

ORDINANCE BILL NO. 11 FOR 1986

ORDINANCE NO. 952

AN ORDINANCE FOR THE IMPOUNDING AND DISPOSING OF DISCARDED VEHICLES; AND REPEALING ORDINANCE NO. 554.

The City of Sweet Home does ordain as follows:

Section 1. Definitions. As used in this ordinance, the following mean:

Discarded Vehicle:

(1) A vehicle, whether licensed or unlicensed, of any kind which is parked, stored or left upon any public or private property within the City of Sweet Home in excess of 7 days and is in one or more of the following conditions: inoperative, wrecked, dismantled, partially dismantled, and/or junked, unless the vehicle is completely enclosed within a building or in an area that is completely enclosed by a solid fence, other solid structure and/or by vegetation, and is not visible from a public street, other public area or other private property, or unless it is in connection with a business enterprise properly operated in the appropriate business zone, pursuant to the zoning laws of the City of Sweet Home.

(2) Discarded vehicles include major parts of vehicles, including but not limited to bodies, engines, transmissions and rear ends.

Enforcement Officer: Any authorized enforcement officer of the City, City of Sweet Home Building Official, or Police Officer.

Person in charge of the property: An agent, occupant, lessee, contract purchaser, owner or person having possession, control or title to property where a vehicle is located.

Vehicle: Every device in, upon or by which a person or property is or may be transported or drawn on a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Vehicle owner or owner of the vehicle: An individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or an interest, legal or equitable, in a vehicle.

Section 2. Declaration of Public Nuisance. The parking, storing, or leaving of a vehicle in violation of the provisions of this ordinance is found to create a condition tending to reduce the value of property; to promote blight, deterioration and unsightliness; to invite plundering; to create fire hazards; to constitute an attractive nuisance causing a hazard to the health and safety of minors; to create a harborage for rodents and insects; and to be injurious to the health, safety and general welfare of the public. Therefore, the presence of a discarded vehicle on private or public property is declared to constitute a public nuisance which may be abated in accordance with the provisions of this ordinance.

Section 3. Prohibited Action; Duty to Move. No person shall park, store, leave, or permit to be parked, stored or left, a discarded vehicle within the City of Sweet Home; and it shall be the duty of the owner of the vehicle, and it shall also be the duty of the person in charge of the property upon which such vehicle is located, to move the discarded vehicle so that it is in compliance with the provisions of this ordinance. A person who is not in compliance with this section is in violation of this ordinance.

Section 4. Notice for Abatement. Before removal of a discarded vehicle under the terms of this ordinance, written notice shall be given as provided herein. The enforcement officer shall give written notice to the registered or other owner of the vehicle which is in violation of this ordinance and/or give such notice to the person in charge of the property upon which such vehicle is situated to the effect that the parking, storing, leaving, or permitting

the parking, storing or leaving of such vehicle is in violation of this ordinance. Said notice shall state in substance:

(a) That said vehicle be moved within ten days from the date of personal service or date of mailing of the notice, whichever is earlier, so that it is brought into compliance with the ordinance;

(b) That the vehicle will be subject to being taken into custody and removed by the City of Sweet Home, if the vehicle is not moved and brought into compliance with the ordinance within the time set out in the notice;

(c) The number of this ordinance;

(d) The place where the vehicle will be held in custody, or the telephone number and address of the appropriate authority that will provide the information;

(e) That the vehicle, if taken into custody and removed by the City of Sweet Home, will be subject to costs and expenses incurred in the removal, preservation, custody, sale, and/or disposition of the vehicle, including administrative costs and expenses, and that a lien will attach to the vehicle, its contents, and the private property, if taken therefrom, for such costs and expenses;

(f) That the vehicle will be sold or disposed of to satisfy some or all of the costs and expenses, including administrative costs and expenses, incurred in the removal, preservation, and custody of the vehicle, if the costs and expenses are not paid;

(g) That if the vehicle is taken into custody and removed, that the owner of the vehicle and/or the person in charge of the property could be held personally liable for any costs and expenses, including administrative costs and expenses incurred in the removal, preservation, custody, sale, and/or disposition of the vehicle;

(h) That the owner of the vehicle or person in charge of the property on which it is parked, stored or left, is entitled to a hearing, before the vehicle is impounded, to

contest the proposed custody and removal if a hearing is timely requested.

(i) That the owner of the vehicle or person in charge of the property on which it is parked, stored or left, may also challenge the reasonableness of any future costs and expenses incurred in removal, preservation, custody and sale of the vehicle or disposal of the vehicle at the hearing; and

(j) The time within which a hearing must be requested and the method for requesting a hearing.

Section 5. Hearing to contest validity of removal of vehicle.

(1) A person provided notice under Section 4, or any other person who reasonably appears to have an interest in the vehicle, or property on which it is parked, stored or left, may request a hearing under this section to contest the validity of the proposed removal and custody of the vehicle by submitting a request for hearing with the City of Sweet Home Building Official not more than ten days from the mailing date of the notice or date of personal service of the notice.

(2) A request for hearing under this section shall be in writing and shall state grounds upon which the person requesting the hearing believes that the proposed custody and removal of the vehicle is not justified.

(3) Upon receipt of a request for a hearing under this section, the City of Sweet Home Building Official shall set a time for the hearing to be held within seven days of the receipt of a request and shall provide notice of the hearing to the person requesting the hearing; to the registered owner, legal owner, lessor, and security interest holder shown in the records of the Motor Vehicles Division; and to the owner and/or person in possession of the property on which the vehicle is parked, stored or left, if not the same as the person requesting the hearing.

(4) If the Hearing Officer finds, after hearing, and by substantial evidence on the record, that the proposed custody and removal of a vehicle under this ordinance is valid, the Hearing Officer shall order the vehicle to be brought into compliance with this ordinance.

(5) A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the Hearing Officer for the person's failure to appear.

(6) The City of Sweet Home is only required to provide one hearing under this section for each time the City proposes to take a vehicle into custody.

(7) A hearing under this section may be used to determine the reasonableness of any future costs and expenses incurred in the removal, preservation, custody, sale, and/or disposition of the vehicle, including administrative costs and expenses. Said costs and expenses set by law, ordinance, resolution, or rule, or that comply with law, ordinance, resolution or rule, are reasonable for purposes of this ordinance.

(8) The Hearing Officer shall provide a written statement of the results of a hearing held under this section to the person requesting the hearing.

(9) Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.

(10) The Hearing Officer at a hearing under this section may be an officer, official or employe of the City of Sweet Home, but shall not have participated in any determination or investigation related to the proposed taking into custody and removing the vehicle that is the subject of the hearing.

(11) The determination of a Hearing Officer at a hearing under this section is final and is not subject to appeal.

Section 6. Entry on Private Property.

(1) The enforcement officer is authorized at all reasonable times to enter on private property and examine a vehicle to determine whether it is in a discarded condition. Except when an emergency exists, before entering on private property, the enforcement officer shall obtain the consent of an occupant or a warrant from a Court authorizing entry for inspection.

(2) No search warrant shall be issued under the terms of this ordinance until an affidavit has been filed with the Court showing probable cause for the inspection by stating the purpose and extent of the proposed inspection, citing this ordinance as the basis for the inspection, and giving descriptive information concerning the vehicle in question and the property on which it is situated.

Section 7. Abatement by the City and Appraisal.

(1) Ten days after giving the notice required in Section 4, or ten days after the final order of the Hearing Officer, as required in Section 5, the City will be considered to have acquired jurisdiction to abate the nuisance and may remove the vehicle by use of its own personnel, equipment and facilities for the removal and preservation of such vehicles, or may hire or otherwise engage other personnel, equipment and facilities for that purpose.

(2) After removing the vehicle, the City shall cause the vehicle to be appraised, within a reasonable time, by a person with a permit issued under ORS 819.230.

Section 8. Lien for towing.

(1) Any person who, at the request of the City of Sweet Home, tows a vehicle taken into custody under the provisions of this ordinance:

(a) Except as otherwise provided in this section, shall have a lien on the vehicle and its contents for the just

and reasonable charges for the towing service performed and any storage provided. The lien shall be subject to the provisions for liens under ORS 98.812(3);

(b) May retain possession of the vehicle and contents until such charges are paid; and

(c) Shall provide written notice, approved by the City of Sweet Home, containing information on the procedures to redeem the vehicle. The notice shall be given to each person who seeks to redeem the vehicle.

(2) A lien described under this section does not attach to the contents of any vehicle taken from the property until 15 days after taking the vehicle into custody.

Section 9. Owner reclaiming vehicle. The legal owner or person entitled to possession of a vehicle:

(1) May reclaim the vehicle at any time after it is taken into custody and before the same is sold or disposed of, upon presentation to the City of Sweet Home Building Official satisfactory proof of ownership or right to possession and except as provided in subsection (2) of this section upon payment of the costs and expenses incurred in the removal, preservation, and custody of the vehicle, including any administrative costs and expenses; and

(2) Shall not be liable for nor required to pay storage charges for a period in excess of 60 days.

Section 10. Sale of vehicle if not reclaimed; right of former owner to vehicle. If a vehicle is not reclaimed within 30 days after it is taken into custody, the City of Sweet Home shall sell the vehicle and its contents at public auction in the manner provided in ORS 87.192 to 87.196. After any vehicle has been sold under this section, the former owner of the vehicle has no further right, title, claim or interest in or to the vehicle itself or the contents. The contents of any vehicle sold under this section are subject to the same conditions of sale as the vehicle in which they are found.

Section 11. Certificate of sale; issuing certificate

of title and registration card for vehicles.

(1) When any vehicle is sold the City of Sweet Home, at the time of the payment of the purchase price, shall execute a certificate of sale in duplicate. The original certificate of sale shall be delivered to the purchaser and the copy shall be retained by the City. The certificate of sale shall contain the name and address of the purchaser, the date of sale, the consideration paid, the description of the vehicle and a stipulation that no warranty is made as to the condition or title to the vehicle.

(2) The purchaser, upon presentation of the certificate of sale to the Motor Vehicles Division and payment of the fees required by law, is entitled to be issued a certificate of title and a registration card for the vehicle.

Section 12. Transmitting return of sale and balance of proceeds.

(1) When any vehicle is sold, the City of Sweet Home Building Official shall transmit to the Motor Vehicles Division, and to the treasurer of the City of Sweet Home a return of sale setting forth:

- (a) A description of the vehicle;
- (b) The purchase price;
- (c) The name and address of the purchaser;
- (d) The costs incurred in the sale; and
- (e) The costs and expenses incurred in the removal, preservation and custody of the vehicle, including administrative costs and expenses.

(2) The City of Sweet Home Building Official shall transmit to the treasurer of the City of Sweet Home, with the return of sale, the balance of the proceeds of the sale. The City of Sweet Home may deduct from the proceeds the costs incurred in the sale and the costs and expenses incurred in the removal, preservation, and custody of the vehicle, including administrative costs and expenses. Upon receipt of the return of sale and such proceeds, the

treasurer of the City of Sweet Home shall deposit such proceeds in the general fund of the City of Sweet Home and file in the treasurer's office the return of sale.

Section 13. Claim by former owner to balance of proceeds. At any time within two years after the sale of a vehicle, the former owner of the vehicle may recover the proceeds, less the costs and expenses in the removal, preservation, custody and sale, including administrative costs and expenses, from the general fund of the City of Sweet Home by filing a claim with the City. The claim shall be audited and paid as are other claims against the City of Sweet Home.

Section 14. Sale or disposition of vehicle appraised at \$750.00 or less; Disposal without notice and public auction; and rights of owner.

(1) If a vehicle taken into custody under this ordinance is appraised at a value of \$750.00 or less, the City of Sweet Home may dispose of the vehicle without notice and public auction if any of the following occur:

(a) The owner of the vehicle and any lessor or security interest holder shown in the records of the Motor Vehicles Division sign a release, under oath, disclaiming any future interest in the vehicle.

(b) The owner and any lessor or security interest holder shown in the records of the Motor Vehicles Division have been sent notification of the location of the vehicle and, within 15 days after the date the notification is mailed, or personal service made, the persons notified have not signed releases or the vehicle has not been reclaimed. Failure to sign a release or to reclaim the vehicle shall constitute a waiver of interest in the vehicle.

(2) If the City of Sweet Home intends to dispose of a vehicle under this section, the City shall do all of the following:

(a) File with the Motor Vehicles Division an

affidavit describing the vehicle, and stating the location and appraised value of the vehicle and that the vehicle will be junked or dismantled.

(b) Surrender the registration plates of the vehicle, if any, to the division.

(c) Include in the affidavit a statement that any notice required under this section has been provided.

(d) Forward any release of interest completed under this section to the Motor Vehicles Division.

(3) Upon completion of the requirements under this section, the City may sell or dispose of the vehicle without notice and public auction to any of the persons described in this subsection. The City shall issue to the person purchasing or obtaining the vehicle a certificate of sale (even if disposed of) described under Section 11. The City may sell or dispose of a vehicle under this subsection to any of the following:

(a) A wrecker with a certificate issued under ORS 822.110.

(b) Any other person who complies with the provisions of and executes the forms required by ORS 819.010. The forms required by ORS 819.010 shall be included with the certificate of sale described under Section 11.

(4) Upon disposition of a vehicle under this section the vehicle shall cease to be a vehicle for purposes of the vehicle code, except as provided in the following:

(a) The person purchasing the vehicle is subject to the provisions of ORS 819.010 and 819.040, relating to salvage procedures and requirements for destruction of vehicles.

(b) The provisions of ORS 819.030 apply to the procedures of the Motor Vehicles Division relating to the vehicle, as appropriate.

(5) The authority to sell or dispose of a vehicle under this section is in addition to any authority under

Section 10.

Section 15. Personal liability. If, after the vehicle is sold or disposed of in accordance with this ordinance, the costs and expenses of removal, preservation, custody, sale, and/or disposal of the vehicle, including administrative costs and expenses, have not been paid, then the City Manager or his designate may cause the owner of the vehicle and/or person in charge of the property to be billed for the unpaid costs and expenses, including any unpaid administrative costs and expenses. The owner of the vehicle and person in charge of the property are personally liable, both jointly and separately, for the costs and expenses, including administrative costs and expenses, incurred in the removal, preservation, custody, sale and/or disposition of the vehicle.

Section 16. Hearing for reasonableness of costs and expenses. After a vehicle that has been taken into custody by the City is sold or disposed of, the owner of the vehicle or person in charge of the property where the vehicle was located may request a hearing before a Hearing Officer to object to the reasonableness of the costs and expenses, including administrative costs and expenses, incurred in the removal, preservation, custody, sale, and/or disposition of the vehicle.

Any request for hearing shall be made in writing to the City Manager, within ten days from the date of mailing the billing or service of the billing.

The procedure and rules set out in subparagraphs 4, 5, 6, 7, 8, 9 and 10, of Section 5, shall be followed and made applicable by the Hearing Officer in the hearing, and the determination of the Hearing Officer is final and not subject to appeal. If a hearing is held pursuant to this section, and the legal owner of the property where the vehicle was taken from participates therein, the hearing shall satisfy any and all of the requirements of a hearing

under Section 17. The Hearing Officer shall inform the legal owner of the property where the vehicle was taken from that a lien could be placed on his property for the unpaid costs and expenses, including any unpaid administrative costs and expenses, if all of such costs and expenses as determined at the hearing are not paid within 30 days after the date of the hearing.

After the 30 day lapse of time, if the said costs and expenses are not paid, an assessment of the unpaid costs and expenses, including any unpaid administrative costs and expenses, shall be made by Council resolution, entered in the docket of city liens, and when the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated. Subsections 4 and 5 of Section 17 shall be fully applicable to this section, as if set forth herein.

Section 17. Assessment of costs.

(1) After disposing of or selling the discarded vehicle and deducting any costs and expenses, including administrative costs and expenses, from any money received from a sale of the vehicle, the City Recorder shall give notice to the legal owner of the property and/or the person in possession of the property from which the vehicle was removed:

(a) Of the paid and unpaid costs of abatement.

(b) That the unpaid costs and expenses as indicated will be assessed to and become a lien against the property where the vehicle was removed from unless paid within 30 days from the date of the notice.

(c) That if the legal owner of the property and/or the person in possession of the property objects to the indicated costs and expenses, a written notice of objection may be filed with the City Recorder within 20 days from the date of the notice.

(2) Within 40 days after the date of the notice,

objections to the proposed assessment shall be heard and determined by a Hearing Officer. The procedure and rules set out in subparagraphs 4, 5, 6, 7, 8, 9 and 10, of Section 5, shall be followed and made applicable by the Hearing Officer, and the determination of the Hearing Officer is final and not subject to appeal.

(3) If the costs and expenses, including administrative costs and expenses, of the abatement are not paid within 50 days from the date of the notice, an assessment of all said costs and expenses shall be made by Council resolution, entered in the docket of city liens, and when the entry is made, it shall constitute a lien on the property from which the nuisance was removed or abated.

(4) The lien shall be enforced in the same manner as liens for street improvements are enforced and shall bear interest at the rate of nine percent per annum. Interest shall accrue from the date of the entry of the lien in the lien docket.

(5) An error in the name of the legal owner of the property and/or person in possession of the property shall not void the assessment, nor will a failure to receive notice of the proposed assessment render the assessment void. The assessment shall remain a valid lien against the property.

(18) Remedies.

(1) Violation of this ordinance constitutes an infraction and may be prosecuted under the provisions of Ordinance No. 876.

(2) The remedies, which include any penalties, provided for in this ordinance or section thereof, shall be cumulative and not exclusive and shall be in addition to any and all other remedies available to the City.

Section 19. Notice. Any notice in this ordinance sent by mail shall be deemed to have been given and served by the deposit in the mails of a letter, by certified mail,

containing the notice and addressed to the person at his/her last known address. Upon completion of the mailing of any notice, the person mailing the notice shall execute and file a certificate stating the date and place of the mailing.

Section 20. Time. In computing any period of time prescribed or allowed by this ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the period runs until the end of the next day which is not a Saturday or a legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020.

Whenever a person has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon such person and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

Section 21. Severability. The sections and subsections of this ordinance are hereby declared severable. The invalidity of any one section or subsection shall not affect the validity of the remaining sections or subsections.

Section 22 . Landlord Exception. Notwithstanding any other provision or Section in this Ordinance, a residential landlord is not to be held personally liable nor have a lien placed on the rental property for any costs and expenses, including any administrative costs and expenses incurred in the removal, preservation, custody, sale and/or disposition of a renter's vehicle taken from the rented property.

Section 23 . Right to inspect and take property .

The person or persons charged with inspecting a vehicle or taking a vehicle into their possession, in accordance with the procedure set out in this ordinance, shall have the right, at reasonable times, to enter on private property, remain there for so long as it takes to inspect or remove the vehicle and leave the property. Any person interfering with the inspection or removal of said vehicle shall be prosecuted under applicable criminal laws as they apply to the situation.

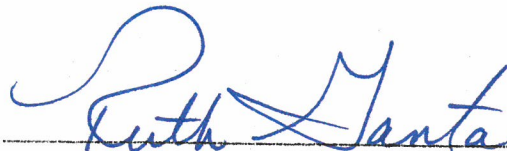
Section 24. Context. In construing this ordinance, and where the context so requires, the singular includes the plural, the masculine the feminine, and all grammatical changes shall be implied to make the provisions hereof apply equally to individuals, firms, partnerships, corporations, and associations of persons.

Section 25. Repealing conflicting ordinances. That Ordinance No. 554, and all ordinances and parts thereof in conflict herewith be and the same are hereby repealed.

Section 26. Police investigations. This ordinance does not apply to vehicles being held as part of any criminal investigation by the Police Department of the City of Sweet Home.

Section 27. Emergency clause. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public peace, health and safety, and an emergency is hereby declared to exist and this ordinance shall take effect and be in full force from and after the passage and approval of the mayor.

Passed by the Council and approved by the Mayor this 26th day of August , 1986.



Mayor

ATTEST:



City Manager Pro Tem