

AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE (AMC) TITLE 13 BY ADDING A NEW CHAPTER 13.90 TITLED PRIVATE PROPERTY IMPOUNDS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Albany is adding AMC Chapter 13.90, Private Property Impounds, to address and regulate towing from private parking facilities; and

WHEREAS, towing from private parking facilities affects city residents and visitors; and

WHEREAS, regulation of towing will ensure that public safety and convenience are protected; and

WHEREAS, Title 13.90 conforms to the laws and regulations of the State or Oregon Motor Vehicle Code regarding towing from private property.

NOW THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Amending AMC Title 13, Vehicles and Traffic. AMC Title 13 is hereby amended to add Chapter 13.90 titled Private Property Impounds:

Sections:

- 13.90.010 General Provisions.
- 13.90.020 Definitions.
- 13.90.030 Conditions.
- 13.90.040 Prohibitions.
- 13.90.050 Photographs.
- 13.90.060 Offer transportation assistance to vehicle owner/owner's agent.
- 13.90.070 Animals in towed vehicles.
- 13.90.080 Notification following the tow.
- 13.90.090 Release of vehicle.
- 13.90.100 Release at scene.
- 13.90.110 Regulations.
- 13.90.120 Predatory tow practices.
- 13.90.130 Towing and storage rates.
- 13.90.140 Penalty.
- 13.90.150 Citizen complaints.
- 13.90.160 Operator's license.

**13.90.010 General provisions.**

- (1) Purpose. The purpose of the Private Property Impound (PPI) code is to require that towing from private parking facilities be performed safely and at a reasonable price. Because towing from private parking facilities affects city residents and visitors, regulation is necessary to ensure that the public safety and convenience are protected.
- (2) Conformity to State Laws. The PPI code shall be construed in conformity with the laws and regulations of the State of Oregon Motor Vehicle Code regarding towing from private property.
- (3) Savings Clause. If any provision of the PPI code is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such holding shall not affect the validity, legality, and enforceability of any other provision of the PPI code.

**13.90.020 Definitions.**

For the purposes of the PPI Code, the following definitions apply. Terms, phrases, words, abbreviations, and their derivatives used, but not specifically defined in this section, either shall have the meanings defined in the State of Oregon Motor Vehicle Code, or if not therein defined, shall have the meanings commonly accepted in the community.

- (1) "Owner's agent" means a person bearing documentation from the registered owner officially authorizing

them to possess or operate the vehicle.

- (2) "Private parking facility" means any property used for motor vehicle parking at which the property owner or manager restricts or reserves parking, including, but not limited to, mobile home parks, apartment complexes, private gated communities and business or shopping centers or malls.
- (3) "Private parking facility owner" means the owner, operator, lessee, manager or other person(s) in lawful possession of a private parking facility, or any designated agent of the private parking facility owner.
- (4) "Private Property Impound(s)" or "PPI" means the impoundment of a vehicle from a private parking facility at the request of the property owner, operator, lessee, manager, or person in lawful possession of the private property facility, without the prior consent of the vehicle's registered owner.
- (5) "Release At Scene fee" (RAS fee) means the fee allowed to be charged when a vehicle owner/owner's agent returns before the PPI tower has departed in tow. Not applicable until the hookup is complete and tow truck is in motion.
- (6) "Temper fee" means an additional charge assessed by a tow driver when someone uses offensive language or is perceived as aggressive.
- (7) "Towing" means to draw or pull along a vehicle by means of a tow truck or car carrier.
- (8) "Towing firm" or "tower" means any entity whose business includes the towing of motor vehicles from private parking facilities and the subsequent storage of such towed vehicles.
- (9) "Vehicle owner" means the person registered with the Department of Motor Vehicles as the owner of the vehicle.

#### **13.90.030 Conditions.**

All PPI towers operating within the city of Albany shall:

- (1) Perform all PPI tows in a safe manner, taking care not to cause damage to the person or property of others while towing or storing a vehicle; and
- (2) Practice courtesy and professionalism when dealing with police and persons redeeming or seeking to redeem a towed vehicle; and
- (3) Cooperate fully with any police agency to facilitate processing of evidence associated with any PPI towed vehicle identified as a possible stolen vehicle; and
- (4) Be considered in possession of any vehicle towed under this chapter, and therefore entitled to charge a release at scene fee, when the hookup is complete and the tow truck has begun towing the motor vehicle by engaging the tow truck's transmission and moving forward.

#### **13.90.040 Prohibitions.**

PPI towers operating within the city of Albany under this chapter shall not:

- (1) Require any vehicle owner/owner's agent to make any statement or sign any document promising not to dispute validity of the tow or fees assessed or relieving the PPI tower from responsibility for the condition of the vehicle or its contents;
- (2) Solicit PPI towing business by means of payment of a gratuity, commission or any other consideration to the private property owner, operator, manager or employee;
- (3) Remove a vehicle from a private parking facility unless the hookup has been completed and all safety equipment has been attached;
- (4) Use predatory tow practices, as described in AMC 13.90.120;
- (5) Charge or assess a temper fee; or

(6) Charge fees in excess of those in AMC 13.90.130.

(7) Place towed vehicles in storage outside of the city of Albany. Exemptions may be granted by the Police Chief or his/her designee but at no greater distance than 3 miles outside of the city of Albany.

**13.90.050 Photographs.**

Prior to performing private property facilities impound, using a digital camera with time and date stamp, the PPI tower shall photograph the vehicle to be towed and the parking facility signage. Such photographs shall illustrate the conditions of the vehicle's location that warrant such an impound, and be made available upon request by the Police Chief or his/her designee, pursuant to a complaint investigation or audit. The tow company is not allowed to charge a fee for photographs.

**13.90.060 Offer transportation assistance to vehicle owner/owner's agent.**

Pursuant to ORS 822.230(3)(d), PPI towers shall offer to either provide transportation for the vehicle owner/operator from the immediate vicinity of the location from which the vehicle was towed to the tower's storage lot for release of the vehicle, or make a call on behalf of the vehicle owner to arrange transportation.

**13.90.070 Animals in towed vehicles.**

Vehicles with any live animal will not be towed.

**13.90.080 Notification following the tow.**

The PPI tower shall notify the Albany Police Department within 15 minutes after the PPI Tower takes possession of a vehicle by providing the details of the tow including;

- A. Vehicle license plate (to verify against prior notice information);
- B. Issuer state of license plate;
- C. Expiration date of license plate;
- D. VIN (vehicle identification number), if visible;
- E. Make of vehicle;
- F. Model of vehicle;
- G. Style of vehicle;
- H. Year of vehicle;
- I. Color of vehicle;
- J. Address from which the vehicle was towed or released at the scene;
- K. Address to which the vehicle was towed;
- L. Name of the business and person who authorized the tow;
- M. Name and phone number of tow company.

**13.90.090 Release of Vehicle.**

- (1) Upon release of the vehicle to the registered owner/owner's agent, the PPI tower must provide an itemized receipt of tow charges.
- (2) Within 15 minutes of releasing a vehicle to the registered owner/owner's agent or foreclosing on possessory lien, the PPI tower shall notify the Albany Police Department by telephone.
- (3) The PPI tower must have personnel available at the storage facility to release a vehicle within 30 minutes after receiving a request for vehicle release.

**13.90.100 Release at scene.**

- (1) If the vehicle owner or operator returns to the vehicle while the tower is still attaching equipment to the vehicle, or the vehicle is fully attached but the tow driver is still outside the cab of the tow truck, or if the tow driver has entered the cab of the tow truck but has not yet engaged the tow truck's transmission to begin removal of the towed vehicle; the PPI tower shall release the vehicle to the vehicle owner or operator at no charge.
- (2) If the vehicle owner or operator stops the PPI tower when the hookup is complete and the tow truck is in

motion with the vehicle, the PPI tower shall immediately halt the tow and inform the vehicle owner of the amount of the RAS fee, and that the vehicle owner has up to 15 minutes, without additional charge, to provide payment of the RAS fee. If the RAS fee is collected, the tower shall unhook the vehicle and release it to the vehicle owner/owner's agent. If the vehicle owner/owner's agent fails to provide payment within 15 minutes, the PPI tower may proceed to tow the vehicle to the storage facility.

### **13.90.110 Regulations.**

- (1) It shall be unlawful to tow a vehicle from a private parking facility unless:
  - (a) The private parking facility owner/operator gives the PPI tower express written authorization identifying the specific vehicle, signed at the time of the tow.
- (2) Signage. It shall be unlawful to tow a vehicle from a private parking facility unless the private parking facility meets the following signage requirements:
  - (a) At least one sign shall be posted and readily visible at each entryway into the parking lot, not more than ten feet from the public right-of-way or street edge. Such signs shall:
    - (1) Be posted so that the center of the sign is not more than eight feet nor less than four feet above the ground; and
    - (2) Be at least 16 inches by 24 inches in size; and
    - (3) Be printed in letters not less than 2 inches high; and
    - (4) State that parking is prohibited, reserved or otherwise restricted; and
    - (5) State who is authorized to park and the hours during which parking is restricted. (Example: "Parking for customers of \_\_\_\_\_ only during \_\_\_\_\_ hours."); and
    - (6) State that towing and storage of a vehicle will be at the owner's expense; and
    - (7) Prominently display the PPI tower's name and 24-hour telephone contact number for release of a vehicle; and
    - (8) Be maintained so as to remain legible and unobstructed by any tree, shrub, bush, vehicle or other obstacle; and
    - (9) When replacing missing or defaced signs, new signs must be posted for a minimum of 24 hours before towing commences or resumes.
  - (a) When a private parking facility is shared by multiple business operations (i.e., shopping mall or office park) parking spaces must be marked, or signs posted, so as to indicate which spaces are reserved for each business.
  - (b) PPI towers may request an exception to the rules for sign location. Such request shall be made to the Police Chief or his/her designee and must be made in writing and offer an alternative posting for approval.
  - (c) Fire lanes from which vehicles may be towed shall be marked in compliance with the Oregon Fire Code.

### **13.90.120 Predatory tow practices.**

It shall be unlawful for a PPI tower to do any of the following:

- (1) Park within 1,000 feet of a private parking facility for the purpose of covert observation in order to obtain PPI tows;

- (2) Post any observer at or near a private parking facility for the purpose of monitoring and ordering towing; and
- (3) Patrol private parking facilities for the purpose of monitoring motor vehicles to tow.

**13.90.130 Towing and storage rates.**

- (1) Rates and fees for PPI towing, RAS, and storage shall be set by Council resolution.
- (2) The PPI Tower must accept at least the following methods of payment for any fees or rates assessed:
  - (a) Cash. Adequate cash must be available at all times at the storage facility and with the tow driver for the purpose of making change; or

**13.90.140 Penalty.**

- (1) Any Violation of this chapter shall be deemed a misdemeanor as provided under AMC 1.04.010 through 1.04.020, unless the City requests it to be treated as a violation.
  - (a) Violation: a civil penalty of not more than \$1,000 or such sum as may be provided in the ordinance defining the offense.
  - (b) Misdemeanor: a fine of not more than \$2,500 or imprisonment not to exceed one year, or both such fine and imprisonment.
- (2) Upon a finding of a violation of any section of this PPI Code by a PPI Tower, the Albany Municipal Court may direct release of a vehicle at no charge, or a refund of all or part of fees paid by a vehicle owner/owner's agent for towing and storage, in lieu of, or in addition to civil penalties or other remedies under this code.
- (3) Nothing in this section is intended to prevent any person from pursuing private legal remedies.

**13.90.150 Citizen complaints.**

- (1) A vehicle owner/operator whose vehicle has been impounded, or who has paid an RAS fee, has 90 days from the date of the tow to file a written complaint against the PPI tower with the Police Chief or his/her designee.
- (2) The Police Chief or his/her designee shall provide a copy of the written complaint to the PPI tower within 15 days of receipt.
- (3) The PPI tower shall provide a written statement of response within 10 days of the date it received the complaint, unless an extension is granted by the Police Chief or his/her designee. The response shall include all documentation requested by the Police Chief or his/her designee, including a copy of the agreement or signed invoice authorizing the tow, an explanation for how the circumstances justified the tow, an itemized receipt of tow charges, and the photograph of the vehicle and signs at the scene of the tow as required by this chapter.
- (4) After reviewing the complaint and the response provided by the PPI tower, Police Chief or his/her designee shall determine whether the tow was properly performed under this chapter and, if not, the appropriate remedy as set forth under AMC 13.90.140. The Police Chief or his/her designee shall submit a written decision and mail it to each party within 75 days from the date of receipt of the original complaint. The PPI tower and/or vehicle owner/operator can seek remedies through civil process.

**13.90.160 Operator's license.**

Each applicant for an operator's license shall apply to the Albany Police Department for such license upon such form as prescribed by the Albany Police Department and shall include thereon the following information:

- (1) Name and post office address of the business;

- (2) Name and post office address of the owner/applicant (if a partnership or joint venture, the application must so state and contain the names and addresses of all parties thereto);
- (3) Address of storage yard(s) where PPI tows will be taken to;
- (4) A license under this section expires annually on December 31;
- (5) A license under this section may be suspended or revoked for a violation of ORS 98.854 or 98.859.

Section 2: Emergency Clause. In as much as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Albany, or to facilitate the prompt and timely completion of important City business, an emergency is hereby declared to exist; and this ordinance shall take effect and be in full force and effect when signed by the Mayor.

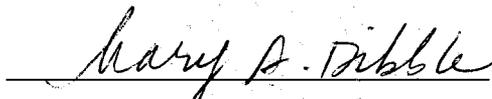
Passed by Council: Feb 8, 2017

Approved by Mayor: Feb 8, 2017

Effective Date: Feb 8, 2017

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk