

**CITY OF YACHATS
ORDINANCE NO. 350**

**AN ORDINANCE AMENDING THE YACHATS MUNICIPAL CODE TITLE 6 – VEHICLES
AND TRAFFIC; ADDING CHAPTER 6.09 – VEHICLE IMPOUNDMENT PROCEDURES; AND
ESTABLISHING AN EFFECTIVE DATE.**

WHEREAS, the City Council has determined that there is a public health and safety interest in keeping City streets and other public property free of obstructions, especially for the purposes of efficiently evacuating in the event of a tsunami.

WHEREAS, as a coastal community, the streets within the City are narrow. Therefore, any unauthorized parking or storage of vehicles or other personal property within the City streets or other public property impedes traffic flow and results in dangerous conditions.

WHEREAS, and in consideration of the conditions and issues above, the City enacts the following authorizing the City to remove and impound vehicles or other private property that is located within City streets or other public property.

NOW THEREFORE, the City of Yachats ordains as follows:

SECTION 1. Section 6.04.020, Definitions, of the Municipal Code is amended to add the following:

“Vehicle” has the meaning provided in the Oregon Vehicle Code and includes “Manufactured Dwelling” and “Recreational Vehicle” as those terms are defined in Section 9.04.030 of the Municipal Code.

SECTION 2. Section 6.04.090, Storage of motor vehicles on streets, is amended and replaced with the following:

Section 6.04.090 Storage of vehicles on streets or other public property.

- A. No person shall store or permit to be stored on a street or other public property without permission from the City a vehicle or any other personal property for a period in excess of seventy-two (72) hours. Failure to move a vehicle or other personal property for a period of seventy-two (72) hours constitutes prima facie evidence of storage. Continuity of time is not interrupted by relocation of the vehicle or other personal property to another location that is also a street or other public property in violation of this ordinance or any other city ordinance.
- B. No person shall store or permit to be stored on a street or other public property a vehicle or other personal property, if the registration for the stored vehicle or personal property, if applicable, has expired.
- C. When a vehicle or other personal property is found in violation of this section, a code enforcement officer responsible for enforcement of this section shall issue a citation for the violation, and may order the vehicle impounded, after providing the notice required under chapter 6.09 of this code and, if requested, the hearing procedures in chapter 6.09.

SECTION 3. Section 6.04.100, Obstructing streets, is amended and replaced with the following:

Section 6.04.100 Obstructing streets or other public property.

Except as authorized by the City, no person shall park or leave on a street or other public property, a vehicle part, trailer, box, ware, merchandise of any description, or any other thing that: 1) impedes any traffic, including vehicular, pedestrian, or bicycle; or 2) obstructs the view.

SECTION 4. Section 6.08.010, Prohibited parking, is amended and replaced with the following:

Section 6.08.010 Prohibited parking.

An operator or owner of a vehicle or other personal property may not park a vehicle on a street or other public property for the principal purpose of:

- A. Displaying the vehicle for sale;
- B. Repairing or servicing the vehicle, except repairs necessitated by an emergency;
- C. Displaying advertising from the vehicle;
- D. Selling merchandise from the vehicle, except when authorized.
- E. Overnight sleeping, except when a special permit is granted by the city.

SECTION 5. The following chapter is added to Title 6 – Vehicles and Traffic:

Chapter 6.09 - Impoundment Procedures

Section 6.09.010 Impoundment - Owner's Responsibility.

The owner of a vehicle or other personal property will be responsible for the cost of towing and storage of the vehicle and other personal property impounded plus the costs of notice and sale as provided in this chapter.

Section 6.09.020 Impoundment of Vehicles.

- A. When this code or state law provides for impounding a vehicle, it shall be given a citation and may be removed by or under the direction of a code enforcement officer of the city; taken to the city facilities for storing vehicles or to some reputable motor vehicle storage facility and kept there until it is redeemed or sold. Any personal property associated with the impounded vehicle may also be removed and taken to some reputable storage facility and kept there until it is redeemed or sold.
- B. Subsection A. of this section shall not apply to vehicles impounded under the direction of a law enforcement officer for criminal investigative purposes or for safekeeping when the operator of the vehicle is unable to safely and lawfully park the vehicle. If the

owner fails to claim the vehicle within five days after its impoundment or notice of its release from criminal investigations, it shall be impounded, redeemed or sold as provided in this chapter.

Section 6.09.030 Impoundment - Inventory.

- A. When a vehicle or personal property has been lawfully impounded by the city, the contents shall be inventoried. An inventory conducted pursuant to this section shall be made for the following purposes:
 - 1. To ensure the protection of the owner's property while it is impounded;
 - 2. To reduce the potential assertion of false claims against the city or other persons for lost, stolen or damaged property; and
 - 3. To reduce the danger to code enforcement officers and others from the impoundment of non-inventoried property.
- B. The city manager or the manager's designee shall adopt an administrative program for inventories conducted pursuant to this section. These internal policies shall be designed and administered so that the inventories are conducted for the purposes set forth in this section and under specific guidelines which ensure that the inventory involves no exercise of discretion by the person directing or taking the inventory.

Section 6.09.040 Notice Prior to Impoundment for Vehicles Stored on the Street.

When this code or state law provides for impounding a vehicle and to comply with federal constitutional requirements of due process of law, the city shall provide notice of the impoundment.

- A. If the city proposes to impound a vehicle for a violation of one of the provisions under this title of the Municipal Code, the City will, before the proposed impoundment:
 - 1. Provide written notice thereof; and
 - 2. Provide an explanation of the procedures available for obtaining a hearing under Section 6.09.060 of the Municipal Code.
- B. The notice required under subsection A. of this section will be given by affixing a citation to the vehicle or personal property and a notice that states all of the following:
 - 1. That the vehicle will be subject to being taken into custody and removed by the City if the vehicle is not removed before the time set by the City.
 - 2. The statute, ordinance, or rule violated by the vehicle and under which the vehicle will be removed.

3. The place where the vehicle will be held in custody and the telephone number and address of the City department that will provide the information.
4. That the vehicle, if taken into custody and removed by the City, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
5. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.
6. 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.
7. That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges at the hearing.
8. That time within which a hearing must be requested and the method for requesting a hearing.

Section 6.09.050 Notice After Impoundment.

- A. If a vehicle is impounded under state law or any other provision of the Municipal Code, the City will provide, by certified mail within 48 hours of the impoundment, written notice thereof to the owners of the vehicle and any lessors or security interest holders having an interest in the vehicle as shown in the records of the state Department of Transportation.
- B. Any notice given under this section will state all of the following:
 1. That the vehicle has been taken into custody and removed by the City.
 2. The statute, ordinance, or rule under which the vehicle was removed and taken into custody.
 3. The location of the vehicle, or the telephone number and address of the City department that will provide that information.
 4. That the vehicle is subject to towing and storage charges which accrue from the date of towing.
 5. That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if they are not paid by a date specific in the notice.
 6. A description of the procedures for the release of the vehicle.
 7. That the owner, possessor or person having an interest in the vehicle is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing

it, and to contest the reasonableness of the charges for towing and storage, if a hearing is timely requested.

8. The time within which a hearing must be requested and the method for requesting a hearing.
9. That the vehicle and its contents may be immediately reclaimed by posting bail and paying outstanding amounts due to the municipal court and by presentation to the towing company or other person in possession of the vehicle of satisfactory proof of ownership or right to possession, such as title or registration, either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges, and:
 - a. For vehicles impounded under ORS 809.720, submission of proof that a person with valid driving privileges will be operating the vehicle, submission of proof of compliance with financial responsibility requirements for the vehicle, and payment of the City's administrative fee for traffic offense vehicle impoundments.

6.09.060 Hearing to Contest Validity of Impoundment.

- A. 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 to contest the validity of the impoundment of the vehicle and the reasonableness of any towing and storage charges for the vehicle.
- B. A hearing under this section will comply with all of the following:
 1. The request for hearing must be submitted to the City department indicated in the notice not more than five days from the mailing date of the notice. The five-day period provided for in this subsection does not include holidays, Saturdays, or Sundays.
 2. If the City receives a request for hearing pursuant to a notice issued under Section 6.09.040 before the vehicle is taken into custody and removed, the vehicle will not be removed unless it constitutes a hazard.
 3. A request for hearing will be in writing and will state grounds upon which the person requesting the hearing believe the custody and removal of the vehicle is not justified.
 4. The City will set a time for the hearing within 48 hours of the receipt of the request and provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the state Department of Transportation, if not the same as the person requesting the hearing. The 48-hour period in this subsection does not include holidays, Saturdays, or Sundays.
 5. If the City finds, after hearing and by substantial evidence on the record or, for impoundments under ORS 809.730, by a preponderance of the evidence that there were

reasonable grounds to believe that the vehicle was being operated in violation of statutes, that the custody and removal of the vehicle was:

- a. Invalid, the City will order the immediate release of the vehicle to the owner or person with right of possession. If a vehicle is released under this subsection, the person to whom the vehicle is released is not liable for any towing or storage charges. If the person has already paid the towing and storage charges, the City will reimburse the amount paid to that person. New storage charges will not start to accrue, however, until more than 24 hours after the time the vehicle is ordered released to the person under this subsection.
 - b. Valid, the City will order the vehicle to be held in custody until the costs of the hearing, all towing and storage costs, and other amounts due are paid by the person claiming the vehicle. If the vehicle has not yet been removed, the City will order its removal.
6. A person who fails to appear at a hearing scheduled pursuant to this section is not entitled to another hearing unless the person provides reasons satisfactory to the City for the person's failure to appear.
 7. The City is only required to provide one hearing for each time the City takes a vehicle into custody and removes the vehicle, or proposes to do so.
 8. A hearing scheduled pursuant to this section may also be used to determine the reasonableness of the charge for towing and storage of the vehicle. For purposes of this subsection, towing and storage charges set by law, ordinance, or rule, or that comply with law, ordinance or rule, are reasonable.
 9. The City will provide a written statement of the results of the hearing to the person requesting the hearing.
 10. Hearings may be informal in nature, but the presentation of evidence will be consistent with the presentation of evidence required for contested cases under ORS 183.450.
 11. The hearing will be conducted by a Municipal Court Judge.
 12. The determination of the Municipal Court Judge at the hearing is final, and is not subject to appeal.

Section 6.09.070 Impoundment - Sale and Redemption.

- A. Any vehicle impounded by authority of this chapter will be sold according to the procedures in this chapter. Notice given as required in either 6.09.040, 6.09.050, and 6.09.100 will be sufficient notice to anyone claiming an interest in the vehicle or personal property.
- B. At any time prior to the sale of an impounded vehicle, the City will release an impounded vehicle from custody and release the City's financial interest in the

impounded vehicle when the owner or other person having a financial interest in the vehicle pays all costs, fines, and fees at the municipal court.

Section 6.09.080 Possessory Lien for Towing and Storage.

- A. Any person who, at the request of a code enforcement officer, tows and stores a vehicle as authorized by this chapter:
 - 1. Except as otherwise provided in this section, shall have a lien on the vehicle and its contents in accordance with ORS 87.152 for the just and reasonable charges for towing and storage services performed;
 - 2. May retain possession of the vehicle and contents until such charges are paid; and
 - 3. Shall provide written notice, approved by the city, containing information on the procedures necessary to obtain the release of the vehicle and judicial review or hearing as provided in sections 6.09.050 of this chapter to each person who seeks to redeem the vehicle. A lien described under this section does not attach to the contents of any vehicle until 15 days after taking the vehicle into custody.
- B. No person towing or storing a vehicle as provided in this chapter may release the vehicle without first obtaining the written permission of the municipal court or the city administrator.
- C. Before any net proceeds from the sale of the vehicle are paid to the county treasurer as provided in subsection (3) of ORS 87.206, the net proceeds will be deposited with the municipal court to satisfy any unpaid bail and fines for parking offenses involving said vehicle. Any amount remaining thereafter will then be paid by the city to the county treasurer. At the time the net proceeds are deposited with the municipal court, the lien claimant shall also deliver to municipal court the documents required by subsection (2) of ORS 87.206.

Section 6.09.090 Determination of Value of Vehicle.

If no registered owner, actual owner, lessor or security interest holder claims the vehicle and pays the towing, storage and administrative charges, the city shall have the impounded and towed vehicle appraised within a reasonable time by a person authorized by Oregon law to perform such appraisals.

Section 6.09.100 Public Notice of Sale.

If the impounded vehicle is appraised at over five hundred dollars (\$500) and no claim is made by the owner within the time specified herein, or if the vehicle is valued under five hundred dollars (\$500), but the owner cannot be identified after the search specified herein, the city shall cause to be published in a newspaper of general circulation, within the county, a notice of sale. The notice shall state:

- A. The intended sale of abandoned property in the city's possession;

- B. A description of the vehicle, including the type, make, license plate number, ID number and any other information that will aid in accurately identifying the vehicle;
- C. The terms of the sale;
- D. The date, time and place of the sale.

The notice of sale shall be published two (2) times, with the first publication made not less than ten (10) days prior to the date of the proposed sale, and the second shall be made not less than three (3) days prior to the date of the proposed sale.

Section 6.09.110 Sale of impounded vehicle.

If a vehicle taken into custody under this Chapter is not reclaimed within thirty (30) days after it is impounded, the authority that towed the vehicle may either sell the vehicle and its contents at public auction, as either provided for pursuant to this ordinance or under Oregon law, or dispose of the vehicle as provided herein. The contents of any vehicle sold under this Chapter are subject to the same conditions of sale as the vehicle in which they are found.

If an abandoned vehicle is determined to be valued less than five hundred dollars (\$500) by an automobile dealer or other knowledgeable person, the authority that towed and impounded the vehicle shall notify the registered or apparent owner and secured parties as provided in this Chapter, photograph the vehicle, notify the Department of Transportation that the vehicle will be disposed of, and, unless the vehicle is claimed by a person entitled to possession within fifteen (15) days of the date of notice under this Chapter, dispose of the vehicle and its contents to a person who holds a valid dismantler certificate.

Section 6.09.120 Violations: Penalties.

Any violation of this chapter shall constitute a Class B civil infraction as provided in Section 1.12.070.

SECTION 6. SEVERABILITY. Any provision of this Ordinance which proves to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Ordinance, and the remaining provisions of this Ordinance shall remain in full force and effect.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by unanimous vote on _____ and _____.

DATED this ___ day of _____, 2017.

Gerald F. Stanley, Mayor

ATTESTED TO:

Shannon Beaucaire, City Manager