

ORDINANCE NO. 235

AN ORDINANCE PROVIDING FOR THE IMPOUNDING AND DISPOSITION OF ABANDONED VEHICLES; AND REPEALING ORDINANCE NO. 149.

The Town of Canyon City ordains as follows:

Section 1. Definitions. As used in this ordinance, unless the context requires otherwise, the following mean:
Abandoned vehicle. A vehicle left unoccupied and unclaimed or in a damaged, disabled or dismantled condition such that the vehicle is inoperable.

Hazardous vehicle. A vehicle left in a location or condition such as to constitute an immediate and continuous hazard to the safety of persons using the streets or alleys of the city. For example, and not by limitation, the following are hazardous vehicles:

- (1) Vehicles blocking public or private rights of way.
- (2) Vehicles with leaks in gas tanks.
- (3) Vehicles blocking fire hydrants.

Law enforcement officer. Any authorized law enforcement officer of the city, or other city employe authorized to enforce this ordinance.

Owner. A person with a claim, either individually or jointly, or ownership of any interest, legal or equitable, in a vehicle.

Private garage. A reputable, private storage yard, garage, or other storage place selected by the law enforcement officer.

Vehicle. 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.

Section 2. Abandoned Vehicles Prohibited.

(1) No vehicle which the law enforcement officer has reason to believe is disabled or abandoned shall be parked or left standing upon the right of way of any city street or alley or upon any city property for a period in excess of 48 hours.

(2) A vehicle so parked or left standing may be taken into custody by the law enforcement officer and shall be held at the expense of the owner or person entitled to possession of the vehicle. The law enforcement officer may use department personnel, equipment and facilities for the

removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for that purpose.

Section 3. Impounding Hazardous Vehicles.

(1) Upon discovering a hazardous vehicle, the law enforcement officer may immediately cause the vehicle to be towed and impounded.

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

Section 4. Towing and Storage Liens.

(1) A person who, at the request of the law enforcement officer, takes a vehicle into custody under the provisions of this ordinance shall have a lien on the vehicle and its contents for the just and reasonable towing and storage charges, may retain possession of them until the charges are paid, and may have them 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 ordinance and held by the law enforcement officer rather than by a private garage at the owner's request, the vehicle and its contents shall be disposed of in the manner provided in ORS 819.210 to 819.260.

Section 5. Pre-Towing Investigation and Notice.

(1) Whenever a vehicle is found in violation of section 2, it shall be the duty of the law enforcement officer to:

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

(b) Failing to discover the owner by such a process, make a diligent inquiry as to the name and address of the owner of the vehicle by examining it for license number, identification number, make, style and any other information which will aid in the identification of the ownership, and transmit all available information pertaining to the vehicle to the Motor Vehicles Division 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 identified, mail a notice to the owner at the address shown with the Motor Vehicles Division.

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

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

Section 6. Contents of Notice.

(1) Notices sent or placed under section 5 shall contain the following information:

(a) The name of the officer or other city employee issuing the notice.

(b) That if the vehicle is not removed within the legal time limit, the vehicle will be towed and taken into custody as an abandoned vehicle.

(c) That any person who, at the request of the law enforcement officer, tows an abandoned vehicle shall have a lien on the vehicle for the just and 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.

(d) That the owner of the vehicle may request a hearing on the validity of the proposed tow and the creation and amount of the lien.

(e) How and where the owner of the vehicle may get information about the opportunity for a hearing and the location of the vehicle, if it has been towed.

(2) If the owner of the vehicle requests a hearing before the vehicle is taken into custody, the vehicle shall not be taken until a hearing is set and held in accordance with sections 7 to 10.

Section 7. Post-Towing Notice.

(1) After an abandoned vehicle has been taken into custody, notice must be provided to the owner indicating:

(a) The location of the vehicle;

(b) That a lien has arisen on the vehicle in favor of the person who towed the vehicle;

(c) That the vehicle may be sold at public auction to satisfy the lien; and

(d) That a hearing on the validity of the tow and on the creation and amount of the lien may be held, if requested.

(2) Notice is considered given when a certified letter addressed to the registered owner of the vehicle and a similar letter addressed to the legal owner, if any, return receipt requested and postage prepaid, is mailed within 24 hours after the vehicle is taken into possession by or at the direction of the law enforcement officer.

(3) If the vehicle is registered in the office of the Motor Vehicles Division of this state, notice may be addressed to the registered owner and the legal owner, if any, at the latest respective address of each shown by the records in the office of the Motor Vehicles Division. If the vehicle is not so registered, reasonable efforts shall be made to ascertain the names and addresses of the legal owner and persons entitled to possession of the vehicle so that notice may be mailed, if reasonably possible, within the time period outlined in this section. The owner must request a hearing within five days after receipt of the notice. The request may be made in person or in writing, and failure to appear in person or to mail a letter within five days after receipt of the notice shall act as a waiver of the right to a hearing.

Section 8. Hearing.

(1) Upon request of the legal owner or the person entitled to possession of the vehicle, a hearing shall be held before the municipal judge.

(2) The hearing shall be set and conducted within 48 hours of receipt of the request, holidays, Saturdays and Sundays not to be included. The hearing can be set for a later date if the owner or person entitled to possession so requests. At the hearing, the owner may contest:

(a) The validity of the action of the law enforcement officer in taking the vehicle into custody; and

(b) The creation and amount of the lien attached to the vehicle.

(3) The city shall have the burden of showing the validity of the taking of the vehicle.

(4) At any time prior to the requested hearing, the owner or the person entitled to possession of the vehicle may regain possession of the vehicle by posting with the city security in the form of cash in an amount sufficient to cover costs of removing and storage.

Section 9. Decision. If the municipal judge finds that:

(1) The action of the law enforcement officer in taking the vehicle into custody was proper, the municipal judge shall enter an order supporting the removal.

(2) The action of the law enforcement officer in taking the vehicle into custody was invalid, the judge shall:

(a) Order the vehicle released to the owner;

(b) Find that the owner is not liable for any towing or storage charges occasioned by the taking; and

(c) Order the city to satisfy the towing and storage lien.

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

Section 10. Failure to Appear. If the person requesting the hearing does not appear at the scheduled hearing, the judge may enter an order supporting the removal and assessment of towing and storage costs and apply any security posted against such costs.

Section 11. Repeal. Ordinance No. 149, passed March 4, 1970, is repealed.

Passed by the council and approved by the mayor October 22, 1986.