



ORDINANCE 2019-007

AMENDING SHERWOOD MUNICIPAL CODE CHAPTER 8.04 REGARDING ABANDONED, STORED, AND HAZARDOUS VEHICLES

WHEREAS, the Sherwood Police Department has identified a number of areas of the existing Chapter 8.04 of the Sherwood Municipal Code, relating to abandoned, stored, and hazardous vehicles, which are in need of updating in order to make them more workable for enforcement and to better target the types of situations where enforcement is warranted; and

WHEREAS, based on these concerns and a comprehensive review of the existing code language, staff prepared a proposed replacement for the existing Chapter 8.04; and

WHEREAS, the City Council held public hearings on the proposed ordinance on June 18, 2019 and July 2, 2019; and

WHEREAS, it appears to City Council that the proposed changes to Chapter 8.04 are necessary and appropriate.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. Findings. After full and due consideration of the information presented at the public hearings, the City Council finds that the Sherwood Municipal Code, Chapter 8.04, should be amended to read as shown in Exhibit 1, attached hereto.

Section 2. Approval. The proposed amendment to the Sherwood Municipal Code identified in Exhibit 1 is hereby APPROVED.

Section 3. Manager Authorized. The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this ordinance, including necessary updates to the Municipal Code.

Section 4. Effective Date. This Ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 18th day of June, 2019.


Keith Mays, Mayor

6/18/2019
Date

Attest:



Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Scott	<input checked="" type="checkbox"/>	_____
Griffin	<input checked="" type="checkbox"/>	_____
Brouse	<input checked="" type="checkbox"/>	_____
Young	<input checked="" type="checkbox"/>	_____
Garland	<input checked="" type="checkbox"/>	_____
Rosener	<input checked="" type="checkbox"/>	_____
Mays	<input checked="" type="checkbox"/>	_____

Chapter 8.04 - ABANDONED, STORED, AND HAZARDOUS VEHICLES

Sections:

8.04.010 - Short title.

The ordinance codified in this chapter shall be known and may be cited as the vehicle impoundment ordinance and may be referred to hereafter as this chapter.

8.04.020 - Definitions.

As used in this chapter, unless the context requires otherwise:

"Abandoned" or "abandoned vehicle" means a vehicle left in the same location, or within a five hundred- (500) foot radius of its earlier position, for more than forty-eight (48) hours, when one or more of the following conditions exist:

1. The vehicle has expired, cancelled, altered, or missing license plates or tags;
2. The vehicle appears to be inoperative or disabled; or
3. The vehicle appears to be wrecked, partially dismantled, or junked.

"City" means the City of Sherwood.

"Costs" means the expense of removing, storing and selling an impounded vehicle.

"Hazardous" or "hazardous vehicle" means a vehicle left in a location or condition such as to constitute an immediate threat to public safety, the environment, or safety of vehicular or pedestrian traffic, or in a manner prohibited by SMC 8.04.040.

"Law enforcement officer" is a law enforcement officer of the City or other City employee authorized to enforce this chapter.

"Owner" means any individual, firm, corporation, or unincorporated association with a claim, either individually or jointly, of ownership or any interest, legal or equitable, in a vehicle.

"Stored" or "stored vehicle" means a vehicle that has remained in the same location or within a five hundred- (500) foot radius of its earlier position for more than one hundred and twenty (120) hours.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracts.

8.04.030 – Abandoned vehicles— Offense.

- A. A person commits the offense of abandoning a vehicle if a vehicle which the person owns, as shown in the records of the Department of Motor Vehicles, is abandoned on any public right-of-way or on public property of the City.
- B. The offense described in this Section is a Class B violation.

8.04.035 – Stored vehicles – Offense.

- A. A person commits the offense of storing a vehicle if a vehicle which the person owns, as shown in the records of the Department of Motor Vehicles, is stored on any public right-of-way or on public property of the City.
- B. The offense described in this Section is a Class B violation.

8.04.040 – Hazardous vehicles – Offense.

- A. No person shall cause:
 - 1. a vehicle to block, impede, or interfere with the vision or normal flow of vehicular, bicycle, or pedestrian traffic on public streets or sidewalks;
 - 2. a vehicle to pose an immediate danger to the public or environmental safety;
 - 3. a vehicle to be parked or left standing on a street, public parking lot, or other area where immediate access is or could be needed, in the event of an emergency, by emergency services personnel or their equipment; or
 - 4. a vehicle to block, be parked, or left standing within ten (10) feet of a fire hydrant.
- B. The offense described in this Section is a Class B violation.
- C. The owner of the hazardous vehicle, as shown by the records of the Department of Motor Vehicles, shall be responsible for the hazardous condition of the vehicle.

8.04.050 -- Removal of vehicles without notice.

A vehicle may be removed without prior notice when:

- A. The vehicle is a hazardous vehicle;
- B. A law enforcement officer reasonably believes the vehicle is stolen;
- C. A law enforcement officer reasonably believes that the vehicle or its contents constitute evidence of any offense, if such removal is reasonably necessary to obtain or preserve such evidence; or
- D. A law enforcement officer reasonably believes that the person in possession of the vehicle has committed one or more of the following offenses:
 - 1. Driving while uninsured in violation of ORS 806.010;
 - 2. Driving while suspended or revoked in violation of ORS 811.175 or 811.182;
 - 3. Driving while under the influence of intoxicants in violation of ORS 813.010;
 - 4. Operating without driving privileges or in violation of license restrictions in violation of ORS 807.010

8.04.060 – Removal of vehicles after notice.

- A. A vehicle may be removed after a law enforcement officer provides notice as set forth in this section if the vehicle is abandoned or stored.

- B. The law enforcement officer shall provide notice and an explanation of procedures available for obtaining a hearing. Notice shall be given by affixing a notice to the vehicle with the required information. The notice shall be affixed to the vehicle at least forty-eight (48) hours before taking the vehicle into custody.
- C. The notice must contain the following:
 - 1. The ordinance violated and under which the vehicle will be removed;
 - 2. The place where the vehicle will be held in custody or the telephone number and address of the police department that will provide the information;
 - 3. That the vehicle, if taken into custody and removed, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents;
 - 4. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid;
 - 5. 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;
 - 6. The time within which a hearing must be requested and the method for requesting a hearing.

8.04.070 – Impoundment -- Notice after removal.

- A. If the City removes a vehicle, the City shall provide, by certified mail, within two (2) business days after the removal, notice with an explanation of procedures available for obtaining a hearing to the owner(s) of the vehicle and any lessors or security interest holders as shown in the records of the Department of Motor Vehicles. The notice shall state that the vehicle has been removed and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing.
- B. If the person(s) required to be provided notice under subsection A cannot be located in the records of the Department of Motor Vehicles, whether because the vehicle lacks necessary identifying information, is not registered with the Department of Motor Vehicles, or otherwise, the City shall make reasonable efforts to provide such notice, which may include posting of notice in the area in which the vehicle was located prior to removal.
- C. Any notice given under this Section shall state all of the following:
 - 1. That the vehicle has been removed by the City of Sherwood;
 - 2. The ordinance violated and under which the vehicle was removed;
 - 2. The place where the vehicle is being held in custody 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 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 lien for payment of the towing and storage charges and that the vehicle and its contents may be sold by the City of Sherwood or the towing and storage facility where the vehicle is located to cover the charges if the charges are not paid within fifteen (15) calendar days;

5. That the owner, possessor, or person having interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested;
6. That a hearing must be requested not more than five (5) business days after the mailing date of the notice and the method for requesting a hearing;
7. That the vehicle and its contents may be immediately reclaimed by complying with the provisions of this chapter for reclaiming a vehicle, and setting forth the applicable requirements.

8.04.080 – Release of removed vehicles.

- A. A vehicle removed under this Chapter may be held until a person entitled to lawful possession of the vehicle complies with the conditions for release or the vehicle is ordered released by a court having jurisdiction over the matter.
- B. A vehicle removed under this Chapter shall be released to a person entitled to lawful possession upon compliance with the following:
 1. Submission to the Sherwood Police Department of proof of ownership or right to possession;
 2. Submission to the Sherwood Police Department of proof that a person with valid driving privileges will be operating the vehicle;
 3. If the vehicle was removed pursuant to SMC 8.04.050(C) or (D), submission to the Sherwood Police Department of proof that the vehicle no longer constitutes evidence of any offense, or that the Department no longer needs to preserve such evidence through possession of the vehicle;
 4. Submission to the Sherwood Police Department of proof of compliance with financial responsibility requirements for the vehicle;
 5. Payment to the Sherwood Police Department of an administrative fee determined by the City to be sufficient to recover its administrative costs; and
 6. Payment of any reasonable towing and storage charges.
- C. Each person who obtains release of a removed vehicle shall sign a copy of the receipt issued, indicating that they have received notice of their right to a hearing.
- D. A person shall have a lien on a vehicle and its contents if the person, at the request of the City, tows a vehicle. A lien established under this subsection shall be 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). The person holding the lien may retain possession of the vehicle and contents until the charges on which the lien is based are paid. A lien described under this subsection does not attach to the contents of any vehicle taken from public property until fifteen (15) calendar days after removing the vehicle.
- E. If a vehicle removed under this Chapter is not claimed within thirty (30) calendar days after removal, it shall be disposed of as authorized by ORS 819.210 to 819.260.

8.04.090 -- Hearing to contest validity of removal.

A person provided notice under this Chapter, 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 or the proposed removal by submitting a request for hearing with the Sherwood Municipal Court not more than five (5) business days after the mailing date of the notice. A request for hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the removal of the vehicle is not justified. 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 removed, the vehicle shall not be removed unless it constitutes a hazard.
- B. The Municipal Court shall set a time for a hearing within seven (7) business days after receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owner(s) of the vehicle and any lessors or security interest holders shown in the records of the Department of Motor Vehicles, if not the same as the person requesting the hearing, and to the City Attorney's Office.
- C. If the Municipal Court finds, after a hearing and by substantial evidence on the record, that the removal of a vehicle was or would be:
 - 1. Invalid, the Municipal Court shall order the immediate release of the vehicle to the owner or person with right to possession. If the vehicle is released under this subsection, the person to whom the vehicle is released is not liable for any towing or storage charges accruing prior to the order of the Municipal Court. If the person has already paid such towing and storage charges on the vehicle, the City shall reimburse the person for the charges. The person shall be liable for any additional storage charges incurred after the order. New storage charges for the vehicle will not start to accrue until twenty-four (24) hours after the issuance of the order. If the vehicle has not yet been removed, the City shall not remove the vehicle.
 - 2. Valid, the Municipal Court shall order the vehicle to be held in custody until the costs of the hearing are paid by the person claiming the vehicle, and the person claiming the vehicle otherwise complies with SMC 8.04.080. If the vehicle has not yet been removed, the City shall order its removal.
- D. If the person requesting the hearing does not appear at the hearing, the Municipal Court may enter an order finding the removal to be valid and any applicable charges to be reasonable.
- E. A person who fails to appear at a hearing under this Section is not entitled to another hearing on the same matter unless the person provides reasons satisfactory to the Municipal Court for the person's failure to appear.
- F. The City is only required to provide one hearing under this Section for each time the City removes a vehicle or proposes to do so.
- G. A hearing under this Section may be used to determine the reasonableness of the charges for towing and storage of a vehicle. Towing and storage charges, set by law, ordinance, or rule, or that comply with law, ordinance, or rule, shall be deemed reasonable for purposes of this Chapter. If the reasonableness of charges for towing and storage of a vehicle are contested through a hearing under this Section, the Municipal Court shall enter an order setting forth the amount of towing and storage charges the court has determined to be reasonable.
- H. The Municipal Court shall provide a written statement of the results of the hearing to the person requesting the hearing and to the City Attorney's Office.
- I. The action of the Municipal Court is final and no appeal can be taken from it.