

Chapter 8.25

Abandoned and Improperly Parked Vehicles

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8.25.010 Policy and Definitions. (1) Policy. It is the policy of the City of Mosier that the public right-of-way is to be used for the safe passage of vehicles, pedestrians, bicycles and other means of transporting people and goods and that any stationary vehicles in or along the public right-of-way shall be consistent with these objectives. Vehicles may be parked along the public right-of-way, outside of the travel lanes where it is safe to do so and where not specifically prohibited. However, vehicles may not be abandoned or stored in the public right-of-way, nor may they be parked in the public right-of-way or on city owned or leased property and offered for sale.

(2) Definitions. The following terms shall have the corresponding meanings for purposes of this chapter:

a. Abandoned vehicle is a vehicle that has been deserted, relinquished or has one or more of the following existing conditions:

1. The vehicle license plate or registration sticker has expired or has been canceled.
2. The vehicle has no license plate.
3. The vehicle appears to be inoperative or disabled.
4. The vehicle appears to be wrecked, partially dismantled or junked.

b. Hazardous vehicle is a vehicle left in a location or condition such as to constitute an immediate threat to the safety of vehicular or pedestrian traffic.

c. Officer means any public safety or law enforcement officer, code enforcement officer or person authorized or designated by the mayor to enforce the requirements of this chapter.

8.25.020 Abandoned and Improperly Parked Vehicles Prohibited

(1) No vehicle may be parked, abandoned or left standing upon:

a. The right-of-way of the city, county, or state highway, street or alley or upon any city property for a period in excess of 24 hours.

b. The right-of-way of any private street or alley or upon any private property used by business licensees, customers, or the public for a period in excess of 24 hours.

c. The public right-of-way so that, in the opinion of the officer, it constitutes a hazardous vehicle.

- d. The public right-of-way on property owned or leased by the city and offered for sale.
- e. Private property for a period in excess of five days in a location that is visible from a street or sidewalk adjoining the premises, but only if it is an abandoned vehicle as defined in section 8.25.010.

(2) It is no defense to any of the above prohibited acts that the vehicle has been moved to a different location within a 500 foot radius.

(3) In addition to any civil enforcement action taken for violation of this code or state law, a vehicle parked, abandoned or left standing in violation of this section may be impounded as provided in this chapter.

8.25.030 Impounding Vehicles. In addition to a civil citation issued for violation of this code or state law, a vehicle may be impounded as follows:

(1) Without Prior Notice. A vehicle may be towed without prior notice when:

- a. The vehicle is a hazardous vehicle as defined in Section 8.25.010;
- b. The officer reasonably believes that the vehicle is stolen;
- c. The officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if such towing is reasonably necessary to obtain or preserve such evidence;
- d. The vehicle was in possession of a person taken into custody by an officer;
- e. The vehicle is unlawfully parked on a public or private street in a conspicuously restricted space, zone or traffic lane where parking is limited or prohibited to designated classes of vehicles or periods of time, or at any time when the vehicle interferes with the intended use of such space, zone or traffic lane;
- f. The vehicle was in the possession of a person who an officer has probable cause to believe, at or just prior to the time the officer stops the person, has committed any of the following offenses:
 - 1. Driving while suspended or revoked (ORS 811.175 or 811.182);
 - 2. Driving while under the influence of intoxicants (ORS 813.010);
 - 3. Operating without driving privileges or in violation of license restrictions (ORS 807.010);
 - 4. Driving an uninsured vehicle (ORS 806.010).
- h. The vehicle remained in a city park after emergency park closure.

(2) With Prior Notice. A vehicle may be towed five calendar days (excluding holidays, Saturdays and Sundays) after the date of the notice, as provided by Section 8.25.040 when:

- a. The officer reasonably believes that the vehicle is abandoned;

b. The vehicle is unlawfully parked pursuant to Section 8.25.020, where there is no reasonable need to immediately remove the vehicle; or

c. The vehicle is parked on city owned or operated property without express city permission.

(3) A vehicle impounded pursuant to this section shall be taken into custody by an officer and shall be held at the expense of the owner or person entitled to possession of the vehicle. The officer may use the personnel, equipment and facilities of the city for the removal and storage of the vehicle, or may hire a private garage or a towing company for that purpose.

8.25.040 Impound Procedures

(1) Pre-Impound Investigation and Notice. After notice under this chapter, the officer may impound a vehicle after completing the following steps:

a. Make a routine investigation to discover the driver or registered owner and request immediate removal of the vehicle; or

b. If the registered owner or driver cannot be discovered, make a diligent inquiry as to the name and address of the owner of the vehicle by examining it for license number, I.D. number, make, style and any other information that may help in identifying the owner, and transmit such information to the motor vehicles division of the state in which the vehicle is registered 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. Place a notice of intent to impound upon the windshield or some other conspicuous part of the vehicle which is easily seen by the passing public, whether or not the owner is identified as set forth above.

d. The pre-impound notice required by this subsection shall include the following:

1. the name and badge number of the officer or identification of other city employee issuing the notice;

2. that if the vehicle is not removed within the prescribed time limit, the vehicle will be impounded;

3. the statute, ordinance or rule violated by the vehicle under which the vehicle will be removed;

4. the telephone number and address of the city department that will provide information about where the vehicle will be held in custody if it is towed;

5. that any person who, at the request of the officer, impounds a 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 to satisfy the lien if the charges are not paid;

6. that the owner, possessor or person having an interest in the vehicle may request a hearing within five calendar days (excluding holidays, Saturdays and Sundays) from the date of the notice on the validity of the proposed impound and the reasonableness of the lien; and

7. that the request for hearing may be made in person, by telephone or in writing to the person so designated in the notice.

e. If a hearing is timely requested before the vehicle is taken into custody, the vehicle shall not be impounded until a hearing is set and held in accordance with section 8.35.030.

(2) Post-Impound Notice. If a vehicle is taken into custody of the city, the officer shall provide notice by certified mail, return receipt requested, and postage prepaid, within 48 hours of the vehicle's removal (not including holidays, Saturdays or Sundays) to the owners of the vehicle and any lessors or security interest holders as shown on the records of the Department of Motor Vehicles.

a. The post-impound notice required by this subsection shall include the following:

1. the statute, ordinance or rule under which the vehicle has been taken into custody or removed on behalf of the city;

2. the location where the vehicle may be redeemed by the owner or person entitled to possession;

3. that the vehicle is subject to towing and storage charges, and the telephone number and address of the facility that may be contacted for information on the 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 in favor of the facility that towed and is storing the vehicle, and that the vehicle and its contents may be sold at public auction to satisfy the lien if the charges are not paid by the specified date;

5. 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; removal of any conditions required for the police department to release its hold; payment of the administrative fee for processing release of the vehicle; 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;

6. that the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing on the validity of the tow and the reasonableness of the charges, if requested within five calendar days (excluding holidays, Saturdays or Sundays) from the date of the notice, and that the request for hearing may be made in person, by telephone or in writing to the person so designated in the notice; and

7. that hearing costs may be assessed against the person requesting the hearing, including court costs and the costs of any witnesses.

b. Reasonable efforts shall be made to ascertain the name and address of the owner and/or other persons with an interest in the vehicle so that notice may be mailed, if reasonably possible, within 48 hours of impound. However, no notice need be mailed pursuant to this subsection when:

1. a vehicles does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined;
2. the identity and address of the vehicle owner is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined; or
3. actual notice of a tow has been given personally to the owner or person entitled to possession. Such actual notice must include all information required under subsection (2)(a) above. Actual notice may be used in lieu of the mailed notice required by subsection (2).

(3) Inventory of Impounded Vehicle. The contents of all vehicles impounded by an officer will be inventoried in accordance with the agency's adopted property inventory procedures.

8.25.050 Hearing

(1) Request for Hearing.

- a. Post-Impound Hearing Request. The owners or any lessors or security interest holders as shown on the records of the Department of Transportation must request a hearing within five calendar days (excluding holidays, Saturdays and Sundays) from the date of the notice. The request may be made in person, by telephone or in writing to the person designated in the notice. Failure to make a timely request for a hearing shall constitute a waiver of the right to a hearing.
- b. Pre-Impound Hearing Request. If the owners or any lessors or security interest holders as shown on the records of the Department of Transportation timely request a hearing before the vehicle is taken into custody, the vehicle shall not be impounded until a hearing is set and held in accordance with this section.

(2) Hearing Procedures.

- a. When timely request for a hearing is made, a hearing shall be held in the Mosier Municipal Court.
- b. The hearing shall be set within 72 hours of receipt of the request and the hearing shall be conducted within four calendar days of receipt of the request for hearing, excluding holidays, Saturdays and Sundays. However, the time within which the hearing is to be set or conducted may be extended at the request or with the consent of the owner or person entitled to request the hearing as provided in this chapter.
- c. At the hearing, the owner or person entitled to request the hearing as provided in this chapter may contest the validity of the impound and the reasonableness of the charges.
- d. The city shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe that the vehicle was being operated in violation of ORS 806.010, 807.010, 811.175, 811.182, 813.010, or the relevant portions of the Mosier Municipal Code. The city may present evidence either by testimony of the officer, or by affidavit of any such officer. If the city's evidence is presented only by affidavit and the judge cannot resolve a question by information contained in the affidavit or relevant report, the hearing may be held open for a reasonable time to complete the record.

(3) Decision of the Municipal Court. If the Court finds that:

a. Impound of the vehicle was proper, the Court:

1. shall enter an order supporting the impound/removal; and
2. shall find that the owner or person entitled to possession is liable for any towing and storage charges resulting from the impound; and
3. may find that the owner or person entitled to possession is liable for the costs of the tow hearing, including costs of the Court proceeding and any witnesses.

b. Impound of the vehicle was improper, the Court shall:

1. order the vehicle released to the owner or person entitled to possession;
2. find that the owner or person entitled to possession is not liable for any towing or storage charges resulting from the impound; and
3. order the city to satisfy the towing and storage lien.

c. Failure to Appear at the Hearing. If the person requesting the hearing does not appear at the scheduled hearing, the Court may enter an order supporting the impound and assessing towing and storage costs, and shall add an assessment for the costs of the Court proceeding and any witnesses who appeared at the time set for hearing.

8.25.060 Release of Vehicles

(1) A vehicle which has been impounded under this chapter may be released to a person entitled to lawful possession provided the hold, if any, on the vehicle, has been released and upon compliance with the following:

- a. Submission of proof that a person with valid driving privileges will be operating the vehicle;
- b. Submission of proof of compliance with financial responsibility requirements for the vehicle; and
- c. Payment to the city clerk of an administrative fee sufficient to recover its actual administrative costs for the impoundment.

(2) Notwithstanding subsection (1) of this section, a person who holds a security interest in the impounded vehicle may obtain release of the vehicle by paying the administrative fee.

(3) When a person entitled to possession of the impounded vehicle has complied with the requirements of subsection (1) or (2) of this section, the city clerk shall authorize the person storing the vehicle to release it upon payment of any accrued towing and storage costs, unless otherwise ordered by the Court;

(4) The council may establish by resolution an administrative fee for processing the release of the vehicle;

(5) Notwithstanding any other provision of law, a city employee has authority to refuse to release or authorize release of any motor vehicle from custody to any person who is visibly under the influence of intoxicants.

8.25.070 Towing and Storage Liens. A person who, at the request of the officer, takes a vehicle into custody 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. The lien that attaches to the vehicle shall be a possessory chattel lien in accordance with ORS Chapter 87 and shall be foreclosed in the manner provided by law. If the appraised value of the vehicle is \$750 or less, the vehicle shall be disposed of in the manner provided in ORS 819.220.