

**City of Sherwood
Ordinance No. 97-1032**

AN ORDINANCE REPEALING ORDINANCE NO. 96-1010 AND REPLACING IT WITH A NEW ORDINANCE RELATING TO THE TOWING AND IMPOUNDMENT OF ABANDONED, DISCARDED AND HAZARDOUSLY LOCATED VEHICLES AND VEHICLES OPERATED BY PERSONS DRIVING WHILE SUSPENDED OR REVOKED, DRIVING UNDER THE INFLUENCE OF INTOXICANTS, OPERATING WITHOUT DRIVING PRIVILEGES, OR IN VIOLATION OF LICENSE RESTRICTIONS, AND UNINSURED VEHICLES.

WHEREAS, the City adopted Ordinance No. 96-1010 on August 13, 1996; and

WHEREAS, related State Statutes were revised in the 1997 Legislative Session with respect to impoundment in certain situations; and

WHEREAS, the City of Sherwood needs to be in compliance with such State Statutes, making it necessary to revise City Ordinance; and

WHEREAS, Ordinance 96-1010 contains some inaccurate references and citations.

NOW, THEREFORE THE CITY OF SHERWOOD DOES ORDAIN AS FOLLOWS:

Section 1. Repealer. Ordinance No. 96-1010, enacted by the City Council of Sherwood on August 15, 1996, is hereby repealed in its entirety.

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 Possession by Person Taken Into Custody Regarding Impoundment
Section 8	Authority of Police Officer to Order Impoundment of Vehicle Driven by Person Believed to Have Committed Certain Offenses Pursuant to Chapter 514 Oregon Laws 1997
Section 9	Notice Prior to Removal Pursuant to Authority of ORS 819.110
Section 10	Notice After Removal Pursuant to Authority of ORS 819.120
Section 11	Procedure for Removal of Vehicles Having No Identification Markings or Registration Plates
Section 12	Possessory Lien for Towing Charges
Section 13	Hearing to Contest Validity of Custody and Removal Under Sections 10 and 11
Section 14	Failure to Appear
Section 15	Disposal
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 hereafter as "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 situation described in ORS 819.120.
- 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 tracts.

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. Authority of police officer to order impoundment of vehicle driven by person believed to have committed certain offenses pursuant to Chapter 514 Oregon laws 1997.

- A. A police officer who has probable cause to believe that a person, at or just prior to the time the police officer stops the person, has committed an offense described in this subsection may, without prior notice, order the vehicle impounded until a person with right to possession of the vehicle complies with the conditions for release or the vehicle is ordered released by a hearings officer. This subsection applies to the following offenses:
 - 1. Driving while suspended or revoked in violation of ORS 811.175 or 811.182.
 - 2. Driving while under the influence of intoxicants in violation of ORS 813.010.
 - 3. Operating without driving privileges or in isolation of license restrictions in violation of ORS 807.010.
- B. Notice that the vehicle has been impounded shall be given to the same parties, in the same manner and within the same time limits as provided in ORS 819.180 for notice after removal of a vehicle.
- C. A vehicle impounded under subsection A of this section shall be released to a person entitled to lawful possession upon compliance with the following:
 - 1. Submission of proof that a person with valid driving privileges will be operating the vehicle.
 - 2. Submission of proof of compliance with financial responsibility requirements for the vehicle.
 - 3. Payment to the police agency of an administrative fee determined by the agency to be sufficient to recover its actual administrative costs for the impoundment.
- D. Notwithstanding subsection C of this section, a person who holds a security interest in the impounded vehicle may obtain release of the vehicle by paying the administrative fee.

- E. When a person entitled to possession of the impounded vehicle has complied with the requirements of subsection C or D of this section, the impounding police agency shall authorize the person storing the vehicle to release it upon payment of any towing and storage costs.
- F. Nothing in this section limits either the authority of the City to adopt ordinance provisions dealing with impounding of uninsured vehicles or the contents of such ordinance provisions.
- G. Notice of the impoundment shall be given to the owners of the motor vehicle and to any lessors or security interest holders as shown on the records of the Department of Transportation. The notice shall be given within 48 hours of impoundment. The notice required by this section shall be given to the same parties, in the same manner and within the same time limits as provided in ORS 819.180 for notice after removal of a vehicle.
- H. A person entitled to lawful possession of a vehicle impounded under this Section may request a hearing to contest the validity of the impoundment. The request, hearing, procedure, authority of the hearings officer shall all be as authorized by ORS 809.715 and 809.716 as amended by Chapter 514 Oregon Laws 1997 (S.B. 780), which we adopted and by this reference made a part of this Ordinance.

Section 10. Removal - Notice Prior to Removal of Vehicle and Contents Pursuant to Authority of ORS 819.110. If the Police Department proposes to take custody of a vehicle, the Police Department shall provide notice and an explanation of procedures available for obtaining a hearing. Except as otherwise provided under Section 8, notice shall comply with all of the following:

- A. Notice shall be given by affixing a notice to the vehicle with the required information. The notice shall be affixed to the vehicle at least 72 hours before taking the vehicle into custody. The 72 hour period under this subsection includes holidays, Saturdays and Sundays.
- B. The ordinance violated and under which the vehicle will be removed.
- C. The place where the vehicle will be held in custody or the telephone number and address of the Police Department that will provide the information.
- D. That the vehicle, if taken into custody and removed by the Police Department, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
- E. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.

- F. 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.
- G. That the owner, possessor or person having an interest in the vehicle is entitled to a hearing, may also challenge the reasonableness of any towing and storage charges at the hearing.
- H. The time within which a hearing must be requested and the method for requesting a hearing.

Section 11. Impoundment - Notice after Removal Pursuant to Authority of ORS 819.120.

- 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. 97-1032 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 12. Procedure for Removal of Vehicles That Have No Identification Markings. If there is no vehicle identification number on a vehicle, or there are no registration plates, or if the registration plates are expired, the Police Department is not required to otherwise provide notice under Section 10, and the vehicle may be immediately removed and disposed of as though notice and an opportunity for a hearing had been given.

Section 13. Impoundment of Uninsured Vehicles.

- A. A police officer who has probable cause to believe that a person, at or just prior to the time the police officer stops the person, was driving an uninsured vehicle in violation of ORS 806.010 may, without prior notice, order the vehicle impounded until a person with right to possession of the vehicle complies with the conditions for release or the vehicle is ordered released by a hearings officer.
- B. Notice that the vehicle has been impounded shall be given to the same parties, in the same manner and within the same time limits as provided in ORS 819.180 and Section 11 of this Ordinance for notice after removal of a vehicle.
- C. A vehicle impounded under subsection A. of this section shall be released to a person entitled to lawful possession upon proof of compliance with financial responsibility requirements for the vehicle payment to the City of Sherwood Police Department of an administrative fee determined by the City to be sufficient to recover its actual administrative costs for the impoundment, and payment of any towing and storage charges. Proof shall be presented to the City of Sherwood Police Department, which shall authorize the person storing the vehicle to release it upon payment of the charges.

Section 14. 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 15. 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 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 vehicle 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 16. Failure to Appear.

- A. If the person who requesting 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 17. Disposal. If a vehicle taken into custody under this Ordinance is not reclaimed within thirty days after it is taken into custody, it shall be disposed of as authorized by ORS 819.210 to 819.260.

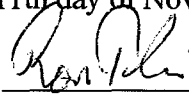
Section 18. Effective Date. This Ordinance shall become effective within thirty (30) days after passage and approval.

Duly passed by the City Council
this 11th day of November, 1997



Jon Bonmet, City Recorder

Approved by the Mayor this
11th day of November, 1997



Ron Tobias, Mayor

<u>Council Members</u>	<u>Aye</u>	<u>Nay</u>
Mayor Tobias	<u>✓</u>	_____
Turner	<u>✓</u>	_____
Boyle <i>absent</i>	_____	_____
Cottle	<u>✓</u>	_____
Krause <i>absent</i>	_____	_____