

ORDINANCE NO. 4223

AN ORDINANCE RELATING TO ABANDONED VEHICLES AND AMENDING CHAPTER SIX OF THE BEAVERTON CODE

Whereas, ORS 819.100 through 819.270 provides for the orderly and expeditious removal and disposition of abandoned vehicles in Oregon; and

Whereas, the Beaverton Code presently affords a more complex, less efficient process to remove and dispose of abandoned vehicles compared to existing state law; and

Whereas, amending the City's procedures for removing and disposing of abandoned vehicles so that the City's process is more like the State's process is likely to result in faster removal of abandoned vehicles and a cost saving to taxpayers;

Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. BC 6.02.030, Definitions, is amended in part by striking the present definitions of the terms "Abandoned vehicle" and "Motor vehicle" and inserting new definitions of the terms to read as follows:

Abandoned vehicle - A vehicle left in circumstances demonstrating its owner never intends to return.

A. A motor vehicle shall be deemed an abandoned vehicle under this definition if it remains stationary upon any street or public property for a period in excess of 48 hours and the motor vehicle:

1. Reasonably appears incapable of self-propulsion; or
2. Does not display a current registration plate or a current trip permit; or
3. Is on a street and is not registered to a person at the address of property on the same side of the street that abuts the part of the street upon which the motor vehicle is located; or
4. Is on public property other than a street without the consent of the owner, occupant and any other person in lawful possession of the public property.

B. A trailer shall be deemed an abandoned vehicle under this definition if it remains stationary upon any street or public property for a period in excess of 24 hours and:

1. The trailer does not display a current registration plate or a current trip permit, unless exempt from registration under provision of Oregon law; or
2. Is on a street and no right of control over the trailer exists in a person or relative of a person who owns property or resides at property that is on the same side of the street that abuts the part of the street upon which the trailer is located; or

3. Is on public property other than a street without the consent of the owner, occupant and any other person in lawful possession of the public property.

Motor vehicle – A vehicle that is self-propelled or designed for self-propulsion.

Section 2. BC 6.05.010, Definitions, is amended in part by striking the present definitions of the terms “Abandoned vehicle” and “Vehicle” and inserting new definitions of the two terms and adding a definition of the term “Motor vehicle” to read as follows:

Abandoned vehicle - A vehicle left in circumstances demonstrating its owner never intends to return.

A. A motor vehicle shall be deemed an abandoned vehicle under this definition if it remains stationary upon any street for a period in excess of 48 hours and the motor vehicle:

1. Reasonably appears incapable of self-propulsion; or
2. Does not display a current registration plate or a current trip permit; or
3. Is on a street and is not registered to a person at the address of property on the same side of the street that abuts the part of the street upon which the motor vehicle is located; or
4. Is on public property other than a street without the consent of the owner, occupant and any other person in lawful possession of the public property.

B. A trailer shall be deemed an abandoned vehicle under this definition if it remains stationary upon any street for a period in excess of 24 hours and the trailer:

1. Does not display a current registration plate or a current trip permit, unless exempt from registration under provision of Oregon law; or
2. Is on a street and no right of control over the trailer exists in a person or relative of a person who owns property or resides at property that is on the same side of the street that abuts the part of the street upon which the trailer is located; or
3. Is on public property other than a street without the consent of the owner, occupant and any other person in lawful possession of the public property.

Motor vehicle – A vehicle that is self-propelled or designed for self-propulsion.

Vehicle – Any device in, upon or by which any person or property is or may be transported or drawn upon a street and includes vehicles that are propelled or powered by any means.

Section 3. BC 6.05.020, Abandoned Vehicles Prohibited, is amended by striking the entire text of the present section and inserting new text to read as follows:

6.05.020 Abandoned Vehicles Prohibited.

- A. No abandoned vehicle shall be left upon:
 1. A street, as defined in BC 6.02.030, or

2. Public property, as defined by BC 6.05.010, without the consent of the owner, occupant and any other person in lawful possession of the public property.

B. The owner of a vehicle as shown by records of the Oregon Department of Transportation or records of a similar agency of another state or governmental jurisdiction, shall be considered responsible for the abandonment of a vehicle in the manner prohibited by this section and shall be liable for the cost of removal and disposition of the vehicle.

C. A vehicle abandoned in violation of this section is subject to the provisions for removal of abandoned vehicles under BC 6.05.025 or 6.05.030 and to being sold as provided under BC 2.05.030 or applicable state law, including ORS 819.210 or 819.220.

D. The City may use its personnel, equipment and facilities for removal and storage of the vehicle or may hire other personnel, equipment and facilities for that purpose.

Section 4. BC 6.05.025 is added to the Beaverton Code to read:

6.05.025 Custody, Removal and Sale of Abandoned Vehicle.

A. After providing notice required under BC 6.05.060 and, if requested, a hearing under BC 6.05.120 to 6.05.150, the City may take an abandoned vehicle into custody and remove the vehicle from the location where it has been left.

B. The authority to remove and take abandoned vehicles into custody provided by this section is in addition to any authority to remove and take vehicles into custody under BC 6.05.030.

C. Subject to BC 6.05.037, vehicles and the contents of vehicles removed and taken into custody under this section, BC 6.05.030 are subject to a lien as provided under BC 6.05.040.

D. Vehicles removed and taken into custody under this section are subject to sale under BC 2.05.030, ORS 819.210 or 819.220 if the vehicle is not reclaimed as provided under BC 6.05.037 or returned to the owner or person entitled to possession under BC 6.05.110.

Section 5. BC 6.05.037 is added to the Beaverton Code to read:

6.05.037 Rights and Liabilities of Owners.

The owner, a person entitled to possession or any person with an interest recorded on the title of a vehicle taken into custody under BC 6.05.020 or 6.05.030:

A. Is liable for all costs and expenses incurred in the removal, preservation and custody of the vehicle and its contents except that:

1. The owner, a person entitled to the vehicle or any person with an interest recorded on the title is not liable for nor shall be required to pay storage charges for a period in excess of 20 days unless the person has received a written notice under as required under applicable state law, including ORS 819.160. In no case shall a person be required to pay storage charges for a storage period in excess of 60 days.

2. A security interest holder is not liable under this subsection unless the security interest holder reclaims the vehicle.

B. May reclaim the vehicle at any time after it is taken into custody and before the vehicle is sold or disposed of under BC 2.05.030, ORS 819.210 or 819.220 upon presentation to the authority holding the vehicle of satisfactory proof of ownership or right to possession and upon payment of costs and expenses for which the person is liable under this section.

C. If the vehicle is taken into custody under BC 6.05.020 or 6.05.030, has a right to request and have a hearing under BC 6.05.120 to 6.05.150.

D. If the vehicle is sold or disposed of under BC 2.05.030, ORS 819.210, 819.215 or 819.220, has no further right, title or claim to or interest in the vehicle or the contents of the vehicle.

E. If the vehicle is sold or disposed of under ORS 819.210, has a right to claim the balance of the proceeds from the sale or disposition as provided under ORS 819.260.

F. Has no right to a hearing if the vehicle is disposed of under ORS 819.215.

Section 6. BC 6.05.060, Pretow Investigation and Notice, is amended by striking the entire text of the present section and inserting new text to read as follows:

6.05.060 Notice Prior to Removal.

A. If the City proposes to take custody of a vehicle that an officer reasonably suspects is abandoned in violation of BC 6.05.020, the City shall affix a notice to the vehicle with the information required by subsection B of this section. The notice shall be affixed to the vehicle at least 24 hours before taking the vehicle into custody. The 24-hour period under this section includes holidays, Saturdays and Sundays.

B. Notices affixed to a vehicle shall state all of the following:

1. That the vehicle will be subject to being taken into custody and removed by the City if the vehicle is not removed before the time set by City.

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

3. The place where the vehicle will be held in custody or the telephone number and address of the City official or department that will provide such information.

4. 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.

5. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.

6. 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.

7. That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges at the hearing.

8. The time within which a hearing must be requested and the method for requesting a hearing.
- C. This section does not apply to vehicles listed in BC 6.05.030.

Section 7. BC 6.05.070, Pretow Notice – Contents, is amended by striking the entire text of the present section and inserting new text to read as follows:

6.05.070 Hearing to Contest Validity of Removal and Custody.

A person provided notice under BC 6.05.060 or BC 6.05.080 or BC 6.05.090 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 BC 6.05.030 or proposed removal and custody of a vehicle under BC 6.05.020 by submitting a request for hearing with the City not more than five days from the mailing date of the notice. The five-day period in this section does not include holidays, Saturdays or Sundays. A hearing under this section shall comply with all of the following:

A. If the City proposes to remove a vehicle and receives a request for hearing before the vehicle is taken into custody and removed, the vehicle shall not be removed unless the vehicle 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. Upon receipt of a request for a hearing under this section, the City shall set a time for the hearing and conduct a hearing pursuant to BC 6.05.120 to BC 6.05.150.

Section 8. BC 6.05.090, Post-Tow Notice – Hazardous Vehicles, is amended by striking the entire text of the present section and inserting new text to read as follows:

6.05.090 Notice After Removal.

A. If the City takes custody of a vehicle under BC 6.05.030, the City shall provide, by certified mail within 48 hours of the removal, written notice with an explanation of procedures available for obtaining a hearing under BC 6.05.120 to 6.05.150 to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation. 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 under BC 6.05.120 to 6.05.150. The 48-hour period under this subsection 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, the identity of the appropriate authority that took the vehicle into custody and removed the vehicle and the statute, ordinance or rule under which the vehicle has been taken into custody and removed.

2. The location of the vehicle 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 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 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 a date specified by the appropriate authority.

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. The time within which a hearing must be requested 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 either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the appropriate authority.

Section 9. BC 6.05.100, Additional Identifying Information, is amended by striking the entire text of the present section and inserting new text to read as follows:

6.05.100 Exemption From Notice and Hearing For Vehicle Held in Criminal Investigation. A vehicle that is being held as part of any criminal investigation is not subject to any requirements under BC 6.05.060 to 6.05.090 or 6.05.120 to 6.05.150.

Section 10. BC 6.05.110, Return of Vehicle to Owner, is amended in part by striking the present subsections A and E and inserting only a new subsection A to read as follows:

A. An owner whose vehicle has been towed pursuant to BC 6.05.020 or BC 6.05.030 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.

Section 11. BC 6.05.120, Hearing, is amended in part by striking the present subsection A and inserting a new subsection A to read as follows:

A. When a person requests a hearing pursuant to BC 6.06.037, the hearing shall be held before a judge of the Beaverton Municipal Court.

Section 12. BC 6.05.205, Definitions, is amended in part by striking the present definition of the term "Impounded vehicle" and inserting a new definition of the term to read as follows:

Impounded Vehicle - A vehicle seized from its owner or operator by or at the direction of the City or one of its employees for a substantial period of time under circumstances in which the City either must consent to the release of the vehicle or otherwise bears some responsibility for the protection, preservation or disposition of the vehicle.

For purposes of this ordinance, a vehicle shall not be considered an impounded vehicle if:

- A. The vehicle is an abandoned vehicle as defined in BC 6.05.010; or
- B. The City or one of its employees or agents facilitates the towing of a vehicle under the following circumstances:
 - 1. The vehicle is towed by a person independent of the City to a place not under the authority or control of the City;
 - 2. The vehicle may be returned to its operator or an owner of the vehicle without City authorization; and
 - 3. The vehicle is towed either:
 - a. With the consent of its operator or an owner of the vehicle; or
 - b. At the direction of a person who:
 - (i) is not an owner or an operator of the vehicle; and
 - (ii) is not an employee or agent of the City; and
 - (iii) is an owner, tenant, occupant or person otherwise in lawful control of the property upon which the vehicle is located immediately prior to towing.

Section 13. The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid, the remaining parts shall remain in force unless:

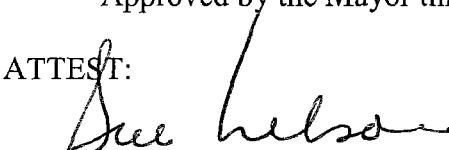
- A. The remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional or invalid part that it is apparent that the remaining parts would not have been enacted without the unconstitutional or invalid part; or
- B. The remaining parts, standing alone, are incomplete and incapable of being executed according to the legislative intent.

First reading this 12th day of August, 2002.

Passed by the Council this 19th day of August, 2002.

Approved by the Mayor this 20th day of AUGUST, 2002.

ATTEST:


SUE NELSON, City Recorder

APPROVED:


ROB DRAKE, Mayor