

ORDINANCE NO. 614

**AN ORDINANCE ADOPTING PROVISIONS FOR IMPOUNDING
VEHICLES AND REPEALING CHAPTER 10.36 OF THE TROUTDALE
MUNICIPAL CODE**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Chapter 10.36 of the Troutdale Municipal Code entitled "Abandoned Vehicles, Towing and Impoundment" is repealed.

Section 2. A new Chapter 10.36 of the Troutdale Municipal Code entitled "Abandoned Vehicles, Towing and Impoundment" is adopted to read and provide as follows:

10.36.010 Impound.

A. A vehicle may be towed without prior notice when:

1. The vehicle is a hazardous vehicle. As used herein, a "hazardous vehicle" is one defined as a hazard under ORS 819.120 or any successor provision of state law;
2. A police officer reasonably believes that the vehicle is stolen;
3. A police officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if such towing is reasonably necessary to obtain or preserve such evidence;
4. The vehicle is in possession of a person taken into custody by a police officer and no other reasonable disposition of the vehicle is available;
5. The vehicle is illegally parked on a public or private street in a conspicuously restricted space, zone or traffic lane where parking is limited or prohibited to designated classes of vehicles or periods of time, or at any time when the vehicle interferes with the intended use of such space, zone or traffic lane;
6. The vehicle obstructs the entrance of any post office or postal station, or is within 10 feet of a private mailbox during the hours of delivery;
7. A police officer reasonably believes the vehicle operator does not possess a valid operator's license and either:
 - (a) is driving uninsured; or

- (b) has failed to transfer the title of the vehicle, register the vehicle, or carry a valid registration card.
- B. A vehicle may be towed after notice, as provided by TMC 10.36.020 when:
- 1. A police officer reasonably believes that the vehicle is disabled or abandoned and the vehicle is parked or left standing for more than five days upon a public or private street, or alley, or upon private property used by the public or is parked or left standing for more than ten days upon private property;
 - 2. The vehicle is parked in violation of a temporary or permanent parking restriction where there is no reasonable need to immediately remove the vehicle; or
 - 3. The vehicle is parked on city owned or operated property without express city permission.
- C. A vehicle may be towed under TMC 10.36.010B no earlier than five days after sending notice by certified mail of the intent to impound to the registered owner. If prior notice of intent to impound was sent to the same registered owner regarding the same vehicle and the same violation within the preceding 12 months, then subsequent notice by certified mail is not required. If notice by certified mail is not reasonably possible, the vehicle may be towed five days after it is posted with the notice of intent to impound.
- D. A vehicle impounded pursuant to this section shall be taken into custody by a police officer and shall be held at the expense of the owner or person entitled to possession of the vehicle. A police officer may use the personnel, equipment and facilities of the city for the removal and storage of the vehicle, or may hire a private garage for that purpose.
- E. A vehicle used in committing a traffic or parking violation for which an unserved warrant or citation is on file with the municipal or district court may be towed upon order of the municipal or district court.

10.36.020. Impound Procedures.

- A. Pre-Impound Investigation. When a vehicle is found in violation of TMC 10.36.010B, a police officer shall:
- 1. Make a routine investigation to discover the driver or registered owner, when the vehicle is required by law to be registered with the Motor Vehicles Division of this or any other state, and request immediate removal of the vehicle; or

2. If the registered owner or driver cannot be located, make a reasonable inquiry as to the name and address of the owner;
3. If the registered owner is identified, mail a notice to the registered owner at the address listed with the Motor Vehicles Division; and
4. Whether or not the owner is identified, place a notice of intent to impound upon the windshield or some other conspicuous part of the vehicle which can be easily seen.

B. Notice Generally.

1. Notice is deemed given when certified letters, return receipt requested and postage prepaid, are addressed to the registered owner of the vehicle and to the legal owner, and mailed within 48 hours after the vehicle is taken into possession by or at the direction of a police officer.
2. If the vehicle is registered with the Motor Vehicles Division, notice may be addressed to the registered owner, and the legal owner, if any, at the last respective addresses of each as shown by the records of the Motor Vehicle Division. If the vehicle is not so registered, reasonable efforts shall be made to ascertain the name and address of the legal owner or person entitled to possession of the vehicle so that notice may be mailed, if reasonably possible, within 48 hours of impound.

C. Pre-Impound Notice.

1. The notice required by TMC 10.36.020A(3)(4) shall state the following:
 - (a) The name and badge number of the officer or identification of other city employee issuing the notice;
 - (b) That if the vehicle is not removed within the prescribed time limit, the vehicle will be impounded;
 - (c) That any person who, at the request of a police officer, impounds a vehicle, shall have a lien on the vehicle for the just and reasonable towing and storage charges, may retain possession of the vehicle until the charges are paid, and may have the vehicle sold at public auction to satisfy the lien; and
 - (d) That a hearing on the validity of the proposed impound may be held, if timely requested within five calendar days of receipt of notice by the owner.

D. **Post-Impound Notice.** After a vehicle has been impounded pursuant to TMC 10.36.010A or 10.36.010B, notice must be provided to the registered owner, if known, indicating:

1. The location of the vehicle;
2. That a lien has arisen on the vehicle in favor of the person who towed and is storing the vehicle;
3. That the vehicle may be sold at public auction to satisfy the lien;
4. That a hearing on the validity of the tow may be held, if requested, within five calendar days of receipt of notice by the owner; and
5. That at any time prior to the requested hearing, the owner or person entitled to possession of the vehicle may regain possession of the vehicle by paying an amount sufficient to cover the costs of towing and storage and complying with TMC 10.36.040. Any payment shall not waive the right to contest the towing.

E. The police officer shall make reasonable inquiry to discover the telephone number where the owner or person entitled to possession of the vehicle may be reached and shall make reasonable efforts to telephone that person to advise that person of the contents of the notice required by this section.

10.36.030. Hearing.

A. **Request for Hearing.**

1. The registered or lawful owner must request a hearing within five calendar days after receipt of the notice. The request must be made in person or in writing to the Police Department. Failure to make a timely request for a hearing shall constitute a waiver of the right to a hearing.
2. If the owner of the vehicle timely requests a hearing before the vehicle is taken into custody, the vehicle shall not be impounded until a hearing is set and held in accordance with this section.

B. **Hearing Procedures.**

1. When timely request for a hearing is made, a hearing shall be held before a hearings officer.

2. The hearing shall be set and conducted within four calendar days of receipt of the request, excluding holidays, Saturdays and Sundays. The hearing can be set for a later date if the owner so requests.
3. At the hearing, the owner may contest the validity of the impound.
4. The city shall have the burden of proving by a preponderance the validity of the impound. The city may present evidence either by testimony of the police officer, traffic officer or code enforcement officer; or by written report of the officer. If the city's evidence is presented only by written report and the hearings officer cannot resolve a question by information contained in the report, the hearing may be held open for a reasonable time to complete the record.

C. Decision of the hearings officer. If the hearings officer finds that:

1. Impound of the vehicle was proper, the hearings officer:
 - (a) Shall enter an order supporting the removal; and
 - (b) Shall find that the owner or person entitled to possession is liable for any towing and storage charges resulting from the impound; and
 - (c) May find that the owner or person entitled to possession is liable for the costs of the tow hearing, including costs of the hearings officer and any witnesses.
2. Impound of the vehicle was improper, the hearings officer shall:
 - (a) Order the vehicle released to the owner or person entitled to possession;
 - (b) Find that the owner or person entitled to possession is not liable for any towing or storage charges resulting from the impound; and
 - (c) Order the city to satisfy the towing and storage lien.
3. The decision of the hearings officer is final.

D. Failure to Appear at the Hearing. If the person requesting the hearing does not appear at the scheduled hearing, the hearings officer may enter an order supporting the impound and assessment of towing and storage costs, shall add an assessment for the costs of the hearings officer and any witnesses who appeared at the time set for hearing, and shall apply any security posted against these costs.

10.36.040. Release Of Vehicle.

A vehicle which has been impounded under this chapter may be released to the registered owner or legal owner, if different, if:

- A. The owner of the vehicle has paid all of the accrued towing storage costs, unless otherwise ordered by the hearings officer;
- B. The Police Department has released its hold, if any, on the vehicle;
- C. The owner presents proof of ownership;
- D. If the vehicle will be driven, the operator shows a valid operator's license and proof of insurance; and
- E. The owner pays an administrative charge, set by the Chief of Police, which charge shall not exceed \$10.00.

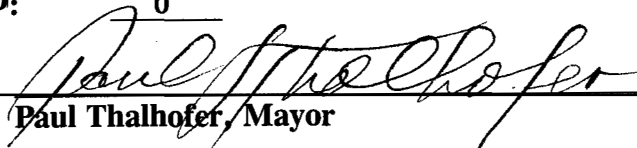
10.360.050. Towing and Storage Liens.

A person who, at the request of a police officer takes a vehicle into custody under the provisions of TMC 10.36.010 and 10.36.020 shall have a lien on the vehicle for the just and reasonable towing and storage charges, may retain possession of the vehicle until the charges are paid, and may have the vehicle sold at public auction to satisfy the lien. The lien that attaches to the vehicle shall be a possessory chattel lien in accordance with state law and shall be foreclosed in the manner provided by the state law. If the appraised value of the vehicle is \$750 or less, the vehicle shall be disposed of in the manner provided in ORS 819.220 and any statute.

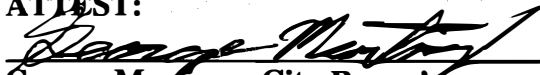
Section 3. The former provisions of Chapter 10.36 apply to any impoundment made before the effective date of this ordinance. This ordinance applies to impoundments made on or after the effective date of this ordinance.

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 11 TH DAY OF OCTOBER, 1994.

YEAS:	<u>6</u>
NAYS:	<u>0</u>
ABSTAINED:	<u>0</u>



 Paul Thalhofer, Mayor

ATTEST:


 George Martinez, City Recorder