

## GENERAL ORDINANCE NO. 03-1247

AN ORDINANCE DECLARING UNINSURED VEHICLES AND VEHICLES OPERATED BY DRIVERS WITHOUT DRIVING PRIVILEGES OR WHOSE LICENSES ARE SUSPENDED, AND VEHICLES OPERATED BY PERSONS UNDER THE INFLUENCE OF INTOXICANTS, TO BE PUBLIC NUISANCES, AND ALLOWING FOR THE VEHICLES TO BE IMPOUNDED

THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1. Vehicles Impounded. Whenever a traffic citation is issued or a physical arrest is made for a violation of Oregon's vehicle code or a local traffic regulation, and the operator of such motor vehicle is cited or arrested for operating the motor vehicle without driving privileges or in violation of license restrictions (ORS 807.010), or for having a suspended or revoked operator's license (ORS 811.175 or 811.182), or for driving while uninsured (806.010), or for driving while under the influence of intoxicants (ORS 813.010), a police officer may order the vehicle towed and impounded as provided herein.

Section 2. Notice Required. Notice that the vehicle has been impounded shall be given by certified mail to the owners of the motor vehicle and to any lessors or security interest holders, as shown on the records of the Oregon Department of Transportation, within 48 hours of the impoundment, in the same manner and within the same time limits as provided in ORS 819.180 for notice after removal of a vehicle.

Section 3. Person Responsible for Fees. The person owning the motor vehicle at the time it is towed and impounded shall be liable for the expenses incurred in the towing and storage of the motor vehicle under this ordinance, including an administrative fee which shall be set by City Council by resolution, whether or not the motor vehicle is returned to the person who was operating it at the time of impound.

Section 4. Return of Vehicle. The vehicle impounded under this ordinance shall be returned to the owner of the vehicle or the owner's authorized agent only upon payment of the administrative fee set forth in Section 3 and the expenses incurred in the towing and storage of the vehicle under this ordinance.

Section 5. Unclaimed Vehicles. If the motor vehicle is not reclaimed within 30 days after the motor vehicle is impounded, the vehicle may be disposed of in accordance with the procedure set forth in ORS 819.180, 819.190, 819.220, and 819.240 to 819.260.

Section 6. Impounding Vehicles.

- (1) A police officer who reasonably believes that a person is driving while suspended or revoked in violation of ORS 811.175 or 811.182, or driving while under the influence of intoxicants in violation of ORS 813.010, or operating a vehicle without driving privileges or in violation of license restrictions in violation of ORS 807.010, or driving uninsured in violation of ORS 806.010, may without prior notice, order the vehicle impounded until a person with the right to possession of the vehicle complies with the conditions for release or the vehicle is ordered released by the Municipal Court Judge.
- (2) 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.
- (3) 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) In the case where the person seeking release of the vehicle is not the current legal owner of the vehicle, proof of either a signed off title, a notarized bill of sale, or bill of sale on car sales business letterhead; and
  - (4) Payment to the City of The Dalles of the administrative fee. Payment shall be in the form of cash, a certified or cashier's check, or a money order. Proof of payment shall be presented to the impounding police agency, which shall authorize the person storing the vehicle to release it upon payment any towing and storage charges.

Section 7. Hearing Procedures; Owner Liability.

- (A) The person operating the motor vehicle at the time it is towed and impounded or the owner of the vehicle impounded under Sections 1 or 6 of this ordinance may request a hearing to contest either the validity of the impoundment or the liability for the administrative fee and the expense incurred in the towing and storage of the vehicle, or both. A request must be made within five (5) calendar days after the date that notice of impoundment is mailed, as evidenced by the postmark, not including Saturdays, Sundays or holidays. The request shall be made to a person designated by the impounding police agency to receive such requests.
- (B) When a timely request for a hearing is made, a hearing shall be set in the Municipal Court for four calendar days after the request is received, excluding Saturdays, Sundays and holidays, but may be postponed at the request of the person asking for the hearing.
- (C) The impounding police agency shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe the vehicle was being operated in violation of ORS 811.175 (infraction driving while suspended or revoked or in violation of permit), ORS 811.182 (criminal driving while suspended or revoked or in violation of permit), ORS 813.010 (driving while under the influence of intoxicants), ORS 807.010 (operating a motor vehicle without driving privileges or in violation of license restrictions), or ORS 806.010 (driving while uninsured). The police officer who ordered the vehicle impounded may submit an affidavit to the Municipal Court in lieu of making a personal appearance at the hearing.
- (D) If the Municipal Court Judge finds that the impoundment of the vehicle was proper, the Judge shall enter an order supporting the removal and shall find that the owner or person entitled to possession of the vehicle is liable for usual and customary towing and storage costs. The Municipal Court Judge may also find the owner or person entitled to possession of the vehicle liable for the costs of the hearing.

- (5) If the Municipal Court Judge finds that the impoundment of the vehicle was improper, the Municipal Court Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the operator or owner of the vehicle is not liable for any towing or storage costs resulting from the impoundment. If there is a lien on the vehicle for towing and storage costs, the Municipal Court Judge shall order it paid by the impounding police agency.

Section 8. Security Interest Holder Rights.

- (A) The authority to impound any vehicle under this ordinance is subject to the rights of a security interest holder under a security agreement executed before the vehicle was impounded under this ordinance. A vehicle shall be released for the purpose of satisfying a security interest if:
  - (1) A request in writing is made to the Municipal Court;
  - (2) If the vehicle has been impounded, the security interest holder pays the administrative fee and the expenses in removal and storage of the vehicle; and
  - (3) If the registration of the vehicle has been suspended under ORS 809.010, the security interest holder takes possession of the vehicle subject to the suspension of the registration remaining in effect against the registered owner.
- (B) A security interest holder's obligation to pay and right to recover removal and storage expenses under this subsection are limited to the recovery of those removal and storage expenses incurred during the initial twenty (20) day period when the vehicle was in public storage, unless the authority taking the vehicle into custody under this subsection has transmitted by certified mail a written notice to the holder concerning the accrual of storage expenses. If the vehicle is in private storage, the lien claimant shall transmit the written notice.

Section 9. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court or board of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Passed by City Council and approved by the Mayor April 14, 2003.