

Ordinance No. 00194

[\(Council Minutes 99/02/01\)](#)

ORDINANCE NO. 194

AN ORDINANCE of the City Council of the City of Lakewood, Washington, creating a new Chapter 10.28 of the Lakewood Municipal Code relating to impounding vehicles driven by drivers with suspended licenses

WHEREAS, in 1998, the Washington State Legislature passed S.H.B. 1221, adopted as Chapter 203, Laws of 1998, which provided an option to municipalities of impounding vehicles being operated by a person that was driving while his or her license was suspended, and thus committing an offense of ADriving While License Suspended@ (DWLS); and, WHEREAS, the term ADriving While License Suspended@ and DWLS include and refer to Driving While License Suspended First Degree, Second Degree and Third Degree, pursuant to Section 46.20.342 of the Revised Code of Washington (RCW); and,

WHEREAS, the State Legislature promulgated findings in Section 1, Chapter 203, Laws of 1998, which are hereby adopted by this reference, and which include in part the following:

1. Suspended drivers are more likely to be involved in causing traffic accidents, including fatal accidents, than properly licensed drivers, and pose a serious threat to the lives and property of Washington residents.
2. Statistics show that suspended drivers are three times more likely to kill or seriously injure others in the commission of traffic felony offenses than are validly licensed drivers.
3. In addition to not having a driver=s license, most such drivers also lack required liability insurance, increasing the financial burden upon other citizens through uninsured losses and higher insurance costs for validly licensed drivers.
4. Because of the threat posed by suspended drivers, all registered owners of motor vehicles in Washington have a duty to not allow their vehicles to be driven by a suspended driver.
5. Despite the existence of criminal penalties for driving with a suspended license, an estimated seventy-five percent of these drivers continue to drive anyway.
6. It is common for suspended drivers to resume driving immediately after being stopped, cited, and released by a police officer and to continue to drive while a criminal prosecution for suspended driving is pending.
7. More than half of all suspended drivers charged with the crime of driving while suspended or revoked fail to appear for court hearings.
8. Vehicle impoundment will provide an immediate consequence which will increase deterrence and reduce unlawful driving by preventing a suspended driver access to that vehicle.
9. Vehicle impoundment will also provide an appropriate measure of accountability for registered owners who permit suspended drivers to drive their vehicles.
10. Impoundment of vehicles driven by suspended drivers has been shown to reduce future driving while suspended or revoked offenses for up to two years afterwards, and the recidivism rate for drivers whose cars were not impounded was one hundred percent higher than for drivers whose cars were impounded.
11. In order to adequately protect public safety and to enforce the state=s driver licensing laws, it is necessary to authorize the impoundment of any vehicle when it is found to be operated by a driver with a suspended license; and,

WHEREAS, the City has found that the current methodology of dealing with the Driving While License Suspended cases has not been totally effective and that the adoption of ordinances authorized by the State Legislature in Chapter 203, Laws of 1998, along with other municipalities would allow for uniformity throughout neighboring municipalities in addressing the problems of persons driving while their license has been suspended; and,

WHEREAS, a progressive minimum impound period is necessary to encourage compliance; and,

WHEREAS, a longer minimum impound period for cases involving the offenses of DWLS in the First Degree or DWLS in the

Second Degree, relative to cases involving the offense of DWLS in the Third Degree, is appropriate considering the nature of the offenses; and,

WHEREAS, the implementation of this Ordinance will result in additional costs to the City, and in an attempt to recoup some of the additional costs it is found that an administrative fee of One Hundred Dollars (\$100.00) is appropriate to offset the City costs of enforcing and administering the Ordinance; and,

WHEREAS, to give the public ample warning an effective date of March 1, 1999 is established by this Ordinance; and,

WHEREAS, the use of the Police Chief or designee, as the administrative hearings officer, is appropriate because of the calendar limitations and periods of unavailability of the Municipal Court Judge and the City's license, most such drivers also lack required liability insurance, increasing the financial burden upon other citizens through uninsured losses and higher insurance costs for validly licensed drivers.

4. Because of the threat posed by suspended drivers, all registered owners of motor vehicles in Washington have a duty to not allow their vehicles to be driven by a suspended driver.

5. Despite the existence of criminal penalties for driving with a suspended license, an estimated seventy-five percent of these drivers continue to drive anyway.

6. It is common for suspended drivers to resume driving immediately after being stopped, cited, and released by a police officer and to continue to drive while a criminal prosecution for suspended driving is pending.

7. More than half of all suspended drivers charged with the crime of driving while suspended or revoked fail to appear for court hearings.

8. Vehicle impoundment will provide an immediate consequence which will increase deterrence and reduce unlawful driving by preventing a suspended driver access to that vehicle.

9. Vehicle impoundment will also provide an appropriate measure of accountability for registered owners who permit suspended drivers to drive their vehicles.

10. Impoundment of vehicles driven by suspended drivers has been shown to reduce future driving while suspended or revoked offenses for up to two years afterwards, and the recidivism rate for drivers whose cars were not impounded was one hundred percent higher than for drivers whose cars were impounded.

11. In order to adequately protect public safety and to enforce the state's driver licensing laws, it is necessary to authorize the impoundment of any vehicle when it is found to be operated by a driver with a suspended license; and,

WHEREAS, the City has found that the current methodology of dealing with the Driving While License Suspended cases has not been totally effective and that the adoption of ordinances authorized by the State Legislature in Chapter 203, Laws of 1998, along with other municipalities would allow for uniformity throughout neighboring municipalities in addressing the problems of persons driving while their license has been suspended; and,

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WHEREAS, to give the public ample warning an effective date of March 1, 1999 is established by this Ordinance; and,

WHEREAS, the use of the Police Chief or designee, as the administrative hearings officer, is appropriate because of the calendar limitations and periods of unavailability of the Municipal Court Judge and the City's Hearing Examiners, with the understanding that the Municipal Court Judge or the City's Hearing Examiners may be delegated to serve as the administrative hearings officer where reasonable and appropriate under the circumstances of a particular case.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1. That a new Chapter 10.28 of the Lakewood Municipal Code is hereby created to read as follows:

Chapter 10.28

Impoundment of Vehicles Driven by Drivers with Suspended Licenses

Sections:

10.18.010 Removal by Police Officer.

10.28.020 Contract for towing and storage.

10.28.030 Administrative fee.

10.28.040 Owner of impounded vehicle to be notified.

10.28.050 Redemption of impounded vehicles.

10.28.060 Post-impoundment hearing procedure.

10.28.070 Rules and regulations.

10.28.080 Severability.

10.28.010 Removal by Police Officer.

A. Whenever the driver of a vehicle is arrested for Driving While License Suspended (DWLS), as defined in Section 46.20.342 of the Revised Code of Washington (RCW), and adopted as a part of the City=s Model Traffic Ordinance pursuant to Chapter 308-330 of the Washington Administrative Code (WAC) through Chapter 10.04 of the Lakewood Municipal Code (LMC), or subsequent amendments thereto, the vehicle is subject to impoundment at the direction of a police officer.

1. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the Third Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing=s records show that the driver has been convicted of a violation of RCW 46.20.342, or similar local ordinance, within the past five (5) years, the vehicle shall be impounded for fifteen (15) days.2. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the Third Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04

2. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the Third Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing=s records show that the driver has been convicted two (2) or more times of violation of RCW 46.20.342, or similar ordinance, within the past five (5) years, the vehicle shall be impounded for thirty (30) days.

3. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the First Degree or DWLS in the Second Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing's records show that the driver has not been convicted of a violation of DWLS in the First or Second Degree (RCW 46.20.342(1)(a) or (b)), or similar local ordinance, within the past five (5) years, the vehicle shall be impounded for thirty (30) days.4. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the First Degree or DWLS in the Second Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing

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Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing's records show that the driver has been convicted of a violation of (DWLS First or Second Degree) RCW 46.20.342(1)(a) or (b), or similar local ordinance, two (2) or more times within the past five (5) years, the vehicle shall be impounded for ninety (90) days.

10.28.020 Contract for towing and storage.

A. The Finance Director is authorized and directed to prepare specifications for towing and storage of vehicles, including instructions to bidders, containing such provisions as the Director shall deem advisable and not in conflict with this chapter. The specifications shall be subject to the review and approval of the City Manager.

B. A call for bids responsive to such specifications shall then be made, and the contract shall be awarded to the lowest and best bidder whose proposal is deemed by the Finance Director to be the most advantageous for the public and the City; provided that, in the event all bids are deemed by the Finance Director to be too high or irregular, the Finance Director may reject all such bids and make another call for bids or proceed alternatively pursuant to the ordinance passed for such purpose. The Finance Director shall consider, among other relevant factors, the following:

1. General experience in providing towing and storage services;
 2. Conduct and performance under a contract with a neighboring City or Cities, or with a City of similar size, and job scope requirement, demonstrating honesty, responsiveness, skill, efficiency, and a satisfactory relationship with vehicle owners;
 3. Existing availability of equipment, facilities, and personnel; and
 4. The bidder's financial ability, storage capacity and location(s), and types of services provided. The contract award shall be in accordance with the City's records show that the driver has been convicted of a violation of RCW 46.20.342, or similar local ordinance, within the past five (5) years, the vehicle shall be impounded for fifteen (15) days.2. If a vehicle is impounded because the driver is arrested for a violation of DWLS in the Third Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307, and LMC 10.04, and the Washington Department of Licensing's records show that the driver has been convicted two (2) or more times of violation of RCW 46.20.342, or similar ordinance, within the past five (5) years, the vehicle shall be impounded for thirty (30) days.
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B. A call for bids responsive to such specifications shall then be made, and the contract shall be awarded to the lowest and best bidder whose proposal is deemed by the Finance Director to be the most advantageous for the public and the City;

provided that, in the event all bids are deemed by the Finance Director to be too high or irregular, the Finance Director may reject all such bids and make another call for bids or proceed alternatively pursuant to the ordinance passed for such purpose. The Finance Director shall consider, among other relevant factors, the following:

1. General experience in providing towing and storage services;
2. Conduct and performance under a contract with a neighboring City or Cities, or with a City of similar size, and job scope requirement, demonstrating honesty, responsiveness, skill, efficiency, and a satisfactory relationship with vehicle owners;
3. Existing availability of equipment, facilities, and personnel; and
4. The bidder's financial ability, storage capacity and location(s), and types of services provided. The contract award shall be in accordance with the City's financial ability, storage capacity and location(s), and types of services provided. The contract award shall be in accordance with the City's policies and procedures for the competitive bidding process.

C. Subsequent to the award of the contract, the Finance Director shall file a written statement with the Office of the City Clerk giving the name and address of the contractor for towing and storage of impounded vehicles, including each storage location and the name and address or location of each storage place. The Director of Finance shall administer and enforce contracts made pursuant to this section.

D. The authorization and direction provided by this Section shall include initial action by the Finance Director to secure a contract or contracts for towing and storage, and subsequent action by the Finance Director to secure successor and replacement contracts for towing and storage, as needed.

10.28.030 Administrative fee.

A. If a vehicle is impounded pursuant to the provisions of this Chapter, an administrative fee of One Hundred Dollars (\$100.00) shall be levied when the vehicle is redeemed under the specifications of the contract provided for.

B. The administrative fee shall be collected by the contractor performing the impound, and shall be redeemed to the Finance Department in the manner directed by the Finance Director. The administrative fee shall be for the purpose of off-setting, to the extent practical, the cost of the City of implementing, in enforcing and administering the provisions of this Chapter and shall be deposited in the appropriate account.

10.28.040 Owner of impounded vehicle to be notified.

A. Not more than twenty-four (24) hours after impoundment of any vehicle, the tow contractor shall mail a notice by first class mail to the last known and legal owners of the vehicles, as may be disclosed by the vehicle identification number, and as provided by the Washington State Department of Licensing. The notice shall contain the full particulars of the impoundment, redemption, and opportunity for hearing to contest the propriety of the impoundment as hereinafter provided.

B. Similar notice shall be given to each person who seeks to redeem an impounded vehicle, except that if a vehicle is redeemed prior to the mailing of notice, then notice need not be mailed.

C. The Lakewood Police Department shall give written notification to the last registered and legal owner that the investigatory hold has been removed, except that if a vehicle is redeemed following notice by telephone and prior to the mailing of notice, then notice need not be mailed. In addition, the Police Department shall notify the towing contractor, by telephone or in writing, of the authorization to release such vehicle.

10.28.050 Redemption of impounded vehicles.

A. Only the registered owner, a person authorized by the registered owner, or one who has purchased the vehicle from the registered owner, who produced proof of ownership or authorization and signs a receipt therefor, may redeem an impounded vehicle. A person redeeming a vehicle impounded pursuant to this Chapter must, prior to redemption, establish that he or she has a valid driver's license and is in compliance with RCW 46.30.020. A vehicle impounded pursuant to this Chapter can be released only pursuant to a written order from the police department or a court.

B. Any person so redeeming a vehicle impounded by the City shall pay the towing contractor for costs of impoundment (towing and storage) and administrative fee prior to redeeming such vehicle. Such towing contractor shall accept payment as provided in RCW 46.55.120(1)(b), as now or hereafter amended. If the vehicle was impounded pursuant to this Chapter and was being

operated by the registered owner when it was impounded, it may not be released to any person until any penalties, fines, or forfeitures owned by the registered owner have been satisfied.

C. The Chief of Police is authorized to release a vehicle impounded pursuant to this Chapter, prior to the expiration of any period of impoundment, upon petition of the spouse of the driver based on economic or personal hardship to such spouse resulting from the unavailability of the vehicle, and after consideration of the threat to public safety that may result from release of the vehicle, including but not limited to, the driver's criminal history, driving record, license status and access to the vehicle. If such release is authorized, the person redeeming the vehicle still must satisfy the requirements of this Section.

D. Any person seeking to redeem a vehicle impounded as a result of a traffic citation has a right to a hearing, before the Police Chief or designee, as the administrative hearings officer, to contest the validity of an impoundment or the amount of towing and storage charges, if such request for hearing is in writing, in a form approved by the Chief of Police and signed by such person, and is received by the Chief of Police within ten (10) days (including Saturdays, Sundays, and holidays) of the latter of the date the notice was mailed to such person pursuant to Section 10.28.040 LMC, or the date the notice was given to such person by the registered tow truck operator, pursuant to RCW 46.55.120(2)(a). Such hearing shall be provided as follows:

1. If all the requirements to redeem the vehicle, including expiration of any period of impoundment under Section 10.28.010 LMC, have been satisfied, then the impounded vehicle shall be released immediately, and a hearing as provided for in Section 10.28.060 LMC shall be held within ninety (90) days of the written request for hearing.

2. If all of the requirements to redeem the vehicle, including expiration of any period of impoundment under Section 10.28.010 LMC, have not been satisfied, then the impounded vehicle shall not be released until after the hearing which, pursuant to Section 10.28.060 LMC, shall be held within two (2) business days (excluding Saturdays, Sundays and holidays) of the written request for hearing.

3. Any person seeking a hearing who has failed to request such hearing within the time specified in Section 10.28.060 LMC, may petition the Chief of Police for an extension to file a request for hearing. Such extension shall only be granted upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed. For the purposes of this section, good cause shall be defined as circumstances beyond the control of the person seeking the hearing, that prevented such person from filing a timely request for hearing. In the event such extension is granted, the person receiving such extension shall be granted a hearing in accordance with this chapter.

4. If a person fails to file a timely request for hearing, and an extension to file such a request has not been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment are deemed to be proper, and the City shall not be liable for towing and storage charges arising from the impoundment.

5. In accordance with RCW 46.55.240(1)(d), a decision made by the Police Chief or designee, as administrative hearings officer, may be appealed to the Lakewood Municipal Court for final judgment. The hearing on the appeal, under this subsection, shall be de novo. A person appealing such a decision must file a request for an appeal in the Municipal Court within fifteen (15) days after the decision of the administrative hearings officer, and must pay a filing fee in the same amount required for the filing of a suit in the Pierce County District Court. If a person fails to file a request for an appeal, within the time specified by this section, or does not pay the filing fee, the right to an appeal is waived and the administrative hearings officer's decision is final.

10.28.060 Post-impoundment hearing procedure.

Hearings requested pursuant to Section 10.28.050 LMC shall be held by the Police Chief or designee, as administrative hearings officer, who shall determine whether the impoundment was proper, and whether the associated towing, storage, and administrative fees were proper.

A. At the hearing, an abstract of the driver's decision is final.

10.28.060 Post-impoundment hearing procedure.

Hearings requested pursuant to Section 10.28.050 LMC shall be held by the Police Chief or designee, as administrative hearings officer, who shall determine whether the impoundment was proper, and whether the associated towing, storage, and administrative fees were proper.

A. At the hearing, an abstract of the driver's driving record is admissible, without further evidentiary foundation, and is prima

facie evidence of the status of the driver=s license, permit, or privilege to drive and that the driver was convicted of each offense shown on the abstract. In addition, a certified vehicle registration of the impounded vehicle is admissible, without further evidentiary foundation, and is prima facie evidence of the identity of the registered owner of the vehicle. B. If the impoundment is found to be proper, the Police Chief or designee, as administrative hearings officer, shall enter an order so stating. In the event that the costs of impoundment (towing, storage, and special fees) have not been paid, or any other applicable requirements of Section 10.28.050 LMC have not been satisfied, or any period of impoundment under Section 10.28.010 LMC has not expired, the administrative hearings officer=s order shall also provide that the impounded vehicle shall be released only after payment to the City of any fines imposed on any underlying traffic infraction, satisfaction of any other applicable requirements of Section 10.28.050 LMC, after payment of the costs of impoundment to the towing company, and after the expiration of any period of impoundment under Section 10.28.010 LMC. In the event that the Police Chief or designee, as administrative hearings officer, grants time payments, the City shall be responsible for paying the costs of impoundment to the towing company. The Police Chief or designee, as administrative hearings officer, shall grant time payments only in cases of extreme financial need, and where there is an effective guarantee of payment.

C. If the impoundment is found to be improper, the Police Chief or designee, as administrative hearings officer, shall enter an order so stating, and order the immediate release of the vehicle. If the costs of impoundment have already been paid, the Police Chief or designee, as administrative hearings officer, shall enter judgment against the City and in favor of the person who has paid the costs of impoundment in the amount of the costs of the impoundment and any administrative fee.

D. In the even that the Police Chief or designee, as administrative hearings officer, finds that the impound was proper, but that the towing, storage, and/or special fees charged for the impoundment were improper, the administrative hearings officer shall determine the correct fees to be charged. If the costs of impoundment have been paid, the administrative hearings officer shall notify the City to reimburse the person who has paid the costs of impoundment for the amount of overpayment and any filing fee.

E. No determination of facts made at a hearing, under this section, shall have any collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude litigation of those same facts in a subsequent criminal prosecution.

F. An appeal of the administrative hearings officer=s decision, in the Municipal Court, shall be subject to and conducted according to the procedures of this Section.

10.28.070 Rules and regulations.

The City Manager, in consultation with the Finance Director and the Chief of Police, shall promulgate rules and regulations consistent with this Chapter to provide for the fair and efficient administration of any contract or contracts awarded pursuant to this Chapter and to provide for the fair and efficient administration of any vehicle impoundment, redemption, or release or any impoundment hearing under this Chapter.

10.28.080 Severability.

If any portion of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances shall not be affected.

Section 2. Effective Date. That this Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary, and on April 1, 1999.

ADOPTED by the City Council this 1st day of February, 1999.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

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