

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2013-27

NO. 324

AN ORDINANCE IN AMENDMENT OF CHAPTER 15, "MOTOR VEHICLES AND TRAFFIC," OF THE CODE OF ORDINANCES OF THE CITY OF PROVIDENCE, ARTICLE II, "IMPOUNDMENT OF VEHICLES."

Approved July 26, 2013

Be it ordained by the City of Providence:

SECTION 1. The Code of Ordinances of the City of Providence, Chapter 15, Article II, "Impoundment of Vehicles," is hereby amended as follows:

ARTICLE II. IMPOUNDMENT OF VEHICLES

Sec. 15-18. Removal or impounding of illegally parked vehicles.

(a) *Generally.* Any police officer may remove and impound or cause to be removed or impounded any vehicle illegally parked upon any street or highway, in such violation of any parking regulation or ordinance (other than overtime parking), as to constitute an obstruction to traffic or as to create an unsafe condition, thus jeopardizing public safety; provided nevertheless, that the police department shall, within forty-eight (48) hours, notify the vehicle owner of the said removal or impoundment; of the opportunity for a hearing before a "neutral official," in which the owner may contest the towing (or the deprivation of said vehicle), and the payment of costs or charges accompanying the towing or impoundment; all substantially in accordance with the procedure set forth in subsection (b) of this section.

(b) *Post-seizure hearings for towed or impounded vehicles.*

(1) *Notice and request for hearing.* As to any vehicle towed or impounded pursuant to this section 15-18 by or at the request of the City of Providence, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand, on forms so provided for such a hearing, with the police department within ten (10) days after such person has learned such vehicle has been impounded or within ten (10) days after the mailing of the date set in the notice of stored vehicle, whichever occurs first. The notice of stored vehicle shall be sent in the mail to the legal and registered owner or their agent and to the garage where the vehicle is stored within forty-eight (48) hours, excluding weekends and holidays, after impounding and storage of the vehicle.

(2) *Conduct of hearing.* A hearing shall be conducted before judge of the municipal court within forty-eight (48) hours of receipt of a written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays, and city holidays are to be excluded from the calculation of the forty-eight-hour period. The sole issue before the hearing shall be whether there was probable cause to impound the vehicle in question.

"Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle.

The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The police department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. The judge's decision in no way affects any criminal proceeding in connection with the impound in question and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. Failure of the registered or legal owner, or his or her agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

(3) *Decisions and their effect.* In the event that the judge determines that there was no probable cause, the official police garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the city in accordance with arrangements made between the city and the authorized garages. If the possessor fails to recover the vehicle within twenty-four (24) hours of its receipt, excluding such days when the said garage is not open for business, the possessor shall assume liability for all subsequent storage charges.

(c) *Payment of charges.* For charges in connection with the towing, winching, storage of a vehicle impounded under this section and for associated labor in connection with any action related to the seizure of a vehicle, refer to the individual carrier's tariff on file with the state department of public utilities; for placement of a boot a charge of one hundred dollars (\$100.00) and an additional fee to compensate for the replacement value of the boot if the boot is damaged or not returned within a reasonable time to the city; all fees shall be paid to the agent for the city in the usual business manner before any such vehicle shall be released except for vehicles towed during periods when emergency regulations controlling parking and traffic movements during storm periods are in effect. The payment of such towing and storage charges shall not release the operator or owner of the vehicle from any penalty imposed for violation of any traffic regulations.

Sec. 15-19. Removal of disabled or abandoned vehicles on public highway.

(a) *Order to remove.* Whenever any vehicle is disabled by reason of accident or for any other reason, or abandoned upon a public street or highway of the city, and such disabled or abandoned vehicle constitutes an obstruction to the normal flow of pedestrian or vehicular traffic upon the said highway which cannot be readily removed, the police department or any officer thereof shall direct the owner or operator to remove said vehicle and give him or her a reasonable opportunity so to do.

(b) *Use of towing service.* If the owner or operator of a disabled or abandoned motor vehicle is unable or unwilling to remove said motor vehicle by his or her own efforts or resources within a reasonable time as directed by said police department, he or she shall be directed to call or designate a towing service of his or her own choice to remove said vehicle. If such owner or operator refuses, fails is unable or is not readily available to call or select a towing service, as aforesaid, the police department shall call upon an approved towing service as herein provided, and direct that said motor vehicle be removed to a suitable place within the city.

Sec. 15-20. Moving, altering, repairing motor vehicle removed from highway.

Any motor vehicle disabled or abandoned and removed from a public highway or street, as provided in section 15-19, shall not be further moved, altered or repaired in any manner or form without the written consent of the owner or operator thereof, or of an agent of the owner or operator duly authorized in writing.

Sec. 15-21. Duty to regain possession of vehicle.

The owner or operator or duly designated agent of the owner or operator shall regain immediate possession of any motor vehicle removed, as aforesaid, from said towing service company or the person to whom or the place to which it may have been delivered by said towing service upon payment of charges as set out in this article.

Sec. 15-23. Use of towing service companies by police department.

(a) *Agreement required.* The police department shall call only upon towing service companies which have indicated by a writing deposited with the commissioner of public safety their agreement to abide by the provisions of this article and the rules and regulations promulgated hereunder, and have further agreed to remove vehicles as provided herein, for storage if other than the premises of or under direct control of said towing service companies only to suitable places in the city whose owners or operators have also indicated by a writing deposited, as aforesaid, their willingness to abide by the provisions hereof and the rules and regulations promulgated hereunder. Towing service companies will be required to release towed vehicles only during normal daylight hours of 8:00 a.m. to 6:00 p.m. for seven (7) days a week.

(b) *Listing to be followed.* Towing service companies registered as aforesaid, with the commissioner of public safety shall be listed in alphabetical order and shall be called upon for their services by said police department to the greatest possible extent in the order of their appearance on said list.

Sec. 15-24. Violations by towing service company, owner or operator of premises to which vehicle is removed.

Violations of any portions of this article by any towing service company or by the owner or operator of the premises to which a vehicle may have been removed pursuant to the provisions hereof, shall be punishable by fine or imprisonment or by both as provided in section 1-10 of this Code of Ordinances and/or by being removed from the approved list of eligible towing service companies or suitable repositories for removed cars. No person shall be removed from such list as aforesaid, except after a hearing before the commissioner of public safety after due notice thereof, at which the person concerned may be represented by an attorney. Any person removed as aforesaid may apply for reinstatement.

Sec. 15-25. Rules and regulations to implement article.

The commissioner of public safety may make further rules and regulations not inconsistent herewith to implement the provisions of this article.

Sec. 15-26. Towing, or impoundment or immobilization of vehicles of scofflaws.

(a) The municipal court of the city shall adhere to the procedure set forth in subsection (b) of this section, in the enforcement of vehicle violations in the event that impoundment or immobilization of vehicles should become necessary. Any police officer, agent, or parking enforcement officer of the city shall have the authority to impound or seize (or cause the same to be done) any vehicle, whether by towing or by immobilization otherwise (such as by use of a boot) if three (3) or more parking tickets or citations for violations of the traffic ordinances or regulations of the city have been issued against it and which remain outstanding and delinquent for more than fifteen (15) days.

(b) The procedure to be followed in the enforcement of the preceding subsection (a) shall be as follows:

(1) Prior to any such vehicle being ordered to be towed, seized, immobilized or impounded, a warning notice of noncompliance and an order to respond to the municipal court to answer to the traffic violations shall be forwarded to the owner of record by mail or by tacking to the windshield of the vehicle in question following the issuance of the third vehicle violation.

(2) Said notice and order shall state that the registrant may appear before the municipal court at any session during the following fourteen (14) days, and request a hearing as to whether the vehicle should be towed or seized and impounded for said violations.

(3) If, after twenty-one (21) days from the date of mailing said notice the matters remain unresolved and at least three (3) violations remain outstanding and delinquent, the municipal court shall list the vehicle as eligible for the city police department to tow (or immobilize by use of a boot) and impound said vehicle for satisfaction or adjudication of all fines, fees and penalties associated therewith.

(4) Upon any appeal to the municipal court contesting the booting fee or the right of the police department to tow or immobilize the vehicle, evidence of the city's compliance with this section shall establish probable cause for the towing or immobilization of the vehicle and such probable cause shall be independent of any judicial ruling regarding traffic tickets and violations. Payment of the booting fee may only be waived by the court upon a finding of a lack of probable cause to immobilize or tow the vehicle.

(5) Upon such a vehicle being thus towed or seized and impounded or immobilized, the city police department shall maintain a record of same, and upon inquiry by the registrant or other authorized person, notify same:

a. That they may appear at the next regular session of the municipal court, for the purpose of securing a hearing as to the towing or impoundment or immobilization of vehicle, liability for any charges arising there from, and for arraignment on the outstanding violations; or

b. That the registrant (or other authorized person) may either pay the outstanding traffic or parking fines together with all fees in connection with the seizure of the vehicle.

(6) Upon such a vehicle being thus duly towed and impounded in a convenient and safe place within the city, or immobilized by use of a boot at the place where it was located, the charge as set forth in section 15-18(c) shall be paid by the registrant of such vehicle or other authorized person, firm or corporation designated by said registrant before any such vehicle shall be released.

(7) No vehicle thus towed and/or impounded or immobilized under this section may be released by the city police department unless issued written notice to do so by the clerk of the municipal court.

(8) No vehicle thus towed and impounded or immobilized under this section shall be disposed of or sold by any person, company or organization having possession or custody of same, nor by the police department, the city or any of its agents, except by written order of the municipal court (or the clerk thereof) obtained pursuant to applicable state law, if any; and if there be no applicable state law, then the following procedure shall govern and apply: If such property remains unclaimed in the possession of the police department, an officer or agent thereof, or an authorized towing company or garage for one (1) month and the owner thereof or his or her place of abode or business is unknown, or if the owner and his or her place of abode or business are known and the owner, after receipt by registered mail of a written notice from such department or member to take possession of said property, refuses or fails for a period of ten (10) days following said receipt so to do, such department may sell the same by public auction, notice of the time and place of sale, with a description of the property to be sold, first being given by publishing the same once in each of three (3) successive weeks in a newspaper published in the city.

Sec. 15-27. Post-seizure hearings for towed or impounded vehicles applicable to other sections of the Code of Ordinances.

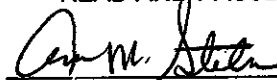
The procedure for post-seizure hearings for towed or impounded vehicles shall also apply to sections 15-19 of Article II.

IN CITY COUNCIL

JUL 02 2013

FIRST READING

READ AND PASSED


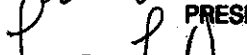
 CLERK

IN CITY
COUNCIL

JUL 18 2013

FINAL READING

READ AND PASSED

 PRESIDENT
 ACTING CLERK

I HEREBY APPROVE.

 Mayor

Date: 7/26/13