

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2007-31

No. 367

AN ORDINANCE AMENDING CHAPTER 15 OF THE CODE OF ORDINANCES ENTITLED "MOTOR VEHICLES AND TRAFFIC," SECTIONS 15-18 AND 15-26

Approved JULY 10, 2007

Be it ordained by the City of Providence:

SECTION 1. Chapter 15 of the Code of Ordinances of the City of Providence is hereby amended in part to read as follows:

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 a "neutral" hearing officer designated by a judge of the municipal court within forty-eight (48) hours of receipt of a written demand therefore 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 hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer 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 hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. 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. At the conclusion of the hearing, the hearing officer shall prepare a brief written decision. A copy of such decision shall be provided to the registered owner of the vehicle. The hearing officer'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. The decision of the hearing officer is final. Failure of the registered or legal owner, or his agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

(3) *Decisions of the hearing officers and their effect.* The hearing officer shall only determine that as to the vehicle in issue either (a) there was probable cause to impound the vehicle or (b) there was no such probable cause. In the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the vehicle and the police department. Upon receipt of the possessor's copy of such certificate, 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 present such certificate to the authorized garage having custody of 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. Such certificate shall advise the possessor of such requirement.

(c) *Payment of charges.* ~~A charge of thirty five dollars (\$35.00) for towing performed during the hours of 8:00 a.m. to 5:00 p.m., or a charge of forty dollars (\$40.00) for towing performed during the hours of 5:00 p.m. to 8:00 a.m.; and/or truck towing and/or winching of commercial vehicles with a gross weight of twelve thousand (12,000) pounds or greater, including trucks, buses, trailers, semis, construction equipment etc., refer to the individual carrier's tariff on file with the Rhode Island Department of Public Utilities; plus a storage charge of fifteen dollars (\$15.00) per calendar day or for a fraction thereof for storage off the public highway in a secured lot; unless the vehicle is being stored pursuant to an ongoing investigation by a law enforcement agency, in said event the storage charge shall not exceed eight dollars (\$8.00) per day, and an additional charge of twenty dollars (\$20.00) for the special use of a car carrier will be levied when requested or required; an additional labor charge of twenty dollars (\$20.00) per half (1/2) hour for cable winching, with a five minute free hook up time allowed on each winch job; and an additional labor charge of ten dollars (\$10.00) for (linkage) the express purpose of moving the shift lever into a tow away position and the repositioning into a park position when the tow is completed; and additional labor charge of five dollars (\$5.00) for sweeping the highway of debris caused by the automobile accident; an additional labor charge of ten dollars (\$10.00) for unlocking doors; 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 Rhode Island 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 carrier 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.~~

(Ch. 2, § 199; added by Ord. 1956, ch. 1033, § 2; Ord. 1961, ch. 1443, § 1; Ord. 1968, ch. 68-71, § 1, 11-21-68; Ord. 1978, ch. 78-29, § 1, 12-21-78; Ord. 1983, ch. 83-12, § 1, 3-4-83; Ord. 1983, ch. 83-25, § 1, 5-3-83; Ord. 1986, ch. 86-9, § 1, 3-13-86; Ord. 1988, ch. 88-1, § 1, 1-12-88)

Editor's note: Section 1 of Ch. 83-25, approved May 3, 1983, purported to amend subsection (b) of § 15-18. The amendment, however, repeated the entirety of § 15-18 as it had appeared prior to the passage of Ch. 83-12, approved March 4, 1983. Apparently, the intent of 83-25 was to raise the charges for towing, now codified as subsection (c). Accordingly, the editor has treated the amendment as amendatory of subsection (c) of § 15-18 as it currently appears, omitting the repetition of former subsection (a).

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

(a) Upon an order of a judge of the municipal court of the City of Providence, obtained in accordance with subsection (b) of this section, 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 the ~~"Denver boot,"~~ so-called a boot) if five (5) or more parking tickets or citations for violations of the traffic ordinances or regulations of the City of Providence have been issued against it and which remain outstanding and delinquent for more than fifteen (15) days.

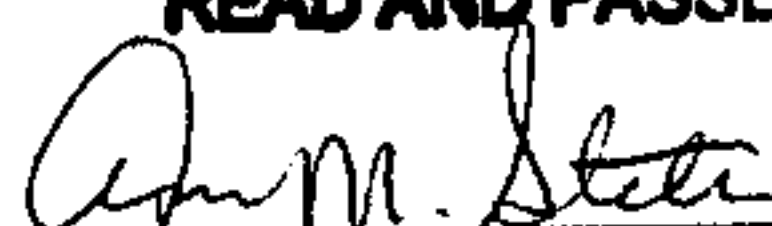
(b) The procedure to be followed in the enforcement of the preceding subsection (a) shall be as follows:

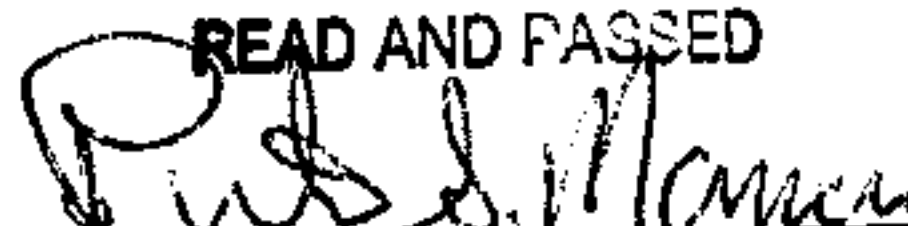
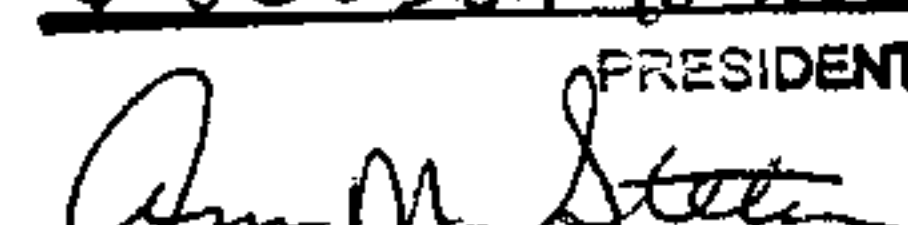
- (1) Prior to any such vehicle being ordered to be towed, seized, **immobilized** or impounded, if the vehicle is registered in the State of Rhode Island, and a registration is on file with the state, a notice of noncompliance and an order to respond to the municipal court to answer to the traffic violations shall be forwarded to the owner of record by registered or certified mail
- (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 or order, the registrant fails to appear, a judge of the municipal court shall issue a written order to the Providence Police Department to tow (or seize **immobilize** by use of the ~~"Denver boot"~~ a boot) and impound said vehicle.
- (4) Prior to any such vehicle being ordered towed or seized and impounded, if the vehicle is registered in a state other than Rhode Island, said notice of noncompliance and order to respond (as aforesaid) shall be mailed (by registered or certified mail) to the registrar of motor vehicles (supplying as much information as reasonably available) of the state in which such vehicle is registered. Said notice of noncompliance and order and the procedure and consequences shall be the same as for a Rhode Island registrant, except that an out-state registrant shall be given twenty-one (21) days to appear before the municipal court, and twenty-eight (28) days before said court order shall issue. **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 subsequent judicial ruling regarding traffic tickets and violations.**
- (5) Upon such a vehicle being thus towed or seized and impounded **or immobilized**, the Providence Police Department shall maintain a record of same, and upon inquiry by the registrant or other authorized person, notify same (i) 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; (ii) provided 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**, or (iii) deposit with the court sufficient security for the payment thereof in the event the same are duly contested.
- (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 Providence 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 month and the owner thereof or his place of abode or business is unknown, or if the owner and his 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 successive weeks in a newspaper published in Providence.

(Ord. 1983, ch. 83-12, § 2, 3-4-83)

SECTION 2. This Ordinance shall take effect upon its passage.

IN CITY COUNCIL
JUN 21 2007
FIRST READING
READ AND PASSED
 CLERK

IN CITY
COUNCIL
JUL 5 2007
FINAL READING
READ AND PASSED
 PRESIDENT
 CLERK

APPROVED

MAYOR 7/10/07