

## Chapter 9.56 NUISANCE VEHICLES<sup>1</sup>

### *Article I Purpose and Introductory Sections*

#### **9.56.110 Purpose.**

The purpose of this chapter is to enact the provisions of California Vehicle Code Section 22659.5 that authorizes cities to adopt legislation for the seizure and impoundment of vehicles involved in prostitution, pandering, pimping and/or illegal dumping.

(Ord. No. 13195, § 2, 10-15-2013)

#### **9.56.120 Definitions.**

For the purpose of this chapter the following words and phrases shall mean and include:

- A. "Illegal dumping" means to dump or to cause to be dumped waste matter in violation of California Penal Code Section 374.3.
- B. "Nuisance vehicle" means any vehicle used to agree to or engage in an act of prostitution, pandering, or pimping or to illegally dump; such vehicle is a nuisance.
- C. "Pandering" means procuring another person for the purpose of prostitution, a crime pursuant to California Penal Code Section 266i.
- D. "Pimping" means deriving support or maintenance from the earning or proceeds of a prostitute, a crime pursuant to California Penal Code Section 266h.
- E. "Prosecuting agency" means the District Attorney or the City Attorney.
- F. "Prostitution" means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code Section 647(b).
- G. "Vehicle" means a motor vehicle as defined in California Vehicle Code Section 415.

(Ord. No. 13195, § 2, 10-15-2013)

#### **9.56.130 Public nuisance vehicles.**

Any vehicle is declared a public nuisance and is subject to seizure and impoundment of up to 30 days if all of the following are met:

- A. The vehicle is used in the commission of or attempted commission of prostitution, pandering, or pimping, or illegal dumping.

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<sup>1</sup>Editor's note(s)—Ord. No. 13195, § 2, adopted October 15, 2013, amended Chapter 9.56 in its entirety to read as herein set out. Formerly, Chapter 9.56, §§ 9.56.010—9.56.060, pertained to similar subject matter, and derived from Ord. No. 13058, adopted March 1, 2011.

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- B. The owner or operator of the vehicle has had a prior conviction for the same offense or any combination of offenses that this chapter applies to within the three years prior to an arrest for a violation of one of offenses.
  - C. The driver has been subject to a valid arrest for a violation of the California Penal Code Sections set out in Subsection A above.

(Ord. No. 13195, § 2, 10-15-2013)

## ***Article II Procedures After Impoundment***

### **9.56.210 Notice to owner.**

- A. Within two working days after impoundment, the City shall send a notice by certified mail, return receipt requested, to the legal owner of the vehicle, at the address obtained from the department, informing the owner that the vehicle has been impounded. The notice also shall include notice of the opportunity for a poststorage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released. The City shall be prohibited from charging for more than five days' storage if it fails to notify the legal owner within two working days after the impoundment when the legal owner redeems the impounded vehicle. The City shall maintain a published telephone number that provides information 24 hours a day regarding the impoundment of vehicles and the rights of a legal owner and a registered owner to request a hearing.
- B. The notice to the legal owner shall include all of the following information:
  - 1. The name, address, and telephone number of the agency providing the notice.
  - 2. The location of the place of storage and description of the vehicle, that shall include, if available, the model or make, the manufacturer, the license plate number, and the mileage.
  - 3. The authority and purpose for the removal of the vehicle.
  - 4. A statement that, in order to receive a poststorage hearing, the owners, or their agents, shall request the hearing in person, writing, or by telephone within ten days of the date appearing on the notice.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.220 Poststorage hearing.**

- A. The poststorage hearing shall be conducted within 48 hours of the request, excluding weekends and holidays. The City Administrator shall authorize an employee or hearing officer to conduct the hearing if that employee or hearing officer is not the same person who directed the seizure of the vehicle.
- B. Failure of the legal and the registered owners, or their agents, to request or to attend a scheduled hearing shall satisfy the poststorage hearing requirement.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.230 Costs of towing and storage.**

- A. The City shall be responsible for the costs incurred for towing and storage if it is determined in the poststorage hearing that reasonable grounds for the storage are not established.

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(Supp. No. 88, 6-21)

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- B. Any period during which a vehicle is subjected to storage under this chapter shall be included as part of the period of impoundment.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.240 Early release of vehicle.**

- A. The City shall release the vehicle to the registered owner or his or her agent prior to the end of the impoundment period under any of the following circumstances:
1. The driver of the impounded vehicle was arrested without probable cause.
  2. The vehicle is a stolen vehicle.
  3. The vehicle is subject to bailment and was driven by an unlicensed employee of a business establishment, including a parking service or repair garage.
  4. The driver of the vehicle is not the sole registered owner of the vehicle and the vehicle is being released to another registered owner of the vehicle who agrees not to allow the driver to use the vehicle until after the end of the impoundment period.
  5. The registered owner of the vehicle was neither the driver nor a passenger of the vehicle at the time of the alleged violation, or was unaware that the driver was using the vehicle to engage in activities subject to Section 266h or 266i of, or Subdivision (b) of Section 647 of, the California Penal Code.
  6. A spouse, registered domestic partner, or other affected third party objects to the impoundment of the vehicle on the grounds that it would create a hardship if the subject vehicle is the sole vehicle in a household. The hearing officer shall release the vehicle where the hardship to a spouse, registered domestic partner, or other affected third party created by the impoundment of the subject vehicle, or the length of the impoundment, outweigh the seriousness and the severity of the act in which the vehicle was used.
- B. Notwithstanding any provision of law, if a motor vehicle is released prior to the conclusion of the impoundment period because the driver was arrested without probable cause, neither the arrested person nor the registered owner of the motor vehicle shall be responsible for the towing and storage charges.
- C. Except as provided in Subsection A. above, the registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment.
- D. A vehicle removed and seized under an ordinance adopted pursuant to this section shall be released to the legal owner of the vehicle or the legal owner's agent prior to the end of the impoundment period if both of the following conditions are met:
1. The legal owner is a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state, or is another person who is not the registered owner and holds a security interest in the vehicle.
  2. The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.250 Storage and sale processing fees.**

- A. No lien sale processing fees shall be charged to the legal owner who redeems the vehicle prior to the 15th day of the impoundment period. Neither the City nor any person having possession of the vehicle shall

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(Supp. No. 88, 6-21)

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collect from the legal owner as described in this Subsection A., or the legal owner's agent, any administrative charges imposed pursuant to Section 22850.5 of the California Vehicle Code, unless the legal owner voluntarily requested a poststorage hearing.

- B. A person operating or in charge of a storage facility where vehicles are stored pursuant to this section shall accept a valid bank credit card or cash for payment of towing, storage, and related fees by a legal or registered owner or the owner's agent claiming the vehicle. A credit card or debit card shall be in the name of the person presenting the card. For purposes of this section, "credit card" is as defined in Subdivision (a) of Section 1747.02 of the California Civil Code. Credit card does not include a credit card issued by a retail seller.
- C. A person operating or in charge of a storage facility described in Subsection B. above who violates Subsection B. shall be civilly liable to the owner of the vehicle or the person who tendered the fees for four times the amount of the towing, storage, and related fees not to exceed \$500.00.
- D. A person operating or in charge of the storage facility described in Paragraph (2) shall have sufficient funds on the premises of the primary storage facility during normal business hours to accommodate, and make change for, a reasonable monetary transaction.
- E. Credit charges for towing and storage services shall comply with Section 1748.1 of the California Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.
- F. A failure by a storage facility to comply with any applicable conditions set forth in this subdivision shall not affect the right of the legal owner or the legal owner's agent to retrieve the vehicle if all conditions required of the legal owner or legal owner's agent under this subdivision are satisfied.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.260 Additional release requirements and procedures.**

- A. The legal owner or the legal owner's agent shall present to the City person in possession of the vehicle, or any person acting on behalf of those agencies, a copy of the assignment, as defined in Subdivision (b) of Section 7500.1 of the California Business and Professions Code, a release from the City, if required by the City Administrator decides to require and develops a form for release the release of impounded vehicles, a government-issued photographic identification card, and any one of the following as determined by the legal owner or the legal owner's agent: a certificate of repossession for the vehicle, a security agreement for the vehicle, or title, whether or not paperless or electronic, showing proof of legal ownership for the vehicle. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically. The City shall not require any documents to be notarized. The City, impounding agency, or any person acting on behalf of those agencies may require the agent of the legal owner to produce a photocopy or facsimile copy of its repossession agency license or registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the California Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of those agencies that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the California Business and Professions Code.
- B. Administrative costs authorized under Subdivision (a) of Section 22850.5 of the California Vehicle Code shall not be charged to the legal owner of the type specified in Subsection 8.56.240 D.1. who redeems the vehicle unless the legal owner voluntarily requests a poststorage hearing.
  - 1. A legal owner or a legal owner's agent is not required to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent. Neither the City, nor the, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall require any documents other than those specified in this Subsection B.

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2. The legal owner or the legal owner's agent shall be given a copy of any documents he or she is required to sign, except for a vehicle evidentiary hold log book.
  3. The City, impounding agency, or any person acting on behalf of those agencies, or any person in possession of the vehicle, may photocopy and retain the copies of any documents presented by the legal owner or legal owner's agent.
  4. The legal owner shall indemnify and hold harmless a storage facility from any claims arising out of the release of the vehicle to the legal owner or the legal owner's agent and from any damage to the vehicle after its release, including the reasonable costs associated with defending any such claims.
- C. A legal owner, who meets the requirements for release of a vehicle pursuant to Subsection 8.56.240 D.1., or the legal owner's agent, shall not be required to request a poststorage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent.
- D. A legal owner, who meets the requirements for release of a vehicle pursuant to Subsection 8.56.240 D.1., or the legal owner's agent shall not release the vehicle to the registered owner of the vehicle or an agent of the registered owner, unless the registered owner is a rental car agency, until after the termination of the impoundment period. Prior to relinquishing the vehicle, the legal owner may require the registered owner to pay all towing and storage charges related to the seizure and impoundment.

(Ord. No. 13195, § 2, 10-15-2013)

#### **9.56.270 Release of rental car.**

- A. A vehicle removed and seized pursuant to an ordinance adopted pursuant to this section shall be released to a rental car agency prior to the end of the impoundment period if the agency is either the legal owner or registered owner of the vehicle and the agency pays all towing and storage fees related to the seizure and impoundment of the vehicle.
- B. The owner of a rental vehicle that was seized under an ordinance adopted pursuant to this section may continue to rent the vehicle upon recovery of the vehicle. However, the rental car agency shall not rent another vehicle to the driver of the vehicle that was seized until the impoundment period has expired.
- C. The rental car agency may require the person to whom the vehicle was rented to pay all towing and storage charges related to the seizure and impoundment.

(Ord. No. 13195, § 2, 10-15-2013)

### ***Article III Miscellaneous***

#### **9.56.310 Amendments to State laws adopted herein.**

In the event that any California statute adopted or referred to in this chapter is amended or succeeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this chapter of the Oakland Municipal Code as if fully set forth herein unless the City Council amends this chapter to do otherwise.

(Ord. No. 13195, § 2, 10-15-2013)

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### **9.56.320 State law requirements.**

During the enforcement of any section or subsection of this chapter, the City will follow the relevant vehicle code's requirements for notice, post-storage hearings, vehicle release, storage facilities, and rental cars.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.330 Promulgation of administrative instructions and protocols.**

The City Administrator or her/his designee may promulgate vehicle impoundment administrative procedures or regulations to ensure the implementation of this chapter complies with state law and with the City Council's policy directives. But the lack of such regulations shall not delay or otherwise impede the application or enforcement of this chapter.

(Ord. No. 13195, § 2, 10-15-2013)

### **9.56.340 City Administrator to assign.**

The City Administrator or her/his designee shall designate the departments or agencies within the City authorized to implement this chapter.

(Ord. No. 13195, § 2, 10-15-2013)