

Ordinance No. 00316

[Council meeting minutes of Sept 2 2003](#)

ORDINANCE NO. 316

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Sections 10.28.010, 10.28.020, 10.28.030, 10.28.050 and 10.28.060 of the Lakewood Municipal Code relating to impoundment of vehicles driven by persons with suspended licenses.

WHEREAS, in 1998, the Washington State Legislature passed S.H.B. 1221, adopted as Chapter 203, Laws of 1998, which provided municipalities the option of creating local ordinances to allow the impoundment of vehicles after the arrest of a driver for driving while his or her license was suspended (DWLS); and,

WHEREAS, contained within S.H.B. 1221 were findings that documented the dangers DWLS drivers cause upon the public roadways in the state of Washington, the lack of financial responsibility such drivers exhibit, and the fact that DWLS drivers were not likely to stop driving while criminal charges were pending or to voluntarily appear in court to answer such criminal charges; and

WHEREAS, these legislative findings were later cited by the Washington State Supreme Court in In Re Impoundment of a Chevrolet Truck v. Washington State Patrol, 148 Wn.2d 145, 60 P.3d 53 (2002), explaining again that the purpose behind suspended driver vehicle impounds was to protect public safety and to deter or prevent persons with suspended licenses from driving; and

WHEREAS, the City of Lakewood accepted the local option of adopting regulations intended to impound the vehicles of DWLS drivers through adoption of Ordinances 194 and 214 in 1999; and

WHEREAS, the present amendments are intended to facilitate the process of impounding such vehicles, to update the City's previous ordinances with recent legislative changes, and to incorporate decisions made in intervening judicial review of the state statutes allowing such impoundments.

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

Section 1. That Section 10.28.010 of the Lakewood Municipal Code is hereby amended to read as follows:

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 or 46.20.345 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 may be subject to summary impoundment at the direction of a police officer.

B. If the vehicle was impounded because the driver was arrested for a violation of DWLS in the First, Second or Third Degree, as defined in RCW 46.20.342, and adopted by the Model Traffic Ordinance in WAC 308-330-307 through LMC 10.04, the vehicle may be impounded for thirty (30) days.

C. If the vehicle was impounded because the driver was arrested for a violation of RCW 46.20.345, as adopted by the Model Traffic Ordinance in WAC 308-330-307 through LMC 10.04, the vehicle may be impounded for thirty (30) days.

D. When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (A) of this section, the police officer shall attempt in a reasonable and timely manner to contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection or under subsection 10.28.050 of this section.

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, 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'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, one (1) time within the past five (5) years, the vehicle shall be impounded for sixty (60) days:

5. 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 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:

(Ord. 194 ? 1 (part), 1999)

Section 2. That Section 10.28.020 of the Lakewood Municipal Code is hereby amended to read as follows:

10.28.020 - Towing and Storage

The ~~Finance Director~~ Chief of Police is authorized to prepare specifications for towing and storage of vehicles, including instructions to towing companies, containing such provisions ~~as the Chief of Police~~ 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.
(Ord. 214 ? 1, 1999; Ord. 194 ? 1 (part), 1999.)

Section 3. That Section 10.28.030 of the Lakewood Municipal Code is hereby amended to read as follows:

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 paid prior to the redemption of the vehicle as provided by this Chapter.
B. The administrative fee shall be ~~collected by~~ paid to the Lakewood Finance Department, 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 and its police department for ~~of~~ implementing, ~~in~~ enforcing and administering the provisions of this Chapter and shall be deposited in the appropriate account.
(Ord. 214 ? 2, 1999; Ord. 194 ? 1 (part), 1999.)

Section 4. That Section 10.28.050 of the Lakewood Municipal Code is hereby amended to read as follows:

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 shall pay the City an 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. The administrative fee shall be paid to the Lakewood Finance Department.
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 all other~~ requirements of this Section. A vehicle may be released prior to the expiration of the impound period if the owner of the vehicle was not the driver, the owner did not know the driver's license was suspended or revoked, and the owner has not received a prior release under this section or under LMC 10.28.010 (d). Other than for the reasons expressed above, a vehicle may not be released prior to the expiration of the impoundment period.
D. Any person seeking to redeem a vehicle impounded as a result of a traffic arrest, pursuant this Chapter, 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.

(Ord. 214 ? 4, 1999; Ord. 194 ? 1 (part), 1999.)

Section 5. That Section 10.28.060 of the Lakewood Municipal Code is hereby amended to read as follows:

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. police officers may testify as to whom they believe to be the legal or registered owner of the vehicle and the basis or source of the information upon which they base this belief.~~

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 event 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.

(Ord. 194 ? 1 (part), 1999)

Section 6. That this ordinance shall be in full force and effect five (5) days after publication of the ordinance summary.

ADOPTED by the City Council this 2nd day of September, 2003.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC/AAE, City Clerk

Approved as to form:

Heidi Ann Wachter, City Attorney