

BEFORE THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN JOAQUIN,
STATE OF CALIFORNIA

ORDINANCE NO. 4606

**Title 4, Public Safety; Division 5, Miscellaneous Regulations; Chapter 3, Seizure and
Impoundment of Nuisance Vehicles**

Chapter 4-5300 Seizure and Impoundment of Nuisance Vehicles

The Board of Supervisors of the County of San Joaquin ordains as follows:

4-5301 Findings and purpose.

- A. Solicitation of prostitution and illegal dumping are nuisance activities that endanger the public health and safety. Vehicles used in these nuisance activities are themselves nuisances to be seized and impounded for a period of 30 days as provided in this chapter if the owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.
- B. The procedures presented in this chapter for the seizure and impoundment of nuisance vehicles are expressly intended as a remedy to abate these nuisances, to protect the County's residents and the public from harm to their health, safety, and welfare. Examples of such damages are the costs of cleaning up illegal dumpsites, and diverting limited police and public works resources to address these nuisance activities through direct enforcement or other programs. Any deterrent effect is deemed incidental to the remedial purpose of this ordinance.
- C. People who use vehicles to illegally dump waste matter or attempt to do so, or transport waste matter for the purpose of illegally dumping it, within the County bring decay and blight into the County's neighborhoods, create public health hazards, and invite more illegal dumping. Such blight, decay, and unhealthful conditions adversely affect the quality of life for the County's residents, lead to a reduction in the values of their property, and invite criminal activity.
- D. People who use vehicles to solicit prostitutes or engage in an act or attempted act of prostitution bring crime and decay into the County's neighborhoods.

4-5302 Authority.

Chapter 4-5300 is adopted pursuant to the authority granted in Article XI, Section 7 of the California Constitution, and Section 22659.5 of the California Vehicle Code.

4-5303 Definitions.

Business day shall mean any weekday other than a Saturday, Sunday, or County observed holiday, which falls on a day other than a Saturday or Sunday.

County shall mean the County of San Joaquin.

County Counsel shall mean the County Counsel of the County of San Joaquin or an authorized representative, deputy, or agent appointed by the County Counsel.

Claimant shall mean any person claiming a legal interest in a nuisance vehicle subject to seizure and impoundment under this chapter, by properly requesting a post-seizure hearing as set forth in Section 4-5308.

Highway shall mean a way or place of whatever nature, which is used or can be used by the public for vehicular travel.

Illegal dumping, as set forth in Section 374.3(h) of the Penal Code, shall mean a person who places, deposits, or causes to be placed, deposited, or dumped, waste matter in violation of this section in commercial quantities. Commercial quantities means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard. This does not apply to the dumping of household waste at a person's residence.

Prostitution, as set forth in Section 647(b) of the Penal Code, shall mean any person who solicits or who agrees to engage in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. Prostitution includes any lewd act between persons for money or other consideration.

Pimping, as set forth in Section 266(h) of the Penal Code, shall mean any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person.

Pandering, as set forth in Section 266(i) of the Penal Code, shall mean any person who procures another person for the purpose of prostitution; by promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute; procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state; by promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate; by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution; receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

Local law enforcement or governmental entity means any County and the respective departments thereof, in this state.

Nuisance shall have the same meaning as set forth in Civil Code § 3479.

Owner shall mean the last registered owner; the last legal owner; and any, then-existing lien holder; of record as shown on the records of the Department of Motor Vehicles or similar state or federal agency, for any vehicle used for any of the nuisance activities subject to this chapter.

Vehicle shall mean a vehicle as that term is defined in California Vehicle Code § 670, and a motor vehicle as that term is defined in California Vehicle Code § 415.

4-5304 Responsible persons.

Any person who owns, leases, borrows, possesses, maintains, or uses any vehicle for any of the purposes or acts set forth in this chapter is responsible for creating a public nuisance.

4-5305 Authority for seizure of nuisance vehicles.

Motor vehicles are a public nuisance subject to seizure and impoundment for a period of 30 days when:

- A. The motor vehicle is used in the commission or attempted commission of an act that violates Section 266h or 266i of, subdivision (h) of Section 374.3 of, or subdivision (b) of Section 647 of, the Penal Code; and
- B. The owner or operator of the vehicle has had a prior conviction for the same offense within the past three years.

4-5306 Process for seizure.

- A. *Investigation of vehicle ownership interests.* The San Joaquin County Sheriff's Office shall make a prompt investigation as to any potential claimant to a nuisance vehicle that is subject to this chapter whose right, title, interest, or lien is of record in the Department of Motor Vehicles of this state or any other state or appropriate federal agency.
- B. *Notice of seizure.*
 - 1. At the time a nuisance vehicle is seized pursuant to this chapter by the San Joaquin County Sheriff's Office, the seizing officer shall provide a notice of seizure to the person from whose possession the vehicle was seized. Notice may be given in person and/or by telephone and will be documented.
 - 2. Within two business days after impoundment, the San Joaquin County Sheriff's Office 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 shall also include notice of the opportunity for a post-storage hearing to determine the validity of the storage or to determine mitigating circumstances establishing that the vehicle should be released.
 - 3. If the San Joaquin County Sheriff's Office investigation reveals any potential claimants, other than the legal owner of the vehicle whose right, title, interest or lien existed prior to the date of the commission of the act giving rise to the nuisance; then the San Joaquin County Sheriff's Office shall send a notice of seizure to each such claimant within two working days following the date the vehicle was seized. Such notice shall be served by certified mail, returned receipt requested, at the claimant's address appearing on the records of the applicable state's Department of Motor Vehicles or appropriate federal agency.

4. The impounding agency 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 impounding agency 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.
5. The notice of seizure shall include the following:
 - a. The name, address, and telephone number of the agency providing the notice.
 - b. The location of the place of storage and description of the vehicle, that shall include, if available, the model, make, the manufacturer, the license plate number, and the mileage.
 - c. The authority and purpose for the removal of the vehicle.
 - d. A statement that, in order to receive a post-storage hearing, the owners, or their agents, shall request a hearing in person, writing, or by telephone within ten days of the date appearing on the notice.

C. *Receipts.*

1. Receipts for nuisance vehicles seized pursuant to this chapter shall be issued in accordance with Penal Code §1412. For the purposes of this chapter, neither Penal Code §1412 nor any provision of this chapter shall be construed as precluding the delivery of a completed Vehicle Report (CHP 180 Form) as the receipt required by this section.

D. *Towing and storage.* The San Joaquin County Sheriff's Office shall make arrangements for the towing of a seized vehicle and its storage at a designated tow yard. Tow yards shall not release seized vehicles without prior authorization from the Sheriff's Office.

E. *Seized vehicles as evidence.* A nuisance vehicle seized pursuant to this chapter, where appropriate, may be held for evidence in any proceeding brought by the District Attorney beyond the 30 day impound.

4-5307 Post-seizure hearing.

- A. *Opportunity for hearing.* The San Joaquin County Sheriff's Office shall provide any potential claimants, discovered as a result of its investigation of vehicle ownership interests, with the opportunity for a post-seizure hearing to determine the validity of the seizure, that is, whether there was probable cause to believe the vehicle was used in violation of this chapter.
- B. *Manner of hearing.* The San Joaquin County Sheriff's Office shall have the authority, but not the obligation, to conduct this hearing in the same manner as a vehicle post-storage hearing conducted pursuant to Vehicle Code §22852.
- C. *Hearing Officer.* The San Joaquin County Sheriff's Office may authorize its own officer or employee to act as a hearing officer and conduct the post-seizure hearing, provided that the officer so chosen is not the same person who directed or participated in the seizure of the nuisance vehicle.

- D. *Request for hearing.* Any claimant who desires a post-seizure hearing must make a request to the San Joaquin County Sheriff's Office in person, or in writing, or by telephone as specified in the notice of seizure. The request must be made within ten business days of the date of the notice of seizure. Failure to make a request within the time allowed shall constitute the claimant's waiver of any right to a post-seizure hearing and satisfies the requirement for such a hearing.
- E. *Time for hearing.* The post-seizure hearing shall be conducted within 48 hours of the date of the first request received, excluding weekends and holidays, by the San Joaquin County Sheriff's Office from any claimant, unless claimant expressly agrees to a later hearing date.
- F. *Multiple claimants; notice of hearing.*
1. If there are multiple claimants, then upon receipt of the first request for a post-seizure hearing, the San Joaquin County Sheriff's Office shall send written notice, by regular mail, of the date, time, and location of the post-seizure hearing to the remaining claimants.
 2. The San Joaquin County Sheriff's Office shall not be required to conduct multiple post-seizure hearings for each seized nuisance vehicle.
 3. Claimants who cannot attend the post-seizure hearing as scheduled, and wish to be heard, may send a written statement for the hearing officer's consideration to the San Joaquin County Sheriff's Office at the address specified in the notice of seizure.
- G. *Findings of hearing officer.*
1. If the hearing officer determines that no probable cause existed for the seizure, the vehicle shall be released as soon as practicable to the appropriate claimant without imposing any towing and/or storage charges. The County Counsel and each claimant shall be notified of the release.
 2. If the hearing officer determines that probable cause for the seizure existed and that the seized vehicle may be subject to the impound exceptions set forth at Section 4-5310, the hearing officer shall confer with the County Counsel as soon as possible. Upon the determination of the Hearing Officer that an impoundment exception applies, the vehicle shall be released as soon as practicable to the appropriate claimant without imposing any towing and/or storage charges. The County Counsel and each claimant shall be notified of the release.
 3. If the hearing officer determines that probable cause existed for the seizure, then the vehicle will remain impounded as provided in Section 4-5308.
 4. Any period during which a vehicle is subjected to storage under an ordinance adopted pursuant to this section shall be included as part of the period of impoundment.

4-5308 Administrative impoundment proceedings.

- A. *Application.* The provisions of this section shall apply only to nuisance vehicles actually seized, pursuant to a valid arrest of the driver, for a violation under the authority of this chapter.

- B. *Factual determination.* The Hearing Officer shall determine from the official reports and other relevant information, if any, whether the factual circumstances surrounding the seizure warrant impoundment of the seized vehicle.
- C. *Notice of administrative proceedings.*
 - 1. In those instances where a 30 day impound is warranted, a San Joaquin County Sheriff's Office representative shall cause a notice of administrative proceedings to be sent by certified mail, return receipt requested, to each potential claimant identified by the San Joaquin County Sheriff's Office. Personal service shall not be required. This notice shall be accompanied by a claim form.
 - 2. The notice of administrative proceedings shall include the following:
 - a. The vehicle and seizure information presented in the notice of seizure;
 - b. Notice that administrative impoundment proceedings have begun and can be opposed only by filing a claim opposing impoundment, the time limits for filing the claim, and instructions for filing and serving the claim; and
 - c. Notice that failure to properly file and serve the claim will result in impoundment of the vehicle for 30 days.

4-5309 Vehicle release prior to impoundment expiration.

- A. Notwithstanding the provisions of this chapter, the San Joaquin County Sheriff's Office shall return a seized vehicle to the registered owner or his/her agent prior to the end of the impoundment period, upon the determination of 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 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.

4-5310 Vehicle storage charges.

A. *Storage charges.*

1. Except as provided in Section 4-5309.A.1, the registered owner or his or her agent shall be responsible for all towing and storage charges related to the impoundment.
2. 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:
 - a. 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 of the vehicle.
 - b. The legal owner or the legal owner's agent pays all towing and storage fees related to the seizure and impoundment of the vehicle.

B. *Waiver of storage charges.*

1. 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 impounding authority nor any person having possession of the vehicle shall collect from the legal owner as described in subdivision (2) of subsection A of this section or the legal owner's agent, any administrative charges imposed pursuant to Section 22850.5, unless the legal owner voluntarily requested a post-storage hearing.
2. 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 or storage charges.

C. *Payment of storage charges.*

1. 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 Civil Code. Credit card does not include a credit card issued by a retail seller.
 - a. A person operating or in charge of a storage facility described in paragraph (1) who violates paragraph (1) 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.
 - b. A person operating or in charge of the storage facility described in paragraph (1) 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.

- c. Credit charges for towing and storage services shall comply with Section 1748.1 of the Civil Code. Law enforcement agencies may include the costs of providing for payment by credit when making agreements with towing companies on rates.
 - d. 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 the legal owner's agent under this subdivision are satisfied.
- D. *Proof of vehicle ownership.*
 - 1. The legal owner or the legal owner's agent shall present to the law enforcement agency, impounding agency, 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 Business and Professions Code, a release from the one responsible governmental agency, only if required by the agency, a government-issued photographic identification card, and any one of the following whether or not paperless or electronic, showing proof of legal ownership for the vehicle as determined by the legal owner or the legal owner's agent:
 - a. A certificate of repossession for the vehicle,
 - b. A security agreement for the vehicle, or
 - c. Title.
 - 2. Any documents presented may be originals, photocopies, or facsimile copies, or may be transmitted electronically.
 - 3. The law enforcement agency, impounding agency, or other governmental agency, or any person acting on behalf of those agencies, shall not require any documents to be notarized. The law enforcement agency, 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 registration issued pursuant to Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to demonstrate, to the satisfaction of the law enforcement agency, impounding agency, or any person acting on behalf of the those agencies that the agent is exempt from licensure pursuant to Section 7500.2 or 7500.3 of the Business and Professions Code.
- E. *Administrative costs.*
 - 1. The impounding agency shall recover from an amount equal to its administrative costs relating to the removal, impound, storage, or release of the vehicles. The administrative costs may be waived upon verifiable proof that the vehicle was reported stolen at the time the vehicle was removed.
 - 2. Administrative costs authorized under subdivision (a) of Section 22850.5, and as set forth above, shall not be charged to the legal owner of the type specified in subdivision 2 of subsection A of this section, who redeems the vehicle unless the legal owner voluntarily requests a post-storage hearing. A city, county, city and county, or state agency shall not require a legal owner or a legal owner's agent to request a post-storage hearing as a requirement for release of the vehicle to the legal owner or the legal

owner's agent. The law enforcement agency, impounding agency, or any person acting on the behalf of those agencies, shall not require any documents other than those specified in this paragraph.

3. 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 logbook. The law enforcement agency, 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.

F. Release of impounded vehicle to legal owner.

1. A legal owner, who meets the requirements for release of a vehicle pursuant to subsection A paragraph 2 of this section, or the legal owner's agent, shall not be required to request a post-storage hearing as a requirement for release of the vehicle to the legal owner or the legal owner's agent.
 - a. A legal owner, who meets the requirements for release of a vehicle pursuant to subsection A paragraph 2 of this section, 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.
 - b. 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.

G. Release of impounded rental vehicles.

1. 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.
2. 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.
3. 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.

4-5311 Recovery of monetary loss.

Nothing in this chapter shall preclude an owner of a nuisance vehicle subject to seizure and impoundment who suffers a monetary loss from the impoundment of a vehicle under this chapter

from recovering the amount of the actual monetary loss from the person who committed the act giving rise to the nuisance that resulted in the seizure and impoundment.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of San Joaquin, State of California, on this 27th of September 2022 to wit:

AYES: **Villapudua, Miller, Patti, Rickman, Winn**

NOES: **None**

ABSENT: **None**

ABSTAIN: **None**

Charles Winn

CHARLES WINN
Chairman, Board of Supervisors
County of San Joaquin
State of California

ATTEST: RACHÉL DeBORD
Clerk of the Board of Supervisors
County of San Joaquin
State of California



By: **Rachél DeBord**