

ORDINANCE NO. 552

AN ORDINANCE PROVIDING FOR THE IMPOUNDING AND DISPOSITION OF ABANDONED/DISCARDED VEHICLES; IMPOSING PENALTIES FOR VIOLATIONS; REPEALING ORDINANCE NO. 350, 350A, 451, 455, 455A, 428 (13) REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH AND DECLARING AN EMERGENCY

THE CITY OF WILLAMINA, OREGON, ORDAINS AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, unless the context requires otherwise:

- (1) Abandoned shall mean unoccupied and unclaimed
- (2) Discarded shall mean any vehicle which is in one or more of the following conditions:
 - (a) inoperative
 - (b) wrecked or damaged
 - (c) dismantled
 - (d) partially dismantled
 - (e) junkedDiscarded vehicles may be deemed to include major parts thereof including but not limited to bodies, engines, transmissions and rear ends.
- (3) Costs shall mean the expense of removing, storing and/or selling an abandoned or discarded vehicle
- (4) City shall mean the City of Willamina
- (5) Chief of police shall include any authorized law enforcement officer of the city
- (6) Vehicle shall mean every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks
- (7) Owner shall mean any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, or ownership or any interest, legal or equitable, in a vehicle
- (8) Person in charge of property shall mean any agent, occupant, lessee, contract purchaser, owner or person having possession, control or title of property where a vehicle is located

- (9) Private garage shall mean a reputable, private storage yard, garage or other storage place selected by the Chief of police

Section 2. Declaration. It shall be unlawful for an owner of a vehicle to leave an abandoned/discarded vehicle on the streets or alleys of the City for a period exceeding 24 hours.

Further, it shall be unlawful for a vehicle owner or person in charge of property to store or permit the storing of a discarded vehicle upon any private property within the city limits unless the vehicle is completely enclosed within a building or unless it is in connection with a business enterprise dealing in junk vehicles lawfully conducted within the city.

Section 3. Police duty.

1. ABANDONED: Whenever a vehicle is found abandoned upon a city alley or street or other public property, in the same position for a period of 24 hours, the police shall make a reasonable investigation to discover the owner of the vehicle and to give such person written notice, by personal service or registered or certified mail and by affixing a citation to the vehicle, or if the owner cannot be located by posting the notice on the vehicle.

The notice shall state the following:

- (a) That the vehicle is considered abandoned in violation of this ordinance
- (b) That the police department will remove and have impounded the vehicle under the provisions of this ordinance 72 hours after the time of the posting unless:
 - (1) the owner removes the vehicle; or
 - (2) good cause is shown, satisfactory to the chief of police, why such vehicle should not be removed by the owner or removed and impounded by the city.

In the alternative, the owner may petition the City Recorder and make a written request for a hearing before the City Council to show cause why the vehicle should not be removed.

- (c) That if the 72 hour period ends on a day the city offices are closed, then the deadline shall extend to the next day the city offices are open.
- (d) That violation may result in a fine set forth in this ordinance

2. DISCARDED: Whenever a discarded vehicle is found upon private property, the city police shall make an investigation to discover the owner of the vehicle and the person in charge of the property upon which such vehicle is located, and to give written notice to such party by personal service or by registered or certified mail and affixing a citation to the vehicle that the vehicle is being stored or being permitted to be stored in violation of this ordinance, and if the owner of the vehicle is not found, to place a notice upon the windshield or some other part of the vehicle where it can be easily seen

The notice shall state that a certain discarded vehicle is in violation of this ordinance and that within ten (10) days of the day of the sending or posting of the notice:

- (a) the vehicle must be removed from the city, or to the storage yard of a lawfully conducted business dealing in junked vehicles; or
- (b) Completely enclosed within a building

The notice shall also state that the alternative to compliance is to petition the city recorder and make a written request for a hearing before the city council within ten (10) days of sending or posting of the notice and show cause why such vehicle should not be immediately abated as provided in this ordinance.

The notice shall also state that failure to comply with this ordinance authorizes the city to remove the vehicle and charge the cost against the property

Section 4. Entry upon Property

- (1) The Chief of police is authorized at all reasonable times to enter upon private property and examine any vehicle for the purpose of determining whether or not it is in a discarded condition. However, before entering upon private property, the chief shall obtain the consent of the owner or person in lawful possession or control thereof or a warrant of the municipal court authorizing his entry for the purpose of inspection, except when an emergency exists.
- (2) No search warrant shall be issued under the terms of this ordinance until an affidavit has been filed with the municipal court, showing probable cause for such

inspection by stating the purpose and extent of the proposed inspection, citing this ordinance as the basis for such inspection, whether it is an inspection instituted by complaint, or other specific or general information concerning the vehicle in question or the property on which it is situated.

- (3) It is unlawful for any person to interfere with or attempt to prevent the chief of police from entering upon private premises and inspecting any vehicle when an emergency exists, or the chief exhibits a warrant authorizing entry.

Section 5. Impounding

1. (a) ABANDONED: An abandoned vehicle which remains in the same position for a period of 72 hours after an owner has been requested to remove it or after a notice to remove has been posted upon the vehicle, and no person has appeared to show good cause why the vehicle should not be moved, shall constitute a nuisance.

(b) DISCARDED: A vehicle which remains discarded 10 days after notice has been given in accordance with Section 3 (2) shall constitute a nuisance.
2. (a) It shall be the duty of the police department to remove a vehicle which constitutes a nuisance under the provisions of this ordinance, store the vehicle upon city property, or store the same in a private garage and dispose of it pursuant to the provisions of this ordinance. The vehicle may be removed by city employees or duly authorized independent contractors.

(b) The City of Willamina assumes no responsibility or liability for personal belongings left in or affixed to the vehicle.
3. After the impoundment, the chief of police shall cause the vehicle to be appraised.

If the owner is identified, he shall be notified immediately by registered or certified mail that such vehicle is held by the police department of the city. The notice to the owner shall also state:

- (a) The reason for impounding the vehicle
- (b) The existing costs charged against the vehicle
- (c) An estimate of future costs, including the cost of advertising the vehicle for sale

- (d) That unless the owner redeems the vehicle within 10 days from the day of mailing the notice and pays all the costs, the vehicle will be sold.

Section 6. Hearing.

Pursuant to a request for a hearing, the City Council shall fix a time for a hearing to show cause why the vehicle should not be removed. If the City Council finds that there is not good cause why the vehicle should not be removed, the owner shall then have 24 hours to remove the vehicle.

In addition, the council may impose conditions and take such other action as it deems appropriate under the circumstances in order to carry out the purposes of this ordinance. It may delay the time for removal of said vehicle where, in its opinion, the circumstances justify it. It shall refuse to order the removal of the vehicle where the vehicle, in the opinion of the council, is not subject to the provisions of this ordinance. The council shall not be bound by the technical rules of evidence in the conduct of the hearing.

If a hearing is requested and the City Council orders the vehicle to be removed and it is not removed within 24 hours, then a complaint will be filed in Municipal Court for the violation of this ordinance.

Section 7. Abatement by the City.

After the giving of notice required if a hearing is not requested or 24 hours after a hearing is held and the Council finds there is not good cause why the vehicle should not be removed, the city shall be deemed to have acquired jurisdiction to abate the nuisance. It shall be unlawful for any person to interfere with, hinder, or refuse to allow, such persons to enter upon private property for the purpose of removing a vehicle under the provisions of this ordinance.

Low Value Vehicle.

If the vehicle is appraised at \$300.00 or less the chief of police shall file with the Motor Vehicles Division an affidavit describing the vehicle, including the license plates, if any, stating the location and appraised value of the vehicle, and stating that the vehicle will be junked or dismantled. The chief of police shall state that notice of intent to junk or dismantle the vehicle has been sent, with notification of the location of the vehicle, to the owner.

Failure of the owner to reclaim the vehicle within (10) ten days after the date notification is mailed shall constitute a waiver of his interest in the vehicle.

Upon completion and forwarding of the affidavit and expiration of the time period stated above, the chief of police may, without notice and public auction, dispose of the vehicle and execute a certificate of sale.

The certificate of sale shall be substantially as follows:

CERTIFICATE OF SALE

This is to certify that under the provisions of Ordinance No. ____ of the City of Willamina I did on the ____ day of _____, 19__, sell to _____ for the sum of \$_____ cash, the following-described personal property, to-wit:

(brief description of property)

and in consideration of the payment of the said sum of \$_____, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property.

Note: The City of Willamina assumes no responsibility as to the condition of title of the above-described property. In case this sale shall for any reason be invalid, the liability of the city is limited to the return of the purchase price.

Section 8. Public Sale.

If the vehicle is appraised over \$300.00, or if the vehicle is valued under \$300.00 but the owner cannot be identified, the chief of police shall cause to be posted a notice of sale. The notice of sale shall state:

- (a) The sale is of abandoned property in the city's possession.
- (b) A description of the vehicle, including the type, make, license number, I.D. number, and any other information which will aid in accurately identifying the vehicle.

(c) Terms of the sale.

(d) The date, time and place of the sale.

The notice of sale shall be published two times. The first publication shall be made not less than 14 days prior to the date of the proposed sale, and the second shall be made not less than 7 days prior to the date of the proposed sale.

If no claim has been made to redeem an impounded vehicle appraised over \$300.00 or appraised under \$300.00 but the owner cannot be identified before the time set for the sale of such vehicle, the chief of police shall hold a sale at the time and place appointed within view of the vehicle to be sold.

The vehicle shall be sold to the highest and best bidder; providing, that if no bids are entered, or those bids which are entered are less than the costs incurred by the city, the chief of police may enter a bid on behalf of the city in an amount equal to such costs.

At the time of payment of the purchase price, the chief of police shall execute a certificate of sale, in duplicate, the original of which shall be delivered to the purchaser and the copy thereof filed with the city recorder.

The certificate of sale shall be substantially as set forth in section 7 of this ordinance.

Section 9. Redemption before sale.

An owner may redeem a vehicle impounded under the provisions of this ordinance, before a sale or disposition has taken place, by applying to the police department, whereupon he shall:

(a) Submit evidence of his ownership or interest in the vehicle, satisfactory to the chief of police, that such claim is rightful; and

(b) Pay the costs due and owing at the time the application to redeem is made.

Upon compliance with (a) and (b) above, the chief of police shall execute a receipt for the owner and cause the vehicle to be returned to him.

Section 10. Sale and Proceeds.

Upon consummation of a sale, the chief of police shall deliver the vehicle and the certificate of sale to the purchaser. The sale and conveyance shall be without redemption.

The proceeds of a sale shall be applied:

- (a) To the payment of costs incurred by the city, then for such services as may be rendered by a private garage; and
- (b) The balance, if any, shall be transferred to the city recorder to be credited to the general fund.

In the enforcement and execution of the provisions of this ordinance, the chief of police shall charge and collect such fees as the council may establish for necessary services rendered in such cases.

Section 11. Assessment of costs.

In the event the sale of the vehicle does not cover the payment of costs incurred for abatement, then after deducting the money received from any sale of the vehicle from the costs, the city recorder shall give notice to the person in charge of the property from which the vehicle was removed:

- (a) Of the unpaid costs of abatement.
- (b) That the cost as indicated will be assessed to and become a lien against the real property unless paid within 30 days from the date of the notice.
- (c) That if the person in charge of the property objects to the cost of the abatement indicated, he may file a written notice of objection with the city recorder within 20 days from the date of the notice

Within (40) forty days after the date of the notice, objections to the proposed assessment shall be heard and determined by the Council.

If the costs of the abatement are not paid within (30) thirty days from the date of the notice, an assessment of the costs shall be made and shall be entered in the docket of city liens, and, upon such entry being made, shall constitute a lien upon the real property from which the nuisance was removed or abated.

The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the statutory rate per annum. Such interest shall accrue from date of the entry of the lien in the lien docket.

An error in the name of the person in charge of the property shall not void the assessment, nor will a failure to receive the notice of the proposed assessment render the assessment void. The assessment shall remain a valid lien against the property.

Section 12. Private garages.

When a private garage is utilized, the council shall also establish reasonable fees for such services, with the following conditions:

- (a) The city shall not be liable for services rendered by a private garage from any funds other than such amounts as may be collected from the owner on redemption or from a purchaser upon sale, after the city has deducted its expenses, unless the city is the purchaser of the vehicle.
- (b) No lien shall be created by this ordinance in favor of the private garage upon the vehicle for such services.
- (c) The vehicle shall not be released from the private garage except upon a receipt signed by the chief of police, proffered by the purchaser.

Section 13. Application.

This ordinance shall apply to all abandoned/discarded vehicles now in the city's possession as well as to abandoned/discarded vehicles that are hereafter impounded.

Section 14. Fine.

Violation of this ordinance shall result in a fine to the owner of the abandoned vehicle of \$50.00 for each day the vehicle is not moved.

Section 15. Repeal.

Ordinance No. 350, enacted August 21, 1969, Ordinance No. 350A, enacted September 15, 1988, Ordinance No. 451, enacted July 27, 1978, Ordinance No. 455, enacted July 27, 1978 and Ordinance No. 455A, enacted September 15, 1988, section 13 of Ordinance No. 428 enacted August 12, 1976 and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 16. Emergency clause.

The Council desires and deems it necessary for the preservation of the health, peace, and safety of the City of Willamina that this ordinance take effect at once; and, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after the date of its passage and approval.

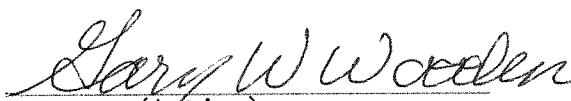
Passed by the Council this 13th day of June, 1991.

AYES: Councilors Alger, Branson, Greb, Hill, Horne, Wooden

NAYS: None

Submitted to and approved by the Mayor on this 14th day of June, 1991.

Acting


Mayor (Acting)

ATTEST:


City Recorder