

Repealed by
Ordinance 96-1010
pm

City of Sherwood, Oregon

ORDINANCE NO. 95-1000

AN ORDINANCE REPEALING ORDINANCE NO. 87-857, AND REPLACING IT WITH A NEW ORDINANCE RELATING TO THE TOWING AND IMPOUNDMENT OF ABANDONED, DISCARDED AND HAZARDOUSLY LOCATED VEHICLES

WHEREAS, the City adopted Ordinance No. 87-857, Impoundment of Abandoned Vehicles on January 28, 1987, and,

WHEREAS, related State Statutes were revised January 1994, and,

WHEREAS, the City of Sherwood needs to be in compliance with such State Statutes, making it necessary to revise City Ordinances.

NOW, THEREFORE, THE CITY ORDAINS AS FOLLOWS:

Section 1. Repealer. Ordinance No. 87-857, enacted by the City Council of Sherwood, on January 28, 1987 is hereby repealed.

Section 2. Reason. 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 3. Sections. The following provisions are hereby adopted as the "Vehicle Impoundment Ordinance" of the City of Sherwood.

SECTIONS:

Section 2	Reason
Section 3	Sections
Section 4	Short Title
Section 5	Definitions
Section 6	Parking or Standing in Excess of Seventy-Two Hours
Section 7	Abandoned Vehicles - Offense
Section 8	Possession by Person Taken Into Custody Regarding Impoundment
Section 9	Advice to Person Taken Into Custody Regarding Motor Vehicle
Section 10	Removal - Notice
Section 11	Removal - Procedure

Section 12	Possessory Lien for Towing Charges
Section 13	Impoundment - Notice
Section 14	Hearing to Contest Validity of Custody and Removal
Section 15	Failure to Appear
Section 16	Effective Date

Section 4. Short Title. Sections 3 through 14 of this Ordinance shall be known and may be cited as the "Vehicle Impoundment Ordinance" and may be referred to herein at "this Ordinance".

Section 5. Definitions. As used in this Ordinance, unless the context requires otherwise:

- A. "Abandoned" or "Abandoned Vehicle" means a vehicle left unoccupied and unclaimed or in such damaged, disabled or dismantled condition that it is inoperable. A vehicle shall be considered abandoned if it has remained in the same location for more than seventy-two hours and one or more of the following conditions exist:
 - 1. The vehicle does not have an unexpired license plate lawfully fixed to it; or
 - 2. The vehicle appears to be inoperative or disabled; or
 - 3. The vehicle appears to be wrecked, partially dismantled or junked; or
 - 4. The vehicle appears to have been stored; or
 - 5. The vehicle has remained in the same position, or within the five hundred foot radius of its earlier position, for a period of thirty days.
- B. "City" means the City of Sherwood.
- C. "Costs" means the expense of removing, storing and selling an impounded vehicle.
- D. "Hazard" means a vehicle standing in such a manner as to jeopardize public safety and the efficient movement of traffic, including but not limited to the situations described in ORS 487.580.
- E. "Law enforcement officer" is a law enforcement officer of the City or other City employee authorized to enforce this Ordinance.
- F. "Owner" means any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or any interest,

legal or equitable, in a vehicle.

- G. "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rail or tracks.

Section 6. Parking or Standing in Excess of Seventy-Two Hours. No vehicle shall be parked or left standing upon the right-of-way of any City street or State highway for a period in excess of seventy-two hours.

Section 7. Abandoned Vehicles - Offense. A person commits the offense of abandoning a vehicle if:

- A. The person abandons the vehicle on any public right-of-way or on public property of the City of Sherwood.
- B. The owner of the vehicle as shown by the records of the Department of Motor Vehicles shall be considered responsible for the abandonment of a vehicle and shall be liable for the cost of removal and disposition of the abandoned vehicle.
- C. A vehicle abandoned in violation of this Section is subject to the provisions for removal of abandoned vehicles under Sections 9 and 10.
- D. The offense described in this Section is a Class B traffic infraction.

Section 8. Possession by Person Taken Into Custody Regarding Impoundment. Any vehicle in the possession of a person taken into custody by a law enforcement officer shall be towed if:

- A. The person taken into custody is advised of the options available for vehicle disposition and requests the vehicle be towed.
- B. The vehicle is in possession of a person taken into custody by a law enforcement agency and the officer taking the person into custody reasonably believes that the vehicle constitutes a hazard.
- C. A police officer reasonably believes that the vehicle is stolen.
- D. A police officer reasonably believes that the vehicle or its contents constitute evidence of any offense, and such towing is reasonably necessary to obtain or preserve such evidence.

- E. The person in possession of the vehicle requests that someone be called to remove the vehicle and the person contacted to remove the vehicle does not take possession of the vehicle within fifteen minutes of being contacted and a police officer reasonably believes that the vehicle constitutes a hazard.

Section 9. Advice to Person Taken Into Custody Regarding Motor Vehicle. A person taken into custody by a law enforcement agency who is in possession of a vehicle shall be advised of the following:

- A. That unless the vehicle constitutes a hazard, the vehicle does not have to be towed.
- B. That if the person taken into custody requests that the vehicle be left where it is parked and the vehicle is not a hazard that the vehicle could be damaged or stolen and that the City will assume no responsibility for damage or theft.
- C. That the person in custody may request that someone be contacted to remove the vehicle, but if the person contacted to remove the vehicle does not take possession of the vehicle within fifteen minutes of being contacted the vehicle shall be:
 - (1) Towed if it constitutes a hazard; or
 - (2) Left where it is parked if it does not constitute a hazard.
- D. That if the person taken into custody by a law enforcement agency prefers that the vehicle be towed, that unless a preference for a towing company is expressed, the law enforcement agency will contact the appropriate dispatching agency to arrange for towing and that the City will assume no responsibility for the actions of the towing company.

Section 10. Removal - Notice. It shall be the duty of the Police Department, whenever a vehicle is found abandoned on any public right-of-way or on public property, to make a routine investigation to discover the owner and request removal of the vehicle.

- A. Failing to discover the owner of an abandoned vehicle, the Police Department shall make a inquiry to determine the name and address of the owner of the vehicle by examining such vehicle for license number, I.D. number, make, style and any other information which will aid in

the identification of the ownership of the vehicle, and transmitting all available information pertaining to such vehicle to the Department of Motor Vehicles of this state with an inquiry for the name and address of the owners and any lessors or security interest holders.

B. If the owner cannot be identified or located or does not remove the vehicle upon request to do so, the Police Department shall give notice to remove the vehicle by both of the following methods:

1. By affixing a notice to tow the vehicle with the required information; and
2. By mailing notice, by certified mail with the receipt stamped as proof of mailing, at least five days before taking the vehicle into custody, with the required information to the owners and any lessors or security interest holders at the address of each shown by the records of the Department of Motor Vehicles. The five-day period under this paragraph does not include holidays, Saturdays and Sundays. The notice shall state all of the following:
 - a. The name or badge number of the law enforcement officer issuing the notice.
 - b. That the vehicle violates Ordinance No. 95-1000 of this Code and the vehicle will be removed under the authority of this Ordinance.
 - c. That the vehicle will be subject to being taken into custody and removed by the City of Sherwood if the vehicle is not removed within seventy-two hours.
 - d. The place where the vehicle will be held in custody or the telephone number and address of the appropriate authority that will provide the information.
 - e. That the vehicle if taken into custody and removed by the City, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
 - f. That the vehicle and its contents could be sold by the City of Sherwood or the towing and storage facility where the vehicle is located to satisfy the costs of towing and storage if the charges are not paid.
 - g. That the owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed custody and removal if a

- hearing is timely requested.
- h. That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges to the hearing.
 - i. That a hearing must be requested not more than five days, holidays, Saturdays or Sundays not included, from the mailing date of the notice and the methods for requesting a hearing. If a timely request for a hearing is received prior to towing the vehicle, the vehicle shall not be removed pending the outcome of the hearing.
3. The notices in this Section are not required when the vehicle is abandoned in such a location as to constitute a hazard or obstruction to traffic using the public right-of-way or public property. Upon discovery, the Police Department may immediately take custody of and remove a vehicle constituting a hazard. However, the City of Sherwood shall provide the notice described in Section 13 and, if requested, a hearing described under Section 14.

Section 11. Removal - Procedure. An Abandoned vehicle which remains in the same position, or remains within a five hundred foot radius of its earlier position for a period of five days, (holidays, Saturdays and Sundays not included) after an owner has been requested to remove it or after notice has been served as required by Section 10, shall be removed by the Police Department using their own personnel, equipment or facilities or those of others.

Section 12. Possessory Lien For Towing Charges. A person shall have a lien on the vehicle and its contents if the person, at the request of the City of Sherwood tows an abandoned vehicle. A lien established under this Section shall be on the vehicle and its contents for the just and reasonable charges for the towing service performed and any storage provided. The lien shall be subject to the provisions for liens under ORS 98.812(3). The person holding the lien may retain possession of the vehicle and contents until the charges on which the lien is based are paid. A lien described under this Section does not attach to the contents of any vehicle taken from public property until fifteen days after taking the vehicle into custody.

A person who tows any vehicle at the request of the City of Sherwood shall provide written notice, approved by the City, containing information on the procedures necessary to obtain a hearing. Each person who redeems a vehicle shall sign a copy of

the receipt issued, indicating that they have received notice of their right to a hearing.

Section 13. Impoundment - Notice.

- A. If the City of Sherwood takes custody of a vehicle, the City of Sherwood shall provide, by certified mail with the receipt stamped as proof of mailing, within forty-eight hours of the removal, notice with an explanation of procedures available for obtaining a hearing to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Motor Vehicles. The notice shall state that the vehicle has been taken into custody and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing. The forty-eight hour period under this Section does not include holidays, Saturdays or Sundays.
- B. Any notice given under this Section after a vehicle is taken into custody and removed shall state all of the following:
 - 1. That the vehicle has been taken into custody and removed by the City of Sherwood, that the vehicle violated Ordinance No. 95-1000 of the Sherwood Municipal Code and that the vehicle was removed under the authority of that Ordinance.
 - 2. The place where the vehicle is being held in custody or the telephone number and address of the appropriate authority that will provide the information.
 - 3. That the vehicle is subject to towing and storage charges, the amount of the charges that have accrued to the date of the notice and the daily storage charges.
 - 4. That the vehicle and its contents are subject to lien for payment of the towing and storage charges and that the vehicle and its contents may be sold by the City of Sherwood or the towing and storage facility where the vehicle is located to cover the charges if the charges are not paid within fifteen days.
 - 5. That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested.

6. That a hearing must be requested not more than five days, holidays, Saturdays or Sundays not included, from the mailing date of the notice and the method for requesting a hearing.
7. That the vehicle and its contents may be immediately reclaimed by presentation to the appropriate authority of satisfactory proof of ownership or right to possession and payment of the towing and storage charges.

Section 14. Hearing to Contest Validity of Custody and Removal. A person provided notice under Section 10, or any other person who reasonably appears to have an interest in the vehicle, may request a hearing under this Section to contest the validity of the removal and custody under Section 11 or the proposed removal and custody of a vehicle under Section 10 by submitting a request for hearing with the City Manager not more than five days from the mailing date of the notice. The five-day period in this Section does not include holidays, Saturdays and Sundays. A hearing under this Section shall comply with all of the following:

- A. If the City proposes to remove a vehicle under Section 10 and receives a request for hearing before the vehicle is taken into custody and removed, the vehicle shall not be removed unless it constitutes a hazard.
- B. A request for hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the custody and removal of the vehicle is not justified.
- C. 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.
- D. Upon receipt of a request for a hearing under this Section, the City shall set a time for a hearing within seventy two hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the Department of Motor Vehicles, if not the same as the person requesting the hearing. The seventy-two hour period in this Subsection does not include holidays, Saturdays and Sundays.
- E. If the City Manager finds, after a hearing and by substantial evidence on the record, that the custody and removal a vehicle was:

1. Invalid, the City Manager shall order the immediate release of the vehicle to the owner or person with right to possession. If the vehicle is released under this Section, the person to whom the vehicle is released is not liable for any pre-decision towing or storage charges. If the person has already paid the towing and storage charges on the vehicle, the City shall reimburse the person for the charges. The person shall be liable for new storage charges incurred after the decision. New storage charges of the vehicle will not start to accrue until more than twenty-four hours after the time the vehicle is officially released to the person.
 2. Valid, the 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 removed, the City shall order its removal.
- F. A person who fails to appear at a hearing under this Section is not entitled to another hearing unless the person provides reasons satisfactory to the City for the person's failure to appear.
- G. The City is only required to provide one hearing under this Section for each time the City takes a vehicle into custody and removes the vehicles or proposes to do so.
- H. A hearing under this Section may be used to determine the reasonableness of the charge for towing and storage of the vehicle. Towing and storage charges, set by law, Ordinance or rule or that comply with law, ordinance or rule are reasonable for purposes of this Subsection.
- I. The City Manager shall provide a written statement of the results of the hearing to the person requesting the hearing.
- J. The action of the City manager is final and no appeal can be taken from it.

Section 15. 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 16. Effective Date. This Ordinance shall become effective within thirty (30) days after passage and approval.

Duly passed by the City Council this 27th day of June 1995.



Walter Hitchcock, Mayor

Attest:



Jim Rapp, City Manager/City Recorder

	<u>AYE</u>	<u>NAY</u>
Aamold	<u>X</u>	___
Boyle	<u>X</u>	___
Cottle	<u>Abst</u>	___
Hitchcock	<u>X</u>	___
Kennedy	<u>X</u>	___