

AGENDA

WASHINGTON COUNTY BOARD OF COMMISSIONERS

Agenda Category: Public Hearing – Sheriff's Office

Agenda Title: THIRD READING, SECOND PUBLIC HEARING OF PROPOSED A-ENGROSSED ORDINANCE NO. 737 AN ORDINANCE TO AMEND WCC 8.16 TO REGULATE PARKING OF VEHICLES IN THE UNINCORPORATED AREAS OF WASHINGTON COUNTY WITHIN THE URBAN GROWTH BOUNDARY AND DECLARING AN EMERGENCY

Presented by: Elmer Dickens, Sr. Asst County Counsel

SUMMARY (Attach Supporting Documents if Necessary)

On August 3, 2010, your Board directed the Office of County Counsel to draft and file an ordinance revising Washington County Code Chapter 8.16. A summary of the proposed amendments follows.

- Add new provisions to allow towing of vehicles parked on a public street or right of way that cannot be legally operated
- Add new provisions to allow towing of vehicles parked in a manner that blocks mailboxes and mail delivery
- Add new provisions to allow towing of recreational vehicles parked on a public street or public right of way in which persons live, sleep or reside
- Add new provisions to allow towing of vehicles parked in a manner which interferes with safe traffic flow or creates a safety hazard

A copy of Exhibit A to Ordinance 737 is attached.

DEPARTMENT'S REQUESTED ACTION:

Conduct third reading, second public hearing of Ordinance 737. Adopt the ordinance or, if the ordinance is not adopted today, continue to a date for the fourth reading, third public hearing.

COUNTY ADMINISTRATOR'S RECOMMENDATION:

I concur with the requested action.

ADOPTED

Agenda Item No.	<u>5.a.</u>
Date:	<u>10/26/10</u>

OCT 21 2010

Washington County
County Clerk

IN THE BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

A-ENGROSSED ORDINANCE 737

**An Ordinance to amend WCC 8.16 to Regulate
Parking of Vehicles in the Unincorporated Areas
of Washington County within the Urban Growth
Boundary and Declaring an Emergency**

The Board of County Commissioners of Washington County, Oregon, ordains as follows:

SECTION 1.

A. The Board finds that County Code 8.16, related to the towing and disposition of vehicles, is in need of revision to resolve specific parking problems that occur in the unincorporated areas of Washington County within the Metro Urban Growth Boundary.

B. The Board further finds that Chapter 8.16 is in need of revision to provide additional authority to tow vehicles parked on a public street or right of way that cannot be legally operated.

C. The Board further finds that Chapter 8.16 is in need of revision to provide additional authority to tow vehicles parked in a manner that blocks mailboxes and mail delivery.

D. The Board further finds that Chapter 8.16 is in need of revision to provide additional authority to tow recreational vehicles parked on a public street or public right of way in which persons live, sleep or reside, with certain exceptions.

E. The Board further finds that Chapter 8.16 is in need of revision to provide additional authority to tow vehicles that are parked in a manner which interferes with the safe flow of traffic or creates a safety hazard by obstructing the view of other drivers.

SECTION 2.

County Code Chapter 8.16 is amended as set forth in Exhibit "A" attached and

1 incorporated herein. New material is underlined; deleted material is strikethrough.

2 SECTION 3.

3 This Ordinance being necessary for the immediate preservation of the public health,
4 safety, and welfare, an emergency is declared to exist and this Ordinance shall take effect
5 immediately upon passage.

6 ENACTED this 26 day of October, 2010, being the 3rd reading and
7 2nd public hearing before the Board of County Commissioners of Washington County, Oregon.

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9 BOARD OF COUNTY COMMISSIONERS
FOR WASHINGTON COUNTY, OREGON

10
11 **ADOPTED**


CHAIRMAN


RECORDING SECRETARY

12
13
14
15 READING

PUBLIC HEARING

16 First September 28, 2010
17 Second October 19, 2010
18 Third October 26, 2010
Fourth _____
Fifth _____

First October 19, 2010
Second October 26, 2010
Third _____
Fourth _____
Fifth _____

19 VOTE: Aye: Strader, Rogers, Duyck, Schouten Nay: _____

20 Recording Secretary: Marian Larkin Date: October 26, 2010

8.16.010 Short title.

This chapter shall be known as "Ordinance No. 639, an ordinance relating to the towing and disposition of vehicles." (Ord. 639 § 2(A) Exhibit A (part), 2005: Ord. 557 (part), 2000)

8.16.020 Purpose.

This chapter is enacted to provide authority and procedures for towing vehicles in addition to that authority granted by Oregon statutes. (Ord. 639 § 2(A) Exhibit A (part), 2005: Ord. 557 (part), 2000)

8.16.030 Definitions.

The following definitions are applicable to this chapter:

"Abandoned vehicle" means a vehicle to which an officer has reason to believe the owner of the vehicle has given up all right and interest in the vehicle with the intent of never again asserting any claim or right. Deputies will normally treat a vehicle as abandoned if it has been left or parked on any public road or right-of-way for more than twenty-four hours and one or more of the following conditions also exist:

1. It is not registered to an address near the location where the vehicle is parked;
2. The deputy has other reliable information that the vehicle was in fact abandoned by the owner (i.e., a neighbor tells the deputy that the vehicle was left by persons who moved from the neighborhood).

Deputies will also treat a vehicle as abandoned if the deputy responds to or discovers a vehicle collision or accident or police pursuit which results in the vehicle leaving the roadway and coming to rest upon private property adjacent to a public road or right-of-way, the vehicle has been left unattended on the property, and the deputy has a reasonable belief that the accident or collision occurred during the previous seventy-two hours.

"Disabled vehicle" means a vehicle which does not reasonably appear to be currently capable of being legally operated on a public road due to the condition of the vehicle or mechanical issues, including but not limited to missing major components such as an engine, transmission, windshield or wheels, flat tires, or other obvious damage or missing equipment which reasonably leads a deputy to believe the vehicle is inoperable.

"Hazard" means a vehicle standing in such a manner as to jeopardize public safety and the efficient movement of pedestrian or motor vehicle traffic including but not limited to those situations described in ORS 819.120.

"In the possession of a person taken into custody" means and includes operating, possessing or exerting control over a vehicle at or just prior to the time the person is taken into custody.

"Owner" means the person responsible for the abandonment of the vehicle and who is liable for the cost of removal and disposition of the abandoned vehicle. The

owner for purposes of this chapter shall be presumed to be the person to whom the vehicle is registered according to the State Motor Vehicles Division records, unless other evidence leads a deputy to reasonably believe that another person is responsible.

"Recreational Vehicle" means a vehicle with or without motive power, that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes.

"Storage" means the holding of a vehicle, with the attendant fees for such holding, at any appropriate facility.

"Towing" means the taking possession of a vehicle and removing it to a storage facility at the request of law enforcement personnel.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon any street or highway, and includes any hulk or component thereof, including but not limited to campers, recreational vehicles, pickup truck canopies, utility trailers, boat trailers, and motor homes, except those devices:

1. Moved exclusively by human power; or
2. Used exclusively upon stationary rails or tracks.

(Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.040 Possession by person taken into custody—Impoundment when on public property.

Any vehicle in the possession of a person taken into custody by a law enforcement officer shall be impounded and immediately towed from public right-of-way, public parks, or other public roads, property or premises if:

- A. No other licensed driver is immediately available to take possession of the vehicle and the officer reasonably believes no other reasonable disposition of the vehicle is available;
- B. The officer taking the person into custody reasonably believes that the vehicle constitutes a hazard;
- C. The officer reasonably believes that the vehicle is stolen; or
- D. The officer has probable cause to believe that the vehicle or its contents constitute evidence of an offense, and the officer reasonably believes such towing is reasonably necessary to obtain or preserve such evidence. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.045 Possession by person taken into custody—Impoundment when on private property.

Any vehicle in the possession of a person taken into custody by a law enforcement officer shall be impounded and immediately towed from private property only when:

- A. The officer reasonably believes that the vehicle is stolen;
- B. The officer has probable cause to believe that the vehicle or its contents

constitute evidence of an offense, and the officer reasonably believes such towing is necessary to obtain or preserve such evidence;

C. The vehicle is parked or stopped on private property of a person other than the driver as a result of being stopped by the police, and the person in charge of that private property does not consent to the vehicle being left on the property. For purposes of this section, if the owner or person in charge of the property is not present, the deputy shall presume that the owner or person in charge does not consent to the vehicle being left on the property and shall have it towed pursuant to this section. This section shall not apply if a legal driver is present to remove the vehicle with the vehicle owner's permission or if the property owner is present and indicates a preference to have the vehicle towed at their discretion and expense. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.050 Disturbance by alarm system—Impoundment.

Any vehicle in which the vehicle alarm system disturbs, injures or endangers the peace, quiet, comfort, repose, health or safety of the public or any person, shall be subject to immediate towing if no other reasonable disposition of the vehicle can be made and the owner cannot be contacted by reasonable efforts. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.055 Prohibited Parking.

The following parking is prohibited in the unincorporated areas of Washington County within the Metro Urban Growth Boundary.

A. No person shall live, sleep, or reside in a vehicle that is parked upon a public street or public right of way.

1. A person may temporarily occupy a recreational vehicle legally parked on a public street as long as:

a. The period of occupancy is not longer than 5 consecutive days in any two calendar weeks. For purposes of this section, if a vehicle is tagged for towing, and is found to be in the same location after the fifth day, there shall be a rebuttable presumption that the vehicle remained in the location for five consecutive days in violation of this chapter. The defendant vehicle owner shall have the burden of disproving the presumption.

b. The recreational vehicle is owned by the resident, or guest of the resident, and is parked immediately in front of or immediately adjacent to the residence.

c. The recreational vehicle is parked in a manner that does not violate paragraph D of this section.

B. No person shall park in front of the entrance of any place where mail is received or within ten feet of a mailbox during the hours of 8AM to 5PM.

C. A vehicle shall not be parked on a public street or public right of way without license plates, with expired tags, with expired registration, or with an expired temporary licensing permit.

D. No person shall park a vehicle in a manner which interferes with the safe flow of traffic or creates a safety hazard by obstructing the view of other drivers.

Any vehicle that is found to be in violation of this ordinance section is subject to being tagged and towed consistent with the process provided in this chapter for "disabled" vehicles, including 8.16.060 (G), and Chapter 819 of the Oregon Revised Statutes. The statutory and code requirements under these provisions require notice and explanation of procedures available for obtaining a hearing prior to towing. Any locks installed to prevent towing of the vehicle may be removed for the purpose of towing the vehicle. Any vehicles parked in such a manner as to prevent the towing of a vehicle in violation of this chapter may be temporarily moved for the purpose of providing access for towing of the vehicle in violation.

8.16.060 Vehicles subject to immediate towing.

The following vehicles shall be subject to immediate towing:

- A. Any vehicle parked in violation of a temporary or permanent parking restriction;
- B. Any vehicle parked on county-owned or operated property without express written permission from the county;
- C. Any vehicle reported stolen;
- D. Any vehicle parked in a space that is marked as reserved for disabled or handicapped persons, unless such vehicle conspicuously displays appropriate decals, insignia or license plate as required by Oregon State Statutes;
- E. Any vehicle illegally parked in a conspicuously posted restricted space, zone or traffic lane where parking is limited to designated classes of vehicle or is prohibited in excess of a designated time period, or at any time and where the vehicle is interfering or reasonably likely to interfere with the intended use of such space, zone or traffic lane.
- F. Any vehicle impounded under Section 8.16.040 or 8.16.045 of this chapter;
- G. Any vehicle tagged with a notice that the vehicle will be towed as a disabled vehicle or tagged with a notice that the vehicle will be towed because the vehicle is parked in violation of this ordinance, and the twenty-four hour period has expired, if the vehicle is subsequently moved to another public road or public right-of-way within Washington County, and the vehicle remains in the same condition or remains parked in violation of this ordinance. ~~which led to the initial decision to tag the vehicle as disabled.~~ No vehicle may be towed under this section unless the notice affixed to the vehicle clearly states that the vehicle will be towed under this section if moved to another public road or public right-of-way and the condition of the vehicle or violation remains the same. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.070 Towing of abandoned and disabled vehicles.

In addition to the authority to tow abandoned and disabled vehicles under the provisions of ORS Chapter 819, deputies shall have authority to tow abandoned

and disabled vehicles as defined in this chapter in the same manner as abandoned and disabled vehicles towed under state statute. If a deputy becomes aware of information that the owner or another person with a right to possession of the vehicle continues to assert an interest in the vehicle at any time prior to the vehicle actually being towed, including but not limited to moving the vehicle to another location or contacting the deputy to tell him/her that the vehicle is not in fact abandoned, the deputy will not tow the vehicle as an abandoned vehicle. In some circumstances, the vehicle may also meet the definition of a disabled vehicle which may result in notice and towing under those provisions. (Ord. 639 § 2(A) Exhibit A (part), 2005)

8.16.080 Notice and hearing.

Any vehicle towed or impounded under this chapter shall be treated as if it were towed under the provisions of Oregon State Statutes, and the statutory provisions including liens, disposition and hearing will be applicable. Any vehicle towed as an abandoned or disabled vehicle shall be subject to the statutory provisions regarding liens, notice, disposition and hearing in ORS Chapter 819. Any other vehicle towed pursuant to this chapter shall be subject to the statutory provisions regarding liens, notice, disposition and hearing in ORS Chapter 809 for impounded vehicles. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.090 Parking vehicle on right-of-way for vending purposes.

A. A person commits the offense of unlawful parking for vending purposes if the person parks or leaves standing a vehicle on a right-of-way of any public road within the county for more than twenty-four hours for the purpose of advertising, selling or offering for sale any merchandise, including the vehicle itself, without written permission of the Washington County department of land use and transportation, or if the person parks or leaves standing a vehicle on a right-of-way of any public road within the county for vending purposes if the vehicle creates an impediment to pedestrian or vehicular traffic or creates a safety hazard.

B. There shall be a rebuttable presumption that the registered owner of the vehicle, as shown in the records of the Oregon department of motor vehicles, parked the vehicle in the right-of-way. The burden of proof shall lie with the registered owner to show that someone other than the registered owner parked the vehicle in the right-of-way in violation of this section. For purposes of this section, if the officer has probable cause to believe that someone other than the registered owner parked the vehicle in the right-of-way for vending purposes in violation of this chapter, the officer may issue a citation to that person.

C. Any vehicle left on the public right-of-way displaying a sign or other device advertising the vehicle for sale for more than twenty-four hours, shall be presumed to be parked in the right-of-way for the purpose of selling the vehicle and this will be prima facie evidence of a violation of this section. The burden of demonstrating that the vehicle was parked in the right-of-way for a purpose other than selling the

vehicle shall lie with the person cited.

D. A violation of this section is punishable by a fine of up to two hundred fifty dollars.

E. Notwithstanding subsection D of this section, any person who has been convicted of a prior violation of this section within the past year shall be subject to a maximum fine of up to five hundred dollars.

F. Each day that a vehicle remains in the right-of-way in violation of this section shall be a separate offense and a new citation may be issued each day.

G. Any vehicle that has been cited for a violation of this section and which has not been removed from public right-of-way within seventy-two hours of the citation being issued may be towed. The procedures for towing a vehicle under this section will be the same as those procedures provided by state statute for the towing of illegally parked vehicles.

H. It shall be an affirmative defense to this section that the vehicle was parked in public right-of-way which is immediately adjacent to the residence or principal place of employment of the vehicle's owner; provided, however, that the affirmative defense shall not apply to any violation for impeding traffic or creating a safety hazard as provided in subsection A of this section. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.100 Moving tagged vehicle.

A. Any vehicle to which notice has been affixed pursuant to ORS 819.110, stating that the vehicle will be towed if not removed, shall not be moved to any real property within Washington County if placing the vehicle on that property would result in a violation of the Washington County community development code.

B. There shall be a rebuttable presumption that the registered owner of the vehicle, as shown in the records of the Oregon department of motor vehicles, parked the vehicle in violation of this section. The burden of proof shall lie with the registered owner to show that someone other than the registered owner parked the vehicle in violation of this section. Notwithstanding the presumption above, if an officer has probable cause to believe that a person other than the registered owner parked the vehicle in violation of

this section, the officer may cite that person instead of the registered owner.

C. A violation of this section is punishable by a fine of up to two hundred fifty dollars.

D. Notwithstanding subsection C of this section, any person who has been convicted of a prior violation of this section within the past year shall be subject to a maximum fine of up to five hundred dollars.

E. If more than one vehicle is moved onto real property in violation of this section, each vehicle shall be a separate violation of this section.

F. Any vehicle that has been cited for a violation of this section and which remains in violation of the community development code for more than seventy-two hours or is returned to the right-of-way in violation of the original notice under ORD 819.110, may be towed. The procedures for towing a vehicle under this section will

be the same as those procedures provided by state statute for the towing of illegally parked vehicles. (Ord. 639 § 2(A) Exhibit A (part), 2005; Ord. 557 (part), 2000)

8.16.110 Vehicles appraised at less than \$1,000.

If a vehicle taken into custody under ORS 819.110 is appraised at a value of more than five hundred dollars but less than one thousand dollars, or a vehicle taken into custody under ORS 819.120 is appraised at a value of less than one thousand dollars, then the tow company that towed the vehicle shall sell and dispose of the vehicle under ORS 819.160 and ORS 87.152. (Ord. 639 § 2(A) Exhibit A (part), 2005)