

Ordinance No. 568

An Ordinance Adopting a Vehicle Nuisance Code

WHEREAS, the City Council desires to have the City of Scio Ordinance No. 568 set forth the criteria under which a vehicle may be towed inside the City of Scio; and

WHEREAS, the City Council believes citizens of Scio will benefit if a vehicle is towed under a city ordinance citation because the driver and/or registered owner(s) of the vehicle may be cited into the Scio Municipal Court;

NOW THEREFORE, THE CITY OF SCIO DOES ORDAIN AS FOLLOWS:

Section 1. **DEFINITIONS.** The following definitions apply to this chapter:

Sheriff means, in addition to Linn County Sheriff, the authorized representatives and deputies of the Sheriff of Linn County.

Police means, law enforcement officers or police officers for the City of Scio, including the Linn County Sheriff and the authorized representatives and deputies of the Sheriff of Linn County.

Section 2. **CERTAIN VEHICLES AS NUISANCES.** The following motor vehicles are hereby declared to be nuisances.

- A. A motor vehicle operated by a person whose operator's license is criminally suspended or revoked in violation of ORS 811.175 or ORS 811.182; or
- B. A motor vehicle operated by a person under the influence of intoxicants in violation of ORS 813.010.

- C. A motor vehicle operated by a person who has habitual offender status under ORS 809.640 or its statutory counterpart in any jurisdiction.
- D. A motor vehicle that is being operated without liability insurance as required by the financial responsibility laws of the State of Oregon (ORS 806.010).
- E. A motor vehicle that is being operated without a driver's license, driver permit, endorsement or statutory grant of driving privileges as required by ORS 807.010.

Section 3. **IMPOUNDMENT.**

A. Any vehicle declared a nuisance by this ordinance may be impounded, and towed by a towing company approved by the Scio City Council, at the time of arrest or citation of the driver for:

1. Whenever a traffic citation is issued, or an arrest is made for violation of Oregon Vehicle Code or local traffic ordinances and probable cause exists that the driver's license of the operator of the motor vehicle is suspended or revoked, or probable cause exists that the vehicle or its operator are without liability insurance as required by the financial responsibility laws of the state of Oregon, or probable cause exists that the operator of the motor vehicle was under the influence of intoxicants at the time of operation, and the vehicle jeopardizes public safety, the efficient movement of vehicular traffic, or is a hazard to other drivers, or is a target for vandalism or theft, or if the driver is unable to remove the vehicle from a public location without continuing the illegal operation of the vehicle, the vehicle shall be impounded, without prior notice, and towed at the owner's expense, and stored at the owner's expense. In making the decision to order the vehicle towed, the Linn County Deputy shall consider the location of the vehicle and whether the vehicle is impeding traffic or threatening public safety and convenience of the streets, or the likelihood that the vehicle can be used in an illegal fashion.

a) Whenever a traffic citation has been issued by the Linn County Sheriff's Department and the individual cited has not contested the citation, or was determined by the municipal court

to be guilty of the infraction for which the individual was cited, and the penalty assessed has not been discharged as required by law, ordinance or the municipal court, then any vehicle owned by such individual, either individually or jointly with others, may be incapacitated with a "booting" device or be towed and stored at the owner's expense in the manner allowed by the provisions of this code.

b) Vehicles booted or towed under authority of subsection "a" of this section shall be released only upon full payment of the original fine amount still owing, towing fee if any, and any additional fee as established by the city council resolution. Such payment shall only be by cash, cashier's check or credit cards.

Section 4. **NOTICE.**

If a vehicle has been impounded under the authority of this chapter, written notice shall be given by certified mail within forty-eight hours of the impoundment, with written explanation of procedures available for obtaining a hearing under Section 6 of this code to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Oregon Department of Transportation. The notice shall state that the vehicle has been taken into custody and shall give the location of the vehicle and describe procedures for release of the vehicle and for obtaining a hearing under this section. The forty-eight hour period does not include holidays, Saturdays or Sundays. Notice of the impoundment of the vehicle given personally to the owner or person entitled to possession may be made in lieu of notice given by certified mail.

Section 5. **LIABILITY FOR EXPENSES-ADMINISTRATIVE FEE.**

The person operating the motor vehicle at the time it is towed and impounded shall be liable for the expenses incurred in the towing and storage of the motor vehicle under this chapter, including an administrative fee as established by city council resolution, whether or not the motor vehicle is returned to the person who was operating it at the time of the

impoundment. The administrative fee represents the cost incurred by the city in administering this chapter.

Section 6. NOTICE-CONTENTS.

Any notice given under this chapter after a vehicle is taken into custody and removed shall describe the vehicle, including the make, model, license plate number and vehicle identification number, and shall state all of the following:

- A. That the vehicle has been taken into custody and removed, the identity of the authority that took the vehicle into custody and removed the vehicle and the ordinance under which the vehicle has been taken into custody and removed.
- B. The location of the vehicle or the telephone number and address of the appropriate authority that will provide the information;
- C. That the vehicle is subject to towing and storage charges, including administrative fees, the amount of charges that have accrued to the date of the notice and the daily storage charges;
- D. That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date specified by the city;
- E. That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested;
- F. The time within which a hearing must be requested and the method for requesting a hearing;
- G. That the vehicle and its contents may be immediately reclaimed by presentation to the Linn County Sheriff's office of satisfactory proof of ownership or right to possession, proof of current insurance on the vehicle, payment of city fees, including either payment of the towing and

storage charges or the deposit of cash security or a bond equal to the charges with the city, and presentation of a current driver's license by either the owner, or driver designated by the owner to operate the vehicle upon its release.

Section 7. **HEARING.**

A person provided notice under this chapter, or any other person who reasonably appears to have an interest in the vehicle, may request a hearing under this section to contest the validity of the removal and custody or proposed removal and custody of a vehicle under this chapter by submitting a request for hearing with the municipal court not more than five days from the mailing date of the notice or delivery of actual notice. The five-day period in this section does not include holidays, Saturdays or Sundays. A hearing under this section will comply with all of the following:

- A. A request for a hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the custody and removal of the vehicle is not justified.
- B. Upon receipt of a request for a hearing under this section, the municipal court shall set a time for the hearing within seventy-two hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the Oregon Department of Transportation, if not the same as the person requesting the hearing. The seventy-two hour period in this subsection does not include holiday, Saturdays or Sundays. The parties may by agreement, or at the request of the person making the request for hearing, set the hearing for a later date.
- C. The city shall have the burden of showing the validity of taking of the vehicle.
- D. If the court finds, after hearing and by substantial evidence that the custody and removal of a vehicle was:
 1. Invalid, the court shall order the immediate release of the vehicle to the owner or person with right of possession. If the vehicle is released under this subsection, the person to whom the vehicle is released is

not liable for any towing or storage charges. If the person has already paid the towing and storage charges on the vehicle, the city shall reimburse the person for the charges. New storage costs on the vehicle will not start to accrue, however, until more than twenty-four hours after the time the vehicle is officially released under this subsection.

2. Valid, the city shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the party claiming the vehicle.
- E. A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the municipal court for the person's failure to appear.
- F. The court is only required to provide one hearing under this section for each time the Linn County Sheriff's Department takes a vehicle into custody and removes the vehicle or proposes to do so.
- G. A hearing under this section may be used to determine the reasonableness of the charge for towing and storage of the vehicle. Towing and storage charges set by law, ordinance or rule or that comply with law, ordinance or rule are reasonable for purposes of this subsection.
- H. The city shall provide a written statement of the results of a hearing held under this section to the person requesting the hearing.
- I. Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.
- J. The determination of the municipal court at a hearing under this section is final and is not subject to appeal.

Section 8. TOWING AND STORAGE LIENS.

- A. A person or business who, at the request of the City of Scio or the Linn County Sheriff takes a vehicle into custody under the provisions of this ordinance

1. shall have a lien on the vehicle and its contents for reasonable towing and storage charges,
 2. may retain possession of the vehicle until charges are paid, and
 3. may have the vehicle sold at public auction to satisfy the lien.
- B. The lien that attaches to the vehicle and its contents shall be a possessor chattel lien in accordance with ORS 87.152 and may be foreclosed in a manner provided in ORS 87.152 to ORS 87.212.
- C. If the appraised value of the vehicle is \$1,000 or less, the vehicle may be disposed of in the manner provided in ORS 819.220. If the vehicle is taken into custody under provisions of this ordinance and held by the City of Scio rather than by a private garage or towing company, the vehicle and its contents shall be disposed of in the manner provided in ORS 819.210 to 819.260.
- D. The City of Scio shall not be liable for services rendered by any person or private towing company including but not limited to the towing and storage of any vehicles impounded pursuant to this ordinance.

Section 9. VEHICLES TO WHICH THIS ORDINANCE DOES NOT APPLY.

The provisions of this ordinance shall not apply to a vehicle that is being held as part of any criminal investigation.

Section 10. RELEASE OF VEHICLE.

A vehicle which has been impounded pursuant to this chapter may be reclaimed at any time upon presentation to the Linn County Sheriff's Department of satisfactory proof of the information contained in Section 6 (G) in the event that the vehicle is stored by a commercial towing company or similar business, the vehicle may be released only upon the presentation of a signed release form from the Linn County Sheriff's Department.

Section 11. DISPOSITION OF UNLCAIMED VEHICLES

If a vehicle taken into custody under this ordinance is not reclaimed within thirty days after it is taken into custody, the vehicle may be disposed of in accordance with the procedure set forth in ORS 819.180, 819.190, 819.210, 819.220 and 819.240 to 819.260.

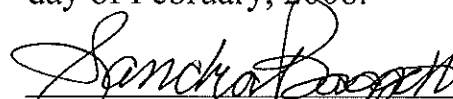
Section 12. SEVERABILITY.

If any section of provision of this ordinance is deemed invalid or unconstitutional it shall not effect the other provisions of the ordinance.

Section 13. REPEAL.


Any previously enacted ordinances by the City of Scio that are in conflict with this ordinance are hereby repealed.

This Ordinance passed on the 25th of February, 2008 by the city council and executed by the Mayor this 25th day of February, 2008.



Sandra Baggett, Mayor

ATTEST:



Virginia A. Griffith, City Manager