

Ordinance No. 00511

[City Council meeting minutes of March 1 2010](#)

ORDINANCE NO. 511

AN ORDINANCE of the City Council of the City of Lakewood, Washington, amending Sections 10.28.010, 10.28.040 and 10.28.050 of the Lakewood Municipal Code, relating to impoundment of vehicles driven by persons with suspended drivers 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, in 1999, through Ordinance Nos. 194 and 214, the City of Lakewood adopted local provisions and procedures related to impounding vehicles driven by drivers whose privilege to drive was suspended or revoked; and,

WHEREAS, in 2003, through Ordinance No. 316, additional amendments were made to the local provisions, updating the local procedures to comply with legislative revisions and judicial review; and,

WHEREAS, the amendments set forth herein again update the previously adopted process and procedures, apply these processes and procedures also to persons operating or in control of vehicles while under the influence of alcohol and/or drugs, and these amendments are intended to protect the public health, safety and welfare through discouraging suspended or revoked drivers from operating vehicles within the City of Lakewood.

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

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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 or cited for Driving While License Suspended (DWLS), as defined in a violation of Section 46.20.342, or 46.20.345, 46.61.502 or 46.61.504 of the Revised Code of Washington (RCW), and which sections have been 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 Driving While License Suspended (DWLS) in the Third Degree, as defined in RCW 46.20.342(1)(c), and the records of the Washington State Department of Licensing (DOL) show the driver has no prior convictions of RCW 46.20.342 or other similar local ordinance, the impounded vehicle may be released as soon as all requirements of LMC sections 10.28.030 and 10.28.050(A) are met.

B. C. 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, and the records of the DOL show that the driver has one or more prior convictions of a violation of RCW 46.20.342 or similar local ordinance within the past five years, the vehicle may be impounded for thirty (30) days.

C. D. If the vehicle was impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), and the records of the DOL show that the driver has no prior convictions for a violation of RCW 46.20.342 or similar local ordinance within the past five years, the vehicle may be impounded for thirty (30) days.

E. If the vehicle was impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), and the records of the DOL show that the driver has one prior conviction for a violation of RCW 46.20.342(1)(a) or 46.20.342(1)(b) or similar local ordinance within the past five years, the vehicle may be impounded for sixty (60) days.

F. If the vehicle was impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), and the records of the DOL show that the driver has two or more prior convictions for a violation of RCW 46.20.342(1)(a) or 46.20.342(1)(b) or similar local ordinance

and the records of the DOL show that the driver has two or more prior convictions for a violation of RCW 46.20.342(1)(a) or 46.20.342(1)(b) or similar local ordinance within the past five years, the vehicle may be impounded for ninety (90) days.

G. 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.

H. If the vehicle was impounded because the driver was arrested for a violation of RCW 46.61.502 or 46.61.504, Driving Under the Influence or having Physical Control of a Vehicle While Under the Influence, as adopted by the Model Traffic Ordinance in WAC 308-330-307 through LMC 10.04, the vehicle may be impounded for a period of twelve (12) hours. The vehicle may be released after this twelve (12) hour impound as soon as the requirements of LMC 10.28.030 and 10.28.050(A) are met.

D. I. 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.

J. A rental car business or a motor vehicle dealer or lender with a perfected security interest may immediately redeem a vehicle it owns that has been impounded pursuant to this section by payment of the costs of removal, towing and storage. Upon such payment the vehicle will not be held for the period of impoundment stated in this section.

Section 2. That section 10.28.040 of the Lakewood Municipal Code is hereby amended to read as follows:

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 legal and registered owners of the vehicles, as may be disclosed by the vehicle identification number, and as provided by the DOL Washington State Department of Licensing. The notice shall include the name of the impounding tow firm, its address, and telephone number. The notice shall include the location and time of the impound, and by whose authority the vehicle was impounded. The notice shall include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impound or the amount of towing and storage charges. The notice shall state the length of the impound.

B. The notice required in subsection A of this section shall state that a person who desires to redeem a vehicle impounded must, within five days of the impound at the request of the tow truck operator, pay a security deposit to the tow truck operator of not more than half of the applicable impound storage rate for each day of the proposed suspended license impound to ensure payment of the costs of the removal, towing, and storage of the vehicle pursuant to RCW 46.55.120(1)(b).

C. The notification required in subsection A of this section shall state that if the security deposit is not posted within five days of the impound the vehicle will immediately be processed and sold at auction as an abandoned vehicle pursuant to RCW 46.55.130(1). The notice shall state the requirements set out in LMC 10.28.050 regarding the payment of the costs of removal, towing, and storage as well as providing proof of satisfaction of any penalties, fines, or forfeitures before redemption. The notice must also state that the registered owner is ineligible to purchase the vehicle at the abandoned vehicle auction, if held.

B. D. If the date on which a notice required by subsection (A) A of this section is to be mailed falls upon a Saturday, Sunday, or postal holiday, the notice may be mailed on the next day that is neither a Saturday, Sunday, nor a postal holiday.

C. E. 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.

D. F. 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, fax or in writing, of the authorization to release such vehicle.

G. As provided for in RCW 46.55.120(4), as now stated or hereinafter amended, notwithstanding the statements contained in the notice described above, the legal owner of a vehicle or personal property subject to impound under this section may redeem such property before the start of an auction by payment of the applicable towing, administrative and storage fees, as well as all applicable or necessary fines and interest.

Section 3. 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 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 owed by the registered owner have been satisfied. The administrative fee stated in LMC 10.28.030 shall be paid to the Lakewood Finance Department.

C. The Chief of Police or designee 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 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, in order to avoid discriminatory application, early release of an impounded vehicle shall be denied in all other circumstances without discretion. 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) ten (10) 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.

Section 4. Severability. If any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, or its application held inapplicable to any person, property or circumstance, such invalidity or unconstitutionality or inapplicability shall not effect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance or its application to any other person, property or circumstance.

Section 5: Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage and after publication as required by law.

PASSED by the City Council this 1st day of March, 2010.

CITY OF LAKEWOOD

Douglas G. Richardson, Mayor

Attest:

Alice M. Bush, MMC, City Clerk

Approved as to form:

Heidi Ann Wachter, City Attorney