

CITY OF SHERWOOD

ORDINANCE NO. 87-857

AN ORDINANCE RELATING TO THE TOWING AND IMPOUNDMENT OF ABANDONED, DISCARDED AND HAZARDOUSLY LOCATED VEHICLES

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THE SHERWOOD CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. This ordinance is enacted to assure that due process of law requirements of notice and opportunity to be heard are provided to owners and/or persons entitled to possession of abandoned, discarded or hazardously located vehicles. All abandoned, discarded, or hazardously located vehicles shall be taken into custody by or towed at the direction of the police department of the City of Sherwood.

Section 2. The following provisions are hereby adopted as the "Vehicle Impoundment Ordinance" of the City of Sherwood:

Sections

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.020	Abandoned Vehicles Prohibited
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VEHICLE IMPOUNDMENT

Section .005 Short Title. Sections .005 - .150 of this ordinance shall be known and may be cited as the "Vehicle Impoundment Ordinance" and may be referred to herein as "this ordinance".

Section .010 Definitions. As used in this ordinance, the following mean:

Abandoned vehicle - A vehicle left unoccupied and unclaimed or in such damaged, disabled or dismantled condition that it is inoperable.

Discarded vehicle - A vehicle that is inoperative, wrecked, dismantled, partially dismantled, or junked or major parts of discarded vehicles including, but not limited to, bodies, engines, transmissions and rear ends.

Hazardous vehicles - A vehicle left in a location or in a condition that constitutes an immediate and continuous hazard to the safety of persons using the sidewalks, streets, bicycle trails or alleys of the City, including but not

limited to, vehicles, blocking public or private right-of-way or fire hydrants, vehicles with leaking gas tanks, and vehicles located in violation of any Fire Code applicable within the corporate limits of the City of Sherwood.

Law enforcement officer - A law enforcement officer of the City or other City employee authorized to enforce this ordinance.

Owner - A person with an individual or joint claim in or ownership of a legal or equitable interest in a vehicle.

Private garage - A private storage yard, garage or other storage place selected by the City.

Public property - Real property that is owned or operated by the state, a county, city or other governmental entity.

Vehicle - A device in, on, or by which a person or property can be transported or drawn on a public highway, except devices moved exclusively by human power or used exclusively on stationary rails or tracks.

Section .020 Abandoned Vehicles Prohibited.

A. No vehicle that a law enforcement officer has reason to believe is abandoned shall be parked or left standing:

1. in the same place on the right-of-way of a street or alley for more than 72 hours or within 200 lineal feet of the same place measured along the curb-line of the same side of the street and between two intersecting streets for more than 72 hours;
2. on a cul-de-sac or dead-end street for more than 72 hours;
3. on private property without the consent of the owner or occupant.

B. Unless the court finds that the vehicle is parked so that it interferes with or obstructs the free movement of traffic in or onto the street, it shall be a defense to a violation of subsection A1 and 2 that the owner or operator of the vehicle had the abutting property owner's or occupant's permission to park the vehicle on that portion of the street which abuts the owner's or occupant's property if the vehicle bears a license plate with a valid, unexpired registration sticker and is not a discarded vehicle.

C. A vehicle so parked or left standing may be taken into custody by a law enforcement officer after compliance with Section .060 and Section .070 and held at the expense of the owner or person entitled to possession of the vehicle. The law enforcement officer may use City personnel, equipment and facilities for removal and storage of the vehicle or may hire other personnel, equipment and facilities for that purpose.

Section .030 Towing Without Notice.

A. A law enforcement officer may immediately cause a vehicle to be towed without prior notice if:

1. the vehicle is a hazardous vehicle; or
2. the vehicle has been reported stolen; or
3. the vehicle bears license plates which are not issued to the vehicle according to the records of the Department of Motor Vehicles;
4. the vehicle has been involved in a fire and it is necessary to take the vehicle into custody immediately for further fire investigation.

B. The owner of the vehicle shall be responsible for the cost of towing and storing the vehicle.

Section .040 Towing and Storage Liens.

A. Except as provided by Section .080 A3, a person who, at the request of a law enforcement officer, takes a vehicle into custody under provisions of this ordinance shall have a lien on the vehicle and its contents for reasonable towing and storage charges pursuant to ORS 483.383 and 87.152 and may retain possession of that vehicle consistent with this ordinance until such charges are paid or bond or some form of security is posted. A lien described under this section does not attach to the contents of any vehicle taken into custody from public property until 15 days after taking the vehicle into custody. If the appraised value of the vehicle is \$750.00 or less, the vehicle shall be disposed of in the manner provided in ORS 483.395.

B. If the vehicle is taken into custody under provisions of this ordinance and held by a law enforcement officer, rather than by a private garage, the vehicle shall be disposed of in the manner provided in ORS 483.386 and 483.394.

Section .050 Towing and Storage Fees.

The Council may, by resolution, rule, agreement or contract set uniform towing and storage charges for abandoned vehicles that have been towed which shall be deemed reasonable for the purposes of this ordinance.

Section .060 Pretowing Investigation and Notice.

A. When a vehicle is found in violation of Section .020 or parked or standing in violation of this Code or a City ordinance, the law enforcement officer shall:

1. make a routine investigation to discover the owner and request removal of the vehicle;
2. failing to discover the owner, make a diligent inquiry as to the name and address of the owner of the vehicle by examining it for license number, identification number, make, style, and any other information that will aid in identifying ownership, and when the vehicle is required by law to be registered with the state Motor Vehicles Division, transmit all information pertaining to the vehicle to that Division with a request for the name and address of the owner;
3. mail a notice by certified mail, return receipt requested to the owner at the address shown in Motor Vehicles Division records at least ten calendar days prior to taking the vehicle into custody;
4. place a notice on the windshield or another part of the vehicle where it can be easily seen.

B. This section does not apply to vehicles listed in Section .030.

Section .070 Pretow Notice - Contents.

A. Notices sent or placed under BC Section .060 shall state:

1. the name or badge number of the law enforcement officer issuing the notice;
2. that the vehicle will be towed and taken into custody by the City if it is not removed within ten calendar days of the date of the notice;

3. the statute, ordinance or rule violated by the vehicle and under which the vehicle will be removed;

4. the place where the vehicle will be held in custody or the telephone number and address where information concerning the vehicle can be obtained;

5. that the person who tows a vehicle pursuant to Section .005 - .150, at the request of a law enforcement officer, shall have a lien on the vehicle for 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;

6. that the owner of the vehicle is entitled to a hearing before the vehicle is towed to contest the validity of the tow if the hearing is timely requested;

7. that the owner of the vehicle is also entitled to challenge the reasonableness of any towing and storage charges at a hearing;

8. that a hearing on the validity of the towing must be requested within ten calendar days of the date on the notice to the owner and the method of requesting the hearing.

B. If the owner of the vehicle requests a hearing before the vehicle is taken into custody, the vehicle shall not be taken until a hearing is set and held in accordance with Section .120 - .150.

C. The owner must request the hearing on the validity of the tow within ten calendar days of the date of the notice. The request must be made in writing or in person and shall state the grounds upon which the person requesting the hearing believes the towing is invalid or the charges are unreasonable.

D. Failure to appear in person or to mail or deliver a request for hearing within ten calendar days of date of the notice shall act as a waiver of the right to a hearing on the validity of the tow.

Section .080 Pretow Notice When Four or More Citations Have Been Issued With Respect to a Vehicle.

A. A vehicle may be towed or immobilized on order of the municipal court if:

1. it is a vehicle that has been used in the commission of at least four or more violations of City parking ordinances for which citations have been issued and have been outstanding for more than 30 days; and

2. the citation issued stated that the vehicle could be immobilized or towed if bail was not posted or a hearing scheduled; and

3. a delinquent parking citation notice was mailed to the registered or legal owner at least ten days prior to the towing or immobilization stating the following:

a. the license plate number, the citation numbers, the violation dates and the amount of bail due;

b. that the vehicle will be immobilized and towed and taken into custody by the City if the total bail is not paid within ten calendar days;

c. the statutes, ordinances or rules violated by the vehicle for which the citation is issued;

d. that if the vehicle is immobilized or towed, the place where

the vehicle will be held in custody or the telephone number and address of the City department where information concerning the vehicle can be obtained;

e. that if the vehicle is immobilized an immobilization fee will be assessed for removal of the immobilization device in addition to any penalties assessed pursuant to the Code;

f. that the person who tows the vehicle pursuant to this ordinance at the request of a law enforcement officer shall have a lien on the vehicle for reasonable towing and storage charges, may retain possession of the vehicle until the charges are paid, and may have the vehicle sold at a public auction to satisfy the lien;

g. that the owner of the vehicle is entitled to a hearing before the vehicle is immobilized or towed to contest the validity of the citations or proposed immobilization or towing if a hearing is timely requested;

h. that if the vehicle is towed, the owner of the vehicle is entitled to challenge the reasonableness of any towing and storage charges at a hearing;

i. that a hearing on the validity of the citations, proposed immobilization or towing must be requested in person at the court or in writing within ten calendar days of date of the notice and that the request must include the grounds upon which the owner believes the towing is invalid.

B. If the owner of the vehicle requests a hearing before the vehicle is taken into custody, the vehicle shall not be immobilized or towed until a hearing is set and held in accordance with Section .110 - .130.

C. The owner must request the hearing on the validity of the citations, proposed immobilization or towing within ten days of the date of the delinquent parking citation notice. The request must be made in writing or in person and shall state the grounds upon which the person requesting the hearing believes the citations and/or proposed immobilization or towing are invalid.

D. Failure to appear in person or to mail or deliver a written request for a hearing within ten calendar days after date of the delinquent parking citation notice shall act as a waiver of the right to contest the validity of the citations or the tow.

Section .090 Post-Towing Notice - Hazardous Vehicles.

A. After a vehicle has been taken into custody without notice under Section .030, notice shall be provided to the owner stating:

1. that the City has had the vehicle towed;
2. the statute, ordinance or rule under which the vehicle was towed;
3. location of the vehicle or telephone number or address where information concerning the vehicle can be obtained;
4. that a lien for towing and storage charges has arisen on the vehicle in favor of the person who towed the vehicle;
5. that the vehicle may be sold at public auction to satisfy the lien if the charges are not paid within a specific period of time;
6. that, if requested, a prompt hearing shall be held on the validity of the tow and the creation and amount of the lien;

7. the time within which a hearing must be requested and the method for requesting the hearing;

8. that, if the owner requests a hearing, the owner may immediately recover possession of the vehicle before the hearing by:

a. presenting proof of ownership or right to possession; and

b. either paying the towing and storage charges or posting a security deposit in accordance with the security deposit schedule authorized in Section .110, with the City for towing and storage charges that have accumulated as of the date of the request for hearing.

B. Notice is considered given when a certified letter addressed to the registered owner of the vehicle and a similar letter addressed to the legal owner, if different, return receipt requested are mailed within 48 hours not including Saturdays, Sundays and holidays after the vehicle is taken into possession by the law enforcement officer.

C. If the vehicle is registered in the office of the State Motor Vehicles Division, notice may be addressed to the registered owner and the legal owner at the latest addresses shown on records in that office. If the vehicle is not registered, reasonable efforts shall be made to ascertain the names and addresses of the legal owner and persons entitled to possession of the vehicle, so that notice can be mailed within the time period prescribed in subsection B 2.

D. The owner must request a hearing within ten calendar days of the date of the notice. The request may be made in person or in writing and shall state the grounds upon which the person requesting the hearing believes the towing is invalid or the charges unreasonable. Failure to appear in person or to mail or deliver a written request within ten calendar days of the date of the notice shall act as a waiver of the right to a hearing.

Section .100 Additional Identifying Information.

After a vehicle has been towed, if other information becomes available which reasonably enables the law enforcement officer to determine the owner of the vehicle and notice has not been sent to the owner, the law enforcement officer shall cause the appropriate notice to be mailed to the owner in accordance with this ordinance.

Section .110 Return of Vehicle to Owner.

A. An owner whose vehicle has been towed pursuant to Section .090 or Section .070 and who has requested a hearing in accordance with this ordinance may recover immediate possession of the vehicle before the hearing by:

1. presenting proof of ownership or right to possession; and

2. either paying the towing and storage charges or posting a security deposit in the form of a bond or cash with the City for towing and storage charges that have accumulated as of the date of the request for the hearing.

B. The municipal judge is authorized to establish, by court order, a security deposit schedule. The court is also authorized to require those owners requesting a hearing under Section .080 or Section .130 to certify that the owner will attend the hearing when a hearing date is scheduled.

C. The judge is authorized to increase security deposit amounts which

must be posted before a vehicle is released prior to a hearing where the individual requesting the hearing has failed to appear in the past, is a nonresident of the state, or under other appropriate circumstances.

D. Subsection A of this section and subsection 6.05.090 8A shall not apply to vehicles being held as part of any criminal investigation by any police or fire agency.

Section .120 Hearing.

A. When a hearing is requested pursuant to Section .070, Section .080 or Section .090, it shall be held before the city manager or the municipal judge if the city manager is not available, upon request of the legal owner or the person entitled to possession of the vehicle.

B. The hearing shall be set within three days of receipt of the request, holidays, Saturdays and Sundays not included. The City shall provide notice of the hearing, either in writing, by phone or in person to the person requesting the hearing and the registered and legal owners of the vehicle, if not the same as the person requesting the hearing.

C. Unless otherwise provided by this Code or City ordinance, at the hearing the owner or person entitled to possession may contest:

1. the validity of the action of the law enforcement officer in taking the vehicle into custody;

2. creation and amount of the lien attached to the vehicle;

D. The City shall have the burden of showing by the preponderance of the evidence the validity of the taking of the vehicle under the state and federal constitution, the statutes of this state, and the provisions of this ordinance.

Section .130 Hearings on Towing and Storage Charges When Pretowing Notice Was Given.

A. Whenever pretowing notice has been given pursuant to Sections .060 - .070 and the owner fails to request a hearing within the stated time period, the owner may nevertheless, request a hearing on the creation or amount of the lien.

B. The hearing on the creation or amount of the lien must be requested in person or in writing not more than 25 days after the vehicle was towed and shall state the grounds upon which the person believes the creation of the lien is invalid or the amount unreasonable.

C. The provisions of .120 B shall apply.

Section .140 Decision.

If the city manager finds that custody and removal is:

A. Valid, city manager shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the person claiming the vehicle. If the vehicle has not yet been towed, city manager shall order it towed.

B. Invalid, city manager shall:

1. order the immediate release of the vehicle to the person claiming it;

2. order any immobilization, towing or storage costs already paid be refunded;

3. order the City to satisfy any immobilization, towing and storage charges the tower may require from the City;

4. order that the owner is not liable for immobilization, towing and storage charges occasioned by the taking. New storage costs will not start to accrue until more than 24 hours after the time the vehicle is officially released by the city manager's order to the person claiming the vehicle.

C. The order of the city manager shall be in writing.

D. The action of the city manager is final and no appeal can be taken from it.

Section .150 Failure to Appear.

A. If the person who requested the hearing does not appear at the hearing, the city manager may enter an order supporting the removal and assessment of immobilization, towing and storage costs and apply security posted against the costs.

B. A person who fails to appear at a hearing is not entitled to another hearing on the same matter unless the person provides a satisfactory reason to the city manager for failure to appear.

Section 3. This vehicle impoundment ordinance hereby adopted shall be Chapter VII of Ordinance 599, the motor vehicle code of the City of Sherwood.

Section 4. This ordinance shall become effective on the 30th day after its enactment by the city council and approval by the mayor.

Duly passed by the City Council this  
28 day of January, 1987.

Polly Blankenbaker  
Polly Blankenbaker, City Recorder

Approved by the Mayor this 2nd day  
of February 1987.

Mary Tobias  
Mary Tobias, Mayor of the City of  
Sherwood