

ORDINANCE NO. 23-\_\_\_\_\_

AN ORDINANCE TO REPEAL AND REORDAIN ARTICLE 25 (REMOVAL AND IMPOUNDMENT OF VEHICLES) OF CHAPTER 10 (MOTOR VEHICLES AND TRAFFIC) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO IMPOUNDMENT OF VEHICLES

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Article 25 (Removal and Impoundment of Vehicles) of Chapter 10 (Motor Vehicles and Traffic) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

**10.25.103: STORAGE AND TOWING CHARGES:**

- A. For the purposes of this section:
  - 1. "Impound" refers to a vehicle towed to and stored in a lot owned or leased by a government or operator at which motor vehicles are stored under appropriate protection.
  - 2. "Operator" means a person or firm licensed by the public utilities commission as a towing carrier.
- B. Charges for the towing or other removal of any vehicle shall be based upon a computation of all actual expenses incurred by the City and/or the tow operator contracted to remove and store vehicles in accomplishing the towing or removal.
- C. A schedule of the charge or charges shall be posted for public inspection on a City of Colorado Springs website page designated for impounded vehicle information.
- D. The charge for storing each vehicle so removed and impounded shall not exceed the charges published and regulated by the Colorado Public Utilities Commission (PUC).
- E. The registered or legal owner, lienholder or authorized agent of a vehicle which has been towed and impounded pursuant to the provisions of section 10.25.101 of this article may request a hearing concerning the waiver of towing,

impound, and/or storage charges by following the provisions set forth in section 10.25.105 of this article. The Presiding Judge or designee, the Municipal Court Referee, may waive the imposition and collection of all or any part of the towing, impound and storage charges as outlined in section 10.25.105.

F. The City department responsible for the tow and/or contracted tow operator may require that a vehicle be towed from the City impound lot or maintained lot by a licensed towing company of the registered owner's choice, in the event that the vehicle to be released is deemed to be an unsafe vehicle as determined by reference to applicable laws and regulations relating to required equipment and safety, or in the event that proper documentation that the vehicle is insured cannot be produced.

**10.25.104: NOTICE OF IMPOUNDMENT:**

A. Except as provided in subsection D of this section, whenever a vehicle is towed and impounded at the direction of the City pursuant to the provisions of this chapter, the City department responsible for the tow or contract tow operator shall notify the registered owner and any current lienholder, if ascertained, of the impoundment of the vehicle and of the opportunity to request a hearing to determine the validity of the impoundment.

B. The notice shall be sent by regular mail to or shall be personally served on the registered owner, and any current lienholder if ascertained, within seventy two (72) hours of impoundment, excluding weekends and holidays, and shall include the following information:

1. The location of storage of the motor vehicle;
2. The location from which the motor vehicle was towed;
3. The manner in which the vehicle may be reclaimed;
4. The reason for which the motor vehicle was towed and impounded;
5. A description of the motor vehicle, which shall include, if available, the make, model, license plate number, and vehicle identification number;
6. That, unless claimed within thirty (30) calendar days from the date appearing on the notice, the motor vehicle is subject to sale; and
7. That the registered or legal owner, lienholder or authorized agent of a vehicle which has been towed and impounded pursuant to the provisions of section 10.25.101 of this article may request a hearing, pursuant to section 10.25.105, concerning the legality of the towing and impoundment

by filing a written request with the Colorado Springs Municipal Court within ten (10) days from the postmark on the notice.

C. The notice and hearing requirements of subsection A of this section and subsection 10.25.105A of this article shall not be applicable as to any vehicle which is towed, impounded and held pursuant to order of a law enforcement agency for evidentiary purposes relating to any criminal case which is under investigation or pending in a court of competent jurisdiction. This subsection shall not limit any registered owner's rights under CMCR 241 (e).

**10.25.105: IMPOUNDED VEHICLE; POST-TOW HEARING:**

A. The registered or legal owner, lienholder or authorized agent of a vehicle which has been towed and impounded pursuant to the provisions of section 10.25.101 of this article may request a hearing concerning the legality of the towing and impoundment by filing a written request with the Colorado Springs Municipal Court within ten (10) days from the postmark on the notice. Failure to timely request or to attend a scheduled hearing shall be deemed a waiver of the right to a hearing. However, for good cause shown by the owner, lienholder or authorized agent thereof, the court may extend the hearing request deadline for a reasonable period of time.

B. Upon a showing that the registered or legal owner, lienholder or authorized agent of a vehicle which has been towed and impounded pursuant to the provisions of section 10.25.101 of this article was not involved in the criminal activity which necessitated towing and/or impoundment, the City shall have the discretion to release an impounded vehicle to that owner, lienholder or authorized agent without the imposition of fees and without a required hearing so long as the vehicle is not needed for evidentiary purposes.

C. Upon receipt of a timely written request, a hearing shall be conducted within seventy two (72) hours of the request, excluding weekends and holidays, if the vehicle remains impounded, or within ten (10) days of the request if the vehicle has been released, or, for good cause shown by the owner, lienholder or authorized agent thereof, the court may extend the hearing deadline for a reasonable period of time. The hearing shall be conducted by a Hearing Officer, which Hearing Officer shall be a Judge of the Municipal Court for the City of Colorado Springs, or should the Presiding Judge so designate, the Municipal Court Referee.

D. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The burden of proof shall be on the City department responsible for the tow to establish by a preponderance of the evidence probable cause for the impoundment.

E. For the purposes of this section, "probable cause" shall mean a state of facts as would lead a reasonable person to believe that there was sufficient compliance with a provision of section 10.25.101 of this article or other lawful authority as to grant authority to tow and impound the vehicle.

F. If the Hearing Officer subsequent to hearing determines there was probable cause to tow and impound the vehicle, the provisions of section 10.25.103 of this article shall apply. Should the charges provided for not be paid, the vehicle shall be sold or otherwise disposed of as provided in section 10.25.106 of this article.

G. If the Hearing Officer subsequent to hearing determines there was no probable cause to tow and impound the vehicle, the City department responsible for the tow shall release the vehicle to the registered or legal owner, lienholder or authorized agent thereof, and shall be responsible for the costs incurred in the towing and storage of the vehicle. Failure of the registered owner, lienholder or authorized agent to take possession of the vehicle within forty eight (48) hours of the hearing, excluding weekends and holidays, shall render the registered owner, lienholder or authorized agent liable for all subsequent storage charges.

H. For the purposes of this section, "authorized agent" means a person who is authorized to act on behalf of or at the direction of the registered or legal owner of the towed vehicle, in all matters concerning this section. Proof of authorization may include a power of attorney or a notarized letter executed and signed by the registered or legal owner or lienholder which empowers the agent to act in the place of the registered or legal owner or lienholder regarding the towed vehicle. "Legal owner" shall include any person who can establish an ownership or possessory interest in the towed vehicle as evidenced by a legal document, which includes, but is not limited to, a contract, lease, written agreement or court order that establishes that interest.

I. For the purposes of this section, the decision of the hearing officer shall constitute final agency action.

#### **10.25.106: SALE OF UNCLAIMED VEHICLES; PROCEEDS:**

Whenever, pursuant to the terms of this chapter, a vehicle has been impounded for a period of thirty (30) days and no claim of ownership or the right to possession has been made, and whenever a claim has been made but not established to the satisfaction of the City or the contract tow operator within thirty (30) days, and no suit or action to determine the same has been instituted and is pending, the vehicle may be sold in the following manner:

A. The City or contract tow operator will publish all unclaimed vehicles and the date the unclaimed vehicle will be sold on a City of Colorado Springs website,

on a page designated for impounded vehicle information. The posting will include a description of the vehicle to be sold, the names of the registered or legal owner, and lienholder, if ascertained, and the time, place and manner of the sale.

B. In accord with the terms of a notice given as provided in section 10.25.104 of this article, or without giving notice if no person claiming an interest in the vehicle is known, a sale of the vehicle by auction may be had to satisfy any valid claims of the City or contract tow operator for the storage, removal and sale of the vehicle, and to discharge the City or contract tow operator from further responsibility in connection with the vehicle, and from any duty to further retain or store the vehicle. The sale shall be held in the place where the vehicle is impounded or at the nearest suitable place, or through an online service approved by the City.

C. If the City is responsible for the sale of unclaimed vehicles, the City department responsible for impounding the vehicle will retain all reasonable charges that occur as a result of the removal, storage, advertisement and sale from the proceeds of the vehicle sale. The balance, if any, of the proceeds will be paid into the City general fund.

D. If a contract tow operator is responsible for the sale of unclaimed vehicles, the contract tow operator may sell the motor vehicle and its attached accessories and equipment or personal property within or attached to the vehicle that are not redeemed by the last-known owner of record or lienholder after complying with the requirements of this section. The contract tow operator will follow all state and federal laws, as well as any state regulatory agency rules regarding the sale of unclaimed vehicles in their possession.

The proceeds of the sale of any motor vehicle and its attached accessories or equipment by a contracted tow operator will be disbursed in the following manner:

1. The proceeds shall first satisfy the contracted tow operator's reasonable costs and fees arising from the sale of the motor vehicle and the cost and fees of towing and storing the vehicle as specified in rules promulgated by the PUC.
2. The balance, if any, will be distributed as outlined in the City's contract with the tow operator.

E. When any vehicle is offered for sale or auction pursuant to the terms of this section, and there is no bid or offered bid for the same, the vehicle may be offered for sale again, sold as scrap pursuant to Colorado law, or with the approval of the Chief of Police, converted to City use. The Police Department will keep a permanent record of all vehicles put to City use and its final disposition.

Vehicles no longer needed for City use will either be sold, scrapped, or disposed of as determined by the City department using the vehicle.

F. Within thirty (30) days from the date of sale any person claiming to be entitled to any portion of the proceeds may request a refund from the City. Upon such request, the City shall make, or cause to be made, a thorough examination into the merits of the refund, determine whether it is justified, and approve or disapprove the same. Failure of any person to request the initiation of a refund within thirty (30) days from the date of the sale, shall be conclusive of the fact that the person has no meritorious claim for a refund, and the person shall not be entitled to a refund.

G. There shall be no right to redemption from any sale made pursuant to the terms of this section, and after a vehicle has been sold pursuant to the terms, neither the City nor any officer, agent, operator, or employee shall be liable for failure to deliver the vehicle to anyone other than the purchaser or purchasers at the sale.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 2023.

**Finally passed:** \_\_\_\_\_

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Randy Helms, Council President

**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

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Blessing A. Mobolade, Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk