

ORDINANCE 2011 - 17

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SUNNYSIDE, WASHINGTON, AMENDING
CHAPTER 10.04 OF THE SUNNYSIDE MUNICIPAL CODE
REGARDING MOTOR VEHICLE IMPOUNDMENT**

WHEREAS, pursuant to Chapter 35A.13 of the Revised Code of Washington, the City Council is charged with the legislative authority of the City of Sunnyside;

WHEREAS, the City of Sunnyside desires to adopt standards in accordance with Chapter 46.55 of the Revised Code of Washington; and

WHEREAS, the City Council has determined that adopting standards in accordance with Chapter 46.55 is in the best interest of the residents of the City of Sunnyside and will promote the general health, safety, and welfare;

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF SUNNYSIDE, WASHINGTON, as follows:**

Section 1. Sunnyside Municipal Code Section 10.04.080 is hereby amended to read as follows:

10.04.080 Motor Vehicle Impoundment.

A. Adoption by Reference.

RCW 46.55 is hereby adopted by reference as currently enacted and as hereinafter amended from time to time, and shall be given the same force and effect as if set forth herein in full.

B. Impound of Vehicles Authorized.

- (1) (a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 (Driving under the influence) or 46.61.504 (Physical control of vehicle under the influence), the vehicle is subject to summary impoundment and except for a commercial vehicle or farm transport vehicle under subsection (3)(c) of RCW 46.55.113,

the vehicle must be impounded. With the exception of the twelve-hour hold mandated under this section, the procedures for notice, redemption, storage, auction, and sale shall remain the same as for other impounded vehicles under SMC 10.04.080 and RCW 46.55.

(b) If the Sunnyside law enforcement officer directing that a vehicle be impounded under this section has:

(i) Waited thirty (30) minutes after the police officer contacted the police dispatcher requesting a registered tow truck operator and the tow truck responding has not arrived, or

(ii) If the police officer is presented with exigent circumstances such as being called to another incident or due to limited available resources being required to return to patrol, the police officer may place the completed impound order and inventory inside the vehicle and secure the vehicle by closing the windows and locking the doors before leaving.

(c) If a police officer directing that a vehicle be impounded under this section has secured the vehicle and left it pursuant to (b) of this subsection, the police officer and the government or agency employing the police officer shall not be liable for any damages to or theft of the vehicle or its contents that occur between the time the officer leaves and the time that the registered tow truck operator takes custody of the vehicle, or for the actions of any person who takes or removes the vehicle before the registered tow truck operator arrives.

(2) (a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners of the vehicle or there is a legal owner of the vehicle that is not the driver of the vehicle. A registered owner who is not the driver of the vehicle or a legal owner who is not the driver of the vehicle may redeem the impounded vehicle after it arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may not be redeemed within a twelve-hour period following the time the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log, unless there are two or more registered owners or there is a legal owner who is not the

driver of the vehicle. The police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by either a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(3) (a) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(b) When a driver of a vehicle is arrested for a violation of RCW 46.61.502 or 46.61.504 and the driver is not a registered owner of the vehicle, the police officer directing the impound shall notify the driver that the impounded vehicle may be redeemed by a registered owner or legal owner, who is not the driver of the vehicle, after the impounded vehicle arrives at the registered tow truck operator's storage facility as noted in the registered tow truck operator's master log.

(c) If the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest.

(d) The registered tow truck operator shall notify the agency that ordered that the vehicle be impounded when the vehicle arrives at the registered tow truck operator's storage facility and has been entered into the master log starting the twelve-hour period.

(4) A registered tow truck operator that releases an impounded vehicle pursuant to the requirements stated in this section is not liable for injuries or damages sustained by the operator of the vehicle or sustained by third parties that may result from the vehicle driver's intoxicated state.

(5) If an impoundment arising from an alleged violation of RCW 46.61.502 or 46.61.504 is determined to be in violation of this chapter, then the police officer directing the impoundment and the government employing the officer are not liable for damages for loss of use of the vehicle if the officer had reasonable suspicion to believe that the driver of the vehicle was driving while under the influence of intoxicating

liquor or any drug, or was in physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(6) Whenever the driver of a vehicle is arrested for a violation of RCW 46.20.342 (Driving while license invalidated) or 46.20.345 (Operation under other license or permit while license suspended or revoked), the vehicle is subject to summary impoundment at the direction of a Sunnyside law enforcement officer. Impoundment shall be for the maximum allowable lengths of time authorized by RCW 46.55.120.

(7) In addition, a Sunnyside law enforcement officer may take custody of a vehicle, at his or her discretion, and provide for its prompt removal to a place of safety under any of the following circumstances:

(a) Whenever a police officer finds a vehicle standing upon the roadway in violation of any of the provisions of RCW 46.61.560, the officer may provide for the removal of the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the roadway;

(b) Whenever a police officer finds a vehicle unattended upon a highway where the vehicle constitutes an obstruction to traffic or jeopardizes public safety;

(c) Whenever a police officer finds an unattended vehicle at the scene of an accident or when the driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his or her property;

(d) Whenever the driver of a vehicle is arrested and taken into custody by a police officer;

(e) Whenever a police officer discovers a vehicle that the officer determines to be a stolen vehicle;

(f) Whenever a vehicle without a special license plate, placard, or decal indicating that the vehicle is being used to transport a person with disabilities under RCW 46.19.010 is parked in a stall or space clearly and conspicuously marked under RCW 46.61.581 which space is provided on private property without charge or on public property;

(g) Upon determining that a person is operating a motor vehicle without a valid and, if required, a specially endorsed driver's license or with a license that has been expired for ninety days or more;

(h) When a vehicle is illegally occupying a truck, commercial loading zone, restricted parking zone, bus, loading, hooded-meter, taxi, street construction or maintenance, or other similar zone where, by order of the director of transportation or chiefs of police or fire or their designees, parking is limited to designated classes of vehicles or is prohibited during certain hours, on designated days or at all times, if the zone has been established with signage for at least twenty-four hours and where the vehicle is interfering with the

proper and intended use of the zone. Signage must give notice to the public that a vehicle will be removed if illegally parked in the zone;

(i) When a vehicle with an expired registration of more than forty-five days is parked on a public street.

(8) When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (6) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection.

(9) Nothing in this section may derogate from the powers of police officers under the common law. For the purposes of this section, a place of safety may include the business location of a registered tow truck operator.

(10) For purposes of this section "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms 18 (16,001 pounds) or more.

(11) For purposes of this section "commercial vehicle" means any vehicle the principal use of which is the transportation of commodities, merchandise, produce, freight, animals, or passengers for hire.

C. Redemption.

Vehicles or other items of personal property that are impounded pursuant to this section may be redeemed after the legal owner or person authorized by RCW 46.55.120 to redeem the vehicle complies with the provisions of SMC 10.04.080 and RCW 46.55.120. Upon compliance with these provisions, the legal owner or a person authorized to redeem under RCW 46.55.120 may present proof of compliance to a commissioned Sunnyside law enforcement officer at the Sunnyside Law and Justice Center any time during regular business hours. Upon proof of compliance, and the additional payment

of a \$50.00 administrative fee, the officer shall issue an order releasing the impounded vehicle. The legal owner or person authorized to redeem the vehicle must present the order releasing the impounded vehicle to the towing agency. The vehicle shall be released by the towing agency upon receipt of such order releasing the impounded vehicle and the expiration of the required impound period as provided in SMC 10.04.080 and RCW 46.55.120.

D. Contesting Validity of Impound or Towing and Storage Charges.

(1) Any person seeking to redeem an impounded vehicle under this section has a right to a hearing in the Sunnyside Municipal Court pursuant to and in accordance with RCW 46.55.120.

(2) Request for a hearing must be made in writing and signed by the person contesting the impound. Hearing request must be filed with the Sunnyside Municipal Court within ten (10) days of notice of impoundment being mailed or provided to the legal and registered owner as required by RCW 46.55.110. Failure to request a hearing pursuant to this subsection shall constitute a waiver of the hearing, the impoundment and associated costs of impoundment are deemed to be proper, and the City shall not be liable for any charges arising from the impound.

(3) Hearings shall determine whether the impoundment was proper; whether the associated removal, towing, storage, and any administrative fees were proper; and/or who is responsible for payment of said fees. The court may not adjust fees or charges that are in compliance with the posted or contracted rates. The burden of proof is upon the City to establish the impound was proper by a preponderance of the evidence. No determination of facts made at the hearing under this section shall have any collateral estoppel effect on a subsequent criminal prosecution and such determination shall not preclude litigation of those same facts in subsequent criminal prosecution.

E. Sale of Vehicle.

Any vehicle impounded pursuant to this section shall be subject to the sale provisions of RCW 46.55.130 and other applicable statutes, as now enacted or hereafter amended.

Section 2. Except as amended herein, Chapter 10.04 of the Sunnyside Municipal Code shall remain unchanged.

Section 3. This ordinance shall be effective five days after passage, approval and publication as required by law.

PASSED this 24th day of October, 2011.



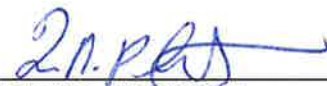
JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CITY CLERK

APPROVED AS TO FORM:



MENKE JACKSON BEYER EHLIS & HARPER, LLP
Attorneys for the City of Sunnyside