

ORDINANCE NO. 241**AN ORDINANCE PROVIDING FOR THE TOWING OF CERTAIN ILLEGAL VEHICLES AND PROVIDING A PENALTY THEREFOR**

The City of Coos Bay ordains as follows:

Section 1. Definitions.

City: The City of Coos Bay

Department of Transportation: The Oregon Department of Transportation, or other registration authority analogous to the Department of Transportation in any state other than Oregon.

Person: An individual; a corporation, partnership or other legal entity; and entity in fact.

Police Department: The police department of the City of Coos Bay.

Section 2. Towing Without Notice. A police officer, without prior notice to the owner or operator of a motor vehicle, may cause motor vehicle to be towed and impounded in the following circumstances:

- (1) When the police officer reasonably believes the operator is driving the motor vehicle uninsured or without other means to prove financial responsibility as required by ORS 806.010;
- (2) When the motor vehicle is illegally parked on a public street, private street, parking lot, or in a restricted space, zone, or traffic lane where parking is limited or prohibited to designated classes of vehicles or during designated periods of time, or where the motor vehicle at any time interferes with the intended use of such restricted space, zone or traffic lane;
- (3) When the operator of the motor vehicle does not possess or cannot produce a valid operator's license;
- (4) When the motor vehicle is in the possession of a person taken into custody by the police officer and no other reasonable disposition of the motor vehicle is available;

- (5) When the motor vehicle has not been registered or the operator is unable to produce a valid registration card;
- (6) When a police officer has good cause to believe the motor vehicle is stolen;
- (7) When the police officer reasonably believes a vehicle is abandoned and the vehicle has been parked or left standing on public right of way for a period in excess of twenty-four (24) hours without authorization as provided by law;
- (8) When a vehicle is left on public right of way in such a location or manner as to create a hazard or obstruction to traffic.

Section 3. Towing After Notice. A police officer may provide written notice of intent to impound when the officer reasonably believes the vehicle is abandoned as provided in Section 1(7). Notice shall be sent to the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation, and must state that the vehicle will be towed unless the owner removes the vehicle within five (5) days of the date of mailing; notice of intent of impound shall also be posted in a conspicuous place on the vehicle, and must state the vehicle will be towed on a date not later than five (5) days after the date of posting. Failure to provide notice under this section shall not affect the validity of any action taken to tow and impound an abandoned vehicle pursuant to Section 2 of this ordinance.

Section 4. Inventory of Vehicle.

- (1) The contents of any vehicle which is to be towed and impounded shall be inventoried by the police officer. The inventory shall be conducted prior to towing except where there is reasonable suspicion to believe the safety of the police officer or other persons is at risk, in which case the inventory shall be made as soon as safely practical.
- (2) The inventory shall be made for the following purposes only:
 - (a) to promptly identify personal property for the protection of such property while the vehicle is impounded;
 - (b) to prevent false claims for lost or stolen property;
 - (c) to locate toxic, flammable, explosive or other dangerous substances.
- (3) The inventory shall be conducted throughout the passenger and engine compartments of the vehicle, including accessible areas under or within the dashboard areas, pockets in the doors or the back of the front seats, in any consoles between seats, and under floor mats and seats.

(4) Inventories of the following property shall be made:

- (a) of all personal property in plain view or in open containers;
- (b) all open containers found in any unlocked compartments, including the trunk, glove box and car-top carriers;
- (c) all open containers found in any locked compartments; provided, however, that person in possession of the vehicle consents to entry or the keys to the compartments have been left with the vehicle;
- (d) no closed container shall be opened for inventory purposes; as used in this subsection, "closed container" means any container secured in such a manner that a reasonable person would know or should know that access requires permission;

(5) The police officer shall prepare a written list of property inventoried contemporaneously with the inventory. The inventory shall be signed, dated, including the time the inventory was complete. A copy of the inventory shall be filed with the police department, a copy shall be left with the vehicle or tendered to the person in control of the vehicle if present at the time of towing, and a copy shall be provided with the Notice of Removal under Section 5.

Section 5. Notice of Removal.

(1) After a vehicle has been towed and impounded and within forty-eight (48) hours after the vehicle is towed, excluding Saturdays, Sundays and legal holidays, Notice of Removal shall be provided to the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation by sending, certified mail, notice stating the following:

- (a) the vehicle has been towed and impounded;
- (b) the reason the vehicle has been towed and impounded;
- (c) an address and telephone number that may be used to obtain information on the charges which must be paid before the vehicle will be released and on the procedures for procuring such release;
- (d) the owner is entitled to and may request a hearing on the validity of the impoundment by filing a Request for Hearing with the Coos Bay Police Department within ten (10) calendar days, excluding Saturdays, Sundays and legal holidays, of the receipt of the notice;

- (e) the location of the vehicle;
- (f) the vehicle is subject to towing and storage charges, the amount of charges that have accrued as of the date of the notice, the rate of the daily storage charges and that daily storage charges will continue to accrue;
- (g) the person who towed and is storing the vehicle has a lien on the vehicle for the towing and storage charges, and will retain possession of the vehicle until the charges are paid and, if the charges remain unpaid for more than thirty (30) days, may have the vehicle sold to satisfy the lien;
- (h) the vehicle and its contents may be immediately reclaimed upon presentation to the police department proof of ownership or right to possession, payment to the police department of the fee specified in Section 7, and payment to the person who towed and is storing the vehicle all towing and storage charges;
- (i) the vehicle may be sold or otherwise disposed of if a person entitled to possession of the vehicle does not reclaim the vehicle within thirty (30) days of the date the vehicle was towed.

(2) No notice is required under this Section in the following circumstances:

- (a) the vehicle does not display license plates or other identification by which registration or ownership of the vehicle can be determined; and
- (b) the identity of the owner of the vehicle is not available from the Oregon Department of Transportation or other registration authority or the identity and address of the owner cannot reasonably otherwise be determined.

Section 6. Effect of Notice of Removal. If the owner of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation do not contact the City, in writing, within thirty (30) days of the date Notice of Removal is provided, or thirty (30) days from the date of towing and impoundment if no notice is required, then the vehicle shall be deemed an abandoned vehicle.

Section 7. Release of Vehicle. A vehicle towed and impounded shall be released to a person entitled to lawful possession upon payment to the city of a fee of \$75.00. Upon payment of the fee, the city shall authorize the person storing the vehicle to release the vehicle upon payment of towing and storage charges. Entitlement to lawful possession shall be established by the owner presenting proof of current ownership, proof of insurance and financial responsibility and proof of a valid operator's license; provided, however, if the person seeking release does not have a valid operator's license, the person may be accompanied by a licensed driver, who shall operate the vehicle after release. If the person

seeking release is

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the holder of a validly perfected security interest, then entitlement to lawful possession shall be established by presentation of a certified copy of the document creating the security interest, along with a copy of a letter to the owner, with proof of mailing, providing notice the vehicle will be released to the secured party.

Section 8. Hearing to Contest the Validity of Removal and Custody.

(1) A request for hearing must be filed with the police department by the owner of the vehicle within ten days of receipt of the Notice of Removal under Section 5. The request must be in writing, and shall state with particularity the basis of the owner's objection to the towing and impoundment of the vehicle. Failure to timely file a request for hearing shall be a waiver of right to hearing.

(2) Hearing shall be held within four calendar days of a timely filed request, excluding Saturdays, Sundays and legal holidays before an impartial hearings officer appointed by the city. The city shall have the burden of proving the validity of the towing and impoundment by a preponderance of the evidence.

(3) If the hearings officer finds the towing and impoundment of the vehicle was improper, the vehicle shall be ordered released to the person entitled to possession, and the city shall pay charges for towing and storage.

(4) Appeal of the decision by the hearings officer shall be by Writ of Review under ORS 34.010-34.100.

Section 9. Towing and Storage Liens.

(1) A person who tows and impounds a vehicle pursuant to this ordinance shall have a lien on the vehicle for just and reasonable towing and storage charges, may retain the vehicle until the charges are paid, or, if the charges are unpaid for the time specified herein, may have the vehicle sold to satisfy the lien. The lien shall be a possessory chattel lien as provided in ORS 87.152 and shall be perfected and foreclosed in the manner provided in ORS 87.152-87.212.

(2) A person who tows a vehicle pursuant to this ordinance is immune from civil liability for towing the vehicle, unless loss, damage or injury to the vehicle is the result of the person's negligent or willful acts.

Section 10. Disposal of Vehicles.

(1) If a vehicle is not reclaimed within thirty (30) days after it is impounded, the city may dispose of the vehicle and its contents. The city shall first give the person who towed and is storing the vehicle ten (10) days written notice of the city's intent to

dispose of the vehicle under this section, provided such written notice may be given

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prior to thirty (30) days after the vehicle is impounded.

(2) At any time after thirty (30) days after the vehicle Notice of Removal has been provided pursuant to Section 5, or thirty (30) days after the date the vehicle is towed if no notice is required pursuant to Section 3, the city may institute proceedings to sell the vehicle and its contents. The sale may with or without public auction. The city shall have the vehicle appraised by a person who has been issued an appraiser's certificate by the Oregon Department of Transportation, shall photograph the vehicle and shall notify the Department of Transportation the city will be disposing of the vehicle.

(3) Notice of Sale of the vehicle shall be given to the owner and any lessors and security interest holders as shown in the records of the Department of Transportation, by registered or certified mail at least thirty days prior to the sale. In addition, the city shall post Notice of Sale in a public place located within the Coos Bay city hall. The Notice of Sale shall contain a particular description of the vehicle, the name of the owner, the amounts due under this ordinance for towing, storage and other charges, and the time, place and manner of sale. If the vehicle is appraised at a value of \$2,500.00 or greater, Notice of Sale shall be printed once a week for two (2) successive weeks in a daily or weekly newspaper generally circulated in Coos County.

(4) A person holding a security interest may, prior to sale, obtain release of the vehicle by providing entitlement to possession as required by Section 7 and by paying the amounts due under this ordinance under Section 8 and the towing and storage charges. If a person holding a security interest in the vehicle fails to do so prior to the date of sale, the person's security interest is extinguished. If the city fails to notify a person holding a properly perfected security interest of the sale as required by this section, then the vehicle remains subject to the security interest, and any subsequent purchaser takes the vehicle subject to the security interest.

(5) Disposal.

(a) If the vehicle is appraised at a value of \$500.00 or less, the city may dispose of the vehicle and its contents by sale to a person who holds a valid wrecker's certificate issued under ORS 822.110, or may dispose of the vehicle at public auction.

(b) If the vehicle is appraised at a value less than \$1,000.00 but more than \$500.00, the city may dispose of the vehicle and its contents by sale to a person who holds a valid wrecker's certificate issued under ORS 822.110 if:

(i) the owner of the vehicle, any lessor or holder of a security interest

shown in the records of the Department of Transportation sign a release, under oath, disclaiming any interest in the vehicle; or

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(ii) the owner of the vehicle, any lessor or holder of a security interest shown in the records of the Department of Transportation have been provided Notice of Removal as provided in Section 5, and have failed to sign a release or reclaim the vehicle.

In all other cases where the vehicle is appraised at a value less than \$1,000.00 but more than \$500.00, the vehicle shall be sold at public auction.

(c) If the vehicle is appraised at a value of \$1,000.00 or more, the city shall sell the vehicle at public auction.

(6) Upon sale and payment of the purchase price, the city shall execute a certificate of sale in duplicate. The original certificate of sale shall be delivered to the purchaser and the copy retained by the city. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the price paid, a description of the vehicle and a stipulation that the sale is without any warranty as to the condition or title of the vehicle. The purchaser shall be notified that the purchaser might be required to apply for a salvage title under ORS 819.010. The purchaser shall be entitled to be issued title and a registration card for the vehicle, or to be issued a salvage title to the vehicle.

(7) Return of Sale and Proceeds of Sale.

(a) When a vehicle is sold pursuant to this Section, the city shall provide a return of sale to the Department of Transportation setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.

(b) The city shall deduct from the proceeds of the sale the costs incurred in the sale and the costs and expenses incurred in the removal, preservation and custody of the vehicle; provided, however, that the city shall only disburse proceeds to the person who towed and stored the vehicle if that person properly perfected their lien under ORS 87.176. The city's finance officer shall then deposit the proceeds from the sale in a fund specifically designated for such purpose, and shall file a copy of the return of sale, along with a copy of any notices required by this Section in the records of the city. At any time within two (2) years after the sale of a vehicle, the former owner or former security interest holder may recover the proceeds, minus costs incurred in the sale and costs of removal, preservation and custody of the vehicle, and fee charged pursuant to Section 7, along with interest at the legal rate, by filing a claim with the city, proving the person's ownership or security interest in the

vehicle as of the date of sale. If no person has filed a claim within two (2) years of the date of sale, then the proceeds shall be deposited in the city's general fund.

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Passed by the Council and approved by the Mayor on June 3, 1997