs 29, 30 and 31 are denied.

21. Answering Paragraph 32, the Defendants reiterate and reallege Paragraphs 1 through 20 of this Answer as fully and to the same extent as if here repeated word for word.

22. The allegations of Paragraphs 33, 34, 35, 36 and 37 are denied.

23. Answering Paragraph 38, the Defendants reiterate and reallege Paragraphs 1 through 22 of this Answer as fully and to the same extent as if here repeated word for word.

24. The allegations of Paragraphs 39, 40, 41, 42, 43, 44 and 45 are denied.

25. Answering Paragraph 46, the Defendants reiterate and reallege Paragraphs 1 through 24 of this Answer as fully and to the same extent as if here repeated word for word.

26. Answering Paragraph 47, the Defendants admit only that the Plaintiff has listed on its Application for Nonconsensual Towing Business Permit with the City certain properties as to which it alleges that it is authorized by the property owner(s) to boot or tow vehicles.

27. The allegations of Paragraphs 48, 49, 50 and 51 are denied.

28. Answering Paragraph 52, the Defendants reiterate and reallege Paragraphs 1 through 27 of this Answer as fully and to the same extent as if here repeated word for word.

29. The allegations of Paragraphs 53, 54, 55 and 56 are denied.

30. Answering Paragraph 57, the Defendants reiterate and reallege Paragraphs 1 through 29 of this Answer as fully and to the same extent as if here repeated word for word.

31. Answering Paragraph 58, the Defendants crave reference to the State Constitutional provision cited for an accurate statement of its contents.

32. The allegations of Paragraphs 59, 60 and 61 are denied.

33. The allegations of the prayer for relief in the Complaint, and the Plaintiff's entitlement to any relief requested therein (including the relief of damages and attorney fees), are denied.

FOR A SECOND DEFENSE

34. The Defendants assert that the Ordinance at issue in this case is lawful, is within the power and authority and discretion of the City as a municipal government and its City Council as the legislative and governing body of the City, is not inconsistent or in conflict with State or Federal law, is a valid exercise of the police power, and was adopted in good faith and in the public interest, and under a reasonable interpretation of the law.

FOR A THIRD DEFENSE

35. Plaintiff's Complaint fails to state a claim upon which relief can be granted for the alleged causes of action for interference with contractual relations, gross negligence and inverse condemnation, and, therefore, those causes of action should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendants hereby reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE

36. The Defendants assert that attorney's fees are not recoverable against the Defendants under any State or Federal law applicable to this case, but that, if determined to be recoverable, attorney's fees should not be awarded, inasmuch as any such award of attorney's fees would be discretionary with the Court, the positions of the Defendants are substantially justified, and the other circumstances of this case would make any award of attorney's fees unjust.

FOR A FIFTH DEFENSE

37. The Defendants assert that they are not preempted by State law from addressing by ordinance nonconsensual towing practices in the City.

FOR A SIXTH DEFENSE

38. The Defendants assert that they are not preempted by Federal law from addressing by Ordinance nonconsensual towing practices, inasmuch as such action by Defendants is expressly permitted under 45 U.S.C. §14501(c)(2)(C) which provides that the Federal statute relied on by Plaintiff (49 U.S.C. §14501(c)(1)) does "not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle."

FOR A SEVENTH DEFENSE

39. Plaintiff's claim for inverse condemnation fails to state a claim for which relief can be granted on the grounds that Defendants' actions do not constitute a taking and that Plaintiff lacks a sufficient property interest in present or future contracts or agreements for the nonconsensual towing of vehicles from commercial property. Therefore, the cause of action for

inverse condemnation should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Defendants hereby reserve the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR AN EIGHTH DEFENSE

40. Any claims of the Plaintiff against the Defendants sounding in tort, including but not limited to Plaintiff's alleged causes of action for contractual interference and gross negligence, are subject to, and controlled by, the provisions of the South Carolina Tort Claims Act (S.C. Code §§ 15-78-10 et seq.), inasmuch as the City is a political subdivision of the State and a governmental entity, and the City Council is an agency of the City. The Defendants hereby plead, in response to Plaintiff's tort claims, all applicable defenses, immunities, defenses and limitations on damages and nature of damages provided by the Tort Claims Act, including, but not limited to, the exceptions to waiver of immunity in §15-78-60(1), (2), (4), (5), (12), (13), (17), and (20), and the limitations on damages and nature of damages in §15-78-120 (a) and (b).

FOR A NINTH DEFENSE

41. Plaintiff's claims brought against the City Council fail to state a claim for which relief could be granted and Defendants reserve the right to file a Motion to Dismiss or other appropriate motion, made on grounds including, but not limited to, the following:

- a. No legitimate purpose is served in naming the City's legislative body as a party:
- b. The Council is not a separate legal entity but is a body or an agency of the City and not amenable to suit; and
- c. All of Plaintiff's claims are redundant against the Council since they are identically and concurrently made against the City.

FOR A TENTH DEFENSE

42. As to any claims of the Plaintiff against the Defendants sounding in tort, including but not limited to Plaintiff's alleged causes of action for contractual interference and gross negligence, the City is immune from liability and resultant damages, if any, inasmuch as the City owed the Plaintiff no duty or, in the alternative if a duty is found, that any duty is to the public at large. The City pleads the public duty rule as a complete defense and bar to Plaintiff's causes of action sounding in tort.

FOR AN ELEVENTH DEFENSE

43. Plaintiff's recovery may be limited or barred based on Plaintiff's failure to mitigate or minimize his damages by taking proper preventative or curative measures.

FOR A TWELFTH DEFENSE

44. To the extent Plaintiff suffered any damages as alleged, such injuries or damages were caused by Plaintiff's own actions, omissions or conduct, such that Plaintiff is barred from recovery against the Defendants.

FOR A THIRTEENTH DEFENSE

45. Defendants allege that if any injuries and damages were sustained by the Plaintiff, and the existence of such alleged injuries and damages is denied, said injuries and damages were caused by the intervening and superseding acts of third parties for which the Defendants are not liable.

FOR A FOURTEENTH DEFENSE

46. Defendants allege that Plaintiff's claims sounding in equity are barred by the doctrine of unclean hands, and/or the doctrine of equitable estoppel.

FOR A FIFTEENTH DEFENSE

47. Defendants assert that any preliminary or temporary injunction that may be sought by the Plaintiffs concerning the Ordinance will result in losses and damages for the Defendant City of Spartanburg. Defendants further assert that the issuance of any such injunction, pursuant to State law (including Rule 65(c) of the South Carolina Rules of Civil Procedure), will require that the Plaintiff post a security or a bond, in a sum determined by the Court to be proper, for the payment of such costs and damages.

FOR A SIXTEENTH DEFENSE

48. The facts not having been fully developed, the Defendants reserve the right to assert any additional and further defenses as may be revealed through the course of discovery and investigation, in a manner that is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having answered, the Defendants request that the Complaint be dismissed, that any relief requested by the Plaintiff be denied, that judgment be entered in favor of the Defendants, and that the Court grant such other and further relief in favor of the Defendants as is appropriate.

/s/Mary D. LaFave

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Attorneys for City of Spartanburg and
 Spartanburg City Council

June 1, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Cole Towing and Recovery, LLC,	)	C. A. No.: 2017-CP-42-01468
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY
	)	JUDGMENT
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendants.	)	

TO: DEFENDANTS BY AND THROUGH THEIR ATTORNEYS, DANNY C. CROWE
AND MARY D. LAFAVE

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, the Plaintiff moves for Summary Judgment in its favor in regards to Plaintiffs Complaint concerning the following:

1. The Ordinance enacted by the Defendants is an unconstitutional market regulation that exceeds all constitutional bounds, sets forth no rational or reasonable basis for such regulations, and exceeds the authority of the City to enact such ordinance. See Retail Servs. & Sys. Inc., vs. S.C. Dept. of Revenue, Op. No. 27709 (S.C. 2017).
2. The Ordinance enacted by the Defendant's unlawfully regulates private impounding different than other areas of the private towing business in violation of the equal protection clauses of the United States and South Carolina Constitutions.
3. The Ordinance enacted by the Defendant's makes legal activity unlawful in violation of S.C. Code Ann. § 5-7-30(2004); Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E. 2d 608 (S.C. 1994); Beachfront Ent. Inc., vs. Town of Sullivan's Island, 379 S.C. 602, 666 S.E.2d 912 (2008); City of North Charleston vs. Harper, 306 S.C. 153, 410 S.E.2d 569 (1991); Op. S.C. Attorney General, 2007 WL 1651346 (May 1, 2007); Op. S.C. Attorney

General, 2006 WL 269614 (January 26, 2006); 1990 Op. S.C. Attorney General, 196 (1990); Diamonds vs. Greenville County, 325 S.C. 154, 480 S.E.2d 718 (1997) and South Carolina Constitution Art. VIII §14.

4. State pre-emption by the regulation of towing vehicles from private property, motor vehicles operations and motor carriers prohibits the Defendant's from enacting the subject ordinance and thus invalidates the same. Denene vs. City of Charleston, 325 S.C. 208, 212, 574 S.E.2d 196, 198 (2002); Bugsy's vs. City of Myrtle Beach, 340 S.C. 87, 93, 530 S.E.2d 980, 983 (2000); South Carolina State Park Authority vs. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006).
5. Federal pre-emption by the regulation of motor carriers, motor carrier operations prohibits the Defendant's from enacting the subject ordinance and thus invalidates the same.
6. The Defendant's Ordinance impairs existing contracts in violation of the United States Constitution.
7. For such other and further reasons as may be set forth hereafter.

Wherefore, the Plaintiff moves for Summary Judgement on the invalidity of the Defendant's Ordinance.

Respectfully Submitted,

s/ Robert C. Childs, III
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Greenville, South Carolina
Date: 6/29/17

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
	)	
Cole Towing and Recovery, LLC.	)	C. A. No.: 2017-CP-42-1468
Plaintiff,	)	
	)	
v.	)	BRIEF OF PLAINTIFF IN SUPPORT
	)	OF SUMMARY JUDGMENT
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendant.	)	

SUMMARY

Plaintiff seeks summary judgment on of an ordinance enacted by the City of Spartanburg regulating vehicle impoundments. The Plaintiff is a business that had numerous contracts with private property owners for towing of vehicles illegally parked on their property.

GROUND FOR SUMMARY JUDGMENT

a. Price Controls

Until, RL Jordan Co. v. Boardman Petroleum, 338 S.C. 475, 527 S.E.2d 763 (S.C., 2000) South Carolina adhered to the traditional substantive due process analysis developed by the United States Supreme Court during the first third of the 20th century. Under this "Lochner Era" two approach, statutes regulating private economic relationships, such as this price control statute, are subject to a unique constitutional test, which most fail to pass. The traditional approach acknowledges that, "Beyond doubt, the state has the power to regulate and control the price that one in private business may charge for goods or services where such business is "affected with a public interest." Gwynette v. Myers, 237 S.C. 17, 115 S.E.2d 673 (1960) [citing Munn v. Illinois, 94 U.S. 113, 24 L.Ed. 77 (1877)]. There is no precise test to determine whether a business is "affected with a public interest." *Id.* Even if a business is affected with a public interest, governmental regulation is "not a matter solely within the legislative discretion. It depends on the nature of the business, on the feature which touches the public, and on the abuse

reasonably to be feared." Stone v. Salley, 244 S.C. 531, 137 S.E.2d 788 (1964). Price controls are "justifiable under the police power only when the industry is affected with a public interest in a sense that it may fairly be said that it has been devoted to the public use." *Id.*

The modern rule gives great deference to legislative judgment on what is reasonable to promote the public welfare when reviewing economic and social welfare legislation. 2 Rotunda & Nowak, Treatise on Constitutional Law, § 15.4 (1992). Legislation is overturned unless when it has no rational relationship to any legitimate interest of government. *Id.* at p. 407. This is the same standard we apply when reviewing substantive due process challenges to other types of statutes. E.g., State v. Kiser, 288 S.C. 441, 343 S.E.2d 292 (1986).

The Plaintiff submits that economic protectionism of the very small class of individuals who park illegally on Plaintiff's customer's properties is an unconstitutional market regulation that exceeds all constitutional bounds. The Defendant can point to no law that supports the proposition that limiting prices charged to these individuals protects the health, safety and welfare of the community. See Retail Servs. & Sys., Inc. v. S.C. Dep't of Revenue, Opinion No. 27709 (S.C., 2017). Furthermore, local government is ill-equipped to determine what prices are reasonable. The Defendants can point to no reliable basis to form their opinion as to what prices are reasonable. As shown by the Plaintiff's previously submitted affidavit no real consideration was given to what prices were appropriate and they were just picked out of the air. Never has a court in South Carolina stated that a City or County could regulate prices on any matter. Such alleged authority would wreak havoc on the statewide economy and allow Cities and Counties to delve into issues and policy decisions that are fully incapable to making as their deliberative process envisions no such ability.

b. Equal Protection.

The Plaintiff submits that there is no basis to regulate private impounding different than other areas of the towing business. A private impounder can no more or no less "price gouge" than making a call to a wrecker service from a phone book. No person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. To satisfy the equal protection clause, a classification must (1) bear a reasonable relation to the legislative purpose sought to be achieved, (2) members of the class must be treated alike under similar circumstances, and (3) the classification must rest on some rational basis. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 428, 593 S.E.2d 462, 469 (2004); Jenkins v. Meares, 302 S.C. 142, 146-47, 394 S.E.2d 317, 319 (1990). The rational basis standard, not strict scrutiny is applied in this case because the classification at issue does not affect a fundamental right and does not draw upon inherently suspect distinctions such as race, religion, or alienage. See Sunset Cay, 357 S.C. at 428-29, 593 S.E.2d at 469; Fraternal Order of Police v. S.C. Dept. of Revenue, 352 S.C. 420, 433, 574 S.E.2d 717, 723 (2002).

A legislative enactment will be sustained against constitutional attack if there is any reasonable hypothesis to support it. Gary Concrete Products, Inc. v. Riley, 285 S.C. 498, 504, 331 S.E.2d 335, 338-39 (1985) (citing Thomas v. Spartanburg Ry., Gas Elec. Co., 100 S.C. 478, 85 S.E. 50 (1915)). The Court must give great deference to a legislative body's classification decisions because it presumably debated and weighed the advantages and disadvantages of the legislation at issue. Furthermore, "the classification does not need to completely accomplish the legislative purpose with delicate precision in order to survive a constitutional challenge." Foster v. S.C. Dept. of Highways Pub. Transp., 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992).

Plaintiff asserts that the ordinance has created two classes: tow service providers that do private impounding and tow service providers that don't. These similarly situated businesses

receive disparate treatment and thus the ordinance violates the equal protection clause and must be struck down as unconstitutional.

A crucial step in the analysis of any equal protection issue is the identification of the pertinent class, i.e., exactly who is included in the group of persons allegedly being treated differently under similar circumstances without any rational basis. What rationale did the City have in this instance as to the class of private impounders?

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sunset Cay, 357 S.C. at 430, 593 S.E.2d at 470; Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000). A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." Joytime Distributions and Amusement Co., 338 S.C. at 640, 528 S.E.2d at 650.

The South Carolina Supreme Court has long held that the standard for reviewing all substantive due process challenges to state and local laws, including economic and social welfare legislation, is whether the statute bears a reasonable relationship to any legitimate interest of government. Sunset Cay, 357 S.C. at 430, 593 S.E.2d at 470; R.L. Jordan Co. v. Boardman Petroleum, Inc., 338 S.C. 475, 477, 527 S.E.2d 763, 765 (2000). "The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (internal quotes omitted).

"The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests

protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959)); Baird v. Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). "It cannot be doubted that a man's trade or profession is his property." Byrne's Administrators v. Stewart's Administrators, 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812).

Here the City of Spartanburg, for whatever reason decided to impose arbitrary regulations on part of an industry yet not the other. The ordinance fails as a denial of equal protection.

c. Criminalizing State Permitted Conduct.

Under Title 16, Crimes and Offense, Trespasses and Unlawful Use of Property of Other, Parking on private property without permission; removal of vehicles; lien for towing and storage, sale of vehicles, penalty for violations, South Carolina Code Ann. Section 16-11-760 states:

(A) It is unlawful for a person to park a vehicle, as defined in Section 56-5-5630, on the private property of another without the owner's consent. If the property is for commercial use, the owner must post a notice in a conspicuous place on the borders of the property near each entrance prohibiting parking. Proof of the posting is considered notice conclusive against the person making entry.

(B) A vehicle found parked on private property may be towed and stored at the expense of the registered owner or lienholder, and charges for towing, storing, preserving the vehicle, and expenses incurred if the owner and lienholder are notified pursuant to Section 29-15-10 constitute a lien against the vehicle, provided that the towing company makes notification to the law enforcement agency pursuant to Section 56-5-2525.

(C) If the vehicle is not claimed by the owner, lienholder, or his agent, the vehicle must be sold pursuant to Section 29-15-10 by a magistrate in the county in which the vehicle was towed or stored.

(D) A person violating the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not

less than twenty-five dollars nor more than one hundred dollars or imprisoned for not more than thirty days. This punishment is in addition to the other remedies authorized in this section.

The City of Spartanburg's Ordinance states "It shall be unlawful to charge for the nonconsensual towing of any motor vehicle ...except under the following circumstances" and goes on to require an approved sign with the name and number of the towing service, development of signs by the City, Signs placed at each entrance that are clearly and unmistakably visible, on the scene payment for release, certification of equipment, insurance, books and records, approval of the placement of signs, audits and maximum charges. The Ordinance furthermore only makes the vehicle owner responsible for the towing and storage if all the requirements of the Ordinance are met.

The Plaintiff in his affidavit correctly cites Connor v. Town of Hilton Head Island, 314 S.C. 251, 442 S.E.2d 608 (S.C., 1994) for the proposition that this ordinance is unconstitutional because it makes legal activity unlawful. South Carolina Code Ann. § 5-7-30 (2004) provides: "Each municipality of the State... may enact ... ordinances, not inconsistent with the Constitution and general law of this State. . . . for preserving health, peace, order, and good government in it" (Emphasis added). South Carolina Const. article VIII, § 14 provides: "In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside; ... (5) criminal laws and the penalties and sanctions for the transgression thereof...."

The Defendant will surely point to Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 530 S.E.2d 369 (S.C., 2000) a case handled by Plaintiff's own counsel. However, the Myrtle Beach ordinance provided "There are no penalties specified in the ordinance for violations by towing companies." However, the City of Spartanburg's Ordinance provides "Any violation of this Ordinance may subject the offender to fines up to \$500.00 per violation and/or

30 days in prison or revocation of its business license.” Therefore, the City of Spartanburg has criminalized legal conduct.

d. Contract Clause

The Plaintiff has established that he had numerous contracts with private property owners that entitled it to post, tow and charge in a certain manner. The effect of this ordinance is to violate the Contract Clauses of the State and Federal Constitutions.

South Carolina's Constitution Provides:

No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument shall be passed, and no conviction shall work corruption of blood or forfeiture of estate.

S.C. Const. article I, § 4 (emphasis added); see also U.S. Const. art. I, § 10 (also prohibiting the impairment of contracts). To establish a Contract Clause violation, the Court must examine “(1) whether there is a contractual relationship; (2) whether the change in the law impairs that contractual relationship; [401 S.C. 29] and whether the impairment is substantial.” Hodges v. Rainey, 341 S.C. 79, 93, 533 S.E.2d 578, 585 (2000) (citing Gen. Motors Corp. v. Romein, 503 U.S. 181, 112 S.Ct. 1105, 117 L.Ed.2d 328 (1992)).

It is undisputed a contractual relationship existed. Thus, we must ask whether the ordinance, as applied retroactively, substantially impairs these contracts. These contracts authorized the Plaintiff to tow vehicles from the owner's property in compliance with 16-11-760. The Ordinance flips 16-11-760 and makes it unlawful charge for towing except under certain circumstance with numerous other additional requirements as set forth above. Therefore, this ordinance retroactively changes these contracts substantially impairing those pre-existing contracts by materially changing their terms. Hodges, 3451 S.C. 94, 533 S.E.2d at 585-86. (holding “[f]or purposes of Contract Clause analysis, a statute can be said to impair a contract when it alters the reasonable expectations of the contracting parties”); Henry v. Alexander, 186

S.C. 17, 194 S.E. 649 (1937) (holding a deviation from the terms of a contract constitutes an impairment of contract); *Superior Motors, Inc. v. Winnebago Indus., Inc.*, 359 F.Supp. 773, 777 (D.S.C.1973) (stating impairment of contract occurs when legislation “attempts to make material alterations in the character, terms or the legal effect of an existing contract”).

Because the ordinance substantially impairs Plaintiff's contractual rights, the next question is whether the Act is reasonable and necessary to effectuate a legitimate legislative purpose. *Ken Moorhead Oil Co. v. Federated Mut. Ins. Co.*, 323 S.C. 532, 545, 476 S.E.2d 481, 488–89 (1996). “Traditional analysis of reasonableness and necessity focuses on such issues as (1) whether an emergency exists justifying the impairment; (2) whether the law was enacted to protect a basic societal interest, rather than a favored group; (3) whether the law is narrowly tailored to the emergency at hand; (4) whether the imposed conditions are reasonable; and (5) whether the law is limited to the duration of the emergency.” *Id.* Considering these factors and given the lengthy and drawn out history of litigation in this area, this court cannot conclude that the City of Spartanburg needed alter and/or supplement the provisions of State Law in order to address a pressing emergency. Consequently, the retroactivity provision is neither necessary nor reasonable, and therefore it is unconstitutional.

c. Pre-emption.

(1) State.

Several South Carolina Statutes regulate the towing of vehicles from private property. Much like *Diamonds v. Greenville County*, 325 S.C. 154, 480 S.E.2d 718 (S.C., 1996) state law addresses this conduct and in general our State Legislature has expressed an unequivocal intent to regulate nearly every aspect of motor vehicle operations including tow companies. Additionally, the Plaintiff is a “Motor Carrier” under both Federal and State Law. Because state criminal laws address the subject of towing from private property and regulate the entire field of

operating a tow truck upon our highways Spartanburg County's Ordinance is re-empted by State Law.

(2) Federal.

As previously stated the Plaintiff is a "motor carrier" under Federal Law. In the FAA Authorization Act of 1994, Congress sought to equalize competition between air carriers and motor carriers in the transportation of property by uniformly preempting state economic regulation of their activities, but not state safety regulation. The motor carrier provisions are codified at 49 U.S.C. § 14501(c). The statute provides that (i) States and their political subdivisions may not enforce a law "related to a price, route, or service of any motor private carrier ... with respect to the transportation of property," but (ii) this preemptive prohibition "shall not restrict the safety regulatory authority of a State with respect to motor vehicles." § 14501(c)(1), (2)(A). The legislative history of the safety exception includes a significant caveat: "The conferees do not intend the regulatory authority which the States may continue to exercise ... to be used as a guide for continued economic regulation as it relates to prices, routes or services." H.R. CONF. REP. No. 103-677, at 84, reprinted in 1994 U.S.C.C.A.N. 1715, 1756.

The United States Supreme Court ruled that the safety exception to preemption only applies to local regulations "genuinely responsive to safety concerns." City of Columbus v. Ours Garage & Wrecker Serv., Inc., 536 U.S. 424, 442, 122 S.Ct. 2226, 153 L.Ed.2d 430 (2002).

Clearly, the Spartanburg County Ordinance is "under the guise" of price protection of consumers and is thus beyond their authority.

f. Declaration that the Ordinance does not apply to Multi-Family Residential Property

Most if not all of the premises from which the Plaintiff tows from is Medium to High Density Residential Property. The Ordinance itself states that it applies to "privately-owned commercial property". The Plaintiff submits that the term "privately-owned commercial

property" does not apply to towing from property not designated as Limited Commercial, General Business or Heavy Commercial Districts as defined by the City's own zoning ordinance.

CONCLUSION

The Plaintiff is entitled to summary judgment on the issues set forth above and a declaration by the court that the ordinance is void and/or applies only to zoning districts defined as Commercial by the City's own zoning ordinance.

s/Robert C. Childs, III
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Greenville, South Carolina
Date: 07/25/17

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Cole Towing and Recovery, LLC,	)	C. A. No.: 2017-CP-42-1468
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF CHRISTOPHER M.
	)	COLE
	)	
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendant.	)	

I, Christopher M. Cole, being duly sworn, do swear and affirm as follows:

I am 41 years of age and of sound mind and body and competent to testify and give this affidavit. I've never been convicted of a crime.

I'm a shareholder and officer of Cole Towing and Recovery, LLC. Cole Towing and Recovery, LLC operates six "Motor Vehicle Carriers" which presently consists of two self-loading tow trucks and four "rollbacks".

As of January 1, 2017, Cole Towing and Recovery LLC primarily conducted business through participation with wrecker rotation lists with the SCHP, Geico, State Farm, Allstate, Honk, Owners Request, Repossessions for Banks and Finance Companies and contract towing from private property. Gross operating income from these activities averaged \$38,000.00 per month. Of that 60% of our income came from the over 8 contracts with private property owners for towing vehicles from their property that were parked there without their permission or in violation of their regulations. (Hereinafter referred to as "private impounding")

As significant portion of our private impounding are for multi-family housing complexes where there have been persistent problems with illegally parked cars, derelict cars and cars lacking current tags. Those vehicles degrade the neighborhood and diminish the quality of life

for the residents. The residents of those complexes have signed lease agreements essentially consenting to have their vehicle towed if it is illegally parked, derelict, have no parking sticker or if the tags have expired. The fees we charge for these services are based upon market rates that the Highway Patrol, insurance companies and other wrecker services. These rates are below what is routinely charged for repossessions by banks and finance companies. The risk and exposure of private impounding are comparable to that of repossessions. The Cole Towing and Recovery LLC., has long recognized that charging excessive rates for private impounding is a significant legal liability exposing the company to liability for unfair trade practices, class actions, wrongful conversion, trespass to chattels, fraud and numerous other causes of action enforceable under the law.

In February of 2017, a disgruntled ex-employee started contacting our contract customers attempting to obtain a breach of our contracts. My information is that he was going into his own private impounding business. On Thursday, March 16, 2017, Sgt. Forrester of the Spartanburg City Police Department called me to let me know that the City was considering an Ordinance to reduce fees for nonconsensual towing. Sgt. Forrester is our disgruntled ex-employee's father-in-law.

On Monday, March 20, 2017, a City Council meeting was held and the disgruntled ex-employee spoke at the meeting with Sgt. Forrester and his daughter (the ex-employee's wife, who is a dispatcher for the City of Spartanburg) sitting next to him. They made derogatory comments about my business and orchestrated a number of other individuals to appear. I met with the City Administrator about my concerns and the impact on my business and my contracts. He informed me that Sgt. Forrester would have no further involvement. I began to receive

information that Sgt. Forrester was close to retirement and was going into the private impounding business with his son-in-law our disgruntled ex-employee.

On March 23, 2017 we were out at a private property impound when Sgt. Forrester arrived at the scene. Sgt. Forrester told the vehicles owner to get into the impounded vehicle so it could not be towed from the scene. He called me dirty, said that I deserved to be assaulted and threatened to arrest my employee. I complained to the Administrator again and between 1st and 2nd reading I had numerous threats of arrest by City Police Officers. None of these problems with the City happened before my ex-employee and his father-in-law got involved.

City Council heard from no industry experts, no towing business owners (but me) and no private property owners. The City mailed letters to my contract owners referencing complaints and the need to regulate the practice. This initial letter caused two customers to cancel their contracts with me.

Since passage of the Ordinance revenues have declined by one-third. I've had to comply with the ordinance pending a determination on the ordinance. Significant investments in signage and losses from operations are being sustained. Almost all our contracts are considering termination and hassles with the Spartanburg Police Department are almost constant. I have had to show contracts to prove I can tow and officers observe our towing. I suspect that in the absence of this litigation we would have been denied our license to operate under the Ordinance and we'll be terminated as soon as the lawsuit is over.

Cole Towing and Recovery, LLC is the only company affected by this Ordinance and it is quickly putting us out of business. This will make way for the planned business of the disgruntled ex-employed and his father-in-law. The Ordinance grants the City Administrator the option to increase the allowable fees. Once our business fails I expect exactly that to happen.

This Ordinance sets rates that are well below industry rates including the South Carolina Highway Patrol, insurance companies and the banks. Even the disgruntled ex-employee's business charges twice as much as this Ordinance allows. Attached is the State Highway Patrol list of rates authorized by the State (Exhibit A). These rates are much higher than the City allows, and the Patrol is not even considering the extent of services and risks involved in private impounding. These prices simply have no basis for their establishment. I believe that local government has no authority to set prices for anything. They don't establish the prices for any other business. There is no rational or reasonable basis for regulating these prices.

Most importantly, our damages are incalculable. Our business is one of the few that does this impounding. Our business was growing at an exponential rate that will never be shown by our prior income or a guess at future income. The loss of goodwill of my business can never be compensated for. Should my business fail, no amount of estimation will calculate the ramifications of the loss to myself and my employees for our good efforts improving this business. One experienced employee has already been beaten up and quit because of this turmoil.

We are a licensed and regulated motor vehicle carrier under Federal and State Law. We are subjected to civil and criminal penalties for compliance with those extensive regulations. Every piece of my equipment is inspected and approved before it enters the highway. Record keeping, employee hours, insurance, maintenance records and numerous other requirements for our business are set forth by State and Federal Law. Local governments are not authorized to regulate motor vehicle carriers much less even the operation of motor vehicles. The State and Federal Governments have entirely pre-empted any regulation by local government. The South Carolina State Legislature has set the parameters for towing from private property and I believe

their legislation and the other State and Federal legislation entirely occupies the field as far as how this business may be conducted.

S.C. Code 16-11-760 is simple and straight forward and does not authorize local government to criminalize conduct it specifically permits. This ordinance makes it a criminal offense to privately impound a vehicle without compliance with the ordinance even if one complies with S.C. Code 16-11-760. I would crave reference to *Beachfront Enter. vs. Sullivan's Island*, 666 S.E.2d 912, 379 S.C. 602 (S.C. 2008), *City of North Charleston vs. Harper*, 306 S.C. 153, 410 S.E.2d 569 (1991) and *Connor vs. Town of Hilton Head Island*, 314 S.C. 251, 442 S.E.2d 608 (1994)

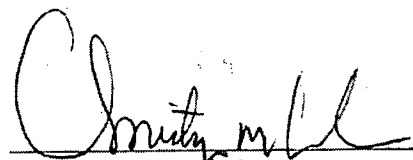
Aside from regulation a preempted area of the law and set prices for a business this ordinance should not even apply to most of our properties. Most of the property we tow from is not commercial but multi-family residential property. The Ordinance shouldn't even apply to that.

Although 49 U.S.C 14501(c)(1) allows the State to pass laws concerning "operations performed without prior consent or authorization of the owner or operator of the motor vehicle" This exception was clearly intended to recognize that most States already had statutes like South Carolina and does not intend to authorize the City of Spartanburg to analysis and regulate the private impound industry.

This Ordinance makes it unprofitable for these businesses to operate in the City of Spartanburg. Impounded vehicles that are not ultimately released end up on the interstate market for used motor vehicles. Apartment complexes will be afraid to have vehicles towed from their premises and entire neighborhoods will be blighted by unwanted and derelict cars.

Lastly this ordinance fundamentally altered our existing contracts and takes away our business without compensation. There has never been an approved case of a local government in the State of South Carolina establishing prices concerning a single business. It's unfair, unreasonable, unlawful and unconstitutional. If a temporary injunction is not granted, our business will be irreparably harmed. As shown above, we are likely to prevail on the merits of our case. The City of Spartanburg has waited over a hundred years to attempt to regulate this industry it certainly won't be harmed while this court reviews the City's two week efforts on this matter.

Further affiant sayeth not.


Christopher M. Cole

SWORN to before me this

23rd Day of May 2017.



Notary Public for South Carolina

My Commission Expires: 8/2/25

EXHIBIT A



South Carolina Department of Public Safety

S.C. Highway Patrol

2017 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2017 are listed below:

2017 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing Charge	*Special Operations	Storage
\$ 214.00 Flat Fee	\$ 126.00 Per Hour	\$ 32.00 Per Day
<i>*Special Operations are billed at a per hour rate in 1/2 hour increments.</i>		
Class B Wrecker		
Standard Towing Charge	*Special Operations	Storage
\$ 313.00 Flat Fee	\$ 200.00 Per Hour	\$ 41.00 Per Day
<i>*Special Operations are billed at a per hour rate in 1/2 hour increments.</i>		
Class C Wrecker		
*Standard Towing Charge	Special Operations	Storage
\$ 474.00 Per Hour	**See below	\$ 56.00 Per Day
<i>*Standard Towing is billed at a per hour rate in 1/2 hour increments.</i>		
<i>**Although no Special Operations fee is set for Class C tows, a wrecker service may recover the actual cost of rental/subcontracted equipment or labor necessary to accomplish the job. Proof of these actual costs in the form of an itemized invoice or receipt from each third party providing such equipment or labor must accompany the tow bill.</i>		

Class C services only		
Description of Service, Labor or Equipment	Rate / Fee	
Additional Wrecker	\$ 464.00	Per hour
Dump Truck, Dump Trailer or Drop Dumpster	\$ 223.00	Per hour
Rotator/Crane or equivalent	\$ 662.00	Per hour
Truck Tractor with Box Trailer or equivalent	\$ 260.00	Per hour
Truck Tractor with Flat Trailer or equivalent	\$ 267.00	Per hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	\$ 300.00	Per hour
Skid Steer or equivalent	\$ 212.00	Per hour
Forklift or equivalent	\$ 209.00	Per hour
Backhoe or equivalent	\$ 241.00	Per hour
Service Truck (includes all tools and equipment on board)	\$ 175.00	Per hour
Tower Light System	\$ 148.00	Per hour
Complete Air Bag Unit	\$ 712.00	Per hour
Additional Labor (General)	\$ 79.00	Per person/per hour
Additional Labor (Specialized)	\$ 109.00	Per person/per hour

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SECTION II

ZONING DISTRICTS AND OFFICIAL ZONING MAP

§ 201. ZONING DISTRICTS (*)

The following districts hereby created and designated by the accompanying symbols:

R-15	Single Family Residential District
R-12	General Residential District
R-8 SFD	Single Family District
R-8	General Residential District
R-6	General Residential District
R-6 Live Work	Live/Work District (***)
GID	General Institutional District (**)
LOD	Limited Office District (**)
LC	Limited Commercial District
B-1	Neighborhood Shopping Center
DT-4, DT-5, DT-6	Downtown Urban Districts
B-3	General Business District
B-4	Heavy Commercial District
I-1	Light Industrial District
I-2	Heavy Industrial District

The boundaries of these districts are hereby established as shown on the official Zoning Map of Spartanburg, South Carolina.

DISTRICTS

CHARACTERISTICS

R-15 (Single Family Residential)

These districts exist for the protection of areas, most of them large in size, that have been and are being developed predominantly for low-density single family dwellings and low-density planned unit developments. Accordingly, the use of land and buildings within such areas is limited to single family detached dwellings, mixed dwellings permitted in PDDs and to such nonresidential uses as generally support and harmonize with these low-density residential districts. Within these areas, home occupations and the maintenance of professional offices within homes are not characteristic and are prohibited except as permitted in planned development districts.

R-12 (General Residential District)

These districts exist for the protection of areas, most of them large in size, that have been and are being developed predominantly for low-density single family dwellings but in which two family and multi-family

* (Amended by Council 12/12/94)

*** (Further Amended by Council 1/24/05)

** (Further Amended by Council 10/8/01)

Section 201-208: Zoning Districts and Official Zoning Map

dwelling are occasionally found. Accordingly, the use of land and buildings within such areas is limited to single family detached dwellings, low-density two family and multi-family dwellings, and to such nonresidential uses as generally support and harmonize with a low-density residential area.

**R-8 SFD
(Single Family Residential)**

These districts exist for the protection of areas that have been developed primarily for medium density single family dwellings. Accordingly, the use of land and buildings within these areas is limited in general to single family dwellings at a density of approximately seven units per acre and such nonresidential uses which generally support and are compatible with a medium-density residential area. (*)

**R-8
(General Residential)**

These districts exist for the protection of areas that have been and are being developed predominantly for medium-density single family dwellings but in which two family and multi-family dwellings occur. Accordingly, the use of land and buildings within these areas is limited in general to dwellings at a density of around seven dwelling units per acre and to such nonresidential uses as generally support and harmonize with a medium-density residential area.

**R-6
(General Residential District)**

These districts exist for the protection of areas that generally contain older residential structures, some of which were originally large single family dwellings which have been or may be converted to rooming houses or multi-family dwellings, and others which have been built on relatively small lots. Accordingly, the use of land and buildings within these areas is limited in general to dwellings at a density of around ten dwelling units per acre, and to such nonresidential uses as generally support and harmonize with a medium-high residential density.

R-6 Live/Work

These districts provide for employment opportunities in conjunction with a dwelling which are more extensive than home occupations under Section 302.6, and which create a mixed use neighborhood predominately residential in character. Live/work neighborhoods are also designed to provide a transition between more intensive office and commercial areas and low-density residential neighborhoods. (**)

* (Amended by Council 2/10/92)

** (Amended by Council 1/24/05)

Section 201-208: Zoning Districts and Official Zoning Map

GID (*) (General Institutional District)	These districts are established solely for institutions. It is intended that this district will develop in a manner that will insure compatibility with residential neighborhoods.
LOD (*) (Limited Office District)	These districts are established to provide for office uses, including offices which have contact with the general public, but which do not conduct sales of merchandise on the premises. It is intended that this district will develop that will insure compatibility with residential districts.
LC (*) (Limited Commercial)	These districts are established to provide for the Limited Commercial District transitional areas from residential to office and limited commercial retail services which do not generate large volumes of traffic, noise or other harmful effects and which are compatible with nearby residential uses. Moreover, these districts provide for development along major thoroughfares, especially between more intensely developed and higher traffic generating areas and residential areas, in order to permit a reasonable use of land along such thoroughfares without the inherent ill effects of commercial strip development. These districts also encourage conservation and preservation of structurally sound residences in these neighborhoods. No exterior storage is permitted in this Zone.
B-1 (Neighborhood Shopping)	These districts are intended primarily to serve the needs of the surrounding residential neighborhood, providing goods, and services that are day-to-day needs, generally classed by merchants as "convenience good and services". Businesses which might tend to be a nuisance to the immediately surrounding residential developments are excluded, even though the goods or services offered might be in the convenience category or classification.
DT-4, DT-5, DT-6 (Downtown)	These districts are the central shopping areas of the City. Here are concentrated activities which have primarily a city-wide and regional function: large stores offering comparison shopper's goods, specialty stores, business services, banks and other financial institutions, offices, theaters, hotels, and government building. The use of land is intensive and this intensity of use is one of the main determinants of the vitality of the Downtown Urban Districts. It is the purpose of these regulations to encourage such intensity of use and to exclude activities which have a negative effect upon the proper functions of the downtown area.

* (Further Amended by Council 12/12/94)

** (Further Amended by Council 10/8/01)

Section 201-208: Zoning Districts and Official Zoning Map**B-3
(General Business)**

These districts serve several functions. They provide central concentrations of goods and services for more than one neighborhood. They provide comparison shopper's goods, convenience goods and services, specialty goods, amusements and numerous services for less than a city-wide market. They also provide locations for small businessmen with a city-wide market who cannot operate in the downtown areas. The predominant purpose of all these functions is retail trade.

**B-4
(Heavy Commercial)**

These districts furnish goods and services which are mainly used in support of retail trade for the City and the region. The principal activities located here are wholesaling, warehousing, transportation, heavy business services, distribution, and some incidental processing. Such functions are generally located in such a position that they can support the Downtown Districts and at the same time concentrate their heavy traffic requirements near the main arteries for movement of goods and services.

**I-1
(Light Industrial)**

These districts are intended for industrial uses, which are not offensive to nearby commercial or residential uses, and for business uses which generally support and are integrated with these industrial uses. Further development of residences is prohibited from these districts to prevent residences from being established under strongly adverse conditions and to conserve the supply of industrial land.

**I-2
(Heavy Industrial)**

These districts are for heavy industrial activities which may be offensive, or incompatible, if located near commercial or residential uses and for limited business uses which support, or are compatible with, these heavy industrial activities. Further development of residences is prohibited from these districts to prevent residences from being established under strongly adverse conditions and to conserve the supply of industrial land.

§ 202. INTERPRETATION OF THE ZONING MAP.

The Zoning Administrator shall interpret the Zoning Map according to the following guide:

- A. Where such district boundaries are indicated as approximately following center lines of streets and alleys, lot lines, stream center lines, property lines or corporate limit lines, such lines shall be considered to be such boundaries.
- B. In unsubdivided property or where a district boundary divides a lot, or where the dimension is not shown on the official Zoning Map, the Zoning Administrator shall determine the location of the zoning line by use of the appropriate scale.

AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF SPARTANBURG 1988, CHAPTER 23, "WRECKERS AND WRECKING SERVICES BY ADDING SECTIONS 23-14 THRU 23-19 TO PROVIDE FOR "NONCONSENSUAL BOOTING AND TOWING."

WHEREAS, the Code of the City of Spartanburg 1988 sets a schedule of maximum rates that can charged for vehicle towing and storage from public rights-of-way; and

WHEREAS, there are at present no maximum rates for the towing and storage of vehicles towed from privately-owned commercial property; and

WHEREAS, the Spartanburg Police Department personnel have become aware of incidents when vehicles were towed from privately-owned commercial property and the vehicle owner was charged towing-related fees that were significantly higher than rates permitted for towing from the public rights-of-way; and

WHEREAS, a modification to the Code is desired to protect the public and reasonably balance the property rights and interests associated with the towing of privately owned vehicles from privately owned commercial property.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. To amend the Code of the City of Spartanburg 1988, Chapter 23, "WRECKERS AND WRECKING SERVICES," to add Sections 23-14 thru 23-19 to provide for "Nonconsensual Booting and Towing" which shall read as follows:

SEC. 23-14. NONCONSENSUAL BOOTING AND TOWING.

- (a) City recognizes the rights of real property owners to restrict or prohibit the parking of motor vehicles on their premises without their consent, or without appropriate payment when consent is given, and recognizes that parking on privately-owned commercial property without the property owner's consent is a misdemeanor under S.C. Code 1976, § 16-11-760 if the owner has posted notice at a conspicuous place.
- (b) City nonetheless finds as follows:

- (1) When a lot owner consents to parking by the public but requires payment in all or some instances, state statutes do not fully address the balance between lot owners or managers and vehicle motorists.**
- (2) Increasingly, there are instances of vehicles being towed from privately-owned commercial property, or instances of wheels being booted while the vehicles are on privately-owned commercial property, without the vehicle owners having been given sufficient notice that parking on the premises is not authorized, or without vehicle owners having been warned of the specific consequences.**
- (3) There are no clear and objective standards under state statutes for what constitutes a conspicuously posted notice.**
- (4) Restricting the use of spaces in private lots to paying monthly parkers or requiring other users to make payment on a basis of payment per occasion of use is not a predatory practice. However, the willful inducement to use a private lot with an expectation to levy additional charges beyond normal parking fees as a precondition of exiting the lot is a predatory practice.**
- (5) Predatory towing practices involving vehicles parked on lots associated with residential properties, primarily apartment complexes, is also a problem which can disproportionately impact the working poor who face the choice between paying what in some instances are excessive towing-related fees and the loss of their vehicle.**
- (6) Excessive charges for nonconsensual booting and towing, as well as the refusal of certain towing services to release vehicles prior to their being towed even when the vehicle owner is prepared to provide payment for the vehicle, constitute predatory practices, as do efforts to patrol and wait for offenders to park their vehicles in insufficiently posted parking lots.**
- (7) Predatory booting and towing practices of businesses offering booting and towing services to real property owners can have a detrimental impact on the business climate of restaurants and other commercial establishments whose patrons sometimes park in lots with either no notices or inadequate notices posted.**
- (8) Predatory booting and towing practices can impose excessive**

hardships on drivers who have not intentionally acted in bad faith in parking vehicles on privately-owned commercial property in many circumstances.

- (9) Poorly marked and inadequately staffed parking lots lead to confrontations between motor vehicle drivers and providers of booting services and towing services to substantially the same extent as deliberately predatory entrapments, and the confrontations lead to calls for a police department response.
- (10) Establishing reasonable rules of conduct is a good means of balancing the bona fide interests of property owners, booting providers and towing providers, with the interests of the parking public and businesses whose patrons need parking.
- (11) The city can reconcile the rights of real property owners with the public interest of promoting commercial areas in the city as regional destinations by requiring certain warning signs to be posted at lots where booting and towing are used as enforcement tools by real property owners and by establishing reasonable measures to regulate privately-owned commercial lot owners and towing and booting service providers.
- (12) Booting inevitably results in a high instance of angry confrontations which disturb the peace and threaten public order.

SEC. 23-15. DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boot or locking wheel boot means a mechanical clamp or device that is professionally manufactured and designed to lock the wheel on a motor vehicle thus immobilizing the vehicle and preventing anyone but the key holder of the device from removing it.

Deliver means placing a towed motor vehicle in the actual possession of the owner, authorized operation or authorized agent of the owner.

Lot or parking lot means any privately owned place which is used for parking motor vehicles while leaving them unattended. The term "lot" or "parking lot" includes places which customarily make per use charges or require lease payments from users, and it also includes places where no charges or payments are ordinarily assessed, whether the places are associated with a particular

building or stand alone.

Motor vehicle means any car, truck, motorcycle, or similar equipment which has wheels and is propelled by an engine and which is capable of moving on the public ways of the city.

Nonconsensual booting means the booting of a vehicle which is authorized or directed by a person other than the vehicle owner, authorized operator or authorized agent of the owner.

Nonconsensual towing means the towing of a vehicle from property other than the public right-of-way which is authorized or directed by a person other than the vehicle owner, its authorized operator or an authorized agent of the owner. The term "nonconsensual towing" shall not apply to nonconsensual tows that occur as a result of vehicle repossession by a lien holder having title to the vehicle.

Privately-owned commercial property booting means the booting of a motor vehicle from private real property at the request of the property owner or the agent of the privately-owned commercial property owner.

Privately-owned commercial property towing means the towing of a motor vehicle from private real property at the request of the property owner.

Property owner means the person or business entity which owns and occupies real property. For real property which is leased, the term "property owner" shall mean the lawful lessee with occupancy and control of the premises. Control of the premises with the authority to refuse admittance to the property is the factor which determines the status of "owner" under the sections which follow.

Towing operator means any person, company or partnership, engaged in the business of towing or storing towed vehicles, and the term includes the employees of the individual or business entity engaged in such business.

SEC. 23-16. WARNING SIGN FOR NONCONSENSUAL BOOTING AND TOWING.

(a) It shall be unlawful to charge for the nonconsensual towing of any motor vehicle from any parking lot located upon privately-owned commercial property without authorization from the owner of the motor vehicle or of the city, or to request the provider of booting or towing services to engage in such actions, except under the following circumstances:

(1) The property owner has posted the property at each vehicular entrance

to the property with a sign approved by the city manager, or his designee, and having been determined to be conspicuous for the property and entrance concerned so as to be clearly visible by the person of ordinary sensibilities upon entrance to the property. The name and telephone number of the towing service provider must appear on or immediately below the sign.

- (2) All signage must be approved by the city manager as complying with the provisions of this section. The city manager may direct the traffic services division to develop a standard sign in compliance with the criteria of this section. The standard sign shall be made reasonably available to lot owners and their representatives in an electronic format which can be utilized by private sign vendors for the manufacture of the standard sign. The traffic services division shall develop standard signs at cost to requesting lot owners or their representatives.
- (3) Signs shall be placed at the entrance of each parking lot of privately-owned commercial property or in a position that is clearly and unmistakably visible to a driver upon entering the lot. The exact placement must be approved by the city manager or the city manager's designee in order to ensure that the sign can be seen by drivers of motor vehicles upon entering the parking lot. Additional signs may be placed elsewhere in the lot at the owner's discretion.
- (4) The city manager, or the city manager's designee, may require that the required signage be placed on a sandwich board sign frame, or comparable temporary frame, at ground level of all entrances whenever a lot begins operation as a pay per use lot on a temporary basis, or whenever other circumstances such as physical configuration of the lot or its relation to the right-of-way or other properties reasonably require in order to meet the purposes of this section.
- (b) The requirements of subsection (a) of this section are in addition to, and not in lieu of, the provisions of S.C. Code 1976, § 16-11-760(A) requiring the posting of privately-owned commercial property before an unauthorized vehicle can be towed without the vehicle owner's consent.

SEC. 23-17. PAYMENT AND PROCEDURES FOR NONCONSENSUAL BOOTING AND TOWING.

- (a) Subject to Section 23-19 which sets forth all allowable nonconsensual towing-related charges. The owner of the vehicle which is towed in accordance with this section shall be responsible for paying all applicable towing-related charges provided that the real property owner has complied with all of the requirements contained in Section 23-15.

- (b) No provider of towing services shall tow a motor vehicle from a parking lot located upon privately-owned commercial property without the owner's consent without first having obtained a written authorization for such action from the property owner, and without the authorization showing the name and bearing the signature of the property owner. The authorization may be in the form of a written agreement to cover all nonconsensual towing for a particular lot for a specific term.
- (c) Any towing operator performing a nonconsensual tow, shall within 60 minutes of the removal of the vehicle from the private lot, telephone the police department to make an oral report of the tow by providing the applicable information on the tow record/invoice form described in Section 23-18. Any towing operator which fails to give such notice within one hour of the time the vehicle was towed shall not be entitled to any compensation for the towing and storing operation and shall deliver the vehicle to the owner upon request.
- (d) If a driver of a vehicle to be towed arrives prior to removal of the vehicle from the posted property, then the towing operator must accept payment tendered at the scene and release the vehicle immediately. For payment tendered at the scene, the required payment can be no more than one-half the maximum authorized for nonconsensual towing in section 23-19.

SEC. 23-18. PERMIT REQUIRED.

- (a) No provider of services for towing vehicles from privately-owned commercial property shall operate within the corporate limits of the city without obtaining a permit for that purpose from the city manager or the city manager's designee. The permit shall be in addition to, and not in lieu of, any business license permit otherwise required under this Code.
- (b) The city manager or the city manager's designee shall develop such forms as may be appropriate for the application for the permit, which shall be approved as to form by the city attorney, and may refrain from issuing a permit without the information on the form being complete. The information required shall include, as may be relevant to the service, the principal operating the business, the street and mailing address of the business, the street address of where towed vehicles will be stored, the state of incorporation of the business, persons having an ownership of five percent or greater in the business, telephone numbers where persons operating the business can be reached at any time of the day or evening, a description of all equipment to be used, the name and address of other businesses from whom equipment will be leased or borrowed, a list of properties where the business is authorized by the property owners to boot

vehicles or to have them towed, a certification that changes in the information will be updated in writing prior to the changes taking effect, an acknowledgement that a violation of this chapter is a basis for the revocation of the permit or of the business license, or both.

- (c) No permit shall be issued absent copies of certificates of insurance, from an insurance carrier authorized to do business in this state, evidencing general liability insurance, and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the city manager's designee determines to be reasonable, considering the exposure to harm by the general public.
- (d) The books and records of all providers of towing services shall be subject to inspections and audits, and must be kept at the office location identified on the permit application. Failure to keep such books and failure to make all books kept available for inspection and audit by the city when access is requested is a basis for suspension or revocation of permits under this section and a basis for suspension or revocation of the provider's business license.

SEC. 23-19. MAXIMUM CHARGES FOR TOWING, BOOTING AND FEES RELATED THERETO; METHODS OF PAYMENT AND INVOICE/RECEIPTS.

- (a) Charges made to vehicle owners or operators for nonconsensual towing of motor vehicles on privately-owned commercial property shall be limited to the following:

Booting & Towing Fees

Fees relative to booting and towing of motor vehicles parked without permission on privately-owned commercial property within the city

Booting and towing permit fee	\$ 25.00
Maximum booting charge from private lot	50% of tow cost
Maximum towing charge from private lot	\$100.00
<i>Vehicles less than 26,000 pounds</i>	
City-provided sign (each)	\$ 25.00
Maximum Storage charges for impoundment	\$ 20.00
<i>(Applicable only after 24 hours of storage)</i>	\$ 20.00 per day
Maximum disconnect fee	50% of tow cost
DMV Processing Fee	\$ 35.00

Authorized processing fee for any vehicle retained for five (5) or more days, as a tow company incurs direct costs with DMV after retention of five (5) or more days.

Dolly Fee Authorization **\$40.00**
Authorized fee when all four-wheel drive vehicles must be dollyed to safely move

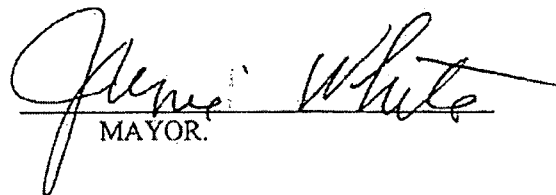
Weather Wrap Fee - Per window/sunroof wrapped **\$10.00**
Authorized fee for open windows and sunroofs that require weatherproof wrapping

Vehicles Exceeding 26,000 pounds – Maximum Fee **\$300.00**
Authorized fee for vehicles exceeding 26,000 pounds in weight

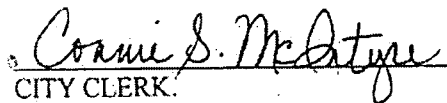
- (b) The maximum fees set forth above in subsection (a) shall be set by the city manager from time to time. All other fees and charges are prohibited.
- (c) The city manager shall set the fee in an amount that is high enough that property owners can reasonably expect to receive timely service from competent providers when a request for service is placed. However, the fee shall not be so high that it is punitive. The removal or immobilization of the vehicle having been found to be sufficiently punitive that an additional monetary penalty is unwarranted.
- (d) Every provider of nonconsensual towing services must provide to a motor vehicle owner or operator an invoice and receipt, or a combination form serving as an invoice which can become a receipt upon payment from the motor vehicle owner or operator. The invoice/receipt must be capable of being prepared in duplicate, with an original provided to the vehicle owner, and the duplicate to be retained by the service provider for not less than three years. The form shall show the name and telephone number of the service provider. It shall reflect the time, date and place of booting or towing, and the time and date of accepted payment. It must bear the signature or initials of the person accepting payment. The city manager may develop additional information requirements which are reasonably related to the purposes of this chapter.
- (e) Any violation of this Ordinance may subject the offender to fines of up to \$500 per violation and/or 30 days in prison or a revocation of its business license.

Section 2. This Ordinance shall become effective thirty (30) days after enactment.

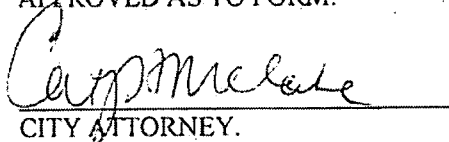
DONE AND RATIFIED this 10 day of April, 2017.


MAYOR.

ATTEST:


CITY CLERK.

APPROVED AS TO FORM:


CITY ATTORNEY.

03/20/17 1st Reading

04/10/17 2nd Reading

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs.

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-42-01468

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for the Defendants City of Spartanburg and Spartanburg City Council (hereinafter collectively "The City") will move before the Presiding Judge of the Seventh Judicial Circuit at the Spartanburg County Courthouse, Spartanburg, South Carolina, at such time and place as may be set by the Court, for an Order granting the Defendants' Motion for Summary Judgment on the grounds that there is no genuine issue of material fact and, accordingly, they are entitled to judgment as a matter of law.

This motion is made pursuant to Rule 56, SCRCP, and is based on the following specific grounds when viewed in the light most favorable to Plaintiff:

1. The City acted within its power and authority under State law to enact its ordinance to regulate nonconsensual towing practices within its own city limits.
2. The City is not preempted by State or Federal law to enact its ordinance to regulate predatory nonconsensual towing practices within its own city limits.
3. The Ordinance at issue is not an unlawful criminalization of conduct that is lawful under a statewide criminal law.

4. The Ordinance at issue does not violate Equal Protection as complained of by Plaintiff.
5. The Ordinance at issue is not an unconstitutional market regulation as complained of by Plaintiff.
6. The Ordinance at issue does not constitute inverse condemnation or an unconstitutional impairment of contract.
7. Enactment of the Ordinance at issue did not constitute negligence and The City is not subject to suit in tort for a legislative act under the South Carolina Tort Claims Act S.C. Code Ann. §15-76-60 (1) and (4).
8. The Spartanburg City Council is not a proper Defendant.

This motion is based on the foregoing, Affidavits filed on behalf of The City previously and herewith, exhibits, any and all pleadings filed by the parties, orders of the court, applicable law, depositions of witnesses, supporting memoranda of law and any arguments made by counsel before the Court.

CROWE LAFAVE, LLC

/s/Mary D. LaFave

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Attorneys for the Defendants City of Spartanburg
and Spartanburg City Council

July 18, 2017

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs.

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-42-01468

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Defendants City of Spartanburg and Spartanburg City Council (hereinafter collectively "The City"), by and through their undersigned counsel, file this Memorandum in Support of Defendants' Motion for Summary Judgment and In Opposition to Plaintiff's Motion for Summary Judgment. Defendants request an Order 1) granting judgment to the Defendants as a matter of law on the grounds that there is no genuine issue of material fact and summary judgment for the Defendants is appropriate and 2) denying Plaintiff's Motion for Summary Judgment.

In support, the Defendants particularly rely upon two affidavits of City Manager Ed Memmott referenced and incorporated herein. On May 26, 2017, the Affidavit of Ed Memmott was filed as an exhibit to Defendants' Memorandum In Opposition to Plaintiff's Motion for Temporary Injunction or Writ of Mandamus and on July 18, 2017, the Supplemental Affidavit of Ed Memmott was filed in support of Defendants' Motion for Summary Judgment.

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC; *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998).

ARGUMENT

The ordinance in question regulates predatory nonconsensual booting and towing on privately owned commercial property within the city limits. *See* Spartanburg, South Carolina's Nonconsensual Booting and Towing Ordinance, §§ 23-14 through 23-19 (1988) (hereinafter "The Ordinance"). *See* Aff. of Ed Memmott.

Generally, The Ordinance seeks to regulate predatory nonconsensual towing on privately owned commercial property. *Id.* Legitimate nonconsensual towing is still permitted under The Ordinance and for ease of reference, subsections discussed herein can be briefly summarized as follows:

- ☐ § 23-16: Posted Warning Signs by Property Owner Must Adhere to Certain Parameters to Provide Proper Notice to Vehicle Owner; Property Owner Must Consent to Tow
- ☐ § 23-17: Payment for Towing Required by Vehicle Owner; Procedures for Towing by Towing Companies
- ☐ § 23-18: Permit Required for Towing Companies
- ☐ § 23-19: Maximum Charges for Towing, Booting and Fees; Criminal Penalties for Violation of This Section

Defendants submit The Ordinance is valid and constitutional and Summary Judgment is

appropriate for the Defendants based on the following grounds:

I. The City Acted Within Its Power and Authority to Regulate Predatory Towing Practices

Under the Constitution of this State, “all laws concerning local government shall be liberally construed in their favor” and “a municipal ordinance is a legislative enactment and is presumed to be constitutional”. *Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 660 S.E.2d 264 (S.C. 2008). Municipalities have broad powers under State law and may enact regulations, and ordinances, not inconsistent with the Constitution and general law of this state. S.C. Code Ann. §5-7-30 (1976). Determining the validity of a local ordinance is a two-step test: (1) Did the municipality have the power to enact the ordinance? (2) Is the ordinance inconsistent with the Constitution or general law of the State? *Hospitality Ass’n of S.C. v. County of Charleston*, 320 S.C. 219, 224, 464 S.E.2d 113, 116 (1995).

South Carolina Courts have upheld ordinances regulating the area of nonconsensual towing by specifying requirements for the content of signs, price controls for towing and storage, the records to be maintained and permits. Such ordinances, existing in a number of jurisdictions throughout the state, do not conflict with State law and are within the power of a municipality. *See Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000) (holding an ordinance regulating nonconsensual towing valid and constitutional); Supp. Aff. Ed Memmott.

A municipality is within its authority to enact an ordinance if it is consistent with State law. “In order for there to be a conflict between a State statute and municipal ordinance, both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. If either is silent where the other speaks, there is no conflict.” *Bugsy’s, Inc. v. The City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (quoting *Barnhill v. City of North Myrtle*

Beach, 333 S.C. 482, 511 S.E.2d 361 (1999)); *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. at 553, 397 S.E.2d at 664 (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932)) (where no conflict exists, both laws stand). As in *Quality Towing*, The Ordinance establishes certain requirements for property owners and towing operators for nonconsensual booting and towing.

Plaintiff has not and cannot show any State law inconsistent or irreconcilable with these nonconsensual towing requirements to divest The City of its power to enact The Ordinance. When State law is silent, there can be no conflicting or irreconcilable law on point to deprive The City of this authority. Accordingly, The Ordinance is a valid exercise of the power and authority of The City.

II. The City is Not Preempted by State or Federal Law

There are three ways a municipality can be preempted from enacting an ordinance. First, “express preemption” occurs when the General Assembly declares in express terms its intention to preclude local action in a given area. *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 629 S.E.2d 624 (2006). Second, “implied preemption” exists when an ordinance hinders the accomplishment of the statute’s purpose such that compliance with both is impossible. *Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 530, 476 S.E.2d 477, 480 (1996). Third, “field preemption” is when a statutory scheme so thoroughly and pervasively covers the subject so as to occupy the field or when the subject mandates statewide uniformity. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 574 S.E.2d 196 (2002); *Bugsy’s v. City of Myrtle Beach*, 340 S.C. 87, 93, 530 S.E.2d 890, 893 (2000).

Plaintiff first argues The Ordinance is expressly preempted because several State statutes regulate the towing of vehicles from private property. Plaintiff relies on the case of *Diamonds*

where State statutes criminalized public nudity and an ordinance deeming all nude or semi-nude dancing unlawful was void. *Diamonds v. Greenville County*, 352 S.C. 154, 480 S.E.2d 718 (1997). The ordinance scrutinized in *Diamonds* was expressly preempted by the state criminal statute because the ordinance imposed inconsistent penalties on the person committing the nudity. Here, while the State has indeed imposed criminal penalties through statute on drivers/owners for improper parking under S.C. Code Ann. §16-11-760 (1976), The Ordinance does not impose penalties on the person committing the parking. See further *Bugsy's, Inc. v. City of Myrtle Beach*, 340 S.C. 87, 530 S.E.2d 890 (2000) (an ordinance criminalizing the failure to follow the requirements of an ordinance to operate video game machines does not criminalize the same conduct addressed by state law and is not preempted). The Ordinance at bar addresses the conduct of tow operators, a conduct that is not otherwise addressed by State law. Accordingly, the express preemption analysis does not apply. *Town of Hilton Head Island v. Fine Liquors*, 302 S.C. 550, 397 S.E.2d 662 (1990) (mere differences in detail does not render a conflict with state law and an ordinance will be upheld if either is silent where the other speaks).

Plaintiff's also alleges State field preemption *via* S.C. Code Ann. §16-11-760 that, again, makes it a criminal offense for the driver/owner of a vehicle to park on commercial property without the property owner's consent. Plaintiff's position is that the requirements in The Ordinance related to signage, signage placement, permits and unhooking are invalid on the grounds that the State has "pre-empted the field of regulation of motor carriers and more particularly non-consensual tows from commercial property". See Pl. Compl. Pg. 3, ¶¶12-22. Counsel for Plaintiff made this identical argument before in the case of *Quality Towing* and this position was expressly rejected. The Court determined that there was *no preemption or conflict with state law* where the "focus of the state statute (S.C. Code Ann. §16-11-760) is on the

conduct of the vehicle owner, whereas the focus of the city ordinance is on the conduct of the property owner and towing company.” *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 37 530 S.E.2d 369, 372 (2000). Here, The Ordinance is identical in subject matter to that scrutinized by the *Quality Towing* Court and is not preempted by the State criminal statute cited by Plaintiff.

Plaintiff also submits that The Ordinance is preempted by Federal Law 49 U.S.C. §14501(c) titled “Federal Authority Over Intrastate Transportation” which provides (emphasis added):

(1) **General Rule.** -Except as provided in paragraphs (2) and (3), a State, political subdivision of a State or political authority of 2 or more States may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of any motor carrier... or any motor private carrier, broker, or freight forwarder with respect to the transportation of property”.

(2)(C) **Matters Not Covered.** -Paragraph (1) ... does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation or other provision relating to the regulation of tow truck operations performed without the prior consent or authorization of the owner or operator of the motor vehicle.

This Federal statute cannot preempt The City from enacting The Ordinance for two reasons. First, there is no expressed legislative intent to preempt the entire field of nonconsensual towing as is required for preemption. Second, this Federal law plainly provides that this statute does not abrogate the power and authority of a State or a “political subdivision of a State” to enact or enforce a law to regulate nonconsensual tow truck operations. If anything can be gleaned from this Federal statute for purposes of this analysis, it is that there is a manifest legislative intent to **allow** political subdivisions of the state such as The City to enact The Ordinance.

The Ordinance sets parameters on signage, procedures for towing vehicles, records on towed vehicles, price controls for towing and storage, permits to operate a tow truck in the city, etc. South Carolina Courts specifically have determined municipalities are within their power to regulate nonconsensual towing consistent with *Quality Towing* and the Federal statute relied upon by Plaintiff expressly provide municipalities with the ability to do so. Therefore, The City is not preempted by any State or Federal law from regulating tow operators performing nonconsensual towing and The Ordinance is valid.

III. The Ordinance is Not an Unlawful Criminalization of Lawful Conduct

Plaintiff argues The Ordinance is in conflict with State Law for criminalizing conduct that is otherwise legal under statewide criminal law. It is undisputed that The Ordinance contains a provision stating: “[a]ny violation of this Ordinance may subject the offender” to criminal and civil penalties. *See* The Ordinance § 23-19(e).

Plaintiff relies on *Connor* for the principle that an ordinance will be deemed invalid for criminalizing conduct deemed valid by state law. *Connor v. The Town of Hilton Head*, 314 S.C. 251, 256, 442 S.E.2d 608, 610 (1994) (holding an ordinance criminalizing nude dancing invalid). The *Connor* holding creates a useful distinction but undermines Plaintiff’s position. The *Connor* Court held that where an ordinance criminalizes the totality of the conduct, it will be invalid. In that case, the conduct subjecting someone to criminal penalties was nude dancing. It is not the existence of a criminal penalty that invalidated the *Connor* ordinance; rather, the ordinance was invalid as a complete prohibition on the conduct.

The South Carolina Supreme Court has upheld ordinances containing criminal penalties for violations of an ordinance pertaining to lawful conduct. In *Bugsy’s*, the Court held that an ordinance regulating the operation of video game machines is valid “[s]o long as businesses

comply with the zoning ordinance, they can operate video game machines.” *Bugsy’s*, 340 S.C. at 97, 530 S.E.2d 890, 895. The *Bugsy’s* Court explicitly rejected the *Connor* analysis relied upon by Plaintiff because the *Bugsy’s* ordinance did not criminalize the conduct. Criminal penalties in an ordinance do not, by their presence alone, render it invalid as long as the conduct can occur through compliance with the ordinance.

Identical to *Bugsy’s*, here, The Ordinance does not criminalize the totality of the conduct of nonconsensual towing. Rather, The Ordinance criminalizes the failure by a property owner or towing company to comply with its requirements related to nonconsensual towing. So long as Plaintiff complies with the regulations defined in The Ordinance, it is permitted to operate its tow trucks. The Ordinance is valid since it does not criminalize nonconsensual towing.

IV. The Ordinance Does Not Violate Equal Protection

To satisfy the Equal Protection Clause, a classification must 1) bear a reasonable relation to the legislative purpose sought to be achieved, 2) members of the class must be treated alike under similar circumstances, and 3) the classification must rest on some rational basis. *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004) citing *R.L. Jordan Co. v. Boardman Petroleum, Inc.*, 338 S.C. 475, 477, 527 S.E.2d 763, 765 (2000). The Court must give great deference to a legislative body’s classification decisions. *Foster v. S.C. Dept. of Highways Pub. Transp.*, 306 S.C. 519, 526, 413 S.E.2d 31, 36 (1992).

South Carolina Courts opine that Equal Protection rights are not violated by simply by treating members of a similar class differently as long as there is a rational basis to make the distinction. *Jenkins v. Mears*, 302 S.C. 142, 394 S.E.2d 317 (1990). In *Jenkins*, a statute withstood constitutional challenge treating claims for medical malpractice differently depending on the type of malpractice alleged (foreign object vs. negligent conduct). *Id.* at 147. The Court

determined that a direct causal connection existed where the shortened statute of limitations for foreign object claims was directly related to the ability of a plaintiff to discover the harm.

Here, the legislative purpose of The Ordinance is to regulate nonconsensual towing to protect the public from predatory towing practices. *See* Aff. Ed Memmott, Supp. Aff. Ed Memmott. The Ordinance emulates several other nonconsensual towing ordinances throughout the state. *Id.* The Defendants created The Ordinance's requirements to specifically address complaints brought to The City and City Council related to nonconsensual towing. *Id.* Some of the many citizen complaints brought to The City raised serious concerns of price gouging, questionable towing, failure to return vehicles to citizens, failure to provide receipts and retrieval of personal items from towed vehicles. *See* Supp. Aff. Ed Memmott. As a result, The Ordinance specifies price controls, towing guidelines, signage, procedure for return of vehicles, record keeping and permit requirements.

There is no question that The Ordinance applies to all nonconsensual towing companies operating within the City for the protection of the public. Those towing companies providing voluntary or requested tows provide a completely different service that inherently includes the consent of the vehicle owner. Furthermore, at the April 10, 2017, "Public Comment" portion of the City Council meeting, there were no comments related in any way to consensual towing. *See* Supp. Aff. Ed Memmott.

Just as the *Jenkins* court observed, it is not a violation of Equal Protection to treat different groups of the same class differently when a rational basis exists. Here, The Ordinance was narrowly tailored to address predatory nonconsensual towing practices by property owners and towing operators for the protection of citizens and visitors to the city. The Ordinance is limited to those practices of concern to citizens and applies evenly to all nonconsensual tows

within the city.

V. The Ordinance is Not an Unconstitutional Market Regulation

Plaintiff's assertion of unconstitutional market regulation by price control is set out in the Complaint. *See* Pl. Compl., Pg. 6, ¶44. Plaintiff's reliance for this point in its motion for summary judgment and supporting memoranda on *Retail Services & Systems, Inc. v. South Carolina Department of Revenue*, 419 S.C. 469, 799 S.E.2d 665 (2017) is misplaced. The Ordinance at issue here plainly does not present a situation of "economic protectionism for a certain class of retailers" as the Court determined was involved in *Retail Services*. *Id.* at 667. Rather, *Quality Towing, supra*, stands as solid on-point authority for the validity of The Ordinance at issue here. *Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 530 S.E.2d 369 (2000).

VI. The Ordinance Does Not Constitute Inverse Condemnation or Unconstitutional Impairment of Contract

a. No Inverse Condemnation

Plaintiff's eighth cause of action is denominated as one for "inverse condemnation" and alleges a taking of Plaintiff's private property. *See* Pl. Compl., Pg. 8, ¶¶57-61. However, Plaintiff's evidence is that it has suffered money damages due to alleged restrictions on business activities arising from The City's Ordinance. Plaintiff has presented no evidence that any real (or even personal) property has been physically appropriated or that it has been deprived of the ordinary beneficial use and enjoyment of any property. *Sea Cabin on the Ocean IV Homeowners Ass'n v. City of North Myrtle Beach*, 828 F. Supp. 1241 (D.S.C. 1993); *Hill v. The City of Hanahan*, 281 S.C. 527, 316 S.E.2d 681 (Ct. App. 1984); *South Carolina State Highway Dep't v. Wilson*, 254 S.C. 360, 175 S.E.2d 391 (1970). *See also, Quality Towing, Inc. v. City of Myrtle Beach*, 340 S.C. 29, 38, 530 S.E.2d 369, 373-374 (2000).

b. No Impairment of Contract

Plaintiff's second cause of action alleges that The City's Ordinance operates as "a substantial impairment to contractual relationships of the Plaintiff" by affecting pre-existing contracts between private parties, altering "the reasonable expectations of these private parties," and, therefore, violating the Contract Clause of the United States Constitution. *See* Pl. Compl. Pg. 4., ¶¶23-27. Article I, §10 of the United States Constitution provides in relevant part: "No state shall... pass any... law impairing the obligation of contracts..." [Although the South Carolina Constitution contains a similar provision, the Plaintiff, in its Complaint, does not assert a violation of the State Constitution.]

As explained by the United States Supreme Court in *Allied Structural Steel Company v. Spannaus*, 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978), the Contract Clause, despite the absolute appearance of its language, is not, "the Draconian provision that its words seem to imply," and "the Contract Clause does not operate to obliterate the police power of the States." 98 S.Ct. at 2720 and 2721. Quoting previous authority, the Supreme Court stated that:

It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for portion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected . . . One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them.

Id. (Internal citations omitted).

Rather, according to the *Spannaus* Court, the initial inquiry is whether the law under challenge operated as a "substantial impairment" of a contractual relationship:

The severity of the impairment measures the height of the hurdle the State legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe

impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Spannaus, 98 S.Ct. at 2722-2723.

If a law substantially impairs a contractual relationship, the State must have a significant and legitimate public purpose behind the regulation. Once a legitimate public purpose has been identified, the next inquiry for a claim under the Contracts Clause is whether the adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation's adoption. Unless the State itself is a contracting party, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-413, 103 S.Ct. 697, 704, 74 L.Ed.2d 596 (1983). (Quotes and internal cites omitted).

Here, Plaintiff has presented no evidence of substantial contractual impairment. Indeed, no towing contracts between Plaintiff and any commercial properties have been provided. Plaintiff has failed to establish its claim that The Ordinance impairs any of its contracts in violation of the United States Constitution.

Similarly, Plaintiff's sixth cause of action for inference with contractual relations fails for want of proof of the particular contracts claimed, and want of evidence of The City's intentional procurement of breach of any contract. See Pl. Compl. Pgs. 5-6, ¶¶46-51. Intentional procurement of a breach is a necessary element of this cause of action. See *Edens & Avant Investment Properties, Inc. v. Amerada Hess Corporation*, 318 S.C. 134, 456 S.E.2d 406 (Ct. App. 1995).

VII. Plaintiff's Claim for Gross Negligence is Barred by the South Carolina Tort Claims Act S.C. Code Ann. §15-76-60 (1) and (4)

The gravamen of Plaintiff's seventh cause of action for gross negligence is that the Defendants enacted an "invalid and unlawful ordinance" and its "effects" result in past, present and future economic damage to Plaintiff. *See* Pl. Compl., Pg. 8, ¶¶52-56. The enactment of an ordinance is a legislative or quasi-legislative act and the Defendants are entitled to immunity from liability and suit as provided in the South Carolina Tort Claims Act S.C. Code Ann. §15-78-10 *et seq.*

Pursuant to S.C. Code Ann. §15-78-60 (1976), a governmental entity is not liable for loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction; and/or (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation or written policies. *See Health Promotion Specialists, LLC v. South Carolina Bd. Of Dentistry*, 403 S.C. 623, 743 S.E.2d 808 (2013).

Plaintiff's cause of action for gross negligence demanding damages related to the enactment, adoption or enforcement of an ordinance is precisely the type of situation for which municipalities are immune from liability, as contemplated by the General Assembly. Accordingly, Plaintiff's claim for gross negligence is short-circuited by immunity afforded the Defendants and summary judgment for the Defendants is appropriate.

VIII. The Spartanburg City Council is the Governing/Legislative Body of the City of Spartanburg and Is Not Amenable to Suit

The Spartanburg City Council is the governing/legislative body of The City through S.C. Code Ann. §5-7-160 and City of Spartanburg Code of Ordinances §2-21 through §2-65. In the Complaint, Plaintiff acknowledges that the Defendants are the same entity setting forth that The

City is a body politic governed by the Defendant Spartanburg City Council. *See* Pl. Compl., Pg.1, ¶2. In its response, Defendants admit such allegations but deny that The Spartanburg City Council is a proper party to this action. *See* Def. Ans. To Pl. Compl., Pg.1, ¶3. Accordingly, there is no dispute that The Spartanburg City Council is created by statute as the governing/legislative body of The City and is not a separate legal entity amenable to suit.

IX. Plaintiff's Request for a Declaration that The Ordinance Does Not Apply to Multi-Family Dwellings is Inapposite

Plaintiff's third cause of action requests a declaration in its memorandum that The Ordinance does not apply to multi-family residential properties. *See* Pl. Compl. Pg. 4, ¶¶28-31. Plaintiff argues that The Ordinance states that it applies to "privately-owned commercial property" excluding "limited commercial general business or heavy commercial districts" as defined by the zoning portion of the city's code.

While Plaintiff is correct that The Ordinance specifically references "privately-owned commercial property" in §23-14(a), a more careful reading puts these terms in context. In §23-14(b)(5), the intent for The Ordinance to address predatory towing problems particular to multi-family dwellings such as apartment complexes is charted. The "Definitions" section of §23-15 is also instructive defining "[n]onconsensual towing" as "the towing of a vehicle from property other than the public right-of-way". Clearly, when reading The Ordinance as a whole, multi-family dwellings are included in its scope.

CONCLUSION

The Ordinance was enacted pursuant to the lawful power and authority of The City, is not preempted by or in conflict with State or Federal law, and is constitutional. Plaintiff's claims for inverse condemnation, impairment of contract, gross negligence and all claims against the Spartanburg City Council are inapplicable. Therefore, based on the foregoing, applicable law,

exhibits, pleadings, affidavits filed previously and herewith, and arguments by counsel, there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law.

Respectfully Submitted,

/s/ Danny C. Crowe

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Attorneys for the Defendants City of Spartanburg
and Spartanburg City Council

July 31, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Cole Towing and Recovery, LLC,	)	C. A. No.: 2017-CP-42-1468
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF CHRISTOPHER M.
	)	COLE
	)	
City of Spartanburg and Spartanburg City	)	
Council,	)	
Defendant.	)	

I, Christopher M. Cole, being duly sworn, do swear and affirm as follows:

I am 41 years of age and of sound mind and body and competent to testify and give this affidavit. I've never been convicted of a crime.

I'm a shareholder and officer of Cole Towing and Recovery, LLC. Cole Towing and Recovery, LLC operates six "Motor Vehicle Carriers" which presently consists of two self-loading tow trucks and four "rollbacks".

As of January 1, 2017, Cole Towing and Recovery LLC primarily conducted business through participation with wrecker rotation lists with the SCHP, Geico, State Farm, Allstate, Honk, Owners Request, Repossessions for Banks and Finance Companys and contract towing from private property. Gross operating income from these activities averaged \$38,000.00 per month. Of that 60% of our income came from the over 8 contracts with private property owners for towing vehicles from their property that were parked there without their permission or in violation of their regulations. (Hereinafter referred to as "private impounding")

As significant portion of our private impounding are for multi-family housing complexes where there have been persistent problems with illegally parked cars, derelict cars and cars lacking current tags. Those vehicles degrade the neighborhood and diminish the quality of life

for the residents. The residents of those complexes have signed lease agreements essentially consenting to have their vehicle towed if it is illegally parked, derelict, have no parking sticker or if the tags have expired. The fees we charge for these services are based upon market rates that the Highway Patrol, insurance companies and other wrecker services. These rates are below what is routinely charged for repossessions by banks and finance companies. The risk and exposure of private impounding are comparable to that of repossessions. The Cole Towing and Recovery LLC., has long recognized that charging excessive rates for private impounding is a significant legal liability exposing the company to liability for unfair trade practices, class actions, wrongful conversion, trespass to chattels, fraud and numerous other causes of action enforceable under the law.

In February of 2017, a disgruntled ex-employee started contacting our contract customers attempting to obtain a breach of our contracts. My information is that he was going into his own private impounding business. On Thursday, March 16, 2017, Sgt. Forrester of the Spartanburg City Police Department called me to let me know that the City was considering an Ordinance to reduce fees for nonconsensual towing. Sgt. Forrester is our disgruntled ex-employee's father-in-law.

On Monday, March 20, 2017, a City Council meeting was held and the disgruntled ex-employee spoke at the meeting with Sgt. Forrester and his daughter (the ex-employee's wife, who is a dispatcher for the City of Spartanburg) sitting next to him. They made derogatory comments about my business and orchestrated a number of other individuals to appear. I met with the City Administrator about my concerns and the impact on my business and my contracts. He informed me that Sgt. Forrester would have no further involvement. I began to receive

information that Sgt. Forrester was close to retirement and was going into the private impounding business with his son-in-law our disgruntled ex-employee.

On March 23, 2017 we were out at a private property impound when Sgt. Forrester arrived at the scene. Sgt. Forrester told the vehicles owner to get into the impounded vehicle so it could not be towed from the scene. He called me dirty, said that I deserved to be assaulted and threatened to arrest my employee. I complained to the Administrator again and between 1st and 2nd reading I had numerous threats of arrest by City Police Officers. None of these problems with the City happened before my ex-employee and his father-in-law got involved.

City Council heard from no industry experts, no towing business owners (but me) and no private property owners. The City mailed letters to my contract owners referencing complaints and the need to regulate the practice. This initial letter caused two customers to cancel their contracts with me.

Since passage of the Ordinance revenues have declined by one-third. I've had to comply with the ordinance pending a determination on the ordinance. Significant investments in signage and losses from operations are being sustained. Almost all our contracts are considering termination and hassles with the Spartanburg Police Department are almost constant. I have had to show contracts to prove I can tow and officers observe our towing. I suspect that in the absence of this litigation we would have been denied our license to operate under the Ordinance and we'll be terminated as soon as the lawsuit is over.

Cole Towing and Recovery, LLC is the only company affected by this Ordinance and it is quickly putting us out of business. This will make way for the planned business of the disgruntled ex-employed and his father-in-law. The Ordinance grants the City Administrator the option to increase the allowable fees. Once our business fails I expect exactly that to happen.

This Ordinance sets rates that are well below industry rates including the South Carolina Highway Patrol, insurance companies and the banks. Even the disgruntled ex-employee's business charges twice as much as this Ordinance allows. Attached is the State Highway Patrol list of rates authorized by the State (Exhibit A). These rates are much higher than the City allows, and the Patrol is not even considering the extent of services and risks involved in private impounding. These prices simply have no basis for their establishment. I believe that local government has no authority to set prices for anything. They don't establish the prices for any other business. There is no rational or reasonable basis for regulating these prices.

Most importantly, our damages are incalculable. Our business is one of the few that does this impounding. Our business was growing at an exponential rate that will never be shown by our prior income or a guess at future income. The loss of goodwill of my business can never be compensated for. Should my business fail, no amount of estimation will calculate the ramifications of the loss to myself and my employees for our good efforts improving this business. One experienced employee has already been beaten up and quit because of this turmoil.

We are a licensed and regulated motor vehicle carrier under Federal and State Law. We are subjected to civil and criminal penalties for compliance with those extensive regulations. Every piece of my equipment is inspected and approved before it enters the highway. Record keeping, employee hours, insurance, maintenance records and numerous other requirements for our business are set forth by State and Federal Law. Local governments are not authorized to regulate motor vehicle carriers much less even the operation of motor vehicles. The State and Federal Governments have entirely pre-empted any regulation by local government. The South Carolina State Legislature has set the parameters for towing from private property and I believe

their legislation and the other State and Federal legislation entirely occupies the field as far as how this business may be conducted.

S.C. Code 16-11-760 is simple and straight forward and does not authorize local government to criminalize conduct it specifically permits. This ordinance makes it a criminal offense to privately impound a vehicle without compliance with the ordinance even if one complies with S.C. Code 16-11-760. I would crave reference to *Beachfront Enter. vs. Sullivan's Island*, 666 S.E.2d 912, 379 S.C. 602 (S.C. 2008), *City of North Charleston vs. Harper*, 306 S.C. 153, 410 S.E.2d 569 (1991) and *Connor vs. Town of Hilton Head Island*, 314 S.C. 251, 442 S.E.2d 608 (1994)

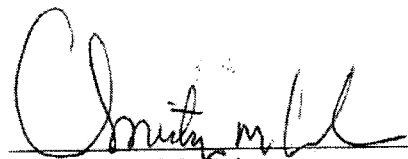
Aside from regulation a preempted area of the law and set prices for a business this ordinance should not even apply to most of our properties. Most of the property we tow from is not commercial but multi-family residential property. The Ordinance shouldn't even apply to that.

Although 49 U.S.C 14501(c)(1) allows the State to pass laws concerning "operations performed without prior consent or authorization of the owner or operator of the motor vehicle" This exception was clearly intended to recognize that most States already had statutes like South Carolina and does not intend to authorize the City of Spartanburg to analysis and regulate the private impound industry.

This Ordinance makes it unprofitable for these businesses to operate in the City of Spartanburg. Impounded vehicles that are not ultimately released end up on the interstate market for used motor vehicles. Apartment complexes will be afraid to have vehicles towed from their premises and entire neighborhoods will be blighted by unwanted and derelict cars.

Lastly this ordinance fundamentally altered our existing contracts and takes away our business without compensation. There has never been an approved case of a local government in the State of South Carolina establishing prices concerning a single business. It's unfair, unreasonable, unlawful and unconstitutional. If a temporary injunction is not granted, our business will be irreparably harmed. As shown above, we are likely to prevail on the merits of our case. The City of Spartanburg has waited over a hundred years to attempt to regulate this industry it certainly won't be harmed while this court reviews the City's two week efforts on this matter.

Further affiant sayeth not.


Christopher M. Cole

SWORN to before me this

23rd Day of May 2017.



Notary Public for South Carolina

My Commission Expires: 8/2/25

EXHIBIT A



South Carolina Department of Public Safety

S.C. Highway Patrol

2017 Wrecker Rotation Fee Schedule

In accordance with Section 38-600 of the South Carolina Code of State Regulations, the Department of Public Safety publishes a yearly Fee Schedule outlining the maximum allowable fees for each class of wrecker on the SCHP Wrecker Rotation List. The reasonableness of fees on the Fee Schedule is determined by the Highway Patrol on a comparative basis. The fees permitted for calendar year 2017 are listed below:

2017 MAXIMUM ALLOWABLE FEES FOR ROTATION LIST CALLS

Rates / Fees		
Class A Wrecker		
Standard Towing Charge	*Special Operations	Storage
\$ 214.00 Flat Fee	\$ 126.00 Per Hour	\$ 32.00 Per Day
<i>*Special Operations are billed at a per hour rate in 1/2 hour increments.</i>		
Class B Wrecker		
Standard Towing Charge	*Special Operations	Storage
\$ 313.00 Flat Fee	\$ 200.00 Per Hour	\$ 41.00 Per Day
<i>*Special Operations are billed at a per hour rate in 1/2 hour increments.</i>		
Class C Wrecker		
*Standard Towing Charge	Special Operations	Storage
\$ 474.00 Per Hour	**See below	\$ 56.00 Per Day
<i>*Standard Towing is billed at a per hour rate in 1/2 hour increments.</i>		
<i>**Although no Special Operations fee is set for Class C tows, a wrecker service may recover the actual cost of rented/subcontracted equipment or labor necessary to accomplish the job. Proof of these actual costs in the form of an itemized invoice or receipt from each third party providing such equipment or labor must accompany the tow bill.</i>		

Class C services only		
Description of Service, Labor or Equipment	Rate / Fee	
Additional Wrecker	\$ 464.00	Per hour
Dump Truck, Dump Trailer or Drop Dumpster	\$ 223.00	Per hour
Rotator/Crane or equivalent	\$ 662.00	Per hour
Truck Tractor with Box Trailer or equivalent	\$ 260.00	Per hour
Truck Tractor with Flat Trailer or equivalent	\$ 267.00	Per hour
Truck Tractor with Landoll/Lowboy/Tilt Trailer or equivalent	\$ 300.00	Per hour
Skid Steer or equivalent	\$ 212.00	Per hour
Forklift or equivalent	\$ 209.00	Per hour
Backhoe or equivalent	\$ 241.00	Per hour
Service Truck (includes all tools and equipment on board)	\$ 175.00	Per hour
Tower Light System	\$ 148.00	Per hour
Complete Air Bag Unit	\$ 712.00	Per hour
Additional Labor (General)	\$ 79.00	Per person/per hour
Additional Labor (Specialized)	\$ 109.00	Per person/per hour

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs.

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-42-01468

AFFIDAVIT OF ED MEMMOTT

Personally appeared before me, Ed Memmott, who after being duly sworn deposes and states as follows:

1. I am over 18 years of age and competent to testify as to my personal knowledge of the facts contained herein.

2. From 2009 to present, I have served as the City Manager for the City of Spartanburg, South Carolina (hereinafter "the City").

3. In my role as City Manager, some of my duties involve overseeing administrative processes that allow the City to function including the presentment, discussion, modification and adoption of ordinances before the Spartanburg City Council.

4. Attached as Exhibit A is a true and correct copy of Spartanburg, South Carolina's Nonconsensual Booting and Towing Ordinance, Municipal Code §§ 23-14 through 23-19 (1988) (hereinafter "The Ordinance") recently added to the City's Code.

5. Attached as Exhibit B is a true and correct copy of the City Council Meeting Minutes for the City Council Meeting held on March 20, 2017, whereupon The Ordinance was

initially presented to City Council. The Ordinance was edited and approved for a second reading unanimously 6 to 0.

6. Attached as Exhibit C is a true and correct copy of the City Council Meeting Minutes for the City Council Meeting held on April 10, 2017, whereupon The Ordinance was presented to City Council through a second reading. The Ordinance was approved as presented unanimously 7 to 0.

7. Following numerous complaints by its citizens, the City of Spartanburg adopted The Ordinance to address predatory towing practices by towing companies on private commercial property within the city limits of Spartanburg.

8. The City established a fee schedule in The Ordinance for towing and storage charges comparable to those of surrounding communities. I personally met with Christopher M. Cole and considered his feedback on the amount of the fees.

9. The Ordinance is patterned after similar predatory practices were addressed by the City of Greenville, South Carolina's Nonconsensual Booting and Towing Ordinance, Municipal Code § 42-196 *et seq.* (2015).

10. As referenced in the preamble of The Ordinance and the City Council Meeting Minutes, The Ordinance does not forbid or illegalize towing in general. The Ordinance is specifically tailored to regulate predatory towing practices necessary for the protection of the public while balancing the property rights and interests associated with towing. *See Exhibits A, B & C.*

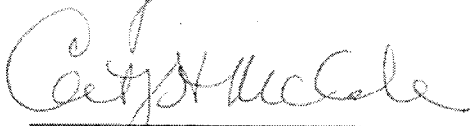
(This space intentionally left blank; signature page to follow.)

FURTHER AFFIANT SAYETH NOT.



Ed Memmott
City Manager
City of Spartanburg

Sworn before me this the 26 day
of May 2017.



Notary Public for South Carolina

My Commission Expires: March 30, 2025

EXHIBIT A

AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF SPARTANBURG 1988,
CHAPTER 23, "WRECKERS AND WRECKING SERVICES BY
ADDING SECTIONS 23-14 THRU 23-19 TO PROVIDE FOR
"NONCONSENSUAL BOOTING AND TOWING."

WHEREAS, the Code of the City of Spartanburg 1988 sets a schedule of maximum rates that can be charged for vehicle towing and storage from public rights-of-way; and

WHEREAS, there are at present no maximum rates for the towing and storage of vehicles towed from privately-owned commercial property; and

WHEREAS, the Spartanburg Police Department personnel have become aware of incidents when vehicles were towed from privately-owned commercial property and the vehicle owner was charged towing-related fees that were significantly higher than rates permitted for towing from the public rights-of-way; and

WHEREAS, a modification to the Code is desired to protect the public and reasonably balance the property rights and interests associated with the towing of privately owned vehicles from privately owned commercial property.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND MEMBERS OF COUNCIL OF THE CITY OF SPARTANBURG, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. To amend the Code of the City of Spartanburg 1988, Chapter 23, "WRECKERS AND WRECKING SERVICES," to add Sections 23-14 thru 23-19 to provide for "Nonconsensual Booting and Towing" which shall read as follows:

SEC. 23-14. NONCONSENSUAL BOOTING AND TOWING.

- (a) City recognizes the rights of real property owners to restrict or prohibit the parking of motor vehicles on their premises without their consent, or without appropriate payment when consent is given, and recognizes that parking on privately-owned commercial property without the property owner's consent is a misdemeanor under S.C. Code 1976, § 16-11-760 if the owner has posted notice at a conspicuous place.

- (b) City nonetheless finds as follows:

- (1) When a lot owner consents to parking by the public but requires payment in all or some instances, state statutes do not fully address the balance between lot owners or managers and vehicle motorists.
- (2) Increasingly, there are instances of vehicles being towed from privately-owned commercial property, or instances of wheels being booted while the vehicles are on privately-owned commercial property, without the vehicle owners having been given sufficient notice that parking on the premises is not authorized, or without vehicle owners having been warned of the specific consequences.
- (3) There are no clear and objective standards under state statutes for what constitutes a conspicuously posted notice.
- (4) Restricting the use of spaces in private lots to paying monthly parkers or requiring other users to make payment on a basis of payment per occasion of use is not a predatory practice. However, the willful inducement to use a private lot with an expectation to levy additional charges beyond normal parking fees as a precondition of exiting the lot is a predatory practice.
- (5) Predatory towing practices involving vehicles parked on lots associated with residential properties, primarily apartment complexes, is also a problem which can disproportionately impact the working poor who face the choice between paying what in some instances are excessive towing-related fees and the loss of their vehicle.
- (6) Excessive charges for nonconsensual booting and towing, as well as the refusal of certain towing services to release vehicles prior to their being towed even when the vehicle owner is prepared to provide payment for the vehicle, constitute predatory practices, as do efforts to patrol and wait for offenders to park their vehicles in insufficiently posted parking lots.
- (7) Predatory booting and towing practices of businesses offering booting and towing services to real property owners can have a detrimental impact on the business climate of restaurants and other commercial establishments whose patrons sometimes park in lots with either no notices or inadequate notices posted.
- (8) Predatory booting and towing practices can impose excessive

hardships on drivers who have not intentionally acted in bad faith in parking vehicles on privately-owned commercial property in many circumstances.

- (9) Poorly marked and inadequately staffed parking lots lead to confrontations between motor vehicle drivers and providers of booting services and towing services to substantially the same extent as deliberately predatory entrapments, and the confrontations lead to calls for a police department response.
- (10) Establishing reasonable rules of conduct is a good means of balancing the bona fide interests of property owners, booting providers and towing providers, with the interests of the parking public and businesses whose patrons need parking.
- (11) The city can reconcile the rights of real property owners with the public interest of promoting commercial areas in the city as regional destinations by requiring certain warning signs to be posted at lots where booting and towing are used as enforcement tools by real property owners and by establishing reasonable measures to regulate privately-owned commercial lot owners and towing and booting service providers.
- (12) Booting inevitably results in a high instance of angry confrontations which disturb the peace and threaten public order.

SEC. 23-15. DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Boot or locking wheel boot means a mechanical clamp or device that is professionally manufactured and designed to lock the wheel on a motor vehicle thus immobilizing the vehicle and preventing anyone but the key holder of the device from removing it.

Deliver means placing a towed motor vehicle in the actual possession of the owner, authorized operation or authorized agent of the owner.

Lot or parking lot means any privately owned place which is used for parking motor vehicles while leaving them unattended. The term "lot" or "parking lot" includes places which customarily make per use charges or require lease payments from users, and it also includes places where no charges or payments are ordinarily assessed, whether the places are associated with a particular

building or stand alone.

Motor vehicle means any car, truck, motorcycle, or similar equipment which has wheels and is propelled by an engine and which is capable of moving on the public ways of the city.

Nonconsensual booting means the booting of a vehicle which is authorized or directed by a person other than the vehicle owner, authorized operator or authorized agent of the owner.

Nonconsensual towing means the towing of a vehicle from property other than the public right-of-way which is authorized or directed by a person other than the vehicle owner, its authorized operator or an authorized agent of the owner. The term "nonconsensual towing" shall not apply to nonconsensual tows that occur as a result of vehicle repossession by a lien holder having title to the vehicle.

Privately-owned commercial property booting means the booting of a motor vehicle from private real property at the request of the property owner or the agent of the privately-owned commercial property owner.

Privately-owned commercial property towing means the towing of a motor vehicle from private real property at the request of the property owner.

Property owner means the person or business entity which owns and occupies real property. For real property which is leased, the term "property owner" shall mean the lawful lessee with occupancy and control of the premises. Control of the premises with the authority to refuse admittance to the property is the factor which determines the status of "owner" under the sections which follow.

Towing operator means any person, company or partnership, engaged in the business of towing or storing towed vehicles, and the term includes the employees of the individual or business entity engaged in such business.

SEC. 23-16. WARNING SIGN FOR NONCONSENSUAL BOOTING AND TOWING.

(a) It shall be unlawful to charge for the nonconsensual towing of any motor vehicle from any parking lot located upon privately-owned commercial property without authorization from the owner of the motor vehicle or of the city, or to request the provider of booting or towing services to engage in such actions, except under the following circumstances:

(1) The property owner has posted the property at each vehicular entrance

to the property with a sign approved by the city manager, or his designee, and having been determined to be conspicuous for the property and entrance concerned so as to be clearly visible by the person of ordinary sensibilities upon entrance to the property. The name and telephone number of the towing service provider must appear on or immediately below the sign.

- (2) All signage must be approved by the city manager as complying with the provisions of this section. The city manager may direct the traffic services division to develop a standard sign in compliance with the criteria of this section. The standard sign shall be made reasonably available to lot owners and their representatives in an electronic format which can be utilized by private sign vendors for the manufacture of the standard sign. The traffic services division shall develop standard signs at cost to requesting lot owners or their representatives.
- (3) Signs shall be placed at the entrance of each parking lot of privately-owned commercial property or in a position that is clearly and unmistakably visible to a driver upon entering the lot. The exact placement must be approved by the city manager or the city manager's designee in order to ensure that the sign can be seen by drivers of motor vehicles upon entering the parking lot. Additional signs may be placed elsewhere in the lot at the owner's discretion.
- (4) The city manager, or the city manager's designee, may require that the required signage be placed on a sandwich board sign frame, or comparable temporary frame, at ground level of all entrances whenever a lot begins operation as a pay per use lot on a temporary basis, or whenever other circumstances such as physical configuration of the lot or its relation to the right-of-way or other properties reasonably require in order to meet the purposes of this section.
- (b) The requirements of subsection (a) of this section are in addition to, and not in lieu of, the provisions of S.C. Code 1976, § 16-11-760(A) requiring the posting of privately-owned commercial property before an unauthorized vehicle can be towed without the vehicle owner's consent.

SEC. 23-17. PAYMENT AND PROCEDURES FOR NONCONSENSUAL BOOTING AND TOWING.

- (a) Subject to Section 23-19 which sets forth all allowable nonconsensual towing-related charges. The owner of the vehicle which is towed in accordance with this section shall be responsible for paying all applicable towing-related charges provided that the real property owner has complied with all of the requirements contained in Section 23-15.

- (b) No provider of towing services shall tow a motor vehicle from a parking lot located upon privately-owned commercial property without the owner's consent without first having obtained a written authorization for such action from the property owner, and without the authorization showing the name and bearing the signature of the property owner. The authorization may be in the form of a written agreement to cover all nonconsensual towing for a particular lot for a specific term.
- (c) Any towing operator performing a nonconsensual tow, shall within 60 minutes of the removal of the vehicle from the private lot, telephone the police department to make an oral report of the tow by providing the applicable information on the tow record/invoice form described in Section 23-18. Any towing operator which fails to give such notice within one hour of the time the vehicle was towed shall not be entitled to any compensation for the towing and storing operation and shall deliver the vehicle to the owner upon request.
- (d) If a driver of a vehicle to be towed arrives prior to removal of the vehicle from the posted property, then the towing operator must accept payment tendered at the scene and release the vehicle immediately. For payment tendered at the scene, the required payment can be no more than one-half the maximum authorized for nonconsensual towing in section 23-19.

SEC. 23-18. PERMIT REQUIRED.

- (a) No provider of services for towing vehicles from privately-owned commercial property shall operate within the corporate limits of the city without obtaining a permit for that purpose from the city manager or the city manager's designee. The permit shall be in addition to, and not in lieu of, any business license permit otherwise required under this Code.
- (b) The city manager or the city manager's designee shall develop such forms as may be appropriate for the application for the permit, which shall be approved as to form by the city attorney, and may refrain from issuing a permit without the information on the form being complete. The information required shall include, as may be relevant to the service, the principal operating the business, the street and mailing address of the business, the street address of where towed vehicles will be stored, the state of incorporation of the business, persons having an ownership of five percent or greater in the business, telephone numbers where persons operating the business can be reached at any time of the day or evening, a description of all equipment to be used, the name and address of other businesses from whom equipment will be leased or borrowed, a list of properties where the business is authorized by the property owners to boot

vehicles or to have them towed, a certification that changes in the information will be updated in writing prior to the changes taking effect, an acknowledgement that a violation of this chapter is a basis for the revocation of the permit or of the business license, or both.

- (c) No permit shall be issued absent copies of certificates of insurance, from an insurance carrier authorized to do business in this state, evidencing general liability insurance, and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the city manager's designee determines to be reasonable, considering the exposure to harm by the general public.
- (d) The books and records of all providers of towing services shall be subject to inspections and audits, and must be kept at the office location identified on the permit application. Failure to keep such books and failure to make all books kept available for inspection and audit by the city when access is requested is a basis for suspension or revocation of permits under this section and a basis for suspension or revocation of the provider's business license.

SEC. 23-19. MAXIMUM CHARGES FOR TOWING, BOOTING AND FEES RELATED THERETO; METHODS OF PAYMENT AND INVOICE/RECEIPTS.

- (a) Charges made to vehicle owners or operators for nonconsensual towing of motor vehicles on privately-owned commercial property shall be limited to the following:

Booting & Towing Fees

Fees relative to booting and towing of motor vehicles parked without permission on privately-owned commercial property within the city

Booting and towing permit fee	\$ 25.00
Maximum booting charge from private lot	50% of tow cost
Maximum towing charge from private lot	\$100.00
<i>Vehicles less than 26,000 pounds</i>	
City-provided sign (each)	\$ 25.00
Maximum Storage charges for impoundment	\$ 20.00
<i>(Applicable only after 24 hours of storage)</i>	\$ 20.00 per day
Maximum disconnect fee	50% of tow cost
DMV Processing Fee	\$ 35.00

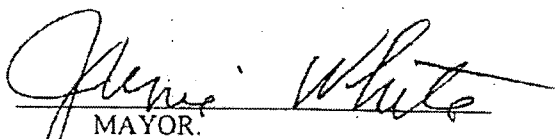
Authorized processing fee for any vehicle retained for five (5) or more days, as a tow company incurs direct costs with DMV after retention of five (5) or more days.

Dolly Fee Authorization <i>Authorized fee when all four-wheel drive vehicles must be dollyed to safely move</i>	\$40.00
Weather Wrap Fee - Per window/sunroof wrapped <i>Authorized fee for open windows and sunroofs that require weatherproof wrapping</i>	\$10.00
Vehicles Exceeding 26,000 pounds – Maximum Fee <i>Authorized fee for vehicles exceeding 26,000 pounds in weight</i>	\$300.00

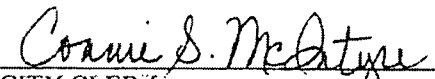
- (b) The maximum fees set forth above in subsection (a) shall be set by the city manager from time to time. All other fees and charges are prohibited.
- (c) The city manager shall set the fee in an amount that is high enough that property owners can reasonably expect to receive timely service from competent providers when a request for service is placed. However, the fee shall not be so high that it is punitive. The removal or immobilization of the vehicle having been found to be sufficiently punitive that an additional monetary penalty is unwarranted.
- (d) Every provider of nonconsensual towing services must provide to a motor vehicle owner or operator an invoice and receipt, or a combination form serving as an invoice which can become a receipt upon payment from the motor vehicle owner or operator. The invoice/receipt must be capable of being prepared in duplicate, with an original provided to the vehicle owner, and the duplicate to be retained by the service provider for not less than three years. The form shall show the name and telephone number of the service provider. It shall reflect the time, date and place of booting or towing, and the time and date of accepted payment. It must bear the signature or initials of the person accepting payment. The city manager may develop additional information requirements which are reasonably related to the purposes of this chapter.
- (e) Any violation of this Ordinance may subject the offender to fines of up to \$500 per violation and/or 30 days in prison or a revocation of its business license.

Section 2. This Ordinance shall become effective thirty (30) days after enactment.

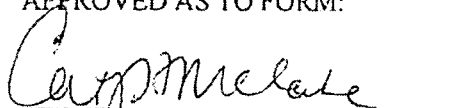
DONE AND RATIFIED this 10 day of April, 2017.


MAYOR.

ATTEST:


CITY CLERK.

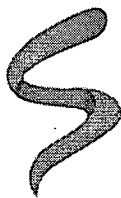
APPROVED AS TO FORM:


CITY ATTORNEY.

03/20/17 1st Reading

04/10/17 2nd Reading

EXHIBIT B



**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC
Monday, March 20, 2017
5:30 p.m.**

**These minutes are subject to approval at the
April 10, 2017 City Council meeting.)**

City Council met this date with the following Councilmembers present: Mayor Junie White, Councilmembers Erica Brown, Jerome Rice, Sterling Anderson and Rosalyn Henderson Myers. Mayor pro tem Laura Stille was absent. City Manager Ed Memmott and City Attorney Cathy McCabe were also in attendance. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are recorded for a complete transcript.

- I. Moment of Silence** – observed.
- II. Pledge of Allegiance** – recited with assistance from Boy Scouts from Troop 106 at Mt. Moriah Baptist Church.
- III. Swearing In of District 2 City Councilmember John Alan Jenkins**
Mr. Jenkins was sworn in by Rev. Sally Beth Shore, with assistance from Mr. Jenkins wife and daughter. City Councilmembers welcomed Councilmember Jenkins to Council and wished him well. Councilmember Jenkins offered words of thanks to all who helped him during his campaign and pledged to do his best to serve the residents of City Council District 2.
- IV. Approval of the Minutes of the February 27, 2017, City Council Meeting** –
Councilmember Brown made a motion to approve the minutes as received. Councilmember Henderson Myers seconded the motion, which carried unanimously 6 to 0.
- V. Approval of Agenda of the March 20, 2017 City Council Meeting** –
Councilmember Henderson Myers made a motion to approve the agenda as received. Councilmember Rice seconded the motion, which carried unanimously 6 to 0.
- VI. Public Comment**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
Attorney John Strickland spoke against the proposed changes for the wrecker and towing fees.
Victoria Prickett spoke in favor of having an indoor pool at the new TK Gregg facility.

Chris Cato spoke regarding the proposed changes for the wrecker and towing fees, and expressed his desire for everyone to understand how dangerous the towing business can be.

VII. Recognition of Spartanburg City Firefighter Retiree David Free II

Presentation: Mayor Junie White –

Mayor White congratulated Firefighter Free on his retirement and thanked him for his many years of dedicated service to the City of Spartanburg. Firefighter Free's wife and a standing room only assembly of his fellow firefighters was in attendance to honor him.

VIII. Resolution

A. Authorizing the City Manager to Execute The Collaborative Partnership Agreement

Presenter: Martin Livingston, Neighborhood Services Director

Mr. Livingston presented the item to Council as follows:

"Staff is requesting approval to allow the City Manager to execute a collaborative agreement between the City of Spartanburg, Spartanburg County, and the Housing Authority for the City of Spartanburg for the completion of an Affirmatively Furthering Fair Housing (AFFH) Study. The agreement allows the City, County, and Authority to partner to complete a joint AFFH study. The U.S. Department of Housing and Urban Development (HUD) will review and make a determination on the approval of the agreement prior to implementation.

ACTION REQUESTED: Staff is requesting approval of the resolution allowing the City Manager to execute the Collaborative Partnership Agreement with Spartanburg County on the implementation of the Affirmatively Furthering Fair Housing Study."

Councilmember Rice made a motion to approve the resolution as presented. Councilmember Henderson Myers seconded the motion, which carried unanimously 6 to 0.

B. To Determine the Eligibility of 141/143 W. Main Street, 174 E. Main Street and 589 E. Main Street and to Reaffirm 130 Magnolia Street for Special Property Tax Assessment for Rehabilitated Historic Properties as Adopted by Ordinance of the City Council on September 9, 2013

Presenter: Chris Story, Assistant City Manager

Mr. Story presented the item to Council as follows:

"In 2013, City Council established by ordinance a mechanism, consistent with state code, which allows City Council to provide an advantaged property tax treatment for eligible historic properties when those properties are significantly rehabilitated according to historic standards. The Council, by and through either resolutions or development agreements, have certified the following properties for the special property tax assessment for rehabilitated historic properties:

141/143 W. Main Street
 174 E. Main Street
 589 E. Main Street
 130 Magnolia Street

By state code, the Board of Architectural Design and Historic Review (HARB) is the reviewing authority and must provide preliminary certification for the proposed rehabilitation work for properties seeking the special assessment. Each of these properties is in the process of renovation and restoration and some of the properties have work being conducted under the supervision of the SC State Office of Historic Preservation ensuring that work is conducted according to appropriate preservation standards.

In order to enjoy the special assessment, these properties must also be certified by resolution of Spartanburg County Council. There was some inconsistency in which these properties have been certified and in order to facilitate the special assessment through Spartanburg County Council, these properties are requiring a consolidated resolution by City Council finding these properties as being eligible for the special property tax assessment for rehabilitated historic properties.

Staff recommends approval of the resolution.”

Councilmember Henderson Myers made a motion to approve the resolution as presented. Councilmember Jenkins seconded the motion, which carried unanimously 6 to 0.

IX. Ordinance

- A. **To Amend the Code of the City of Spartanburg 1988, Chapter 23, “Wreckers and Wrecking Services by Adding Sections 23-14 Thru 23-19 to Provide for “Nonconsensual Booting and Towing.” (First Reading)**

Presenter: Ed Memmott, City Manager

Mr. Memmott presented the item to Council as follows:

“For decades the city has regulated the practices and charges associated with the towing of vehicles from public rights-of-way. The city has not, however, regulated towing practices or charges on private property. Over the past few months, staff has become aware of incidents when vehicles were towed from private property and the vehicle owner was charged fees that were substantially higher than what is allowed by city code for services performed in public rights-of-way.

Due to the potential cost and inconvenience on vehicle owners and the potential adverse impact on the commercial activities in the city, staff believes it is appropriate to set a regulatory framework for the nonconsensual towing of vehicles from privately-owned commercial property. The proposed code amendment would set maximum charges for towing and storage of vehicles. It

would also require tow truck operators providing services to privately-owned commercial property owners to register with the city and would set requirements for signage on property where towing is enforced.

Tow truck operators who are known to operate in the city have been provided notice of staff's intent to recommend these changes. The ordinance and the new requirements would take effect 30 days after second reading approval by Council. Staff will also provide tow truck operators and property owners where towing is enforced with written notice of the new requirement immediately following second reading.

ACTION REQUESTED: First reading approval of an ordinance to set standards and maximum charges for the nonconsensual towing of vehicles from privately-owned commercial properties."

After discussion, Councilmember Brown made a motion to approve the ordinance as presented with a correction of the amount of "Vehicles Exceeding 26,000 pounds – Maximum Fee \$400.00 Authorized fee for vehicles exceeding 26,000 pounds in weight" from \$400.00 to \$300.00 before second reading. Councilmember Jenkins seconded the motion, which carried unanimously 6 to 0.

X. Boards and Commissions – Accommodations Tax Committee, Design Review Board, and Spartanburg Housing Authority

Presenter: Connie McIntyre, City Clerk

Accommodations Tax Committee – Councilmember Rice made a motion to waive the rules and appoint Kathy Campbell to the committee. Councilmember Brown seconded the motion, which carried unanimously 6 to 0.

Councilmember Rice made a motion to waive the rules and appoint Eric Kocher to the committee. Mayor White seconded the motion, which carried unanimously 6 to 0.

Spartanburg Housing Authority – Councilmember Anderson made a motion to waive the rules and appoint Matthew Myers to the SHA. Councilmember Henderson Myers seconded the motion, which carried unanimously 6 to 0.

Design Review Board – Mayor White made a motion to waive the rules and appoint Gabriela Giron to the DRB. Councilmember Rice seconded the motion, which carried unanimously 6 to 0.

XI. City Council Updates –

Councilmember Anderson shared he attended the bi-monthly Citizen Advisory Council meeting with Councilmember Stille and enjoyed sharing with the attendees. He mentioned that Burns Automotive had opened on the west side and was doing well. He also mentioned the new Aldi's that opened and was drawing large crowds.

Councilmember Brown mentioned that the Trees Coalition had worked in the northside area weekend before last in their continued efforts to remove invasive plants in the community. She shared that Spring Clean Up would be held on Saturday from 12:30 to 2:00 beginning at Green St. Baptist Church. She reminded everyone of Hub City Hog Fest on Friday and Saturday, April 7-8 in downtown. She thanked the Fire and Police Departments for their quick and effective response in handling the fire at the Montgomery Building.

Councilmember Jenkins mentioned new eastside restaurants Guacamole Mexican Grill and Jersey Mike's. He reminded everyone of the "Walk with Elected Officials" event on March 25 on the Mary Black Rail Trail.

Councilmember Henderson Myers shared she attended the National League of Cities Conference in Washington, March 11-15. She mentioned that she attended a panel discussion regarding the opioid epidemic, and that WYFF news interviewed both she and Councilmember Rice regarding the statistics in Spartanburg. She also attended a Public Finance session on proposed budget cuts that will impact CDBG and affordable housing funds. She shared that the Habitat House project on Hampton St. needed volunteers.

Councilmember Rice also attended the NLC Conference. He mentioned a workshop he attended on "After School Programs" and shared that Council needed to keep a close eye on legislators regarding that subject. He shared that he rode through the St. Patrick's celebration and noticed that it was well attended and people were having a great time.

XII. Adjournment –

Councilmember Brown made a motion to adjourn the meeting. Councilmember Anderson seconded the motion, which carried unanimously 6 to 0. The meeting adjourned at 6:45 p.m.

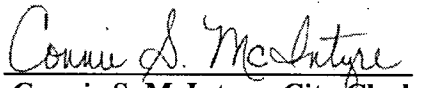

Connie S. McIntyre, City Clerk

EXHIBIT C



**City Council Meeting
City Council Chambers
145 West Broad Street
Spartanburg, SC
Monday, April 10, 2017
5:30 p.m.**

**(These minutes are subject to approval
at the April 24, 2017 City Council meeting.)**

City Council met this date with the following Councilmembers present: Mayor Junie White, Mayor pro tem Laura Stille, Councilmembers Erica Brown, Jerome Rice, Sterling Anderson and Rosalyn Henderson Myers. City Manager Ed Memmott and City Attorney Cathy McCabe were also in attendance. Notice of the meeting was posted with the Media 24 hours in advance according to the Freedom of Information Act. All City Council meetings are recorded for a complete transcript.

- I. Moment of Silence - observed**
- II. Pledge of Allegiance - recited**
- III. Approval of the Minutes of the March 20, 2017, City Council Meeting –**
Councilmember Brown made a motion to approve the minutes as received. Mayor pro tem Stille seconded the motion, which carried unanimously 7 to 0.
- IV. Approval of Agenda of the April 10, 2017 City Council Meeting –**
Councilmember Jenkins made a motion to approve the agenda as received. Councilmember Henderson Myers seconded the motion, which carried unanimously 7 to 0.
- V. Public Comment**
*Citizen Appearance forms are available at the door and should be submitted to the City Clerk
Latreace Jones, Angela Dawkins, Margaret Dawkins, Sonya Ellis, Patricia Lipscomb, April Worthy, Norvell Briggs, Kendrick Anderson, Roushell Swindler, and Khasmir Turley expressed their concerns regarding towing by Cole Towing.
Chance Lebron stated that he would like for E. Wood St. to be named after Rico Matthews
- VI. Presentation of Proclamation to Christmas In Action – 20th Annual ReBuild Day**
Presenter: Mayor Junie White –
Mayor White presented the proclamation to Christmas in Action Executive Director Amanda Mathis, and thanked her for the many things they do to help others.

VII. Ordinance

- A. **To Amend the Code of the City of Spartanburg 1988, Chapter 23, "Wreckers and Wrecking Services by Adding Sections 23-14 Thru 23-19 to Provide for "Nonconsensual Booting and Towing" (Second Reading)**

Presentation: Ed Memmott, City Manager

Prior to second reading, Mr. Memmott stated the following:

"For decades the city has regulated the practices and charges associated with the towing of vehicles from public rights-of-way. The city has not, however, regulated towing practices or charges on private property. Over the past few months, staff has become aware of incidents when vehicles were towed from private property and the vehicle owners were charged fees that were substantially higher than what is allowed by city code for services performed in public rights-of-way.

Due to the potential cost and inconvenience on vehicle owners and the potential adverse impact on the commercial activities in the city, staff believes it is appropriate to set a regulatory framework for the nonconsensual towing of vehicles from privately-owned commercial property. The proposed code amendment would set maximum charges for towing and storage of vehicles. It would also require tow truck operators providing services to privately-owned commercial property owners to register with the city and would set requirements for signage on property where towing is enforced.

Tow truck operators who are known to operate in the city have been provided notice of staff's intent to recommend these changes. The ordinance and the new requirements would take effect 30 days after second reading approval by Council. Staff will also provide tow truck operators and property owners where towing is enforced with written notice of the new requirement immediately following second reading.

ACTION REQUESTED: Second reading approval of an ordinance to set standards and maximum charges for the nonconsensual towing of vehicles from privately owned commercial properties."

Councilmember Brown made a motion to approve the ordinance as presented on second reading. Councilmember Jenkins seconded the motion, which carried unanimously 7 to 0.

VIII. Resolutions

- A. **To Extend the Term of the Commissioners of The Housing Authority of the City of Spartanburg From Ending on June 30th to Ending on September 30th**

Presenter: Ed Memmott, City Manager

Mr. Memmott presented the item to Council as follows:

"The terms of Spartanburg Housing Authority (SHA) Board of Commissioners expire on June 30th. The SHA's fiscal year ends on September 30th. SHA

management has requested that City Council change the term of SHA Commissioners to end on September 30th as it would allow a Commission member's term to coincide with the SHA budget cycle.

Staff believes this change is warranted and recommends Council approval.

ACTION REQUESTED: Approval of the Resolution."

Councilmember Henderson Myers made a motion to approve the resolution as presented. Councilmember Rice seconded the motion, which carried unanimously 7 to 0.

B. To Extend the Term of the Members of the Design Review Board From Three (3) Year Terms to Four (4) Year Terms and to Allow Current Members to Remain on the DRB for One (1) Additional Term

Presenter: Chris Story, Assistant City Manager

Mr. Story presented the item to Council as follows:

"The Design Review Board (DRB) was established 2011. The DRB is composed of five members who are either a resident of the City or who have significant business interests in the City. DRB members are to have expertise in building design or construction.

The ordinance originally establishing the DRB called for 3 year terms and allowed for members to be reappointed once. The members of the DRB have served their initial term and were reappointed but over the course of their six years of service had limited matters come before the Board.

With the increased pace of the downtown development, staff believes it is in the City's best interest to extend the terms of current DRB members to four years and to allow the current members to remain on the DRB for one additional term. This will provide for continuity in review of projects at what is a critical time of increased downtown development.

ACTION REQUESTED: Approval of the Resolution."

Mayor pro tem Stille made a motion to approve the resolution as presented. Councilmember Henderson Myers seconded the motion, which carried unanimously 7 to 0.

IX. Other Business

A. Declaration of Boards and Commissions Vacancies for Council Annual Review

Presenter: Connie McIntyre, City Clerk

Ms. McIntyre presented the item to Council as follows:

"City Council annually reviews vacancies on City of Spartanburg Boards and Commissions. Vacancies are declared in April, unless circumstances dictate otherwise, with the goal of Council having all the appointments/reappointments

made by the second meeting in June. This procedure meets the requirements of the resolution Council approved regarding June 30 term expirations dated June 9, 2003.

Applications for vacancies will be accepted through June 20, 2017. In the event of multiple applications for the number of vacancies on a particular board, Mayor White will appoint a committee to conduct interviews of the applicants. The committee will bring forward their recommendation/s for Council approval.

The application and the vacancies on each Board or Commission are posted on the City's website. The information is also available upon request to the City Clerk."

Accommodations Tax Committee – 1 vacancy

1 is eligible to serve again

Airport Advisory Board – 4 vacancies

3 are eligible to serve again

Architectural Design and Historic Review Board (HARB) – 4 vacancies

2 are eligible to serve again

Bicycle and Pedestrian Committee – 3 vacancies

1 is eligible to serve again

Civil Service Commission - 1 vacancy

Construction Board of Adjustments and Appeals – 6 vacancies

1 is eligible to serve again

Design Review Board – 4 vacancies

Resolution to be presented at April 10 meeting to extend terms of members to 4 years and allow current members whose terms are expiring to remain on the board an additional term with staggered expiration dates.

Housing Authority – Resolution to be presented at April 10 meeting to extend the term of the SHA commissioners from ending on June 30 to ending on September 30 to accommodate Terril Bates request.

Planning Commission – 3 vacancies

2 are eligible to serve again

Public Safety Committee – 5 vacancies

2 are eligible to serve again

Storm Water Appeals Board – 5 vacancies

2 are eligible to serve again –

Board of Zoning Appeals – 2 vacancies

1 is eligible to serve again

X. City Council Updates –

Councilmember Anderson stated that the 2017 Hub City Hog Fest was a great event, with good food and fellowship, and was for a good cause in that the proceeds go to Mobile Meals.

Councilmember Brown echoed Councilmember Anderson's comments regarding Hog Fest. She mentioned that the "Spartanburg Soars" event would be held on April 22, 2017 at the Chapman Cultural Center. She invited everyone to the unveiling of 4 Northside Artlets the next day, all of which are a part of the Northside Master Plan.

Mayor pro tem Stille welcomed Councilmember Jenkins to council since she was absent when he was sworn in. She thanked all the people who attended the council meeting, adding that there were amazing things happening in Spartanburg.

Councilmember Jenkins shared he had attended the Fernwood Neighborhood Association meeting with 100 or so people in attendance. He stated that it was a great event and a good opportunity to meet residents in that community. He mentioned that Jersey Mikes and Precision Tune has opened on the east side, and echoed comments about Hog Fest. He mentioned Earth Day Festival on April 22, and the SRHS Criterium on April 28.

Councilmember Henderson Myers thanked the citizens who spoke regarding the towing incidents. She invited everyone to her Town Hall Meeting to discuss Domestic Violence on Thursday, April 13, 7:00 p.m. at CC Woodson. She shared that she took part in the "Walk with Elected Officials" event, that there was a good crowd, and invited everyone to the next walk. She, too, echoed comments regarding the successful Hub City Hog Fest event.

Councilmember Rice stated that he appreciated citizens speaking on the towing issue and that it would be looked into. He reminded everyone of the "Seeing Spartanburg in a New Light" closing ceremonies on Tuesday, April 18. He mentioned the Mary H. Wright play "101 Dalmatians" on April 20.

XI. Executive Session Pursuant to Section 30-40-70 (a) (2) of the South Carolina Code to Receive Legal Advice Relating to a Contractual Matter

Council may take action on matters discussed in Executive Session after exiting Executive Session.

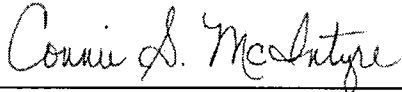
Councilmember Henderson Myers made a motion to adjourn to Executive Session.

Councilmember Brown seconded the motion, which carried unanimously 7 to 0.

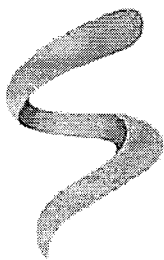
Council adjourned to Executive Session at 6:45 p.m.

Council reconvened at 7:08 p.m. Mayor White stated that discussion was held with no decisions made.

- XII. Adjournment – Councilmember Anderson made a motion to adjourn the meeting. Councilmember Jenkins seconded the motion, which carried unanimously 7 to 0. The meeting adjourned at 7:10 pm.**



Connie S. McIntyre, City Clerk



REQUEST FOR CITY COUNCIL ACTION

TO: Mayor and Members of City Council
FROM: Ed Memmott, City Manager
SUBJECT: Ordinance to Amend Chapter 23 of City Code
DATE: April 5, 2017

BACKGROUND:

For decades the city has regulated the practices and charges associated with the towing of vehicles from public rights-of-way. The city has not, however, regulated towing practices or charges on private property. Over the past few months, staff has become aware of incidents when vehicles were towed from private property and the vehicle owners were charged fees that were substantially higher than what is allowed by city code for services performed in public rights-of-way.

Due to the potential cost and inconvenience on vehicle owners and the potential adverse impact on the commercial activities in the city, staff believes it is appropriate to set a regulatory framework for the nonconsensual towing of vehicles from privately-owned commercial property. The proposed code amendment would set maximum charges for towing and storage of vehicles. It would also require tow truck operators providing services to privately-owned commercial property owners to register with the city and would set requirements for signage on property where towing is enforced.

Tow truck operators who are known to operate in the city have been provided notice of staff's intent to recommend these changes. The ordinance and the new requirements would take effect 30 days after second reading approval by Council. Staff will also provide tow truck operators and property owners where towing is enforced with written notice of the new requirement immediately following second reading.

ACTION REQUESTED: Second reading approval of an ordinance to set standards and maximum charges for the nonconsensual towing of vehicles from privately owned commercial properties.

BUDGET AND FINANCIAL DATA: N/A

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs.

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No.: 2017-CP-42-01468

AFFIDAVIT OF PAUL SMITH

Personally appeared before me, Paul Smith, who after being duly sworn deposes and states as follows:

1. I am over 18 years of age and competent to testify as to my personal knowledge of the facts contained herein.

2. From approximately 2011 to present, I have served as the Business License Enforcement Manager for the City of Spartanburg, South Carolina (hereinafter "the City").

3. In my role as the Business License Enforcement Manager, one of my duties delegated by the City Manager Ed Memmott involves overseeing and controlling the applications for nonconsensual towing business permits.

4. Attached as Exhibit A are true and correct copies of the three (3) nonconsensual towing permit applications received to date. More applications are anticipated at this time.

(This space intentionally left blank; signature page to follow.)

FURTHER AFFIANT SAYETH NOT.



Paul Smith
Business License Enforcement Manager
City of Spartanburg

Sworn before me this the 26th day
of May 2017.


Notary Public for South Carolina

My Commission Expires: September 19, 2024

EXHIBIT A



APPLICATION FOR
NONCONSENSUAL TOWING
BUSINESS PERMIT

Application Type: Check one of the following: ☒ Initial ☐ Renewal	Office Use Only Permit # _____ Fee: \$25.00 _____ ☐ Other _____ Specify Type if Other _____
Type of Ownership: Check one of the following: ☒ Corporation ☐ Sole Proprietor	
State of incorporation <u>South Carolina</u>	

BUSINESS INFORMATION:

- Business Name: COLE Towing Recovery LLC
- Principal Operating the Business: _____
- Street Address: 155 Mauldoff Ct WEFond, SC 29385
- Mailing Address: Same
- Primary Number: _____ Emergency 24-hr. Number: _____
- Mobile Number: _____ Email Address: _____
- Federal Tax Identification Number/Social Security Number: _____

OWNER/OFFICER INFORMATION: Having ownership of 5% or greater
(Please attach a separate paper for additional owners/officers)

Owner/Officer Name: <u>Christopher Cole</u>	Owner/Officer Name: _____
Position: <u>Owner</u>	Position: _____
Address & Zip Code: <u>155 Mauldoff Ct WEFond, SC 29385</u>	Address & Zip Code: _____
Phone Number: _____	Phone Number: (____) _____ - _____
Owner/Officer Name: _____	Owner/Officer Name: _____
Position: _____	Position: _____
Address & Zip Code: _____	Address & Zip Code: _____
Phone Number: (____) _____ - _____	Phone Number: (____) _____ - _____

Please answer yes or no to the following question:

Yes ☐ No ☒ Do you owe money to the City of Spartanburg, either individually or through any other business?

If yes, please provide details: _____

TOWED VEHICLES STORAGE ADDRESS & PHONE NUMBERS

(Please attach a separate paper for additional storage addresses)

Street Address: 155 Mawroth St City/State/Zip: Wellford, SC 29385

Primary Number: _____ Secondary Number: _____

Street Address: _____ City/State/Zip: _____

Primary Number: () - _____ Secondary Number: () - _____

TOWING VEHICLE(S) INFORMATION - (Attach a separate sheet if necessary)

YEAR/MAKE/MODEL	CLASS	VEHICLE ID/VIN	VEHICLE TAG #
2012 Dodge 4500	A		

NAME & ADDRESS OF OTHER BUSINESSES FROM WHOM EQUIPMENT WILL BE LEASED OR BORROWED - (Attach a separate sheet if necessary)

Name of Business: _____

Street Address: _____ City/State/Zip: _____

Equipment: _____

INSURANCE COVERAGE: PRIME Insurance / Evolution's Insurance Broker
Printed Name of Insurance Carrier

3

CERTIFICATION

I, Christopher Cole, the undersigned, under penalties of perjury, declare that I have read the foregoing Application and verify that the facts stated in it are true and complete. I will abide by the provisions of the Code of the City of Spartanburg and all other applicable laws.

I understand that a violation of the nonconsensual towing ordinance is a basis for the revocation of the towing permit or of my business license, or both, or criminal charges.

I certify that changes in information herein will be updated in writing prior to the changes taking effect.

I also understand that no permit shall be issued absent copies of certificates of insurance from an insurance carrier authorized to do business in this state, evidencing general liability insurance and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the city manager's designee determines to be reasonable, considering the exposure to harm by the general public.

I also understand that the books and records of my business shall be subject to inspections and audits, and must be kept at the office location identified in this permit application. Failure to keep such books and failure to make all books kept for inspection and audit by the city when access is requested is a basis for suspension or revocation of this permit and a basis for suspension or revocation of the business license.

I further acknowledge that all permit fees are non-refundable and that any incomplete application shall be immediately denied.

Christopher Cole
Signature of Applicant

4/27/17
Date

Christopher M Cole
Printed Name of Applicant

Cole Towing and Recovery LLC
Printed Name of Business

CERTIFICATE OF INSURANCE				DATE (MM/DD/YYYY) 02/24/2017
PRODUCER AND THE NAMED INSURED Evolution Insurance Brokers, LLC. 8722 S. Harrison St. Sandy, UT 84670		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.		
INSURED Cole Towing & Recovery 155 Mavroffs Ct Wellford, SC 29385		INSURERS AFFORDING COVERAGE INSURER A: Prime Insurance Company INSURER B: INSURER C: INSURER D: INSURER E:		
"LIMITS SHOWN ARE THOSE IN EFFECT AS OF POLICY INCEPTION"				
COVERAGES The policies of insurance listed below have been issued to the Insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.				
TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
☒ Commercial Liability ☒ Claims Made ☒ Exclude Products ☒ Exclude Completed Operations	SC1702171	2/23/2017	2/23/2018	\$150,000 Per Person \$1,000,000 Per Accident \$3,000,000 Policy Aggregate
☒ Commercial Auto Liability ☐ Any Auto ☐ All Owned Autos ☐ Scheduled Autos ☒ Hired Autos ☒ Non-Owned Autos ☒ Drive Away	SC1702171	2/23/2017	2/23/2018	\$150,000 Per Person \$1,000,000 Per Accident
☒ Commercial Garage Liability ☒ G.K.D.P. \$350,000.00 ☒ O.T.R.P.D. \$50,000.00 ☐ D.O.C. ☐ Cargo ☒ On Hook \$100,000 ☒ Employee Dishonesty \$1,000,000 ☒ Wrongful Repossession \$1,000,000 ☒ Claims Made ☒ Exclude Products ☒ Exclude Completed Operations	SC1702171	2/23/2017	2/23/2018	\$150,000 Per Person \$1,000,000 Per Accident \$3,000,000 Policy Aggregate \$25,000 Property Damage \$50,000 Over the Road Physical Damage
☐ Excess Liability ☐ Claims Made				
OTHER				
DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Coverage is limited to only insured activities or operations identified in the Policy.				
☒ CERTIFICATE HOLDER ☐ ADDITIONAL INSURED ☐ LOSS PAYEE				
FOR PROOF OF INSURANCE ONLY		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 0 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.		
		AUTHORIZED REPRESENTATIVE 		



APPLICATION FOR
NONCONSENSUAL TOWING
BUSINESS PERMIT

Application Type: Check one of the following:
☒ Initial ☐ Renewal

Type of Ownership: Check one of the following:
☐ Corporation ☒ Sole Proprietor ☐ Other _____
State of incorporation _____ Specify Type if Other _____

BUSINESS INFORMATION:

- Business Name: ACE Towing of Spartanburg / Mr & L Wrecker
- Principal Operating the Business: Chris Wheatley
- Street Address: 904 S. Church St. 29306
- Mailing Address: P.O. Box 3016 29304
- Primary Number: _____ Emergency 24-hr. Number: _____
- Mobile Number: _____ Email Address: _____
- Federal Tax Identification Number/Social Security Number: _____

OWNER/OFFICER INFORMATION: Having ownership of 5% or greater
(Please attach a separate paper for additional owners/officers)

Owner/Officer Name: Donna Hamm Owner/Officer Name: _____
Position: owner Position: _____
Address & Zip Code: 8261 D Old Raleigh Rd, Sims, NC 27880 Address & Zip Code: _____
Phone Number: _____ Phone Number: () _____

Owner/Officer Name: _____ Owner/Officer Name: _____
Position: _____ Position: _____
Address & Zip Code: _____ Address & Zip Code: _____
Phone Number: () _____ Phone Number: () _____

Please answer yes or no to the following question:

Yes ☐ No ☒ Do you owe money to the City of Spartanburg, either individually or through any other business?

If yes, please provide details: _____

TOWED VEHICLES STORAGE ADDRESS & PHONE NUMBERS

(Please attach a separate paper for additional storage addresses)

Street Address: 904 S. Church St. City/State/Zip: Spartanburg, SC 29306

Primary Number: _____ Secondary Number: _____

Street Address: _____ City/State/Zip: _____

Primary Number: () - _____ Secondary Number: () - _____

TOWING VEHICLE(S) INFORMATION - (Attach a separate sheet if necessary)

YEAR/MAKE/MODEL	CLASS	VEHICLE ID/VIN	VEHICLE TAG #
2014 Dodge Ram	A		
2012 Hmb	A		
2014 Ford F450	A		

NAME & ADDRESS OF OTHER BUSINESSES FROM WHOM EQUIPMENT WILL BE LEASED OR BORROWED - (Attach a separate sheet if necessary)

Name of Business: _____

Street Address: _____ City/State/Zip: _____

Equipment: _____

(Attach a separate sheet if necessary)

INSURANCE COVERAGE: Plaza Ins / Newton Services
Printed Name of Insurance Carrier

3

CERTIFICATION

I, Donna Hamm, the undersigned, under penalties of perjury, declare that I have read the foregoing Application and verify that the facts stated in it are true and complete. I will abide by the provisions of the Code of the City of Spartanburg and all other applicable laws.

I understand that a violation of the nonconsensual towing ordinance is a basis for the revocation of the towing permit or of my business license, or both, or criminal charges.

I certify that changes in information herein will be updated in writing prior to the changes taking effect.

I also understand that no permit shall be issued absent copies of certificates of insurance from an insurance carrier authorized to do business in this state, evidencing general liability insurance and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the city manager's designee determines to be reasonable, considering the exposure to harm by the general public.

I also understand that the books and records of my business shall be subject to inspections and audits, and must be kept at the office location identified in this permit application. Failure to keep such books and failure to make all books kept for inspection and audit by the city when access is requested is a basis for suspension or revocation of this permit and a basis for suspension or revocation of the business license.

I further acknowledge that all permit fees are non-refundable and that any incomplete application shall be immediately denied.

Donna Hamm
Signature of Applicant

5-2-17
Date

Donna Hamm
Printed Name of Applicant

ACE Towing of Spartanburg / M & R Wrecker
Printed Name of Business



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/01/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Newton Insurance Solutions, LLC PO BOX 28493 GREENVILLE SC 29616-1493		CONTACT NAME: MAGGIE WATKINS PHONE: _____ FAX: _____ EMAIL: _____ ADDRESS: _____	
INSURED ACE TOWING OF SPARTANBURG & M&R WRECKER SERVICE 804 S CHURCH ST SPARTANBURG SC 29306-5438		INSURER(S) AFFORDING COVERAGE INSURER A: PLAZA INSURANCE COMPANY INSURER B: _____ INSURER C: _____ INSURER D: _____ INSURER E: _____	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDITIONAL INSURER	POLICY NUMBER	POLICY EFF. DATE (MM/DD/YYYY)	POLICY EXP. DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO. ☐ LOC		PTOWK003203-05	03/05/2017	03/05/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (E&A OCCURRENCE) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 1,000,000 PRODUCTS - COMPROP AGG. \$ 1,000,000
AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ SCHEDULED AUTOS ☒ NON-OWNED AUTOS		PTOWK003203-05	03/05/2017	03/05/2018	COMBINED SINGLE LIMIT (E&A accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ UM/UIM \$ 300,000
UMBRELLA LIAB ☐ EXCESS LIAB ☐ OCCUR ☐ CLAIMS-MADE DED \$ RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A			WC STATL TORT LIMITS \$ OTHER \$ EL EACH ACCIDENT \$ EL DISEASE - BA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
A GARAGEKEEPERS		PTOWK003263-05	03/05/2017	03/05/2018	\$100,000 W/ \$500 DED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, or make space as required)
 ON HOOK & CARGO \$75,000 w/ \$1,000 ded on each vehicle.
 Scheduled vehicles: 1) 2012 HINO 258LP #0837 2) 2014 DODGE #9081 3) 2014 FORD #3835
 Comp/Colt on vehicle 1-\$80,000, vehicle 2-\$72,000, 3- \$65,900 all with \$1000 ded
 Building Coverage: \$205,193. Business personal property: \$5,000. Both with \$1000 ded

CERTIFICATE HOLDER FOR INFORMATION	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE:
--	---

ACORD 25 (2010/05)

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APPLICATION FOR
NONCONSENSUAL TOWING
BUSINESS PERMIT

Application Type: Check one of the following:
☒ Initial ☐ Renewal

Type of Ownership: Check one of the following:
☐ Corporation ☒ Sole Proprietor ☐ Other _____
State of incorporation _____ Specify Type if Other _____

BUSINESS INFORMATION:

1. Business Name: Associates Asset Recovery
2. Principal Operating the Business: Same
3. Street Address: 803 W O Ezell Blvd Sptbg SC 29301
4. Mailing Address: _____
5. Primary Number: (803) 444-0000 Emergency 24-hr. Number: _____
6. Mobile Number: () _____ Email Address: _____
7. Federal Tax Identification Number/Social Security Number: _____

OWNER/OFFICER INFORMATION: Having ownership of 5% or greater
(Please attach a separate paper for additional owners/officers)

Owner/Officer Name: Tammy Reason Owner/Officer Name: _____
Position: owner Position: _____
Address & Zip Code: 3601 E Palmetto St Address & Zip Code: _____
Florence SC 29506
Phone Number: _____ Phone Number: () _____

Owner/Officer Name: _____ Owner/Officer Name: _____
Position: _____ Position: _____
Address & Zip Code: _____ Address & Zip Code: _____
Phone Number: () _____ Phone Number: () _____

Please answer yes or no to the following question:

Yes ☐ No ☒ Do you owe money to the City of Spartanburg, either individually or through any other business?

If yes, please provide details: _____

TOWED VEHICLES STORAGE ADDRESS & PHONE NUMBERS

(Please attach a separate paper for additional storage addresses)

Street Address: 803 WO EZELL BLVD City/State/Zip: Spartbg SC 29301

Primary Number: Secondary Number:

Street Address: _____ City/State/Zip: _____

Primary Number: () _____ Secondary Number: () _____

TOWING VEHICLE(S) INFORMATION - (Attach a separate sheet if necessary)

YEAR/MAKE/MODEL	CLASS	VEHICLE ID/VIN	VEHICLE TAG #
2012 Dodge Ram 3500			
2012 Ford F50			

NAME & ADDRESS OF OTHER BUSINESSES FROM WHOM EQUIPMENT WILL BE LEASED OR BORROWED - (Attach a separate sheet if necessary)

Name of Business: _____

Street Address: _____ City/State/Zip: _____

Equipment: _____

LIST OF PROPERTIES WHERE BUSINESS IS AUTHORIZED BY THE PROPERTY OWNER(S) TO BOOT VEHICLES OR TO HAVE THEM TOWED
(Attach a separate sheet if necessary)

[illegible]

INSURANCE COVERAGE: ATIG
Printed Name of Insurance Carrier

Attach a copy of the Certificate of Insurance showing current coverage.

CERTIFICATION

I, Chas Cate, the undersigned, under penalties of perjury, declare that I have read the foregoing Application and verify that the facts stated in it are true and complete. I will abide by the provisions of the Code of the City of Spartanburg and all other applicable laws.

I understand that a violation of the nonconsensual towing ordinance is a basis for the revocation of the towing permit or of my business license, or both, or criminal charges.

I certify that changes in information herein will be updated in writing prior to the changes taking effect.

I also understand that no permit shall be issued absent copies of certificates of insurance from an insurance carrier authorized to do business in this state, evidencing general liability insurance and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the city manager's designee determines to be reasonable, considering the exposure to harm by the general public.

I also understand that the books and records of my business shall be subject to inspections and audits, and must be kept at the office location identified in this permit application. Failure to keep such books and failure to make all books kept for inspection and audit by the city when access is requested is a basis for suspension or revocation of this permit and a basis for suspension or revocation of the business license.

I further acknowledge that all permit fees are non-refundable and that any incomplete application shall be immediately denied.

Chas Cate
Signature of Applicant

11-28-17
Date

Chas Cate
Printed Name of Applicant

Associates Asset Recovery
Printed Name of Business



ATTN. Paul

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 1/10/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER American Transportation Insurance Group 9565 S. Kingston Ct. Suite 110 Englewood CO 80112	CONTACT NAME: Gretchen Rapney PHONE: (303) 751-1111 FAX: (303) 751-1111 EMAIL: gretchen.rapney@atig.com
INSURED Associates Asset Recovery, LLC DBA: Professional Auto Recovery 3601 East Palmetto Street Florence SC 29506	INSURER(S) AFFORDING COVERAGE INSURER A: Conifer Insurance Company 29734 INSURER B: Platte River Insurance Company 18819 INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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TYPE OF INSURANCE	POLICY NUMBER	INSURER A (MM/DD/YYYY)	INSURER B (MM/DD/YYYY)	LIMITS
☒ COMMERCIAL GENERAL LIABILITY ☒ CLAIMS-MADE ☒ OCCUR ☒ INCLUDES WRONGFUL ☒ REPOSSESSION COVERAGE GENERAL AGGREGATE LIMIT APPLIES PER: ☒ PERIOD ☐ PER LOC ☐ OTHER	01C0010251	12/21/2016	12/21/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE LIMIT \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS & COMPOUND \$ 2,000,000
AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ NON-OWNED AUTOS ☒ OTHER	01C0010261	12/21/2016	12/21/2017	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ UNINSURED MOTORIST \$ 100,000
UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☒ CLAIMS-MADE SED ☐ RETENTION	DISHONESTY BOND 01C0010291	3/24/2016	3/24/2017	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NH) ☐ YES, describe under DESCRIPTION OF OPERATIONS below ☒ NO				PER PERSON \$ PER ACCIDENT \$ U.S. FATAL ACCIDENT \$ S. DISABILITY - 64 EMPLOYEES \$ S. DISABILITY - POLICY LIMIT \$
☐ ON HOOR ☐ GARAGE KEEPERS	01C0010261	12/21/2016	12/21/2017	\$100,000 WS \$1,000,000 DEC \$100,000 WS \$1,000,000 DEC

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

PROOF OF INSURANCE ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

G. Thompson/GRETCH

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 ACORD 26 (2014/01)
 INS025 (2014/01)

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STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Cole Towing and Recovery, LLC,

Plaintiff,

vs,

City of Spartanburg and Spartanburg City
Council,

Defendants.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Civil Action No. 2017-CP-42-01468

**SUPPLEMENTAL AFFIDAVIT
OF ED MEMMOTT**

Personally appeared before me, Ed Memmott, who first being duly sworn, deposes and says:

1. I previously provided an Affidavit in this case dated May 26, 2017. This Supplemental Affidavit is intended to supplement the previous Affidavit. All statements made by me in the May 26 Affidavit are reiterated and incorporated by this reference.

2. Attached to this Supplemental Affidavit as Exhibit 1 is a copy of the City of Greenville Ordinance (incorporated into its Municipal Code) upon which the City of Spartanburg Ordinance under challenge in this case is based.

3. In my experience as a City Manager, I am aware that other municipalities in this State, in addition to the City of Greenville, also have enacted ordinances (incorporated into their Municipal Codes) regulating nonconsensual towing from private property. Attached, as examples, are copies of the on-line versions of similar municipal code provisions for the City of Myrtle Beach as Exhibit 2, the City of Florence as Exhibit 3, and the City of Charleston as Exhibit 4.

4. To illustrate the type of complaints received by the City of Spartanburg prior to enactment of the Ordinance under challenge in this case, attached as Exhibit 5 is an accurate

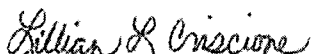
transcription of the "Public Comment" session during the Spartanburg City Council meeting on April 10, 2017¹, at which the Council enacted the Ordinance on second reading.

FURTHER AFFIANT SAYETH NOT.



Ed Memmott
City Manager
City of Spartanburg

Sworn before me this 18th day
of July 2017



Notary Public for South Carolina
My Commission Expires: 01-02-23

¹ The transcript excerpt is time stamp 1:20 through 23:20. The full recording of the Spartanburg City Council Meeting held on April 10, 2017, can be found at <https://vimeo.com/212782353>.

Exhibit 1

City of Greenville Ordinance

Sec. 42-198. - Warning sign for nonconsensual booting and towing.

- (a) It shall be unlawful to charge for the nonconsensual towing of any motor vehicle from any parking lot located upon private property, without authorization from the owner of the motor vehicle or of the city, or to request the provider of booting or towing services to engage in such actions, except under the following circumstances:
- (1) The property owner has posted the property at each vehicular entrance to the property with a sign approved by the city manager, or his designee, and having been determined to be conspicuous for the property and entrance concerned so as to be clearly visible by the person of ordinary sensibilities upon entrance to the property. The name and telephone number of the towing service provider must appear on or immediately below the sign.
 - (2) All signage design must be approved by the city manager as complying with the provisions of this section. The manager may direct the traffic engineering division to design a standard sign design in compliance with the criteria of this section. The standard sign design shall be made reasonably available to lot owners and their representatives in an electronic format which can be utilized by private sign vendors for the manufacture of the standard sign. The traffic engineering division shall manufacture standard signs at cost to requesting lot owners or their representatives.
 - (3) Signs shall be placed at the entrance of each parking lot of private property, or in a position that is clearly and unmistakably visible to a driver upon entering the lot. The exact placement must be approved by the city manager or the manager's designee in order to ensure that the sign can be seen by drivers of motor vehicles upon entering the parking lot. Additional signs may be placed elsewhere in the lot owner's discretion.
 - (4) The city manager, or the manager's designee, may require that the required signage be placed on a sandwich board sign frame, or comparable temporary frame, at ground level of all entrances whenever a lot begins operation as a pay per use lot on a temporary basis, or whenever other circumstances such as physical configuration of the lot or its relation to the right-of-way or other properties reasonably require in order to meet the purposes of this section.
- (b) The requirements of subsection (a) of this section are in addition to, and not in lieu of, the provisions of S.C. Code 1976, § 16-11-760(A) requiring the posting of commercial property before an unauthorized vehicle can be towed without the vehicle owner's consent.

(Code 1997, § 42-182; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006; Ord. No. 2015-86, (exh. A), 9-14-2015)

Sec. 42-199. - Pay per use lots; attendants required.

- (a) The owner of any commercial parking lot which is operating on a pay per use basis for all or any portion of a calendar day can not authorize the booting of a vehicle unless the lot is staffed by an attendant who is authorized to accept payment of parking fees and an attendant has been on duty continuously from the time of day at which the lot begins operations on a pay per use basis, until the time at which the booting or towing occurs.
- (b) No operator of a towing service can boot or tow a motor vehicle parked on a private lot without the vehicle owner's consent when the private lot is operating as a pay per use lot, unless the lot is staffed by a parking attendant.
- (c) Any parking attendant on duty at a private commercial lot being operated on a pay per use basis must wear a luminescent vest with "Parking" printed across the front in bold letters which contrast with the vest color. Any parking attendant must at all times while on duty be clearly visible from each vehicular entry point into the parking lot. In the instances when the position of multiple entries preclude having a continuing view of a single attendant from each entry, the lot owner must staff with the additional attendants needed or preclude vehicular access from those entries not having a clear view of the attendant.

- (d) For the purposes of this section, the requirements of an attendant on duty can be waived by the city manager or his designee if the lot owner makes a showing that a mechanical or electronic device is in operation at the lot for purposes of designating the parking fee to be paid and for purposes of accepting the amount designated. Any mechanical or electronic device must be clearly visible upon entry into the lot, or there must be a sign at each entrance giving notice of the electronic or mechanical device, and the device must have prominent signage, at least as large as signs posted at entry, to announce the purpose of the device. In addition to all other signage required by this division, signage must be placed throughout the lot to provide reasonable notice to pay per use parkers of the purpose and location of the mechanical or electrical device. The authorization to use a mechanical or electronic device may subsequently be withdrawn or modified, provided written notice stating clearly the basis of withdrawal or modification is sent to the lot owner or manager at least ten days in advance of the effective date.

(Code 1997, § 42-183; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006)

Sec. 42-200. - Payment and procedures for nonconsensual booting and towing.

- (a) Subject to Section 42-202, which sets forth all allowable nonconsensual towing-related charges, the owner of the vehicle which is towed in accordance with this section shall be responsible for paying all applicable towing-related charges, provided that the real property owner has complied with all of the requirements contained in section 42-198.
- (b) No provider of towing services shall tow a motor vehicle from a parking lot located upon private property without the owner's consent without first having obtained a written authorization for such action from the property owner, and without the authorization showing the name and bearing the signature of the property owner. The authorization may be in the form of a written agreement to cover all nonconsensual towing for a particular lot for a specific term.
- (c) Any towing operator performing a nonconsensual tow, shall within 30 minutes of the removal of the vehicle from the private lot, telephone the police department to make an oral report of the tow by providing the applicable information on the tow record/invoice form described in section 42-201. Any towing operator which fails to give such notice within one hour of the time the vehicle was towed shall not be entitled to any compensation for the towing and storing operation and shall deliver it upon request.
- (d) If a driver of a vehicle to be towed arrives prior to removal of the vehicle from the posted property, then the towing operator must accept payment tendered at the scene and release the vehicle immediately. For payment tendered at the scene, the required payment can be no more than one-half the maximum authorized for nonconsensual towing in section 42-202.

(Code 1997, § 42-184; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006; Ord. No. 2015-86, (exh. A), 9-14-2015)

Sec. 42-201. - Permit required.

- (a) No provider of services for towing vehicles from private property shall operate within the corporate limits of the city without obtaining a permit for that purpose from city manager or the manager's designee. The permit shall be in addition to, and not in lieu of, any business license permit otherwise required under this Code.
- (b) The city manager or the manager's designee shall develop such forms as may be appropriate for the application for the permit, which shall be approved as to form by the city attorney, and may refrain from issuing a permit without the information on the form being complete. The information required shall include, as may be relevant to the service, the principal operating the business, the street and mailing address of the business, the street address of where towed vehicles will be stored, the state of

incorporation of the business, persons having an ownership of five percent or greater in the business, telephone numbers where persons operating the business can be reached at any time of the day or evening, a description of all equipment to be used, the name and address of other businesses from whom equipment will be leased or borrowed, a list of properties where the business is authorized by the property owners to boot vehicles or to have them towed, a certification that changes in the information will be updated in writing prior to the changes taking effect, an acknowledgement that a violation of this division is a basis for the revocation of the permit or of the business license, or both.

- (c) No permit shall be issued absent copies of certificates of insurance, from an insurance carrier authorized to do business in this state, evidencing general liability insurance, and such additional lines of coverage as the city manager determines to be relevant to the business, in such uniform and standard amounts as the city manager or the manager's designee determines to be reasonable, considering the exposure to harm by the general public.
- (d) The books and records of all providers of towing services shall be subject to inspections and audits, and must be kept at the office location identified on the permit application. Failure to keep such books and failure to make all books kept available for inspection and audit by the city when access is requested is a basis for suspension or revocation of permits under this section and a basis for suspension or revocation of the provider's business license.

(Code 1997, § 42-185; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006; Ord. No. 2015-86, (exh. A), 9-14-2015)

Sec. 42-202. - Maximum charges for towing, booting and fees related thereto; methods of payment and invoice/receipts.

- (a) Charges made to vehicle owners or operators for nonconsensual towing of motor vehicles on private property, shall be limited to the following:
 - (1) Towing vehicles under 26,000 pounds in weight;
 - (2) Towing vehicles exceeding 26,000 pounds in weight;
 - (3) Processing fee for any vehicle retained for five or more days;
 - (4) Daily fee for four wheel drive vehicle;
 - (5) Storage; and
 - (6) Weather wrap fee for open windows and sunroofs.
- (b) The maximum fees set forth in subsection (a) shall be set by the city manager from time to time. All other fees and charges are prohibited.
- (c) The city manager shall set the fee in an amount that is high enough that property owners can reasonably expect to receive timely service from competent providers when a request for service is placed. However, the fee shall not be so high that it is punitive. The removal or immobilization of the vehicle having been found by the city council to be sufficiently punitive that an additional monetary penalty is unwarranted.
- (d) Every provider of nonconsensual towing services must provide to a motor vehicle owner or operator an invoice and receipt, or a combination form serving as an invoice which can become a receipt upon payment from the motor vehicle owner or operator. The invoice/receipt must be capable of being prepared in duplicate, with an original provided to the vehicle owner, and the duplicate to be retained by the service provider for not less than three years. The form shall show the name and telephone number of the service provider. It shall reflect the time, date, and place of booting or towing, and the time and date of accepted payment. It must bear the signature or initials of the person accepting payment. The city manager may develop additional information requirements which are reasonably related to the purposes of this division.

(Code 1997, § 42-186; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006; Ord. No. 2015-86, (exh. A), 9-14-2015)

Sec. 42-203. - Penalties and enforcement.

- (a) Any provider of booting or towing services or any property owner who violates provisions of this division shall be guilty of a misdemeanor and shall be fined at least \$25.00, but no more than \$100.00, or imprisoned for not more than 30 days, or such greater penalties as shall from time to time be authorized by state law for violations of S.C. Code 1976, § 16-11-760. Each instance of a violation shall be a separate violation subject to the penalties of this section.
- (b) In addition to all other penalties and remedies, any person violating a provision of this division shall be subject to a suspension or revocation of the permit or suspension or revocation of the person's business license, or both.

(Code 1997, § 42-187; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006)

Sec. 42-204. - No relief from liability.

This division does not relieve a provider of towing services, or the owner of real property using their services, from liability claims otherwise recognized by the general law of the state for personal injuries or property damages sustained in the removal of vehicles from commercial property.

(Code 1997, § 42-188; Ord. No. 2005-60, § 3(exh. A), 6-27-2005; Ord. No. 2006-33, § 5, 4-24-2006)

Exhibit 2

City of Myrtle Beach

Ordinance

ARTICLE VI. - WRECKER SERVICES; NONCONSENSUAL TOWING

Footnotes:

--- (3) ---

Times referred to in this article shall be the times of day when the wrecker service is available for towing.

DIVISION 1. - WRECKER SERVICES

Sec. 23-125. - Definitions applicable for article VI.

The following words or phrases, as used in this article, shall have the following respective meanings as set out in this section, unless a different meaning clearly appears from the context:

Advertise(s) or advertisement shall mean any representation made in connection with the solicitation of a wrecker service company and includes without limitation, those made in or through any newspaper, telephone directory, publication, radio, television, electronic medium, notice, handbill, business card, sign, catalog, billboard, brochure, poster or letter, or upon any application or form required to be submitted under law or contract.

Consensual towing means a tow authorized by the vehicle owner, authorized operator or authorized agent of the owner.

Coupling or coupled means the initial physical connection made between the wrecker vehicle and vehicle to be towed by means of moving jack, dolly, skate, strap, chain, line, bar or some other form of couplings; or with at least one half of the wheel lift apparatus surrounding a tire, of the winch hook being properly hooked to the vehicle in an appropriate place on the vehicle so that the vehicle can be safely towed or winched. Coupling does not include the positioning of the wrecker to begin the act of coupling the vehicles, commonly known as "blocking".

Decoupling fee means a charge by a towing company for releasing a motor vehicle to its owner or operator when the vehicle has been coupled by a wrecker, but has not completely removed the vehicle from private property.

Legal repossession means the act of a creditor or his duly authorized agent under contract to take possession of a vehicle under a security agreement by a lienholder; and may be referred to as an automobile recovery action, and constitutes a nonconsensual tow.

Normal business hours means:

- (1) For those businesses that engage in a nonconsensual towing operation, those hours during which nonconsensual towing is available as declared by the towing service in either advertisement or in its licensing application, and excepting the act of legal repossession, their normal business hours will include the time of one hour time period that immediately begins when the wrecker operator notifies the police department that a nonconsensual tow has been accomplished, pursuant to S.C. Code, § 56-5-2525.
- (2) For those businesses that do not engage in nonconsensual towing operating, those hours during which service or repairs are available to be performed or as declared by the towing service in either advertising or its licensing application, which are presumed to be from 9:00 a.m. until 6:00 p.m. at least five days a week, excluding Saturdays, unless the business has advertised differently.

Nonconsensual tow means a tow authorized by a person of authority or directed by a person other than the vehicle owner, authorized operator or authorized agent of the owner; and include a legal repossession. Nonconsensual tows also include those directed by law enforcement.

No-tow fee means a charge by a towing company which has been summoned to the private property by the private property owner, and has actually entered the boundary of the property, but has not yet accomplished coupling the vehicle for towing.

Pay-per-use parking lots means real property on which a business entity collects a fee for parking a defined period of time, either by attendant or device that identifies the pay for use spaces and collects the payment instantaneously on the scene. Pay-per-use lots that engage in nonconsensual towing are regulated herein.

Person means an individual, a sole proprietorship, partnership, corporation, limited liability company or any other business entity.

Personal property means health and human care related devices such as child care related items such as strollers, car seats, diaper bags and children's clothing, and/or personal mobility assistance devices such as walkers, crutches and the like, health related items such as medicine delivery systems and devices, medications, prescriptions, and wallets, personal handbags and identity papers such as a person's drivers licenses, identity cards, social security cards, tax records, or other documents that are recognized as subjecting one to identity theft when misused. The vehicle, the other property contained therein not related to health and human care, or that is attached thereto to the vehicle as radios, speaker, and the like may be subject to lien as set forth in S.C. Code, § 29-15-10; provided however the inclusion of articles left in a vehicle which may statutorily subject to sale to satisfy a lien when left in the vehicle is not interpreted to grant a towing entity authority to withhold personal property, as defined herein, from its owner.

Police directed tow shall mean the removal and storage of a wrecked or disabled vehicles at the direction of police/law enforcement from an accident scene, or removal arising from arrest, or the removal and storage of a vehicle in the event the vehicle owner or authorized driver is incapacitated, unavailable, or otherwise does not consent to the removal of the vehicle, excepting, however, all incidents of nonconsensual towing from private parking lots, and acts of legal repossession, as herein defined.

Private parking lot means any private parking lot or area owned by a business entity, or an apartment complex, or other recognized group parking entity who has the legal right to exclude persons not in membership or association with the entity, or that have not paid or has parked beyond the paid time.

Private property owner shall mean the person, unconnected with the towing or wrecker business, who has deed title or leasehold interest, or those duly authorized agents, managers security personnel and other employees to whom authority has been delegated to manage a pay-per-use lot, or a private parking lot and to sign the towing authorization for:

- (1) A business related private property lot associated with a business license holder, or
- (2) A licensed business operation of pay-per-use parking lot, or
- (3) A parking lot serving an apartment complex, condominium complex and like primarily residential uses.

Towing shall mean the consensual or nonconsensual engagement or act of moving one vehicle from one point to another (including hook-up, lift, and transport) using what is commonly referred to as a tow, wrecker, or a car carrier, for which a service charge is made, either directly or indirectly.

Vehicle means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Vehicle owner means the person or business in whom the vehicle is registered, or the person to whom the vehicle has been entrusted or allowed to operate by the title owner, or an authorized agent of the owner.

Wrecker means any vehicle built and equipped for the purpose of towing, lifting, pulling or otherwise transferring vehicles from place to place.

Wrecker service means the business, its officers, agents, employees and vehicle operators towing a vehicle located in the city limits, or storing a vehicle in a lot within the city limits. No person employed by, appointed by or affiliated with a wrecker service may be an agent for a private property owner.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-126. - License and decal required.

- (a) *Business license required.* Any person or entity desiring to operate a wrecker service or engage in the act of towing, including repossessions, within the city shall first obtain a city business license by filing an application, upon a form provided by the city, with the city business license inspector together with the appropriate license fee as set forth in this Code. Apart from the application, the applicant will attach the following information under affirmation and signature:

(1) *Business identity:*

- a. Indicate the nature of the business identity, such as a sole-proprietorship, partnership or corporation; list all individuals or entities having a financial interest in the company including names, physical addresses and telephone numbers.
 - b. Indicate whether business is the legal repossession business, consensual towing arising from an vehicle repair/storage business; or in nonconsensual towing arising from acts of legal repossession or removal of illegally parked vehicles on private property either on an on-call or contractual basis. Any act of nonconsensual towing disqualifies a business from claiming that it only engages in consensual towing.
 - c. The business shall declare if it offers "after hour" redemption, and under what circumstances.
- (2) *Business location:* Provide the street location, mailing address and telephone number of the wrecker service's primary business location, if different from the storage or redemption location. The business location shall display a notice to the public which provides the rates permitted for a nonconsensual tow, the physical address of the storage lot if different from the business location, and a contact number for the police department.
- (3) *Normal business hours:* Declare the normal business hours based on the classification of business as consent only towing or nonconsensual towing.
- (4) *Storage lot(s):* Provide the street location, address and telephone number of the wrecker service's storage lot(s), or location for redemption or retrieval, if different from the business location.
- a. The capacity of storage shall be indicated together with the method employed to screen the stored motor vehicles from public view as well as security measures employed.
 - b. Except for legal repossessions, in order to be licensed to engage in nonconsensual towing within the city limits, the wrecker service is required to have its storage lot within the city limits.
 - c. An attendant must be on premises on duty during normal business hours.
 - d. Storage lot signage must prominently display the normal business hours as declared defined and required herein, towing and storage rates as established by the city, a contact number for the police department, and if the wrecker service advertises an "after hours" redemption or release, a telephone number where the owner, manager or attendant of the towing storage lot may be reached at any time so that after normal business hours redemption and release can occur.
 - e. If after hours redemption and storage is available to consumers, the owner, manager or attendant of the towing storage lot shall respond within one hour of contact.
 - f. If it is an outdoor storage facility, it must be lighted from dusk to dawn, sufficiently illuminated to enable a vehicle owner to inspect a vehicle prior to redemption or release.

- (5) *Records and other services:* List all procedures and attach copies of forms used to keep records and any auxiliary services which will ensure delivery of a high level of service to the public.
- (6) *Contracts for towing:* Copies of all contracts for nonconsensual towing with private property owners.
- (7) *Vehicle identification:* Provide the year, make, model, vehicle identification number, gross vehicle weight class, type and South Carolina license plate number for each vehicle to be used in the applicant's business.
- (8) *Liability insurance:* Provide proof of automobile liability in full compliance with South Carolina Financial Responsibility Laws.
- (9) *Towing decal:* A towing decal shall be issued with the business license. The city's final refusal to issue a decal, or the suspension or revocation of a decal shall not be made except upon reasonable notice of not less than 30 days after application to the applicant or registrant, and an opportunity for the applicant or registrant to be heard. The city may refuse to issue or may suspend or revoke any decal issued upon proof that the applicant or holder of the decal, if the applicant is an entity, a person with a substantial interest in the applicant or holder of a registration, or any towing company in which such person was a person with a substantial interest and was serving in such capacity at the time the conduct or conviction required to be disclosed pursuant to this subsection occurred:
 - a. Has obtained a decal through fraud, deception or misrepresentation;
 - b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense in exercising the authority to tow granted by the decal;
 - c. Has engaged in gross negligence causing or gross incompetence resulting in personal injury to a person or property damage while exercising the authority to tow granted by the decal;
 - d. Has engaged in repeated acts of negligence or incompetence;
 - e. Has engaged in professional or occupational misconduct arising from the exercise of authority granted by the decal;
 - f. Has had the authority to engage in the activity regulated by this article revoked or suspended by any other state, agency or authority for reasons consistent with this section;
 - g. Has been convicted of motor vehicle burglary or theft.

(Ord. No. 2012-15, 3-27-12; Ord. No. 2012-33, 5-22-12)

Sec. 23-127. - Special requirements.

- (a) Every wrecker or roll back shall carry a broom, shovel and container for debris. Each shall also carry a fire extinguisher rated for Class A, B and C fires.
- (b) After being summoned to the scene of an accident, it shall be the responsibility of the wrecker service to perform a cleanup of the accident area before leaving. This responsibility requires the wrecker service to remove all debris such as broken glass, liquids and materials from an accident area by sweeping up such debris and removing this material from the scene in a garbage can type container on each wrecker.
- (c) In addition to the items required above, each wrecker shall also carry commercial material and all other equipment to fulfill this responsibility.
- (d) Each wrecker shall display the owner or company name and business telephone number in letters not less than two inches high on both vehicle doors. Temporary lettering, magnetic or otherwise, is strictly prohibited.

- (e) Each wrecker shall affix on the front windshield a city issued decal which evidences a business license, and authorizing the wrecker to operate within the City of Myrtle Beach.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-128. - Prohibitions.

- (a) It shall be unlawful for any person to offer to perform, or engage, or attempt to engage in the wrecker service business or the act of towing within the city limits of Myrtle Beach, except under the authority of a current business license and a towing decal issued by the City of Myrtle Beach.
- (b) It shall be unlawful for a wrecker service to go to the scene or location of a disabled or damaged motor vehicle or the location of any accident unless summoned by the vehicle's owner, the owner or person in charge of the property where the vehicle is disabled, or by the police department.
- (c) It shall be unlawful for a wrecker service to enter the vehicle, whether locked or unlocked, except under police directed tows.
- (d) Excepting lawful repossession, it shall be unlawful to remove any vehicle that is parked on any road, highway or other public property unless summoned by the vehicle's owner or authorized by the police department to do so.
- (e) It shall be unlawful for vehicles used for legal repossession to be used in other nonconsensual towing unless they are made to be in compliance with section 23-127.
- (f) It shall be unlawful for a wrecker service to operate any emergency lights except at the scene of an accident while hooking up to the vehicle to be towed or while actually towing a vehicle. Emergency lights shall not be operated while on route to any accident scene or other service call.
- (g) It shall be unlawful to tow a motor vehicle from within the city limits to a storage facility or store such vehicle at a storage facility unless the storage facility is in compliance with section 23-126, as inspected and approved by the police department.
- (h) It shall be unlawful for a person to take or receive any benefit or advantage, including a pecuniary benefit, kickback, or reward from a wrecker service for providing information about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with towing from privately owned property motor vehicles parked without authorization. This prohibition does not prevent private property owners and wrecker services from contracting for towing services.
- (i) It shall be unlawful for a wrecker service to offer or make any benefit or advantage, including a pecuniary benefit, kickback, or reward to a private property owner or any person for providing information about motor vehicles parked for unauthorized purposes on privately owned property or otherwise in connection with towing from privately owned property motor vehicles parked without authorization. This prohibition does not prevent private property owners and wrecker services from contracting for towing services.
- (j) It shall be unlawful for anyone to obstruct or interfere with a wrecker service that is carrying out a tow on private property or a tow conducted pursuant to a contract with the city. Occupying the vehicle after the vehicle has been coupled, or positioning oneself or another vehicle to block the wrecker's exit is an obstruction and interference, and may be subject to arrest or the issuance of an ordinance summons or uniform traffic ticket upon observation by law enforcement.
- (k) It shall be unlawful for a wrecker service, or any employee, agent or person acting on behalf of the wrecker service, either as a pedestrian or as a driver or passenger in any vehicle, to patrol or park along or in any streets, highways or a private parking lots in scouting, soliciting or in anticipation of wrecker or towing services being summoned.
- (l) It shall be unlawful for any wrecker service or any employee, agent or person acting on behalf of the wrecker service to refuse to release personal property, as defined herein, upon request during normal business hours, or in an after hours release event, if the wrecker service has after hours release.

- (m) It shall be unlawful for any private property owner or wrecker service to omit, fail or neglect to perform any duty or obligation imposed by this article.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-129. - Violations to serve as grounds for business license suspension or revocation.

The chief of police shall inform the city business license inspector as to any violations under this chapter so the business license administrator may revoke or suspend any business license issued for towing service if he determines that the public interest so requires and when it is found, after investigation, that the license has been mistakenly or improperly issued or issued in violation of a city ordinance; or the licensee has breached any condition upon which his license was issued or has failed to comply with the provisions of this article; or the licensee has obtained his license through any fraud or misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in his application; or the licensee has been convicted of an offense under a law or ordinance regulating businesses; or the licensee has engaged in an unlawful activity or nuisance related to the business, including violations of applicable zoning laws.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-130. - Removal of disabled or abandoned vehicles; police directed tows.

The city manager shall be responsible for insuring that disabled or abandoned vehicles and police directed tows are removed from the public rights-of-way or other public property in a timely manner to serve the health, safety and general welfare of the public. In order to accomplish this purpose, the city manager shall have the authority to contract with one or more private companies to provide wrecker services to the city or may, within budgetary constraints, provide such services with city equipment and personnel. Any such contract for wrecker services shall contain, but not be limited to, provisions for the following:

- (1) Full compliance with the provisions of this chapter.
- (2) Standards for response times to calls for services and requirements for 24-hour service and availability for release of towed vehicles.
- (3) Storage area requirements.
- (4) Insurance and indemnification requirements to protect the city's interests.
- (5) Recordkeeping requirements.
- (6) Special equipment requirements.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-131. - City council approval.

Before entering into any contract pursuant to section 23-130 for continuing wrecker services, the city manager shall submit the contract to city council for approval; provided, however, that the city manager shall retain the right to enter into short term agreements for removal of vehicles from city rights-of-way and other public property when necessary to ensure the public health and safety.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-132. - Payment methods for services rendered for all tows.

- (a) For services rendered, or for any fee, or to redeem a motor vehicle from storage, the operator shall accept in payment either cash, a check issued by an insurance company, a valid debit card, or a valid major credit card or charge card subject to the provisions of subsection (b) of this section.
- (b) With any type of payment card, the wrecker operator may request additional identification by the presentation of state issued driver's license. Unless the motorist is unable to produce such identification, or the operator has a bona fide reason to believe the card or other identification is fictitious, altered, stolen, expired or revoked or not valid for any other cause or is clearly offered with intent to defraud the issuer, the debit card, charge card or credit card shall be deemed an acceptable form of payment in lieu of cash if the operator ordinarily accepts the card at his place of business. The wrecker operator shall notify the police when payment is declined due to a determination that the card or other identification is fictitious, altered, stolen, expired or revoked or not valid for any other cause or is clearly offered with intent to defraud the issuer. Nothing in this ordinance shall preclude payment by a motorist in the form of cash, check or money order, if this form of payment is acceptable to the operator.

(Ord. No. 2012-15, 3-27-12)

Secs. 23-133—23-139. - Reserved.

DIVISION 2. - NONCONSENSUAL TOWING

Sec. 23-140. - Nonconsensual towing requirements and restrictions; duties and obligations.

- (a) Excepting the act of legal possession, a wrecker service shall not engage in towing from a pay-per-use lot or private property unless the private property owner has personally summoned the wrecker service to perform an act of towing of a particular vehicle.
- (b) The private property owner shall verify that proper signage is in place prior to summoning the wrecker service.
- (c) The wrecker service shall not block the exit of a vehicle from a parking lot, or begin the act of coupling the vehicles, until after the private property owner has written the time of the towing and then signed a fully executed authorization for such removal, within 30 minutes immediately prior to the towing.
- (d) The written authorization shall contain the location and reason for the tow, the authorizing person's name, the exact time of the tow, the make, model, year, color, vehicle identification (VIN) and license plate number.
- (e) Authorization forms shall be provided by each wrecker service providing such towing services and will be kept on file by the wrecker service for inspection by the city for not less than three years.
- (f) Except for legal repossession and police directed tows, any wrecker service that has entered the boundaries of the private property but has not initiated coupling, shall upon the request of the vehicle owner, release said vehicle upon payment of the "no-tow fee" on the scene. If the vehicle owner refuses or is unable to pay the no tow fee, the wrecker service may tow the vehicle. Personal property as defined herein may be retrieved without cost or fee on the scene at any time prior to the wrecker leaving the lot, without regard to payment on the scene.
- (g) Except for legal repossession and police directed tows, any wrecker service that has initiated coupling, but has not completely removed the vehicle from the private property, shall upon the request of the vehicle owner, release said vehicle upon payment of the "decoupling fee" on the scene. If the vehicle owner refuses or is unable to pay the decoupling fee, the wrecker service may tow the vehicle. Personal property as defined herein may be retrieved without cost or fee on the scene at any time prior to the wrecker leaving the lot, without regard to payment on the scene.

- (h) Excepting police directed tows, upon exiting the private property, the wrecker service must proceed directly to the final storage location. No vehicle may be stored temporarily, or staged at any other location prior to removal to the identified final storage location.
- (i) In compliance with S.C. Code, § 56-5-2525, any wrecker service performing a nonconsensual tow shall, immediately telephone the police department, not later than one hour of the time of the tow as set forth by the private property owner on the authorization, and the location of the tow, the authorizing private property manager, the towing service and wrecker operator and the address of the storage location.
- (j) After payment of all fees and in any event of release, possession of the keys to the vehicle together with a valid state issued driver's license shall constitute a prima facie presumption that the person presenting such evidence is authorized to accept release. The wrecker service may make a photocopy of the license.
- (k) The wrecker service shall allow the vehicle owner to retrieve personal property without a requirement for that the towing and storage fees be paid before releasing the personal property.
- (l) The wrecker service is not required to return the vehicle or their personal property to the person after the company's normal business hours as declared in the application for license and decal per section 23-126 and per state law S.C. Code, § 56-5-2525. Should the wrecker service elect to provide for after hour redemptions, an additional fee is allowed only as set forth herein. All payments are to be receipted.
- (m) Should the operator of the vehicle seek information on the towing from the private property owner, the private property owner is required to provide a copy of this article, and the contact information for the wrecker service and the police department.
- (n) If a vehicle is towed as a result of a private property owner's request and the private property owner has not complied with the requirements provided in this article, or if the vehicle is shown to have been legally parked, the private property owner shall be guilty of a misdemeanor and may, in the discretion of the municipal judge as provided in S.C. Code 1976, § 14-25-75, be subject to reimburse the vehicle owner for all towing and storage charges which the vehicle owner paid.
- (o) If a vehicle is towed as a result of a private property owner's request and the wrecker service has not complied with the requirements provided in this article, the wrecker service operator shall be guilty of a misdemeanor and may, in the discretion of the municipal judge as provided in S.C. Code 1976, § 14-25-75, be subject to reimburse the vehicle owner for all towing and storage charges which the vehicle owner paid.

(Ord. No. 2012-15, 3-27-12)

Sec. 23-141. - Uniform signage requirements for notice of towing.

- (a) Private property owners shall post signage indicating that nonconsensual towing may occur. This signage is not required to be posted by individual single-family homeowners or renters.
- (b) The sign shall be constructed of metal, plastic or other type of material that is enduring in nature. Signage on a property shall be consistent in appearance and content. The police department shall provide a template for such signs for use by the private property owners indicating requirements for size, materials, placements and wording. Any exceptions to this template must be approved in writing by the police chief.

(Ord. No. 2012-15, 3-27-12; Ord. No. 2012-33, 5-22-12)

Sec. 23-142. - Limited nonconsensual towing fees.

- (a) At any time a vehicle is towed without the authorization of the vehicle owner from a pay-per-use parking lot or private parking lot or private property, the following fees shall be the maximum to be charged by any wrecker operator or company and no other fees or charges of any kind shall be required to be paid by the vehicle owner of the vehicle in order to recover the vehicle.
- (1) The fee for each tow is a flat fee and shall be all inclusive. There shall not be any additional fees assessed by the towing service for using dollies, trailers, lifts, slim jims or any other equipment or service, including release or retrieval fees.
 - (2) No private property owner or wrecker service may assess any additional cost or fee, nor characterize any further recourse as being in the nature of a fine.
 - (3) The assessment of storage fee shall not commence for 24 hours from the time the police department is contacted as required by S.C. Code, § 56-5-2525. For that time, there shall be no assessment of a storage fee, and only the towing fee shall be assessed for release.
- (b) *Class A wrecker/car carrier fees:*
- Towing (any motor vehicle or trailer 10,000 pounds GVW or less), per tow \$160.00
- Storage (after 12 hours) 25.00 per 24-hour period
- No tow fee 30.00
- Decoupling fee 45.00
- After hours vehicle redemption or release of personal property, if offered 30.00
- (c) *Class D wrecker fees:*
- Towing, per tow \$250.00
- Storage (after 12 hours) 30.00 per 24-hour period
- No tow fee 60.00
- Decoupling fee 120.00
- After hours vehicle redemption or release of personal property, if offered 30.00

(Ord. No. 2012-15, 3-27-12)

Sec. 23-143. - Effectivity, applicability and validity.

If any section, subsection, clause or provision of this act shall be adjudged unconstitutional or to be ineffective in whole or in part, to the extent that it is not adjudged unconstitutional or is not ineffective it shall be valid and effective and no other section, subsection clause or provision of this act shall on account thereof be deemed invalid or ineffective, and the applicability or invalidity of any section, subsection, clause or provision of this act in any one or more instances or under any one or more circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance or under any other circumstances.

(Ord. No. 2012-15, 3-27-12)

Secs. 23-144 – 23-149: - Reserved.

Exhibit 3

City of Florence Ordinance

ARTICLE III. - WRECKERS AND TOWING SERVICES¹²

Footnotes:

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Editor's note: This article was adopted by the Board of Commissioners on July 12, 2017, and is hereby published for public information.

Cross reference: Ord. No. 86-66, § 1, 12-15-86; Ord. No. 86-66, § 2, 12-15-86; Ord. No. 86-66, § 3, 12-15-86.

Sec. 20-96. - Wrecker to go to accident only when properly called.

It shall be unlawful for the owner or agent of any wrecker or towing service to go to any place where an accident has occurred unless called by the police dispatcher or the owner/operator of the vehicle. Responding to a call upon notice of any other person shall be considered a violation of this article. In the event of non-accidental mechanical breakdowns, the operator of an automobile or vehicle shall be allowed to call a wrecker or towing service of his choice, provided the wrecker or towing service has a reasonable response time as specified in section 20-101 of this article.

(Ord. No. 86-66, § 1, 12-15-86)

Sec. 20-97. - Use of police radio prohibited.

It shall be unlawful for the owner, agent or driver of any wrecker or towing service to go to the location of a disabled or damaged vehicle by reason of information received by police radio or to interfere in any manner with police radio calls. No provision of this section shall prohibit the owner, agent or driver of any wrecker or towing service to monitor police radio calls for the purpose of ascertaining whether the correct rotation of wreckers is followed in accordance with the wrecker policy of the city.

(Ord. No. 86-66, § 2, 12-15-86)

Editor's note— It should be noted that the wrecker policy referred to in §§ 20-97 and 20-99 is not set out at length herein, but is on file and available for inspection in the office of the municipal clerk.

Sec. 20-98. - Solicitation of wrecker or towing service.

It shall be unlawful for the owner or agent of any wrecker or towing service to drive along or park on any streets, bridges, or highways soliciting wrecker or towing service.

(Ord. No. 86-66, § 3, 12-15-86)

Sec. 20-99. - Solicitation of business and enticement to solicit prohibited.

It shall be unlawful for any city employee to solicit business for any wrecker or towing service and any employee violating these provisions shall be subject to appropriate discipline as specified in the employee

handbook. It shall likewise be unlawful for any owner, agent or driver of a towing service to entice or engage a city employee to solicit business for the service in exchange for payment whether monies, a gift or gratuity, and the offending service shall forfeit its eligibility for the rotation list, as specified in the wrecker policy.

(Ord. No. 86-66, § 4, 12-15-86)

Note— See the editor's note following § 20-97.

Sec. 20-100. - Impounding authorized.

When a police officer finds a motor vehicle or other vehicle that has been abandoned or wrecked upon the public streets or ways of the city, or upon city property, or that has been parked in violation of a city ordinance or state law, or the vehicle has been, or is being used, in the commission of a crime, such officer may have the vehicle removed by a wrecker to any storage lot or garage operated by a wrecker as designated by the requesting officer. Vehicles removed under the above conditions shall be held until claimed by the legal owner or otherwise disposed of as provided by state or federal law.

(Ord. No. 86-66, § 5, 12-15-86)

Sec. 20-101. - Requirements and procedures for wrecker service.

- (a) All wrecker services shall comply with the following requirements and procedures:
- (1) Arrive at the scene within a reasonable period of time after having been notified to do so by the police department, or when requesting service, reasonable time shall be interpreted as thirty (30) minutes after contact has been made with the wrecker company.
 - (2) Obey lawful orders given to wrecker drivers and attendants by any police officer investigating the accident.
 - (3) Fill out an impound report sheet furnished by the Florence Police Department when towing a vehicle from an accident scene or a disabled vehicle.
 - (4) It shall be the duty of every wrecker driver picking up wrecked/disabled vehicles to clear the city's streets of any and all debris, parts, or glass.
- (b) In recognition that, from time to time, the detailed "Wrecker Policy" of the city needs to be changed, city council hereby asserts and reaffirms its continuing plan to establish a detailed "Wrecker Policy" by resolution and to amend that "Wrecker Policy" by resolution so long as the policy is consistent with the requirements of this section.

(Ord. No. 86-66, § 6, 12-15-86; Ord. No. 2009-31, 10-12-2009)

Sec. 20-102. - Penalty for violation.

Any wrecker service company owner found guilty of violating any provision of this article, shall be subject to a maximum fine of two hundred dollars (\$200.00) or sentenced to thirty (30) days' imprisonment.

(Ord. No. 86-66, § 7, 12-15-86)

Sec. 20-103. - Towing from commercial private property.

- (a) It shall be unlawful to remove any motor vehicle from commercial private property without authorization from the owner of the motor vehicle, except for the following circumstances:

- (1) The property owner has appropriate signage which clearly states parking is prohibited/restricted. Signs shall be at least three (3) square feet; and
- (2) The posted signs contain a legible warning that violators' vehicles may be towed at the owner's expense and said sign shall also include a telephone number to call for the release information regarding the towed vehicle.
- (3) The posted signs were in place, clearly visible and legible to a driver approaching the private property where parking is prohibited/restricted at the time the vehicle was parked; and
- (b) The owner of the vehicle towed from private property shall be responsible for paying all applicable towing and storage charges provided that the private property owner has complied with all requirements contained in subsection (a) above and subsection (d) below.
- (c) If a vehicle is towed as a result of the property owner's request and the property owner has not complied with the requirements of subsection (a) above or (d) below, or if the vehicle is shown to have been legally parked at the time it was towed, the property owner shall be guilty of an offense punishable by a maximum fine of two hundred dollars (\$200.00) or sentenced to thirty (30) days imprisonment, and, in addition, shall, in the discretion of the municipal judge pursuant of S.C. Code § 14-25-75, be responsible for reimbursement of towing and storage charges paid by the vehicle owner.
- (d) Before towing a vehicle from private property without authorization from the vehicle owner, the wrecker service operator shall first obtain from the property owner or their agent of record written authorization for the towing which shall set forth the name and original signature of the property owner or agent; the address from which the motor vehicle is to be towed; the reason for the removal; and the year, make, model, vehicle identification number, and license plate state and number of motor vehicle being towed. Any wrecker service removing a motor vehicle from private property without the consent of the owner of the vehicle shall, within thirty (30) minutes of the removal, deliver the report of the tow to the Florence Police Department (FPD). This delivery of the report shall either be done via e-mail to fpdcommunications@cityofflorence.com, by facsimile to (843) 676-8851, or by delivering it by hand to the FPD Telecommunications Desk at 180 N. Irby Street, City/County Complex. The report to the FPD must include a copy of the written authorization referenced in subsection (d) above as well as the location where the motor vehicle may be claimed by its owner. The wrecker service may only tow to a storage area or garage located within the city or no more than five (5) road miles (shortest distance) as measured from the existing municipal limit boundary of the city. The business operations office and storage facility for the wrecker service must be located at the same physical location.
- (e) A private property owner may authorize persons as their agent of record to request towing of vehicles from their property pursuant to this article by sending a letter to the city police department giving authority to said person(s) and detailing the person's name, address and any contact information determined necessary by the police department.
- (f) It shall be unlawful for any towing business/towing operator to financially reward any property owner or agent of record and also for any property owner or agent of record to accept any financial reward from any towing business/towing operator.
- (g) When a vehicle is towed without owner authorization or a person lawfully in possession of the vehicle (hereinafter, the vehicle owner), the following fees shall be the maximum allowable charges by any wrecker operator or company and no other fees of charges of any kind shall be required by the vehicle owner in order to recover the vehicle:

(1) Towing by a Class A Wrecker/Car carrier:

Towing (per tow)—One hundred thirty-five dollars (\$135.00) flat fee to include dollies and Go-Jacks.

No Tow—Shall be fifty (50) percent of the towing fee.²¹

After hours vehicle release—\$35.00 per release.³¹

(2) Towing by a Class D Wrecker:

Towing (per tow)—One hundred fifty dollars (\$150.00) flat fee to include dollies and Go-Jacks.

No Tow—Shall be fifty (50) percent of the towing fee. ⁴⁴

After hours vehicle release—\$35.00 per release. ⁵¹

- (3) When a vehicle is towed by a wrecker service under this policy, no storage charge shall be assessed for the first twenty-four (24) hours after the towing. After the first twenty-four (24) hours, the maximum storage charges on stored and impounded vehicles weighing under ten thousand (10,000) pounds shall be twenty dollars (\$20.00) per day for storage of vehicles and or trailers. After the first twenty-four (24) hours, the maximum storage charges on stored and impounded vehicles weighing ten thousand (10,000) pounds or more shall be thirty dollars (\$30.00) per day for storage of vehicles and or trailers.
- (4) All towing and storage charges will be itemized on an invoice or receipt when the charges are paid. No charges other than the towing or storage charges allowed in subsections (g)(1)—(3) above may be made on any vehicle towed by a wrecker service selected under this section without the prior written approval of the owner or his agent.
- (h) A wrecker service operator is not required to return the vehicle to the person after the company's normal business hours, per state law [S.C. Code, § 56-5-2525]. Should the operator elect to provide for after hour requests, no additional fee or charge is allowed other than those established in subsection (g) above.
- (i) The wrecker service shall post a copy of the ordinance at business locations outlining the service provider's obligations and duties. Any wrecker service located within the city limits or holding a city business license shall be required to post the city prepared ordinance in a conspicuous location. It shall be unlawful to intentionally or negligently fail to post or alter or obscure the ordinance in any way.
- (j) The chief of police is the principle person responsible for the administration of this section. It is also the responsibility of the chief of police to inform the business license department of any suspected unfair business practices as it relates to this section.
- (k) As to private towing and law enforcement towing, the tow truck operator will permit the vehicle owner to remove at all times health and human care related devices such as, but not limited to, car seats, strollers, walkers, crutches and the like, medications, prescriptions, personal handbags, and personal and identity papers from the vehicle without charge and without regard to any towing or storage charge owed on the vehicle. If the tow truck operator has removed this personal property from the vehicle, he will return it to the vehicle owner when requested without charge and without regard to any towing or storage charge owed on the vehicle.
- (l) Any towing owner/operator who violates any provision of this section of this chapter shall be deemed guilty of an offense and shall be subject to punishment under section 20-102 of this chapter.
- (m) The provisions of this section shall not apply to towing directed by law enforcement from public right-of-ways, pursuant to motor vehicle accidents, criminal investigations, or as authorized by S. C. Code § 56-5-5810. It shall also not apply to lawful repossession of vehicles by third parties pursuant to applicable provisions of the S. C. Code of Laws.

(Ord. No. 2012-25, 9-10-2012; Ord. No. 2012-29, 10-8-12)

Footnotes:

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THE CITY OF SPARTANBURG, SOUTH CAROLINA, hereby certifies that the foregoing is a true and correct copy of the ordinance as it appears in the official records of the City of Spartanburg, South Carolina.

--- () ---

If the owner of such vehicle appears before his vehicle is towed away and makes claim to his vehicle after the wrecker has been ordered to remove such vehicle but before the vehicle has been connected to the tow truck upon settlement with the wrecker service for a "no tow fee" equal to fifty (50) percent of the towing fee. If the vehicle owner refuses or is unable to pay the no tow fee, the tow truck operator may tow the vehicle. If the vehicle is connected to the tow truck when the vehicle owner returns to reclaim the vehicle, the tow truck operator shall disconnect the vehicle and return it to the vehicle owner upon payment of no more than the maximum towing charge listed above. If the owner refuses or is unable to pay the towing fee, the vehicle may be towed.

--- () ---

Normal business hours for wrecker and storage businesses governed by this Policy shall be Monday through Friday from 7:00 a.m. until 6:00 p.m. A wrecker service operator is not required to return a vehicle to an owner after the company's normal business hours pursuant to S.C. Code § 56-5-2523, as amended. Should the operator elect to provide for after hour request to pick up vehicles, the operator may charge no more than the amount specified in this section.

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See Paragraph 2 above.

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See Paragraph 3 above.

Sec. 20-104. - Reserved.

Exhibit 4

City of Charleston

Ordinance

ARTICLE XIII. - NONCONSENSUAL TOWING OF VEHICLES

Sec. 19-394. - Findings of council.

City council finds in many instances when a vehicle is towed from private property without the owners knowledge or consent that vehicle owners are at the complete mercy of the tow truck operators and as such, are subjected to instances of price gouging and other overly stringent requirements for the return of their vehicles.

City council finds that due to the unique parking arrangements in some downtown parking lots where city staff operates parking lots on leased private land many citizens and visitors alike are frequently confused over which lots are private or public; and

City council finds that there is often inadequate signage, indicating the times when a car may be towed or of the price of a nonconsensual tow thereby inadequately apprising the public of the maximum risks of imprudent parking; and

City council finds that owners or operators of towed vehicles believe their cars have been stolen and that the police department must respond, and to release their cars, usually late at night, owners must go to one location to pay for the cost of towing and another location to actually take possession of their cars. Car owners or operators can only retrieve their cars after paying cash. This scenario coupled with storage sites that are located on the outskirts of the city and in desolate locations tend to place the reluctant patrons in a dangerous situation; and

Further, city council intends to exercise its police powers to ensure that the public security, general welfare, health and order of the city are adequately protected from price gouging and unscrupulous towing carriers.

(Ord. No. 1997-116, § 1, 3-25-97)

Sec. 19-395. - Definitions.

Commercial property means any real property where the primary use is for office, retail, wholesale, restaurant, education, or service for hire uses and where parking is available for property owners, occupants, or their patrons, clients, or customers. The term also applies to parking lots for which hourly or other periodic charges are made for the right to park on the premises, regardless of whether there are structures on the property. The term does not include property having primarily a residential use, with the exception of multiple dwelling units.

Deliver means placing a towed motor vehicle in the actual possession of the owner, authorized operator, or authorized agent of the owner.

Motor vehicle means any motorized vehicle which is capable of moving on the public ways of the City of Charleston.

Nonconsensual tow means a tow authorized or directed by a person other than the vehicle owner, authorized operator, or authorized agent of the owner. A nonconsensual tow includes, but is not limited to: (1) a private property tow; (2) any tow performed contrary to the specific direction of the vehicle owner, authorized operator, or authorized agent of the owner; or (3) any tow performed without disclosure of the rates and charges to be assessed. This definition shall not apply to nonconsensual tows that occur as a result of a vehicle repossession by a lien holder having title to the vehicle.

Private property tow means the towing of a motor vehicle from private property at the request of the property owner.

Towing carrier means any person, company, partnership, employees, engaged in the business of towing vehicles.

(Ord. No. 1997-116, § 1, 3-25-97; Ord. No. 1997-161, § 1, 5-13-97; Ord. No. 2008-121, § 1, 9-9-08)

Sec. 19-396. - Towing permit required.

- (a) No towing carrier engaged in the business of performing nonconsensual tows shall operate within the corporate limits of the city without obtaining a towing permit from the department of traffic and transportation. The application for a permit shall contain the following information:
- (1) The name and complete street address, city, state, zip code, and telephone number of the applicant, and the trade name under which the operation shall be conducted. A post office box is acceptable as an address so long as a physical address is also provided:
 - a. If the applicant is a corporation:
 1. A statement of that fact and the name of the state in which it is incorporated;
 2. The location of its principal office in the State of South Carolina and the names of its directors and officers;
 3. A copy of its articles of incorporation or charter; and
 4. A copy of its certificate of assumed trade name, if any.
 - b. If the applicant is a limited liability company, the name, title, and business address of each member.
 - c. If the applicant is a partnership, the name, title, and business address of each partner.
 - (2) A list with a complete description of the equipment to be operated.
 - (3) A statement that applicant is familiar with the rules contained in this article and will comply with them.
 - (4) A statement whether or not the towing carrier will provide storage for towed motor vehicles. If storage is provided, a complete address and phone number, if any, and description of the storage facilities shall be included.
 - (5) Every application must be signed by the applicant or its attorney or agent with the complete address and telephone number of the attorney or agent.
 - (6) A statement acknowledging the books and records concerning the towing and storage operations of any towing carrier shall be made available upon request during normal business hours to authorized personnel of the department of traffic and transportation.
 - (7) Certificates of insurance, from an insurer authorized to do business in the State of South Carolina, establishing proof of garage liability coverage of no less than one hundred thousand dollars (\$100,000.00). Further, towing carriers shall provide proof of garage keepers liability insurance covering customer's vehicles in an amount no less than fifty thousand dollars (\$50,000.00) dollars per vehicle.
 - (8) All written authorization(s), if applicable, indicating the properties or lots from which the towing carrier is authorized to conduct nonconsensual tows.
- (b) A towing carrier who operates in violation of this section shall be subject to a fine not exceeding five hundred dollars (\$500.00), or serve a term not exceeding thirty (30) days in jail, or both.
- (c) The cost of the permit shall be ten dollars (\$10.00) per tow truck or as otherwise set by city council from time to time. This license shall be renewable on February 1st of every year at the same rate of ten dollars (\$10.00) per year. Any license under this article may be denied, suspended or revoked for violating any section of this chapter or Code.

(Ord. No. 1997-116, § 1, 3-25-97; Ord. No. 1997-161, § 1, 5-13-97; Ord. No. 2004-05, § 3, 2-13-04)

Sec. 19-397. - Tow record/invoice.

Towing carriers shall use a tow record/invoice form for all non-consensual tows, which form shall contain the information shown in Appendix A to Ord. No. 1997-116. Towing carriers shall complete all applicable portions of the tow record/invoice form for each nonconsensual tow. The tow record/invoice shall be a multiple copy form, the copies of which shall be distributed as follows: The towing carrier shall retain the copy bearing all required original signatures for authorization and delivery. The towing carrier shall deliver a copy to the vehicle owner, authorized operator, or authorized agent of the owner at the time of delivery of the towed motor vehicle and payment of towing charges.

(Ord. No. 1997-116, § 1, 3-25-97)

Editor's note— Editor's note—Appendix A to Ord. No. 1997-116 provides as follows:

Tow Record/Invoices:

The tow record/invoice shall contain at least the following information:

Serial number of the tow record/invoice.

Name, address, permit number, and telephone number of

Towing carrier.

Address of storage facility used by towing carrier, including any

Different telephone number.

Date and time of commencement of towing and of completion.

Time of arrival on scene if different.

Make, model, and year of the motor vehicle towed, and license

Plate number and/or vehicle identification number.

Original address of the tow, destination address.

Name, address, and telephone number of person authorizing tow,

and including signature if a private property tow, unless a written authorization is on file.

Unit number or license number of the towing vehicle and signature of towing vehicle operator.

Itemized invoice of all towing charges assessed.

Sec. 19-398. - Marking of towing vehicles.

No towing carrier shall operate any tow truck, owned or leased, upon the public ways of the City of Charleston without first marking or affixing, in a permanent manner, on each side of the tow truck, the towing carrier's name, address and telephone number, which markings shall also comply with applicable safety regulations. The use of magnetic signs are prohibited.

(Ord. No. 1997-116, § 1, 3-25-97)

Sec. 19-399. - Towing from private property.

- (a) It shall be unlawful to charge for the removal of any motor vehicle from commercial property without authorization from the owner of the motor vehicle or of the city, except under the following circumstances.
 - (1) The property owner has posted the property with signs. Each sign face shall be at least six (6) square feet.
 - (2) The posted signs were in place, clearly visible and legible to any driver approaching any point of ingress to the property where parking is prohibited or restricted at the time the vehicle was parked; and
 - (3) The posted signs contain a clear warning that violators' vehicles will be towed, at the vehicle owner's expense, the telephone number to call and the address where release of the towed vehicle may be obtained.
 - (4) All signage must be approved by the director of the department of traffic and transportation.
 - (5) The signage requirements in this article are exempt from the requirements for signage contained in the City of Charleston Zoning Ordinance; the requirements in this article shall prevail.
- (b) The owner of the vehicle towed from commercially zoned private property shall be responsible for paying all applicable towing and storage charges provided that the private property owner has complied with all of the requirements contained in subsection (a) above. If a vehicle is towed as a result of a property owner's request and the property owner has not complied with the requirements of subsection (a) above, or if the vehicle is shown to have been legally parked, the property owner shall be guilty of a misdemeanor and may, in the discretion of the municipal judge as provided in S.C. Code 1976, § 14-25-75, be subject to reimburse the owner of the vehicle for all towing and storage charges which the owner of the vehicle paid.
- (c) Before towing a vehicle from commercially zoned private property without authorization from the vehicle owner, the tow truck operator shall obtain from the property owner a written authorization which shall set forth the name and signature of the property owner, unless, such authorization has been previously filed pursuant to section 19-396(a)(8) above.
- (d) Any towing carrier performing a nonconsensual tow, shall within thirty (30) minutes of the removal, telephone the police department to verbally report the tow by providing the applicable information on the tow record/invoice form described in section 19-397 above. Any towing operator which fails to give such notice within one hour of the time the vehicle was towed shall not be entitled to any compensation for the towing and storing operation and shall deliver it upon request.

(Ord. No. 1997-116, § 1, 3-25-97; Ord. No. 2008-121, § 2, 9-9-08)

Sec. 19-400. - Maximum charge for nonconsensual tow.

- (a) The maximum rate that may be charged for a nonconsensual tow of a vehicle with a gross vehicle weight rating of less than ten thousand (10,000) pounds shall be no more than one hundred fifty (150) per cent of the city's most recent franchise towing fee for towing on city streets, which shall include

charges for all services rendered including, but not limited to, hookup fees, gate fees, and all other services rendered in performing such private property tow, except as stated elsewhere in this section.

- (b) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle which is parked without authorization on private property attempts to retrieve said vehicle before removal of the motor vehicle from said private property, the maximum release fee (drop charge) shall not exceed fifty per cent (50) of the maximum fee allowed in subsection (a) above. In such circumstances, the owner, authorized operator, or authorized agent of the owner of a motor vehicle so parked may offer payment of the towing carrier's drop charge, and if so offered before removal of the motor vehicle to be towed, the towing carrier shall immediately accept such payment and immediately thereafter deliver the motor vehicle without further transportation or handling.
- (c) If dollies are required and used to perform a nonconsensual tow, the maximum additional amount that may be charged shall be ten dollars (\$10.00).
- (d) The maximum storage amount that may be charged for a vehicle that has been towed as a result of a nonconsensual tow and that has remained on the tow lot for more than two (2) hours shall be no more than six dollars (\$6.00) for the first twenty four hour period and fifteen dollars (\$15.00) during any twenty-four (24) hour period of storage after the vehicle has been on the lot for the first twenty-four (24) hours.
- (e) A fee in an amount not to exceed ten dollars (\$10.00) may be charged to cover expenses incurred if the owner and lienholder of the towed vehicle are notified by certified, registered mail of the location of the towed article.
- (f) All charges for a nonconsensual tow shall be for services rendered in the towing, storing, or notifying the owner of such vehicles. No towing carrier shall include in its charges any sum of money payable to a third person or entity for any purpose, including, but not limited to, payments to an owner or representative of property from which such vehicles are towed. The inclusion of such sums are declared to be an unfair trade practice.
- (g) A towing carrier who violates the terms of this section shall be subject to a fine not exceeding five hundred dollars (\$500.00), or serve a term not exceeding thirty (30) days in jail, or both.

(Ord. No. 1997-116, § 1, 3-25-97; Ord. No. 1997-161, § 1, 5-13-97; Ord. No. 2004-05, § 1, 2-13-04; Ord. No. 2007-157, § 1, 8-21-07)

Sec. 19-401. - Methods of payment at vehicle storage facilities.

Every vehicle storage facility doing business within the corporate limits of the city shall accept major credit cards in addition to cash. There shall be no additional fee charged for the use of credit cards.

(Ord. No. 1997-116, § 1, 3-25-97)

Sec. 19-402. - Signage required at place of payment.

Every entity performing nonconsensual tows shall have affixed in a prominent place, clearly visible to patrons retrieving towed vehicles a sign provided by the City of Charleston outlining the maximum fees and required methods of payment.

(Ord. No. 2007-157, § 3, 8-21-07)

Sec. 19-403. - Severability.

If any section, subsection, sentence, clause, phrase, word or any other part of this article shall be declared unconstitutional or invalid by a court of competent authority, then the remainder of this ordinance shall not be affected and shall remain in full force and effect.

(Ord. No. 1997-116, § 1, 3-25-97; Ord. No. 2007-157, § 2, 8-21-07)

Note— Formerly numbered as § 19-402.

Secs. 19-403—19-413. - Reserved.

Exhibit 5
Excerpt of Spartanburg
City Council
Meeting 4.10.17

P R O C E E D I N G S

1 (Pages 1 to 4)

Page 1	Page 3
STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS COUNTY OF SPARTANBURG : SEVENTH JUDICIAL CIRCUIT C.A. NO.: 2017-CP-4201468 LOUIS TAYLOR AND PATRICIA L. LEE PLAINTIFF, VS. CITY OF SPARTANBURG AND SPARTANBURG CITY COUNCIL, DEFENDANTS. In re: City Council Meeting (Excerpt) City Council Chamber 140 West Broad Street Spartanburg, South Carolina Date: April 16, 2017 Time: 9:00 p.m.	(Excerpt of City Council Meeting) WAYNE WHITE: Item V, Public Comment. Tonight we've got quite a few. The way this public comment works, you can only speak for any group on one subject. You can't speak over twenty minutes. To lead, one person will speak over five minutes. By the amount of people who want to speak tonight, I would certainly want everybody to speak. You're better held at down to about a minute because if we run out of time, that's all she wrote. All right. The public. Let's hear James. Tell us what's your name, where you live and what you want to speak about. MR. JAMES: My name is Lawrence James. I live at the Reserve at Hillcrest and I'm speaking about the taxing authorities. Okay. I think y'all got hearing so speak today. Pretty much, my -- where I stay at, at the Reserve at Hillcrest, they have made it that we have to pay Colin's Taxing a recovery when they tow our cars. Now, these fees are like \$250 when we get towed, plus. And when we go get our car, he has such a nasty attitude. Like he can refuse to give us our car so our cars are going to be there for forever and he ain't -- I mean, ain't nobody doing anything about it. I was out at Colin's a couple weeks ago to get my car, so -- he really doesn't care pretty much at all. Like you have to call the police to go
Page 2	Page 4
CONTENTS Time 9:00 Public Comment: Lawrence James Angela Dawkins/Margaret Dawkins - Mom Tanya Ellis/Denny Davis Patricia Lindholm Narciss Briggs Keithrick Anderson Shamela Shirley Phaedra Brown Certification of Reporter	get your car. He don't give receipts. I don't understand. If you have a vehicle, why don't you have a copy of a receipt? It's against the law not to give somebody a copy of their receipt. He only takes the had been contacted. So at this point, I really want his license revoked in Spartanburg. I'll let everybody else speak. Thank you. WAYNE WHITE: Thank you. Theresa M. Moore? Ms. Moore, do she have? All right. Angela Dawkins? MS. DAWKINS: When I speak, and I bring my moments. WAYNE WHITE: Pardon? MS. DAWKINS: This is my mother. WAYNE WHITE: Okay. MS. DAWKINS: My mother, who lives at Dog Pine Homesite Place in Spartanburg and she -- I'm speaking for her on the behalf of Colin's Town to have their license revoked over the previous activities during the time that they pushed up fines and how they treat you as a citizen. And I feel like they should have their license revoked, that they don't come to do business in this town. Because of what my mother has been through, it's horrible. It's taken all the way that they treat people. And I'm speaking on behalf of my mother because I've been with her since it happened. She had to go out in the cold

P R O C E E D I N G S

2 (Pages 5 to 8)

Page 5

1 at she was alerted by one of her neighbors that her car was
2 being towed.

3 So she went out before six o'clock that morning
4 with wearing her T shirt and nightgown on, no shoes,
5 because she was in shock, asking him why was she -- why was
6 he taking her car. And he responded to her that she was
7 a couple parked. He had towed her car. Because her car, a
8 four-doorer parked space, drove it over to the mother and
9 said that she was double parked. He was saying she was
10 saying that he had parked that he had never spoken.

11 I'm the only driver that's in this location. I
12 have a business, Martin Fowler, that's in Charlotte, North
13 Carolina. He's been helping me with trying to transfer
14 business for her. She had to pay a thousand and nine
15 hundred dollars to get her car just on Friday. And he
16 transferred that that man had took the cash and
17 didn't -- didn't just produce no receipt, saying that she
18 couldn't get a receipt -- she couldn't get her car unless
19 they give a paper.

20 MR. DAWKINS: My sister.

21 MS. DAWKINS: Her sister. But this sister and
22 someone else say he is doing people. He don't deserve to be
23 doing business in this town if he other than because this
24 man not only caused her suffering, this man caused her
25 suffering. This is unnecessary. People have health

Page 7

1 going on in this town. I did not know it. I did not know
2 it. Anything else you want to say?

3 MR. DAWKINS: I just -- I just -- I didn't know
4 what was going on. I didn't know nothing like this was going
5 on in Spartanburg and I've been here all my life. I didn't know
6 anything. But, anyhow, he's very hurtful. It seems like
7 a very terrible insult to me.

8 MR. DAWKINS: Because you -- because she'd be
9 asking why is this happening to her. What has she done?
10 She lived there as a resident. She made her business and
11 in public, a couple times as they said that she was double
12 parked which is not true.

13 MR. DAWKINS: I've lived there --

14 MR. DAWKINS: She was not double parked.

15 MR. DAWKINS: I've lived there 22 years, going
16 on 21 and I don't see no problems there in my life. At least
17 to me and try to work it out. Not only to help me but to
18 help somebody else that they don't have to go through this.

19 MAYOR WHITE: Thank you for coming, ladies.

20 MAYOR WHITE: Thank you for coming --

21 MR. DAWKINS: I am.

22 MAYOR WHITE: Angela Dawkins?

23 MR. DAWKINS: Yes.

24 MAYOR WHITE: That's good. Okay. Mr. Ellis,
25 Sanya Ellis?

Page 6

1 problems and they're trying to live in these low income
2 places which they are living and paying the rent and the
3 management is providing such problems as he's doing with
4 them in order to hurt people like my mother.

5 We have really suffered. I have health problems
6 that I need to be taking care of. My mother has health problems
7 that she needs to be taking care of. And this is
8 not fair. I mean, we have suffered and we have family in
9 other towns and things that's real concerned about us.

10 MR. DAWKINS: I've been --

11 MR. DAWKINS: And this situation's happen in
12 ninety.

13 MR. DAWKINS: I've been to where I can't sleep
14 at night.

15 MS. DAWKINS: She can't sleep, she can't eat,
16 she can't go, I call her screaming on her. We don't -- we
17 haven't had any rest and he don't deserve to have any rest
18 and he don't deserve to have no business license. That's
19 for the way you conduct business with citizens.

20 My mother has taken care of education kids. She
21 have been in the homes of the richest and to the middle
22 class. She have taken care of kids like him. So she don't
23 deserve that treatment. That is injustice. And so I ask that
24 you'll please listen to me and please listen to whoever is
25 talking who comes up. Injustice, I didn't know such law

Page 8

1 MR. ELLIS: Good afternoon. Thank you for
2 allowing me to address this.

3 MR. LEWIS: I'm Huey Lewis.

4 MR. ELLIS: And I live at the business at
5 Hillcrest.

6 MR. LEWIS: Hey, I was going to talk about
7 having his license revoked because they have been using
8 defective reasons and --

9 MR. ELLIS: I'm hoping my family is -- they will
10 save the situation. They're parked correctly but they will
11 move the vehicles and they'll take a picture of it and say
12 that it's not correctly parked and then tow it off.

13 MR. LEWIS: And we've witnessed that, your
14 Honor. And another thing is, one night I was alerted by the
15 assistant manager's husband or fiancé's husband, in late
16 February was hunting on a December to tag and nobody was
17 taking his car and I've seen them out there with flashlights
18 checking them. And they also issued -- or were at one time
19 issuing temporary parking passes on PC payments.

20 MR. ELLIS: For narcotics.

21 MR. LEWIS: And you can only print on one at a
22 time or go (injustice).

23 MR. ELLIS: And I asked him where they got their
24 from and they said they got them from Cole's. Where Cole's
25 got them, I have no idea. The only way that you can get

PROCEEDINGS

3 (Pages 9 to 12)

Page 9

1 There is if you have a DMV license.
 2 MR. LEWIS: And then I got directed.
 3 MS. ELLIS: This is specifically to prescribe
 4 surveillance. And I made a copy of it and I saw you can
 5 have it as evidence that when you make a copy of it, it's
 6 yours so they would be you may not take a copy of it.
 7 MR. LEWIS: It's been reported. Since, they've
 8 stopped using it.
 9 MS. ELLIS: You have a courtesy officer that
 10 works for the City. She's out there early in the morning
 11 when you're out on duty. As soon as Cole's truck comes
 12 driving through, she's out there with flashlight directing
 13 him to the vehicles to be removed. And the assistant
 14 manager.
 15 MR. LEWIS: Yes.
 16 MAYOR WHITE: Speaking of these apartments it's
 17 MR. ELLIS: Reserve at Hillcrest.
 18 MR. LEWIS: Reserve at Hillcrest. And --
 19 MS. ELLIS: If you complain -- if you don't put
 20 up and shut up or complain, you are threatened with eviction
 21 or you are arrested.
 22 MR. LEWIS: I was arrested.
 23 MS. ELLIS: He was arrested by the courtesy
 24 officer. If you try to contact the courtesy officer, it was
 25 him at a residence at the residence saying, you know, there's

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1 Once to find out, I was standing pulling on my
 2 shoes getting ready to take our daughter to school and I'm
 3 hearing, hey, hey. Though, not that way but, you know -- I
 4 kind of ran downstairs and out the door I saw a tow truck
 5 was the Chevy hooked up. My daughter is standing beside the
 6 car, my boyfriend is in the car. He jumped in the car, so
 7 they charged him \$250 for the towing. He got it back that
 8 new day at twelve o'clock.
 9 But he came over to have my daughter to school
 10 so he does every day. And the management has been to get in
 11 and out of that car every single day. They have been to
 12 come down to the office to say my car, they have been to
 13 get in and out of that car. Even the maintenance guy has
 14 been to get in and out of the car. And I think it's wrong
 15 for people to have to have their car towed and they need it
 16 for -- to go to -- from point A to point B.
 17 I think it's unfair. I think they need -- they
 18 need to have their license taken away permanently because
 19 it's ridiculous. And every time he comes over, I'm looking
 20 out the window making sure that Cole's -- Cole's won't come
 21 in and try and take me.
 22 MAYOR WHITE: Is that all?
 23 MS. LIPKOWSKY: That's it.
 24 MAYOR WHITE: That's all. Thank you, ma'am.
 25 MS. LIPKOWSKY: All right.

Page 10

1 some kind of problem or whatever you want to report, you
 2 never get an answer. But if management calls and says for
 3 this officer to come to that office, she will be there. And
 4 she will be there when Cole's is there, too. She's
 5 protective and keeping her own counsel, not the only of
 6 residents at Hillcrest and not anywhere else.
 7 MR. LEWIS: And they say they tow vehicles that
 8 are impounded and he got information that the maintenance
 9 guy's vehicle has been impounded for several days and it
 10 still sits in the same place. They're using selective
 11 enforcement. If they see a car they want to tow never seen a
 12 towed car taken out of there.
 13 MAYOR WHITE: Thank you, sir, for coming and --
 14 MS. ELLIS: Thank you.
 15 MAYOR WHITE: -- speaking to this, Patricia
 16 Lipkowsky. Is she in the audience? Ms. Lipkowsky.
 17 MS. LIPKOWSKY: Hello. I'm sorry. I'm a little
 18 nervous, so -- I live at the Reserve at Hillcrest. Apartment
 19 2 F. My boyfriend was not present with me. He had to work.
 20 His car was towed in front of my door. He came by March the
 21 21st at eight o'clock that morning. Seven o'clock. He came
 22 and he said we have the car. The car, the towed
 23 car. He had to pay it was in the car, it wasn't filled
 24 out. And I told him, I said, Charles, you've got to fill it
 25 out. Oh, they impounded. Fine.

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1 MAYOR WHITE: I'm sorry it had to happen to you.
 2 April Reynolds: Is she here? Ms. Briggs, Maxwell Briggs --
 3 oh, Mr. Briggs.
 4 MR. BRIGGS: Thank you. I just called -- I want
 5 want to speak about the character of the housing and about
 6 how management has intimidated them for the vehicle on the
 7 27th. And my husband was down there and got a pass for
 8 it, that way they wouldn't miss out at the Reserve
 9 apartments. When she went and got the pass for it, they
 10 filled it out at the top themselves. Management filled it
 11 out at the top that the car would be away until the 27th,
 12 even though it says at the top of that pass form only for 72
 13 hours.
 14 But the 72 hours ran out on a Sunday which would
 15 have been the 26th. But management put on there that car
 16 would be gone until the 27th. On the 26th, the question
 17 asked the vehicle from the impounded on the 27th. I want
 18 to say, why did you tow the vehicle? It was gone until the
 19 27th. He said, oh, oh, oh, oh, well, oh, oh, well, normally
 20 it's only good for 72 hours.
 21 I said, well, sir, if you'll look at it very
 22 closely, management said that -- we had a death in the
 23 family. We have people coming in from New York City
 24 bringing the body in from New York City so we're going to
 25 have a bunch of people in and out. So he said, okay, so

P R O C E E D I N G S

4 (Pages 13 to 16)

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1 then he said, well -- then he heard him talking. He said,
2 well, it's only good for 12 hours, that's why my driver
3 picked it up and brought it here.
4 I said, well, sir, you are a spectator from the
5 residence. That's not handwriting from the driver saying
6 I'm in good till the 23rd. I want, look what's on there.
7 The vehicle's information on that same piece of paper is in
8 my handwriting. There's two different handwritings, one
9 that look like a doctors which is mine and the other one
10 look like a woman's handwriting which is the secretary of
11 management, okay?

12 Tell them I said to -- I'll get to the MAP, I'm
13 going to (inaudible) to retrieve the vehicle, okay? So then
14 while I'm up there, he's driving another vehicle that was
15 towed was a Chevy, a blue Chevy Caprice, and as my car was
16 blocking his car and he didn't have a key for mine. So I'm
17 just waiting to him about my vehicle.

18 He asked the truck, how you know to get the
19 vehicle out -- my vehicle out the way to give it to the my
20 because he didn't want to talk to me. Because prior to this
21 he threatened to shoot him, which I have on a video camera
22 because my vehicle was stolen and the dispatch said to me
23 that it wasn't stolen. We've got a lot of law enforcement.

24 He I was just asking him nicely what was my
25 vehicle want. He threatened to shoot me. So when he said

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1 that, I went straight to the house and got my phone and I
2 started recording. He was at the house of his car hooked
3 on a bar so he didn't see that I was recording. So when I
4 walked up I said, sir, did you say you were going to shoot
5 me? Yes, sir. And so then when he said, yes, sir, he
6 looked up like that and he took the camera on him. He said,
7 oh, no, I didn't said that. You was threatening me.

8 Then you see everything changed. And then he
9 told me, you're threatening me so get away from my truck.
10 You could see him in the video, I'm backing up away from
11 him.

12 He I forwarded that information over to
13 (inaudible). Okay. So then (inaudible) get my vehicle from
14 you because you're even threatening to shoot me. So I
15 called the police right then and there. I said, listen, I
16 have a problem with this guy. He won't give me my vehicle.
17 And so as I'm calling them over there, he just forget about
18 me as he took the tow truck to hook it up to my car so get
19 it out of the way so he was out the person who's coming to
20 get the Chevy Caprice. And when he did that, he backed it
21 up into my vehicle and damaged it (inaudible).

22 I said, oh, no, look what you're doing. He just
23 got like he was in so -- there was another truck driver and
24 another tow truck. He said, say I take a picture of that?
25 So I went and took pictures of him that I didn't have as much

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1 data or no more storage on my phone and to the fact I have
2 recorded like a 30-minute video when he threatened to shoot
3 me then and that same video showed them improperly towing a
4 vehicle. You can hear it. It sounded like a -- when a car
5 slows to a stop, sir, you can hear it. He's grinding it
6 from the back, it's a front-wheel drive and you hear him
7 just basically dragging on it.

8 So, anyway, so the police told me, he said,
9 look, he said, I see you properly trying to get your
10 vehicle. He said, but, look, just move tomorrow and we're
11 going to serve papers on him and then try to get up another
12 appointment of the vehicle so he'll be open from two to
13 three. Meet me at the (inaudible) Police Department.

14 So I met him at the (inaudible) Police
15 Department. And so I went there and we got up there, but
16 then when I called the tow truck -- because I'm paying him,
17 I got the money out and the police told me to stand up under
18 his video dash camera. So I'm right there with the money
19 but knowing I'm paying to get my car.

20 At the same time, I'm calling another tow truck
21 to come get it to take my car to (inaudible) collision so they
22 can report the damage that's on it. I don't even want to
23 drive it because I want to show it. Because I just
24 purchased that car, not even been a week now. I had
25 purchased it on the 23rd and all of this happened on the

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1 23rd, which I was there on the 23rd trying to get my
2 vehicle.

3 So he would not, but we got my vehicle. Then he
4 told them, get him off my property. So the police say,
5 well, he's not on your property, he's on the road. He said,
6 look, while this up. Then he started running off to the
7 politicians. But the police said, no, don't worry about it.
8 Just go down to City Hall and file a claim (inaudible). So,
9 you know, basically, I just wanted to speak about
10 (inaudible).

11 DAVE WHITE: Thank you, sir. Your time is up.
12 MR. CRIGGS: All right. Frederick Anderson?
13 UNIDENTIFIED FEMALE: You have five minutes
14 left.

15 DAVE WHITE: And you've only got five minutes
16 left so if you want other people, you'd better hold it by a
17 string, okay?

18 MR. ANDERSON: I live in Charlie Point, 237
19 Charlie Point Apartments. On February 23rd, I (inaudible).
20 I went outside. At 10:00, the tow truck man was looking at
21 the front end of my car. Actually, the parking brake was
22 down. He actually drag it. He said it was illegal there.
23 It was a paper trail and I know as he being a dealer, not
24 customers him privacy notions when we can't give any
25 information about a vehicle (inaudible).

P R O C E E D I N G S

5 (Pages 17 to 20)

Page 17	Page 19
1 He said he called the dealership and said that 2 the dealership said they don't remember selling me the car. 3 So I went to get my car. When I went up to get to get my 4 car, but not my selling out of the car, he actually said me 5 if I was to bring the police to get my car then I would 6 be responsible on my property. My car had still been there 7 since February 2016. I'm not going to (inaudible). 8 MAYOR WHITE: Thank you, sir. (Phonetic) 9 Sumner. (Phonetic)? Turley? (Phonetic) Turley? 10 MR. TURLEY: You pronounced the name Khassir. 11 MAYOR WHITE: Khassir. 12 MR. TURLEY: Yes, I agree with Khassir. 13 Everybody pretty much covered it. The only difference is 14 with my in I have footage of me trying to make an attempt to 15 receive a receipt from them and I have video of them saying 16 that I was a double parker. 17 I work for Spartanburg Regional. I have a three 18 hour shift. At work I get my class B license, so I have 19 better than a double park. I have better than a black & 20 area where the handicap need to be, you know, escorted up a 21 ramp. So I agree with everybody else. Those licenses need 22 to be revoked because people are vulnerable in this region 23 and second that they fall asleep. 24 MAYOR WHITE: Thank you, sir. Chase Lambert 25 MR. LAMBERT: Thanks.	1 (End of excerpt of hearing) 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 18	Page 20
1 MAYOR WHITE: (Phonetic) 2 MR. LAMBERT: Good afternoon. I'd like to speak 3 on -- because Matthew lost his life on August the 15th, 4 2016 on Eastwood Street. The incident occurred with 5 (inaudible), one of y'all's mechanics. I don't know the 6 name. And I was just like, hey, the car was never using a 7 seat with a headrest. I'm asking the deputy if the car 8 (inaudible). 9 MAYOR WHITE: That's a request. Yeah, I'm sure 10 we have that everyone but if we don't, then Spartanburg 11 would have to handle it. 12 MR. LAMBERT: I don't think they have. 13 MAYOR WHITE: All right. Well, I thank 14 everybody for coming tonight. It's very disturbing that 15 we've got a situation like this in the city. I didn't 16 realize it was worse out. I would think, along with the 17 taxing people, probably the accident complex has got a lot 18 of doing with it. So -- 19 UNIDENTIFIED MALE: Yes, sir. 20 UNIDENTIFIED FEMALE: (Inaudible). 21 MAYOR WHITE: What are you telling me? Don't 22 say any more? 23 UNIDENTIFIED FEMALE: That's right. 24 MAYOR WHITE: So I'll have that and take 25 appropriate action.	1 CERTIFICATE OF REPORTER 2 3 I, Laura S. DeCillis, Certified Court Reporter and 4 Sherry Public in and for the State of South Carolina do 5 hereby do hereby certify: 6 7 That the foregoing Verbatim Recordation as typewritten is 8 true, accurate and complete to the best of my ability. 9 I further certify that I am neither related to nor 10 connected in any party to the cause pending or contemplated in 11 the events reported. 12 I further certify that the original of said 13 transcript shall be hereafter stored and delivered to Clerk 14 of Court, LLC, 608 Taylor Street, Columbia, South Carolina, 15 29201. 16 17 Witness my hand, I have hereunto signed my 18 official seal this 14th day of July 2017, at Columbia, 19 Richland County, South Carolina. 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 Laura S. DeCillis Certified Court Reporter My Commission Expires August 4, 2020

GARBER REPORTING SERVICE
803-256-4500

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Cole Towing and Recovery,)
5 LLC,) TRANSCRIPT OF RECORD
6 Plaintiff,) 2017-CP-42-1468
7 -vs-)
8 City of Spartanburg and)
9 Spartanburg City Council,)
10 Defendants.) August 2, 2017
11 Spartanburg, South Carolina
12
13 B E F O R E :
14
15 HONORABLE J. DERHAM COLE, JUDGE
16
17 A P P E A R A N C E S :
18
19 ROBERT CLYDE CHILDS, III, ESQUIRE
20 Attorney for the Plaintiff
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22 DANNY CALVERT CROWE, ESQUIRE
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24 Attorneys for the Defendants
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Motion -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: Cole Towing.
2 MR. CHILDS: Yes, sir, Your Honor.
3 THE COURT: No relation to me.
4 MR. CHILDS: Not to my knowledge, Your Honor.
5 THE COURT: Whose motion?
6 MR. CHILDS: It is motions for summary judgment on
7 behalf of the plaintiff and also on behalf of the
8 defendant.
9 THE COURT: Okay. Who wants to go first?
10 MR. CHILDS: We filed our motion first, June 29th, and
11 they filed theirs July 18th.
12 THE COURT: All right.
13 MR. CHILDS: We -- both sides have submitted briefs.
14 I don't know if you have those. I have another copy of
15 mine.
16 THE COURT: Were they efiled? Did you efile them?
17 MR. CHILDS: I efiled mine, yes, sir.
18 MR. CROWE: Yes, sir. We efiled ours.
19 THE COURT: I should have them.
20 MR. CHILDS: All right. This dispute is by my client
21 who is Cole Towing and Recovery who operates a business
22 here in Spartanburg County who engages in various towing
23 activities. But a lot of activities were related to towing
24 vehicles from the City of Spartanburg for various property
25 owners. Those are nonconsensual tows. Those are towing

1 from property that have signs posted no-parking, permit
2 parking only like the parking lot across the street. Says
3 towing enforced.

4 For some reason in March of this year the City of
5 Spartanburg decided that they wanted to regulate the towing
6 from private commercial property.

7 Now, towing from private commercial property is
8 governed already by South Carolina Code 16-11-760 which
9 really has two -- two parts. It says it's unlawful for a
10 person to park a vehicle as defined by South Carolina Code,
11 which is a motorized vehicle, on private property of
12 another person without the owner's consent. That's the
13 first sentence of the statute.

14 So that envisions that if I drive my car over to your
15 house and park it in your yard that's unlawful unless it's
16 with your permission.

17 The second part of the state statute says that if the
18 property is for commercial use the owner must post notice
19 in conspicuous places on the borders of the property near
20 each entrance prohibiting parking.

21 And that statute goes on to say the vehicle found
22 parked on private property, one, if it's commercial and
23 posted, you can tow it; two, if it's on your private
24 property and you're not commercial you can have it towed.

25 The second section, next section, talks about if the

1 vehicle is not claimed by the owner it can be sold to
2 satisfy the towing and storage fees of the tow operator.

3 It also makes it a misdemeanor for a person to
4 unlawfully park a vehicle on private property or commercial
5 property properly posted.

6 Now, the City of Spartanburg decided to enact an
7 ordinance that was passed on April the 10th of 2017 that
8 extensively regulates towing from commercial property.

9 The ordinance itself prohibits towing from commercial,
10 privately-owned commercial, property except under certain
11 circumstances, whereas, the state law makes it unlawful to
12 park a vehicle on properly posted commercial property. The
13 City of Spartanburg's ordinance prohibits vehicles from
14 being towed until they comply with its ordinance.

15 This ordinance does a number of things. It requires
16 additional posting; it requires signage approval; it
17 requires written approval by property owners. It requires
18 a number of things including sets prices that the towing
19 operator has to use when he tows from private property.

20 Now, my client tows primarily from apartment
21 complexes, and a lot of those apartment complexes have a
22 lot of derelict vehicles that are left there. People park
23 vehicles that don't have a permit to park there. And
24 that's what he does through a contract with them. My
25 client had eight contracts with various apartment complexes

1 in the City of Spartanburg.

2 So this ordinance extensively regulates his business.
3 It lowers his prices. It set a price that -- that is a
4 hundred dollars a tow. On what basis, we don't know.

5 If you look at the comparative highway patrol record
6 rotation price it's more than half that amount. So it's
7 seriously damaging my client's business. And we filed a
8 lawsuit over the validity of this ordinance.

9 So our first argument is, Your Honor, that it
10 unlawfully imposes price controls on a business located
11 here in the City of Spartanburg and that those price
12 controls have no rational or reasonable basis to be
13 enforced.

14 As I said to you, the defendant cannot establish what
15 basis they -- they use to establish this hundred dollar per
16 tow. And the storage fee is about half of what the storage
17 fee for the highway patrol rotation list is.

18 And it's our contention that local government is ill
19 equipped to establish these prices and that these
20 establishment of prices as outlined in my brief are
21 unlawful.

22 Our next allegation is that the ordinance is a denial
23 of equal protection and that it regulates my client who
24 operates a tow business. It just so happens part of that
25 business is towing from properties that have permit

1 requirements or that are prohibited from parking. It does
2 not regulate other tow services that also tow vehicles from
3 the public right of way and things such as that.

4 And so I'm going to rely on my brief about the equal
5 protection argument. But I will say that it bears no
6 reasonable relationship to the legitimate government
7 interest.

8 My next attack on the ordinance is that it
9 criminalizes state permitted conduct, and in that the state
10 statute clearly authorizes a property owner to have a
11 vehicle towed from their property if it's parked there
12 without their consent.

13 Two elements, again. Private property. If it's
14 parked at my house and it's in my front yard, I can call
15 and have somebody tow it off because they're parked there
16 without my consent.

17 The second commercial property. If I'm a commercial
18 downtown lot where my employees park or my customers park,
19 I can have it marked and say if you park here without a
20 permit or if you park here for more than an hour and a half
21 your vehicle can be towed.

22 State law addresses that issue and establishes how
23 those vehicles can be towed, what the price -- the prices
24 can be charged and if the property owner -- if the vehicle
25 owner doesn't redeem the property, then it can be sold at

1 auction to satisfy the towing and storage fees.

2 So we think that this ordinance is criminalizing state
3 permitted conduct and so that it is making it unlawful for
4 vehicles to be towed from private property except under
5 additional conditions of the city.

6 Now, I think it's important to say that the state law
7 makes it a criminal offense for me to park on your property
8 without your permission.

9 The city's ordinance flips it and says you can't tow
10 that vehicle off your property unless you do this. And I
11 think that's what makes it unlawful. I cite to you
12 numerous cases on that issue, which is going to be Connor
13 vs. Town of Hilton Head, is the primary case.

14 The defense is going to hit me with an old case which
15 is Quality Towing vs. City of Myrtle Beach. That was a
16 2000 case that I was involved in. But I will point out to
17 you that the whole line of cases as they addressed at
18 issue, which are the Foothills Brewing vs. City of
19 Greenville -- Your Honor, I'm sure, is aware of those
20 cases, those line of cases, where they say it's okay for
21 the city to supplement state law, it's just that they
22 cannot criminalize state permitted conduct.

23 And in the Quality Towing case that I was involved in
24 in 2000 their ordinance did not have criminal penalties.
25 When we didn't challenge the authority of the city to enact

1 that ordinance.

2 In this case we did challenge the authority of the
3 city to enact the ordinance, but, more importantly, the
4 City of Spartanburg's ordinance makes it a violation that
5 subjects the offender up to \$500 per violation and/or 30
6 days in jail or the revocation of their business license.

7 So we think that Connor vs. Town of Hilton Head
8 prevails in this case. This ordinance is making unlawful
9 what state law permits.

10 We also challenged it on a contract clause. My client
11 had eight contracts existing prior to the enacting of this
12 ordinance. This ordinance impairs those contracts. I'll
13 rely upon my brief about those additional arguments there.

14 Additionally, we contend that the regulation of motor
15 vehicles, including the towing of vehicles from commercial
16 property, is generally regulated by state law.

17 As Your Honor is aware, state law does not permit the
18 city to enact an ordinance that addresses the issues of
19 what equipment automobiles ought to have. They -- they can
20 enact ordinances that make a certain traffic violation,
21 because the state has preempted cities from regulating the
22 use of motor vehicles entirely.

23 It's our contention that since the state has regulated
24 so heavily motor vehicles and motor carriers in this case,
25 which a tow truck is, that the city is preempted from any

1 type of regulation of my client's tow operation. Federal
2 law, we contend also the federal law, has preempted the
3 regulation by the City of Spartanburg.

4 Now, there's a distinction there because federal law
5 allows local authorities to enact regulations on motor
6 carriers as it relates to towing from private property,
7 nonconsensual towing.

8 The defendant will contend that that means the City of
9 Spartanburg can regulate nonconsensual towing of motor
10 carriers.

11 Our argument is the federal law allows the state to
12 enact a statute much as they already have by the State of
13 South Carolina when it enacted the statute that addresses
14 towing from private property. And that's why the City of
15 Spartanburg is preempted from regulation here.

16 Our last argument, Your Honor, is the ordinance itself
17 says that it's related to privately owned commercial
18 property. It says that 20 times, that it regulates
19 activities related to commercial -- private commercial
20 property.

21 The fact is that my client's operations involve towing
22 from multifamily residential property as typical of
23 apartment complexes. They are zoned not as commercial
24 property but as multifamily residential properties. And
25 it's our contention that even if the ordinance is valid it

1 does not apply to multifamily residential properties.

2 Your Honor, in summary I ask you to look at my brief,
3 which is not so brief. It's an interesting legal issue.

4 I think our best argument is the Connor vs. Town of
5 Hilton Head argument and the criminal penalty associated
6 with this ordinance, the fact that it's trying to alter
7 what the state law has created as far as the relationship
8 of property owners and unauthorized parking on their
9 property, and we think the City of Spartanburg is
10 prohibited from regulating this area and we're entitled to
11 summary judgment.

12 THE COURT: Mr. Crowe.

13 MR. CROWE: Thank you, Your Honor.

14 Danny Crowe and Mary LaFave on behalf of the City of
15 Spartanburg and Spartanburg City Council.

16 Your Honor, I would like to hand up two things. First
17 is a copy of the Quality Towing vs. City of Myrtle Beach
18 case, state supreme court, from the year of 2000.

19 I provided a copy to Mr. Childs. And in the event it
20 wasn't readily accessible, a copy of our memorandum filed
21 on Monday afternoon.

22 THE COURT: Before you do that.

23 Mr. Childs, do you have an extra copy of your memo?

24 MR. CHILDS: Yes, sir, I do.

25 THE COURT: Do you want to just let me have it? And

1 that way I won't have to fool with the efile thing.

2 MR. CHILDS: Yes, sir.

3 THE COURT: Thank you.

4 MR. CHILDS: You're welcome.

5 MR. CROWE: Your Honor, the city and the city council
6 filed one memorandum in support of our cross motions for
7 summary judgment on all of these points that Mr. Childs
8 raised and in opposition to his motion.

9 Like Mr. Childs, we believe that our memorandum sets
10 out in detail with specific citations the coaching
11 arguments in this case and would urge Your Honor's
12 consideration of that memorandum before ruling.

13 I would like to if I could walk through some
14 additional evidence that's before the Court already filed
15 and address some of the arguments made by Mr. Childs.

16 This case itself was filed in April, April 27, of this
17 year. Motion for temporary injunction was denied by Judge
18 Kelly in -- on June 23 of this year.

19 In opposition to the plaintiff's motion for temporary
20 injunction the city filed two affidavits. One was from
21 Paul Smith, a city employee who's a business license
22 manager. He provided -- he administers the permit program
23 for nonconsensual towing for the city set up by the
24 ordinance at issue.

25 He provided copies of all three of the applications of

1 the towing companies that applied to be nonconsensual
2 towers. Nonconsensual of course means without permission
3 of the vehicle owner or driver.

4 So there are three businesses that currently have
5 permits from the city to undertake this nonconsensual
6 towing. That affidavit is on file.

7 City also filed affidavit of Ed Memmott, the city
8 manager, in opposition to this temporary injunction motion.

9 His -- his affidavit attached a copy of the ordinance
10 itself. It's Exhibit A to that affidavit. That ordinance
11 is also attached to the complaint of the plaintiff.

12 And Mr. Memmott's original affidavit also attached
13 copies of the minutes from the two city council meetings at
14 which the ordinance was adopted to show some of the matters
15 that were before the council at the time of adoption,
16 particularly the input from citizens.

17 In opposition to Mr. Childs' towing's motion for
18 summary judgment the city also filed a supplemental
19 affidavit by city manager Ed Memmott. It includes copies
20 of the City of Greenville ordinance that regulates
21 nonconsensual towing on which, according to Mr. Memmott,
22 the City of Spartanburg ordinance was based.

23 It also includes -- attaches copies of other municipal
24 nonconsensual towing ordinances that Mr. Memmott was
25 familiar with in connection with the city's adoption of

1 this ordinance and his experience as a city manager.

2 Those pertinent portions of those are set out as
3 exhibits to Mr. Memmott's supplement affidavit. And those
4 include ordinances from City of Greenville as mentioned, as
5 well as Myrtle Beach, City of Florence and City of
6 Charleston.

7 The point there is that the regulation of
8 nonconsensual towing is exercised broadly through the
9 state.

10 Also attached to Mr. Memmott's supplement affidavit
11 was a transcript of a council meeting, the public-comment
12 portion of the council meeting, at which the ordinance was
13 given second and final reading.

14 That transcript includes statements from about six or
15 seven citizens who presented evidence to the city council
16 of predatory practices undertaken by nonconsensual tows
17 primarily in their apartment complexes.

18 These included an elderly lady who testified that she
19 faced excessive fines of more than \$1,000 to get her car,
20 which she had permission to park in her apartment complex,
21 out of -- to satisfy the towing and storage charges by Cole
22 Towing, as it turns out, as well as complaints from other
23 residences of apartment complexes that Cole Towing
24 patrolled the parking lots looking for vehicles that had
25 expired license tags or were parked over the lines. This

1 was called double parking, I believe.

2 Other witnesses testified that Cole's Towing towing
3 vehicles moved vehicles to place them in improper
4 positions, then took a photograph of the vehicle and then
5 towed it and showed the owner or driver the photograph when
6 they came out to inquire about why their vehicle had been
7 towed.

8 Another witness testified, for example, that even
9 though a guest pass provided that the vehicle was properly
10 parked until the 27th of the month the tow driver felt he
11 could tow it on the 26th because the apartment complex
12 usually only produced 72-hour guest passes.

13 So what -- the council considered all of this evidence
14 and determined that these are examples of predatory
15 practices that should not be allowed in the City of
16 Spartanburg because this towing by nonconsensual towing
17 operators affects the public interest, the public order and
18 involves the police department.

19 It necessarily involves the police department because
20 nonconsensual towers are required by state statute to
21 notify the police department within one hour that they have
22 towed a vehicle.

23 This is so the police department can respond to
24 complaints that their vehicle has been stolen from the
25 owner or driver. The police department will then have a

1 record of this.

2 But in its ordinance the city council made a number of
3 specific findings about these predatory nonconsensual
4 towing practices and towing charges.

5 In doing that we would submit that the city showed
6 that it had a legitimate public interest in legislating in
7 this area and that its ordinance provisions were reasonable
8 and supported that permissible legitimate public purpose.

9 I handed up the Quality Towing case because in my view
10 it's rare to run across a case that's clear and on point
11 authority. That case -- and Mr. Childs is right. He was
12 an attorney in that case. That case clearly holds -- this
13 is a state supreme court decision from the year 2000, which
14 is still good law in this state, that the ordinance, that
15 the Myrtle Beach ordinance, which regulated nonconsensual
16 towing practices, as well as rates and charges for those
17 towing and storage, did not conflict with the state towing
18 statute 16-11-760 that Mr. Childs mentioned.

19 In my view the best argument of the plaintiff is this
20 argument that there's some conflict or preemption when the
21 city ordinance is compared to that state statute 16-11-760.

22 Fortunately for the city, Quality Towing case
23 undercuts that argument by the plaintiff completely in our
24 view. It says that -- it analyzes the state statute. It
25 talks about the provisions of the city ordinance and holds

1 that there is no inconsistency, there is no conflict, that
2 there are mere differences in detail. And as Your Honor
3 knows, that the principle that if the -- I want to state
4 this correctly. That so long as there's no conflict
5 between -- if one of either the ordinance or the state
6 statute is silent, then the other can legislate and there's
7 no conflict between them, essentially that city ordinances
8 can fill in the gaps, fill in the differences in detail,
9 provide additional regulation without running the risk of
10 conflict or preemption by -- of a state statute.

11 I'm sorry I got all of that kind of twisted but
12 that -- that's the principle. It's set and discussed fully
13 in the Quality Towing case in which the Court cites Town of
14 Hilton Head vs. Fine Liquors to deal with this idea of
15 inconsistency or irreconcilability and to determine that
16 the Myrtle Beach ordinance did not conflict with the state
17 statute.

18 Similarly, that argument folds into this argument
19 about criminalization of conduct that's otherwise lawful.

20 The leading case there -- and we cite this in our
21 brief -- we believe is Bugsy vs. City of Myrtle Beach in
22 which the Court there looking at a -- it was a
23 video-gaming-device case provided that or held that so long
24 as the ordinance does not criminalize the operation of
25 video game machines but instead sets up additional

1 requirements under the zoning ordinance there is not a
2 situation, a criminalization, of otherwise lawful conduct.

3 The same situation, we would submit -- we discussed
4 this at length in our memo -- is presented here.

5 Nonconsensual towing is not outlawed by the City of
6 Spartanburg ordinance, just as it's not outlawed by the
7 ordinances of these other municipalities.

8 Cole Towing, since it has a permit as required by the
9 ordinance, can continue nonconsensual tows, can still
10 engage in that business so long as it complies with the
11 additional requirements of the city ordinance. This was
12 similar to the situation presented in that Bugsy case. And
13 those, I would submit, are the strongest arguments of the
14 plaintiff.

15 The arguments about equal protection, price controls
16 all fall away in our view for the reasons we set out in
17 brief but primarily because a local government can properly
18 classify nonconsensual towing differently than consensual
19 towing.

20 If my -- if I have a flat tire I can call whoever I
21 want to tow my vehicle or change -- if I can't change the
22 tire. But a person whose vehicle is towed due to some
23 actions of a third party has no availability to use the
24 market, for example, to determine its own tower. So that
25 person is stuck with the rates and terms under which a

1 nonconsensual towing operator removes that vehicle.

2 So it's clear that there's a rational basis and a
3 reasonable basis for different classifications of towing
4 operators. So I think their equal protection argument must
5 fall.

6 Similarly, their contract arguments require some
7 substantial impairment of contract. And we discussed this
8 requirement of the U.S. Constitution in our memo.

9 The plaintiffs although -- the plaintiff, although it
10 argues in its memorandum the state constitution on
11 impairment of contract, does not plead that in its
12 complaint.

13 The law is very similar however and we think requires
14 a showing of substantial impairment in the absence of any
15 reasonable relationship between the end of the legislation
16 and the means by which the legislation approaches that end.

17 Additionally, on the impairment-of-contract claim no
18 contracts with private property owners are part of the
19 record. There's been no evidence of those. So we can't
20 determine whether there has been any impairment of contract
21 or any substantial impairment of contract.

22 Similarly, on the federal preemption statute that's --
23 or the federal statute that's claimed by the plaintiffs who
24 raise an issue of federal preemption, that statute by its
25 very language excludes the authority of a state or

1 political subdivision of the state to enact or enforce a
2 law or regulation that relates to tow truck operations
3 performed without the prior consent or authorization of the
4 owner or operator of the motor vehicle.

5 So the federal statute expressly carves out the type
6 of nonconsensual towing that we're dealing with here in
7 this case.

8 For those reasons, the city submits that the ordinance
9 is constitutional, it's not in conflict with state or
10 federal law and it's not preempted by state or federal law
11 and plaintiff's claims for inverse condemnation, impairment
12 of contract, gross negligence all are inapplicable or the
13 plaintiff has failed to carry its burden of proof on those.

14 On the gross negligence allegation of the complaint
15 it's not argued in their motion, but we submit that the
16 tort claims immunity provision for legislative acts clearly
17 applies here because what the plaintiff is complaining of
18 is enactment of an ordinance. And that runs plainly to the
19 legislative immunity.

20 And, finally, the plaintiff has sued the city and the
21 city council. We would submit that the city council is not
22 properly amenable to sue. It is but a body of the City of
23 Spartanburg. It's the governing body, the legislative
24 body, but it's not a separate entity that could be sued
25 under the law, we submit.

1 So, again, I hope this argument hasn't been too
2 jumbled. I recognize we're throwing a lot of principles at
3 the Court, but the thrust of our argument would be that
4 Quality Towing undercuts the strongest points that the
5 plaintiff presents, those of conflict with state law, state
6 statute, preemption and criminalization of conduct that's
7 otherwise lawful.

8 And we would submit for all of the other reasons that
9 we've argued the actions of the city were appropriate in --
10 under its broad police powers, under state law, including
11 those granted by South Carolina Code Section 5-7-30, the
12 general power statute for municipalities.

13 So for all of these reasons we would submit that the
14 ordinance of the city is proper, lawful, constitutional and
15 that the other claims of the plaintiff are insubstantial
16 and do not merit a judgment from this Court. Thank you,
17 Your Honor.

18 THE COURT: Mr. Childs.

19 MR. CHILDS: Your Honor, as they argued at the
20 plaintiff's motion for temporary injunction, which, by the
21 way, was denied based solely upon the nature of the harm
22 and whether or not it was irreparable or be an adequate
23 remedy at law.

24 They alleged there also, as they did here today, that
25 for some reason Cole Towing is predatory in something that

1 they've done.

2 I'll tell the Court that if there's a predatory
3 practice out there, I know lots of lawyers that can fix
4 that. There's a civil remedy for those types of issues
5 already under the Unfair Trade Practices Act of the South
6 Carolina statutes.

7 So this is not something the City of Spartanburg needs
8 to address. And the fact that other cities have not had
9 their ordinances attacked for invalidity, I think, is
10 immaterial.

11 In respect to our attack in probably it was 1997, is
12 when we started with the city of Myrtle Beach, their
13 ordinance did not have criminal penalties associated with
14 the operation of the tow companies.

15 we only challenge, and as stated in Quality Towing, we
16 did not challenge the city's power to enact the ordinance.
17 We did gain a victory out of that case where the Court said
18 we have standing to challenge the ordinance which has been
19 beneficial to a number of tow companies over the years.

20 But the Court said in Quality Towing that Myrtle Beach
21 was privileged to enact an ordinance to deal with a
22 particularly global towing problem. Appellate has not
23 argued that Section 23-133 was beyond the city's police
24 powers. We are alleging that in this case.

25 Your Honor, you've heard nothing from the defendant

1 that justifies the imposition of price controls associated
2 with the conduct of this industry. There's nothing in the
3 record that establishes a reasonable basis.

4 cities are ill equipped to establish price control.
5 They don't have the legislative committees, the legislative
6 hearings, the type of things that are needed to establish
7 price controls. And that's one of the reasons you didn't
8 hear an argument from the defendant that, oh, a hundred
9 dollars a tow, that's within the market range. So I think
10 that that's a clear concession on their part that they're
11 not entitled to regulate prices.

12 The fact that -- as it relates to the contracts of
13 Cole Towing, you had a business with eight contracts that
14 they're kind of implying were subject to some predatory
15 practices.

16 You know, I think you -- the Court can use its own
17 common sense about whether or not you could get eight
18 property owners to agree to let you come on their premises
19 and do towing if you had those kind of practices going on.
20 You would lose your customers automatically.

21 But what's more significant about that is that if you
22 make the practice unprofitable, if you have a contract
23 where you're towing at rates of \$200 a tow, as is allowed
24 by the highway patrol, and suddenly you're getting half
25 that rate, which is a hundred dollars under the city

1 ordinance, it makes those contracts unprofitable. That's
2 how they're substantially impaired.

3 Not only does -- does this ordinance substantially
4 impair those contracts. It creates things, requirements,
5 that actually endanger their employees.

6 There's a provision in here that says that if you get
7 a vehicle mounted up on your tow and are starting to leave
8 and the owner comes up and says, hey, I'm here to pay the
9 tow fee, you have to take their money on the spot and drop
10 the vehicle.

11 In other words, you have to provide change, credit
12 card access or something on the scene while you're in the
13 process of towing a vehicle.

14 This is the epitome of a conservative leaning city who
15 is espousing liberal ideas trying to effect every perceived
16 notion that a person is somehow oppressed or aggrieved to
17 address a problem that didn't exist. And so we think all
18 of those facts lead to the conclusion that this ordinance
19 is invalid.

20 MR. CROWE: Very quickly, Your Honor.

21 The complaint does not set out any specific challenge,
22 any specific rates. It's a general challenge to the
23 constitutionality and legality of the ordinance, power and
24 authority of the municipality to enact and its conflict or
25 preemption by state law.

1 There is no challenge to the specific rates as
2 unreasonable. And I would point out as well that the
3 recent case of Retail Services vs. South Carolina D.O.R.
4 which dealt with whether a statute that limited the
5 ownership of liquor stores to three -- three stores owned
6 by any one individual held that was unconstitutional, that
7 case itself which is cited by the plaintiff in its
8 memorandum said that the government can regulate any trade
9 or business, the unrestrained pursuit of which may affect
10 injuriously the public health, morals, safety or comfort in
11 the exercise of the power.

12 Particular occupations may be required to be -- and in
13 the exercise of that power particular occupations may be
14 required to be conducted within designated limits.

15 So even the Court as recently as March of this year
16 has recognized this idea of broad police powers and the
17 ability of governments, including municipal governments, to
18 address injurious practices, practices that are injurious,
19 to the public.

20 The reasons for the council's enactment of this
21 ordinance are set out in the preamble and are illustrated
22 in the evidence of record in the transcript of the hearing
23 before -- at the council meeting before its enactment.

24 So it ill behooves the plaintiff to challenge as
25 liberal or conservative the ability of the city to do this.

1 Under state law it can use its police powers in this way to
2 protect the public interest, public order, public safety
3 and use of the roads, streets and other public places by
4 towing companies.

5 So this is an effort to address predatory towing
6 practices. If the plaintiff does not practice predatory
7 towing practices, then the plaintiff can still operate its
8 business of nonconsensual towing. Otherwise, as argued,
9 the plaintiff fails to meet its burden of showing
10 unconstitutionality or illegality. This is a legitimate
11 ordinance for a legitimate public purpose which should be
12 enforced by the courts. Thank you, Your Honor.

13 THE COURT: Do you want a last word?

14 MR. CHILDS: Yes, sir.

15 If this ordinance is valid and the plaintiff complies
16 with all of the requirements of this ordinance, what
17 results is they get half of the revenue that they used to
18 get before they enacted this ordinance. That's what
19 happens. That's price regulation.

20 THE COURT: All right. I'll review the memorandums
21 and issue an order.

22 END OF REQUESTED TRANSCRIPT OF RECORD
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10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

Lincoln

Linda D. Moffitt
Circuit Court Reporter

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GARBER REPORTING SERVICE
803-256-4500

1 (Excerpt of City Council Meeting)

2 MAYOR WHITE: Item V, Public Comment. Tonight
3 we've got quite a few. The way this public comment works,
4 you can only speak, for any group on one subject, you can't
5 speak over twenty minutes. To lead, one person will speak
6 over five minutes. So the amount of people who want to
7 speak tonight, I would certainly want everybody to speak,
8 you'd better hold it down to about a minute because if we
9 run out of time, that's all she wrote.

10 All right. The public, Latreace Jones. Tell us
11 what's your name, where you live and what you want to speak
12 about.

13 MS. JONES: My name is Latreace Jones. I live
14 at the Reserve at Hillcrest and I'm speaking about the
15 towing (inaudible). Okay. I thank y'all for hearing me
16 speak today. Pretty much, my -- where I stay at, at the
17 Reserve at Hillcrest, they have made it that we have to pay
18 Cole's Towing a recovery when they tow our cars.

19 Now, those fees are like \$285 when we get towed,
20 plus. And when we go get our car, he has such a nasty
21 attitude. Like he can refuse to give us our car so our cars
22 are going to be there for forever and he ain't -- I mean,
23 ain't nobody doing anything about it. I was out at Cole's a
24 couple weeks ago to get my car, so -- he really doesn't care
25 pretty much at all. Like you have to call the police to go

GARBER REPORTING SERVICE
803-256-4500

1 get your car, he don't give receipts.

2 I don't understand. If you have a vehicle, why
3 don't you have a copy of a receipt? It's against the law
4 not to give nobody a copy of their receipt. He only takes
5 IRS has been contacted. So at this point, I really want his
6 license removed in Spartanburg. I'll let everybody else
7 speak. Thank you.

8 MAYOR WHITE: Thank you. Theresa M. Moore?
9 Ms. Moore, is she here? All right. Angela Dawkins?

10 MS. DAWKINS: When I speak, can I bring my
11 mother?

12 MAYOR WHITE: Pardon?

13 MS. DAWKINS: This is my mother.

14 MAYOR WHITE: Okay.

15 MS. DAWKINS: My mother, she lives at 989 Pine
16 (inaudible) Drive in Spartanburg and she -- I'm speaking for
17 her on the behalf of Cole's Towing to have their license
18 revoked over the previous activities during the time that
19 they picked up (inaudible) and how they treat you as a
20 citizen. And I feel like they should have their license
21 revoked, that they don't need to do business in this town.

22 Because of what my mother has went through, it's
23 unreal. It's inhuman of the way that they treat people.
24 And I'm speaking on behalf of my mother because I've been
25 with her since it happened. She had to go out in the cold

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1 as she was alerted by one of her neighbors that her car was
2 being towed.

3 So she went out before six o'clock that morning
4 with nothing but her T-shirt and nightgown on, no shoes,
5 because she was in shock, asking him why was she -- why was
6 he towing her car. And he responded to her that she was
7 double parked. He had moved her car. Because her car, a
8 handicapped parking space, moved it over to the mailbox and
9 said that she was double parked. He was saying she was --
10 saying that he had pictures that he had never shown.

11 I'm the only sibling that's in this location. I
12 have a brother, Marlin Dawkins, that's in Charlotte, North
13 Carolina. He's been helping me with trying to transact
14 business for her. She had to pay a thousand and nine --
15 ninety dollars to get her car just on Friday. And he
16 transacted that that man had took that much cash and
17 didn't -- didn't just produce no receipt, saying that she
18 couldn't get a receipt -- she couldn't get her car unless
19 they sign a paper.

20 MOM DAWKINS: My title.

21 MS. DAWKINS: Her title. And it's unfair and
22 inhuman the way he is doing people. He don't deserve to be
23 doing business in this town or no other town because this
24 has not only caused her suffering, this has caused me
25 suffering. This is unnecessary. People have health

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1 problems and they're trying to live in these low income
2 places where they are living and paying the rent and the
3 management is providing such business as he's doing with
4 them in order to hurt people like my mother.

5 We have really suffered. I have health problems
6 that I need to be taking care of. She has health problems
7 that needs -- she needs to be taking care of. And this is
8 not fair. I mean, we have suffered and we have family in
9 other towns and things that's real concerned about us.

10 MOM DAWKINS: I've been --

11 MS. DAWKINS: And this shouldn't happen to
12 nobody.

13 MOM DAWKINS: I've been to where I can't sleep
14 at night.

15 MS. DAWKINS: She can't sleep, she can't eat,
16 she calls me, I call her checking on her. We don't -- we
17 haven't had any rest and he don't deserve to have any rest
18 and he don't deserve to have no business license. That's
19 not the way you conduct business with citizens.

20 My mother has taken care of Caucasian kids. She
21 have been in the homes of the riches and to the middle
22 class. She have taken care of kids like him. So she don't
23 deserve that treatment. That is inhuman. And so I ask that
24 y'all please listen to me and please listen to whoever is
25 talking who comes up. (Inaudible). I didn't know such was

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1 going on in this town. I did not know it. I did not know
2 it. Anything else you want to say?

3 MOM DAWKINS: I just -- I just -- I didn't know
4 what was going. I didn't know nothing like this was going
5 on in Spartanburg and I've here all my life. I didn't know
6 (inaudible). But, anyhow, it's very hurting. It seems like
7 a very terrible insult to (audible).

8 MS. DAWKINS: Because you -- because she'd be
9 asking, why is this happening to her. What has she done?
10 She lives there as a resident. She minds her business and
11 in public, a simple thing as they said that she was double
12 parked which is not true.

13 MOM DAWKINS: I've lived there --

14 MS. DAWKINS: She was not double parked.

15 MOM DAWKINS: I've lived there 22 years, going
16 on 23 and I hadn't had no problems there in my life. Listen
17 to me and try to work it out. Not only to help me but to
18 help somebody else that they won't have to go through this.

19 MAYOR WHITE: Thank you for coming, ma'am.
20 Margaret Dawkins? Were you the same --

21 MOM DAWKINS: I am.

22 MAYOR WHITE: Angela Dawkins?

23 MS. DAWKINS: Yes.

24 MAYOR WHITE: That's you? Okay. Ms. Ellis,
25 Sonya Ellis?

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1 MS. ELLIS: Good afternoon. Thank you for
2 allowing me to address this.

3 MR. LEWIS: I'm Denny Lewis.

4 MS. ELLIS: And I live at the Reserves at
5 Hillcrest.

6 MR. LEWIS: Hey, I was going to talk about
7 having his license revoked because they have been using
8 selective towing and --

9 MS. ELLIS: I'm hoping my family is -- they will
10 move the vehicles. They're parked correctly but they will
11 move the vehicles and they'll take a picture of it and say
12 that it's not correctly parked and then tow it off.

13 MR. LEWIS: And we've witnessed that, your
14 Honor. And another thing is, one night I was alerted to the
15 assistant manager's husband or (inaudible) husband, in late
16 February was running on a December 16 tag and nobody was
17 towing his car and I've seen them out there with flashlights
18 checking them. And they also issued -- or were at one time
19 issuing temporary parking passes on RX payment.

20 MS. ELLIS: For narcotics.

21 MR. LEWIS: And you can only print on one at a
22 time or go (inaudible).

23 MS. ELLIS: And I asked him where they got them
24 from and they said they got them from Cole's. Where Cole's
25 got them, I have no idea. The only way that you can get

1 these is if you have a DEA license.

2 MR. LEWIS: And then I got arrested.

3 MS. ELLIS: This is specifically to prescribe
4 narcotics. And I made a copy of it and I can -- you can
5 have it as evidence that when you make a copy of it, it's
6 going to say void so you may not make a copy of it.

7 MR. LEWIS: It's been reported. Since, they've
8 stopped using it.

9 MS. ELLIS: You have a courtesy officer that
10 works for the City. She's out there early in the mornings
11 when she's not on duty. As soon as Cole's truck comes
12 driving through, she's out there with flashlights directing
13 him to the vehicles to be removed. Also the assistant
14 manager.

15 MR. LEWIS: Yes.

16 MAYOR WHITE: Where's these apartments at?

17 MS. ELLIS: Reserve at Hillcrest.

18 MR. LEWIS: Reserve at Hillcrest. And --

19 MS. ELLIS: If you complain -- if you don't put
20 up and shut up or complain, you are threatened with eviction
21 or you are arrested.

22 MR. LEWIS: I was arrested.

23 MS. ELLIS: He was arrested by the courtesy
24 officer. If you try to contact the courtesy officer, if you
25 have an incident at the residence saying, you know, there's

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1 some kind of problem or whatever you want to report, you
2 never get an answer. But if management calls and says for
3 this officer to come to that office, she will be there. And
4 she will be there when Cole's is there, too. She's
5 protecting and serving her own interest, not the sake of
6 residents of Reserves at Hillcrest and not nowhere else.

7 MR. LEWIS: And they say they tow vehicles that
8 are inoperable and we got information that the maintenance
9 man's vehicle has been inoperable for several weeks and it
10 still sits in the same place. They're using selective
11 methods. If they see a car they want -- I've never seen a
12 junk car towed out of there.

13 MAYOR WHITE: Thank you, sir, for coming and --

14 MS. ELLIS: Thank you.

15 MAYOR WHITE: -- speaking to this. Patricia
16 Lipscomb. Is she in the audience? Hi, Ms. Lipscomb.

17 MS. LIPSCOMB: Hello. I'm sorry. I'm a little
18 nervous, so -- I live at the Reserve at Hillcrest, Apartment
19 7-F. My boyfriend was not present with me. He had to work.
20 His car was towed in front of my door. He came by March the
21 7th at seven o'clock that morning, seven o'clock. He came
22 in. He did not have the -- darn it. The pass, the guest
23 pass. He had it but it was in his car, it wasn't filled
24 out. And I told him, I said, Charles, you've got to fill it
25 out. Oh, they (inaudible). Fine.

1 Come to find out, I was upstairs putting on my
2 shoes getting ready to take our daughter to school and I'm
3 hearing, hey, hey. Though, not that way but, you know -- I
4 kind of run downstairs and out the door I seen a tow truck
5 has the Camry hooked up. My daughter is standing beside the
6 car, my boyfriend is in the car. He jumped in the car. So
7 they charged him \$285 for the towing. He got it back that
8 same day at twelve o'clock.

9 But he came over to take my daughter to school
10 as he does every day. And the management has seen me get in
11 and out of that car every single day. They have seen me
12 come down to the office to pay my rent, they have seen me
13 get in and out of that car. Even the maintenance guy has
14 seen me get in and out of the car. And I think it's wrong
15 for anyone to have to have their car towed and they need it
16 for -- to get to -- from point A to point B.

17 I think it's unfair. I think they need -- they
18 need to have their license taken away permanently because
19 it's ridiculous. And every time he comes over, I'm looking
20 out the window making sure that Cole's -- Cole's won't come
21 in and try and take me.

22 MAYOR WHITE: Is that all?

23 MS. LIPSCOMB. That's it.

24 MAYOR WHITE: That's it? Thank you, ma'am.

25 MS. LIPSCOMB: All right.

1 MAYOR WHITE: I'm sorry it had to happen to you.
2 April Worthy? Is she here? Ms. Briggs, Norvell Briggs --
3 oh, Mr. Briggs.

4 MR. BRIGGS: Thank you. I just called -- I just
5 want to speak about the character of the towing and about
6 how management had (inaudible) them for the vehicle on the
7 23rd. And my grandmama went down there and got a pass for
8 it, that way she wouldn't miss out at the Reserve
9 apartments. When she went and got the pass for it, they
10 filled it out at the top themselves. Management filled it
11 out at the top that the car would be okay until the 27th,
12 even though it says at the top of that same form only for 72
13 hours.

14 But the 72 hours ran out on a Sunday which would
15 have been the 26th. But management put on there this car
16 would be good until the 27th. On the 26th, the gentleman
17 towed the vehicle from the (inaudible) on the 27th. I said,
18 hey, why did you tow the vehicle? It was good until the
19 27th. He said, uh, uh, uh, uh, well, uh, uh, well, normally
20 it's only good for 72 hours.

21 I said, well, sir, if you'll look at it very
22 closely, management said that -- we had a death in the
23 family. We have people coming in from New York City
24 bringing the body in from New York City so we're going to
25 have a bunch of people in and out. So he said, okay. So

1 then he said, well -- then he held (inaudible). He said,
2 well, it's only good for 72 hours, that's why my driver
3 picked it up and brought it here.

4 I said, well, sir, you are a contractor from the
5 Reserve. That's her handwriting from the Reserve saying
6 this is good till the 27th. I said, look what's on there.
7 The vehicle's information on that same piece of paper is in
8 my handwriting. There's two different handwritings, one
9 that look like a doctors which is mine and the other one
10 look like a woman's handwriting which is the secretary or
11 management, okay?

12 Tell them I gets to -- I'll get to the shop, I'm
13 going to (inaudible) to retrieve the vehicle, okay? So then
14 while I'm up there, he's giving another vehicle that was
15 towed was a Chevy, a blue Chevy Caprice, and as my car was
16 blocking his car and he didn't have a key for mine. So I'm
17 just speaking to him about my vehicle.

18 He takes the truck, his tow truck to get the
19 vehicle out -- my vehicle out the way to give it to the guy
20 because he didn't want to talk to me. Because prior to this
21 he threatened to shoot him, which I have on a video camera
22 because my vehicle was stolen and the dispatch said to make
23 sure it wasn't towed. We've got a lot of tows coming.

24 So I was just asking him nicely about was my
25 vehicle towed. He threatened to shoot me. So when he said

1 that, I went straight to the house and got my phone and I
2 started recording. He was at the bottom of his car hooking
3 up a car so he didn't see that I was recording. So when I
4 walked up I said, sir, did you say you were going to shoot
5 me? Yes, sir. And so then when he said, yes, sir, he
6 looked up like that and he seen the camera on him. He said,
7 oh, no, I ain't said that. You was threatening me.

8 Then you see everything changed. And then he
9 told me, you're threatening me so get away from my truck.
10 You could see him in the video, I'm backing up away from
11 him.

12 So I forwarded that information over to
13 (inaudible). Okay. So then (inaudible) get my vehicle from
14 you because you're even threatening to shoot me. So I
15 called the police right then and there. I said, listen, I
16 have a problem with this guy. He won't give me my vehicle.
17 And so as I'm calling them over there, he just forgot about
18 me so he took the tow truck to hook it up to my van to get
19 it out of the way so he can get the person who's coming to
20 get the Chevy Caprice. And when he did that, he backed it
21 up into my vehicle and crashed it (inaudible).

22 I said, oh, no, look what you're doing. He just
23 act like he was in no -- there was another truck driver and
24 another tow truck. He said, may I take a picture of that?
25 So I went and took pictures of him but I didn't have no more

1 data or no more storage on my phone and to the fact I have
2 recorded like a 40-minute video when he threatened to shoot
3 me then and that same video showed them improperly towing a
4 vehicle. You can hear it. It sounded like a -- when a car
5 slams on brakes, urrrr, you can hear it. He's grabbing it
6 from the back, it's a front-wheel drive and you hear the
7 tires actually dragging on it.

8 So, anyway, so the police told me, he said,
9 look, he said, I see you properly trying to get your
10 vehicle. He said, but, look, just come tomorrow and we're
11 going to serve papers on him and then try to set up another
12 appointment at two o'clock so he'll be open from two to
13 three. Meet me at the (inaudible) Police Department.

14 So I met him at the (inaudible) Police
15 Department. And so I went there and we get up there, but
16 then when I called the tow truck -- because I'm paying him.
17 I got the money out and the police told me to stand up under
18 his video dash camera. So I'm right there with the money
19 out showing I'm paying to get my car.

20 At the same time, I'm calling another tow truck
21 to come get it to take my car to Emmett's Collision so they
22 can report the damage that's on it. I don't even want to
23 drive it because I want to show it. Because I just
24 purchased this car, not even been a week now. I had
25 purchased it on the 23rd and all of this happened on the

1 27th, which I was there on the 28th trying to get my
2 vehicle.

3 So he would not let me get my vehicle. Then he
4 told them, get him off my property. So the police say,
5 well, he's not on your property, he's on the road. He said,
6 look, write this up. Then he started mouthing off to the
7 policeman. But the police said, no, don't worry about it.
8 Just go down to City Hall and file a claim (inaudible). So,
9 you know, basically, I just wanted to speak about
10 (inaudible).

11 MAYOR WHITE: Thank you, sir. Your time is up.

12 MR. BRIGGS: All right. Kendrick Anderson?

13 UNIDENTIFIED FEMALE: You have five minutes
14 left.

15 MAYOR WHITE: And you've only got five minutes
16 left so if you want other people, you'd better hold it by a
17 minute, okay?

18 MR. ANDERSON: I live in Candle Point -- 327
19 Candle Point Apartments. On February 21st, I (inaudible).
20 I went outside, of course, the tow truck man was looking at
21 the front end of my car. Actually, the parking brake was
22 down. He actually drug it. He said it was illegal there.
23 It was a paper trail and I know as me being a dealer, our
24 customers sign privacy notices when we can't give any
25 information about a vehicle (inaudible).

1 He said he called the dealership and said that
2 the dealership said they don't remember selling me the car.
3 So I went to get my car. When I went up -- not to get my
4 car, but get my wallet out of the car, he actually told me
5 if I was to bring the police to get my wallet then I would
6 be trespassing on his property. My car has still been there
7 since February 21st. I'm not going to (inaudible).

8 MAYOR WHITE: Thank you, sir. Roushell
9 Swindler. Swindler? Turley? Khasmir Turley?

10 MR. TURLEY: You pronounce the name Khasmir.

11 MAYOR WHITE: Khasmir.

12 MR. TURLEY: Now, I agree with everybody.
13 Everybody pretty much covered it. The only difference is
14 with me is I have footage of me trying to make an attempt to
15 receive a receipt from them and I have video of them saying
16 that I was double parked.

17 I work for Spartanburg Regional. I have a class
18 C -- a class D. At work I get my class D license, so I know
19 better than to double park. I know better than to block a
20 area where the handicap need to be, you know, escorted up a
21 ramp. So I agree with everybody else. Those licenses need
22 to be revoked because people are vulnerable to this company
23 the second that they fall asleep.

24 MAYOR WHITE: Thank you, sir. Chase Labron?

25 MR. LABRON: Chance.

1 MAYOR WHITE: Chance?

2 MR. LABRON: Good afternoon. I'd like to speak
3 on -- because Matthews lost his life on August the 19th,
4 2016 on Eastwood Street. The incident occurred with
5 (inaudible), one of y'all's mechanics. I don't know the
6 name. And I was just like, hey, the man was never doing a
7 test with a breathalyzer. I'm asking the deputy if the City
8 (inaudible).

9 MAYOR WHITE: That's a request. Yeah. I'm sure
10 we drug test everyone but if we don't, then Spartanburg
11 would have to begin to.

12 MR. LEBRON: I don't think they have.

13 MAYOR WHITE: All right. Well, I thank
14 everybody for coming tonight. It's very disturbing that
15 we've got a situation like this in the City. I didn't
16 realize it was going on. I would think, along with the
17 towing people, probably the apartment complex has got a lot
18 of doing with it, so --

19 UNIDENTIFIED MALE: Yes, sir.

20 UNIDENTIFIED FEMALE: (Inaudible).

21 MAYOR WHITE: What are you telling me? Don't
22 say any more?

23 UNIDENTIFIED FEMALE: That's right.

24 MAYOR WHITE: We'll look into this and take
25 appropriate action.

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(End of excerpt of hearing)

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Durham Cole, Circuit Court Judge

Case No. 2017-CP-42-01468
Appellate Case No. 2017-002585

Cole Towing and Recovery, LLC, ... Appellant,

v.

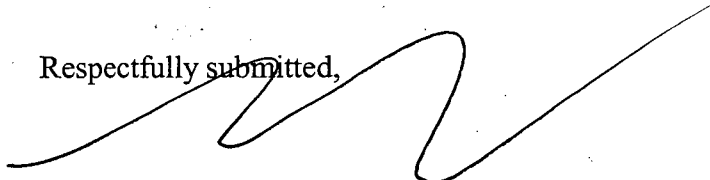
City of Spartanburg and Spartanburg City Council, ... Respondents.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal has been redacted in accordance with the Supreme Court's Order and the Rules pertaining to the redaction of private data and personal identifiers.

I further certify that the Record on Appeal contains all of the matter designated by the parties and no irrelevant matter.

Respectfully submitted,



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