

AN ORDINANCE AMENDING ALBANY MUNICIPAL CODE CHAPTER 13.70, ABANDONED VEHICLES, AND REPEALING ALBANY MUNICIPAL CODE CHAPTER 13.44, IMPOUNDING VEHICLES, AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Albany Municipal Code Chapter 13.70, Abandoned Vehicles, is hereby amended to read as follows:

Chapter 13.70

ABANDONED VEHICLES

Sections:

- 13.70.010 Definitions.
- 13.70.020 ~~Notice of nuisance.~~ Abandoned vehicles prohibited.
- 13.70.030 ~~Impounding nuisance.~~ hazardous vehicles
- 13.70.040 ~~Notice of impoundment and sale.~~ Towing and storage liens.
- 13.70.050 ~~Public sale~~ Pretowing investigation and notice.
- 13.70.060 ~~Public sale.~~ Contents of pretowing notice.
- 13.70.070 ~~Redemption.~~ Posttowing notice.
- 13.70.080 ~~Sale and proceeds.~~ Hearing.
- 13.70.090 ~~Application.~~ Decision of hearing.
- 13.70.100 ~~Charges.~~ Failure to appear.
- 13.70.110 Exemption from notice and hearing requirements.

13.70.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Abandoned" means a vehicle left unoccupied and unclaimed; or in such a damaged or disabled or dismantled condition that the vehicle is inoperable; or not currently licensed through the division, if such a license is required by law; ~~upon the streets or alleys of the city for more than forty eight hours;~~

(2) ~~(4)~~ "Chief of Police" means an ~~includes any~~ authorized law enforcement officer of the city or another City employee authorized to enforce this chapter;

(3) ~~(2)~~ "City" means the City of Albany, Oregon;

~~(3) "Costs" means the expense of removing, storing, and selling an impounded vehicle;~~

(4) "Division" means the Motor Vehicle Division of the State of Oregon or the corresponding state agency of the state in which the vehicle is registered or licensed.

(5) "Hazardous Vehicle" means a vehicle left in a location or condition that constitutes an immediate and continuous hazard to the safety of persons using the streets or alleys of the city. For example, and not for limitation, the following are hazardous vehicles:

- (a) Vehicles blocking public or private rights-of-way.
- (b) Vehicles with leaking petroleum or other hazardous fluids.
- (c) Vehicles blocking fire hydrants.
- (d) Vehicles with broken glass/windows.

(6) ~~(5)~~ "Owner" means any individual, firm, corporation, or unincorporated association with a claim, either individually or jointly, or ownership of any interest, legal or equitable, in a vehicle;

(7) "Private Garage" means a private storage yard, garage, or other storage place selected by the Chief of Police.

(8) ~~(6)~~ "Vehicle" means every device in, upon or by which a person or property is or may be transported or drawn upon a public highway, except devices moved

exclusively by human power or used exclusively upon stationary rails or tracks;
~~(7) "Impound area" means a fenced and secured area with controlled access.~~

13.70.020 Abandoned vehicles prohibited. (1) No vehicle that the Chief of Police has reason to believe is abandoned shall be parked or left standing on the right-of-way of a city street, alley, or city property for a period in excess of 24 hours.

(2) A vehicle so parked or left standing may be taken into custody by the Chief of Police and shall be held at the expense of the owner of the vehicle. The Chief of Police may use department personnel, equipment, and facilities for removal and storage of the vehicle or may hire other personnel, equipment, and facilities for that purpose.

~~13.70.020 Notice of nuisance. (1) It shall be the duty of the police department, whenever a vehicle is found abandoned upon the streets or alleys in the same position or within two hundred feet of the same location for a period of forty eight hours, to:~~

~~(a) Make a routine investigation to discover the owner and request removal of a vehicle; or~~

~~(b) Failing to discover the owner by such a process, to make a diligent inquiry as to 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 owner, whenever such vehicle is required by law to be registered with that office;~~

~~(c) If the owner is not identified, to place a notice upon the windshield, or some other part of the vehicle easily seen by the passing public.~~

~~(2) The notice shall state that the police department will cause the removal and the impounding of the vehicle under the provisions of this chapter twenty four hours after the time of the posting, unless the owner causes the vehicle to be removed.~~

13.70.030 Impounding hazardous vehicles. (1) Upon discovering a hazardous vehicle, the Chief of Police may immediately cause the vehicle to be towed and impounded.

(2) The owner of the vehicle shall be responsible for all costs of towing and storing the vehicle.

~~13.70.030 Impounding nuisance. (1) An abandoned vehicle which remains in the same position for a period of twenty four hours after an owner has been requested to remove it or after a notice to remove has been posted upon the vehicle, and no person has appeared to show good cause why the vehicle should not be moved, shall constitute a nuisance.~~

~~(2) It shall be the duty of the police department to arrange for the vehicle to be removed to an impounded area and hold the vehicle until released or sold at public auction.~~

~~(3) The vehicle may not be released from impoundment except when authorized by the chief of police after being furnished proof of interest or ownership.~~

~~(4) The city shall not be liable for the vehicle during impounding nor responsible for impounded vehicles once they are placed in the impound area.~~

13.70.040 Towing and storage liens. (1) A person who, at the request of the Chief of Police, takes a vehicle into custody under the provisions of this chapter shall have a lien on the vehicle and its contents 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. The lien that attaches to the vehicle and its contents shall be a possessory chattel lien in accordance with ORS 87.152 and may be foreclosed in the manner provided in ORS 87.152 to 87.212. If the appraised value of the vehicle is \$750 or less,

the vehicle may be disposed of in the manner provided in ORS 819.220.

(2) If the vehicle is taken into custody under the provisions of this chapter and held by the City rather than by a private garage, the vehicle and its contents shall be disposed of in the manner provided in ORS 819.210 to 819.260.

~~13.70.040 Notice of impoundment and sale. If the owner is identified, he shall be notified immediately by registered or certified mail that such vehicle is held by the police department by the city. The notice to the owner shall also state:~~

- ~~(1) The reason for impounding the vehicle;~~
- ~~(2) The existing costs charged against the vehicle;~~
- ~~(3) That unless the owner redeems the vehicle, within fifteen days from the day of mailing the notice and pays all the costs, the vehicle will be sold.~~

13.70.050 Pretowing investigation and notice. (1) The Chief of Police investigating a vehicle in violation of 13.070.020 shall:

(a) Make a routine investigation to discover the owner and request removal of the vehicle.

(b) Failing to discover the owner by such a process, make a diligent inquiry as to the name and address of the owner by examining the vehicle for a license number, identification number, make, style, or any other information that will aid in the identification of the owner. When such vehicle is required by law to be registered with the Division, the Chief of Police shall inquire by license and/or VIN number with the Division for the name and address of the owner.

(c) Mail a pretowing notice to the owner at the address shown on the Division records at least five (5) days (excluding Saturday, Sunday, and holidays) before towing.

(d) Whether or not the owner is identified, place a notice upon the vehicle where it can be easily seen.

(2) This section does not apply to a hazardous vehicle.

~~13.70.050 Public sale notice. (1) If no claim is made by the owner within the time specified by Section 13.70.040 (3) of this chapter, but the owner cannot be identified after compliance with Section 13.70.020, the chief of police shall cause to be published in a newspaper of general circulation within the city a notice of sale. The notice of sale shall state:~~

~~(a) The sale is of abandoned property in the possession of the city;~~

~~(b) A general description of the vehicle;~~

~~(c) The terms of the sale;~~

~~(d) The date, time and place of the sale.~~

~~(2) The notice of sale shall be published once, five days prior to the sale and notice of the sale posted in three public places five days prior to the sale.~~

13.70.060 Contents of pretowing notice. Notices sent or placed under 13.70.050 shall contain the following information: (1) The name of the officer or other City employee issuing the notice.

(2) That if the vehicle is not removed within the time specified, the vehicle will be towed and taken into custody for violation of this chapter.

(3) The vehicle will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.

(4) The vehicle and its contents will be sold to satisfy the towing and storage charges if they are not paid.

(5) The owner is entitled to a hearing, before the vehicle is towed, to contest the proposed custody and removal if a hearing is timely requested.

(6) The owner may challenge the reasonableness of any towing and storage charges at the hearing.

(7) Contact the Albany Chief of Police in writing not more than five (5) days (excluding Saturday, Sunday, and holidays) from the mailing date of the

notice. The request must state grounds as to why the custody and removal is not justified.

(8) If the vehicle is towed, its location may be obtained by contacting the Albany Police Department.

~~13.70.060 Public sale. (1) If no claim shall have been made to redeem an impounded vehicle and the owner cannot be identified before the time set for the sale of such vehicle, the chief of police shall hold a sale at the time and place appointed within the view of the vehicle to be sold.~~

~~(2) The vehicle shall be sold to the highest and best bidder, providing that if no bids are entered, or those bids which are entered are less than the cost incurred by the city, the chief of police may enter a bid on behalf of the city in an amount equal to such costs.~~

~~(3) At the time of the purchase, the chief of police shall execute a certificate of sale, in duplicate, the original of which shall be delivered to the purchaser, and the copy thereof filed with the city recorder.~~

~~(4) The certificate of sale shall be substantially as follows:~~

CERTIFICATE OF SALE

~~_____ This is to certify that under the provisions of Ordinance No. _____ entitled, "An Ordinance for the Impounding and Disposition of Abandoned Vehicles" and pursuant to due notice of the time and place of sale, I did on the _____ day of _____, 19____, sell at public auction to _____ for the sum of \$ _____ cash, he being the highest and best bidder, and that being the highest and best sum bid therefor, the following described personal property, to wit:_____~~

~~(BRIEF DESCRIPTION OF PROPERTY)~~

~~and in consideration of the payment of the said sum of \$ _____, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property.~~

~~DATED this _____ day of _____, 19 _____.~~

~~NOTE: The City of Albany assumes no responsibility as to the condition of title of the above described property. In case this sale shall be for any reason invalid, the liability of the city is limited to the return of the purchase price."~~

13.70.070 Posttowing notice. (1) After an abandoned or hazardous vehicle has been towed pursuant to this chapter, notice shall be mailed within forty-eight hours of removal (excluding Saturday, Sunday, and holidays) to the owner. The notice shall contain the following information:

(a) The Albany Police Department has removed the vehicle. The applicable statute or ordinance by which the vehicle was towed is cited.

(b) The location of the vehicle.

(c) That the vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of notice and daily storage charges.

(d) That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by the date specified.

(e) That the owner is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and to contest the reasonableness of the towing charges if a hearing is timely requested.

(f) If a hearing is desired, the owner must request a hearing within five (5) days (excluding Saturday, Sunday, and holidays) from the mailing

date of the notice. The request must be made in writing to the Chief of Police. The request must state the grounds as to why the custody and removal is not justified.

(g) That the vehicle and its contents may be reclaimed by presenting proof of ownership to the Albany Police Department and payment of towing and storage charges, or the deposit of cash security, or a bond equal to the charges, with the Albany Police Department.

(2) If the vehicle is registered in Division records, notice may be addressed to the owner at the latest respective address shown by Division records. If the vehicle is not registered, reasonable efforts shall be made to ascertain the name and address of the owner so that notice may be mailed, if reasonably possible, within the time period outlined in this section.

(3) Notice is considered given when a certified letter addressed to the owner of the vehicle, return receipt requested, and postage prepaid is mailed within 48 hours (excluding Saturday, Sunday, and holidays) after the vehicle is taken into custody.

~~13.70.070 Redemption. (1) An owner may redeem a vehicle impounded under the provisions of this chapter, before a sale or disposition has taken place, by applying to the police department, whereupon he shall:~~

~~(a) Submit evidence of his ownership or interest in the vehicle, satisfactory to the chief of police, that such claim is rightful; and~~

~~(b) Pay the costs due and owing at the time the application to redeem is made.~~

~~(2) Upon compliance with subsection (1) of this section, the chief of police shall execute a receipt for the owner and cause the vehicle to be returned to him.~~

13.70.080 Hearing. (1) Upon request of the owner, a hearing shall be held before the municipal judge. If the vehicle has not been taken into custody before the hearing request, it will not be removed unless it is a hazard.

(2) A hearing shall be set within 72 hours (excluding Saturday, Sunday, and holidays) of receipt of the request and the owner shall be notified.

(3) Towing and storage charges set by law, ordinance, or rule or that comply with law, ordinance, or rule are reasonable for purposes of this hearing.

(4) Hearings may be informal in nature, but the presentation of evidence shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.

~~13.70.080 Sale and proceeds. (1) Upon a sale being consummated, the chief of police shall deliver the vehicle and the certificate of sale to the purchaser. The sale and conveyance shall be without redemption.~~

~~(2) The proceeds of a sale shall be applied:~~

~~(a) To the payment of costs incurred by the city; and~~

~~(b) Then, for such other services as may be rendered connected with impounding;~~

~~(c) The balance, if any, shall be transferred to the recorder of the City to be credited to the general fund.~~

13.70.090 Decision of hearing. If the municipal judge finds that:

(1) The action of the Chief of Police is valid:

(a) The vehicle will be held in custody until the costs of the hearing, towing, and storage are paid by the owner.

(b) If the vehicle has not yet been towed, its removal shall be ordered.

(2) The action of the Chief of Police is invalid:

(a) Order the immediate release of the vehicle to the owner.

(b) Find that the owner is not liable for towing or storage charges incurred prior to the hearing.

(c) Order the City to satisfy towing and storage charges incurred prior to the hearing.

(3) The municipal judge shall provide a written statement of the results of the hearing to the person requesting the hearing.

(4) The action of the municipal judge is final.

~~13.70.090 Application. This chapter shall apply to all abandoned vehicles now in the possession of the City as well as to abandoned vehicles that are hereafter impounded.~~

13.70.100 Failure to appear. If the person requesting the hearing does not appear at the scheduled hearing, the judge shall enter an order supporting the removal and assessment of towing and storage costs.

~~13.70.100 Charges. In the enforcement and execution of the provisions of this chapter, the charge and collective fee for the impoundment and storage of vehicles shall be the actual expenses incurred in placing the abandoned vehicle in storage and a storage fee of three dollars per day for each day that the vehicle remains in storage.~~

13.70.110 Exemption from notice and hearing requirements. A vehicle that is being held as part of any criminal investigation is not subject to any part of this chapter.

Section 2: Albany Municipal Code Chapter 13.44, Impounding Vehicles, is hereby repealed.

Section 3: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Passed by Council: August 14, 1991

Approved by Mayor: August 15, 1991

Effective Date: August 14, 1991



Mayor

ATTEST:



Deputy City Recorder

Chapter 13.44

IMPOUNDING VEHICLES

Sections:

- 13.44.010 Authority.
- 13.44.020 Towing and storage charges.
- 13.44.030 Sale.
- 13.44.040 Identification.
- 13.44.050 Notification to owner.
- 13.44.060 Disposition.
- 13.44.070 Costs of keeping--Charge.

13.44.010 Authority. (a) Members of the police department are authorized to move a vehicle from a street or highway to the nearest garage or other place of safety, or to a garage designated or maintained by the police department, or otherwise maintained by the police department, or otherwise maintained by this city, under the circumstances hereinafter enumerated:

(1) When any vehicle is left unattended upon any bridge, viaduct or causeway, or where such vehicle constitutes an obstruction of traffic;

(2) When a vehicle upon the highway is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle, by reason of physical injury or are incapacitated to such an extent as to be unable to provide for its custody or removal;

(3) When a vehicle is left unattended on a street and is so parked illegally as to constitute a definite hazard and obstruction to the normal movement of traffic;

(4) When any vehicle is parked in an area which is restricted to parking within certain hours and the vehicle is parked in violation of the restricted parking;

(5) When a vehicle is found to be in the possession or control of a person arrested for a crime and such impoundment is desirable for the security of the vehicle.

(b) Whenever an officer moves a vehicle from a street as authorized in this chapter and the officer knows or is able to ascertain from the registration record, the name and address of the owner thereof, the officer shall immediately give or cause to give notice in writing to the owner of the act of the removal and the reasons therefor and the place to which the vehicle has been removed. In the event that any such vehicle is stored in a public garage, a copy of the notice shall be given to the proprietor of the garage.

13.44.020 Towing and storage charges. Any vehicle removed from the street by a police officer or under the direction of a police officer pursuant to Section 13.44.010 shall be subject to a tow-away charge of such amount as shall be charged by a towing company doing business in the city which sum shall be paid to the city recorder before the vehicle is released to the custody of the owner. The owner of the vehicle shall further be required to pay a reasonable storage charge as shall be charged by a vehicle storage company that is providing storage for the vehicle.

13.44.030 Sale. If the vehicle is not redeemed within thirty days, then the vehicle shall be sold in accordance with applicable provisions relating to the sale of abandoned vehicles (Sections 13.44.040 through 13.44.070).

13.44.040 Identification. It shall be the duty of the police department of the city whenever a motor vehicle or other personal property is found abandoned upon the streets of the city, or is found without an owner claiming the same, or shall, by reason of arrest or by virtue of Ordinance No. 1422 as amended by Ordinance No. 2162, or in any other manner, come into the hands of the police department without a claimant, to make reasonable provisions for the storage of the same and thereupon make diligent inquiry as to the name and address of the owner, conditional vendor or mortgagee or any other person interested therein and, should the property be such that requires registration with a state agency, to examine the property for identification by way of license number, motor number, serial number, make and style, and transmit the information to the state agency with an inquiry for the name and address of the registered owner, conditional vendor, mortgagee or other person interested.

13.44.050 Notification to owner. If the owner, conditional vendor, mortgagee or other interested persons be found or identified, he shall be immediately notified by registered letter that the property is held by the police department of the city and will be sold at public auction at the city hall on a certain day at ten a.m. to the highest bidder for cash, if the property is not redeemed prior thereto by paying the costs as hereinafter provided.

13.44.060 Disposition. All property coming into the hands of the police department, as provided in Section 12.44.040, shall be sold by the chief of police upon giving not less than ten days' notice of the sale by posting the notice in three public places within the city and, in addition thereto, not less than ten days' notice as provided in Section 13.44.050, if the owner, conditional vendor or mortgagee be ascertained, at public auction to the highest and best bidder at the hour of ten a.m. of the designated day, within view of the property to be sold, and in default of bids from others for a greater sum, shall bid the same in for the city at the amount of costs incurred in seizing, keeping and offering for sale of the same. Upon such sale being consummated, the chief of police shall make, execute and deliver, together with possession of the property, a bill of sale, signed by himself as chief of police of the city, conveying the property to the purchaser.

Provided, however, that all property shall be subject to redemption by the owner, conditional vendor or mortgagee at any time prior to the sale by the owner, conditional vendor or mortgagee properly identifying himself and paying all costs incurred to the date of redemption by reason of seizing, and keeping the property.

Provided, further, that sale and conveyance, as heretofore provided, shall be without redemption and the proceeds thereof shall go to the general fund of the city.

13.44.070 Costs of keeping--Charge. There is hereby imposed a charge of five dollars as costs of seizing and keeping any property subject to registration by a state agency and a charge of one dollar for seizing and keeping all other property in this chapter provided which charge shall be in addition to the actual costs of seizing, keeping and selling as in this chapter provided.