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Subject: Impound Hearings
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Cc: Police Command (Email) <PoliceCommand@Englewoodco.gov>; Elsa Walker <ewalker@Englewoodco.gov>
Sent: June 8, 2022 3:56 PM (UTC-04:00)
Attached: Tow Hearing training.docx, impound hearing document 01012008.doc, impound hearing request document 01012008.doc, 20220603_165012_056182_11_1A_5___Disposition_of_Impounded_Vehicles_When_Ownership_Has_Been_Established..docx

Hello,

We recently had an individual request an impound hearing and although these do not happen with any level of frequency, they can cause some issues if policy is not followed.

I have attached a word document, which goes through the process and hopefully answers most questions. Bottom line is, this more than likely will only impact Records who will provide the hearing request form, the Administrative Sergeant for scheduling the hearing, and the Hearing Officer, which is the Chief of Police or their designee. However, once records has the request form filled out, depending on who is out of the office, this can impact all on this list as well.

I have also attached a copy of the request for hearing form, as well as the adjudication form in which the hearing officer would need to complete.

Attached is the policy which addresses the hearing as well as the Conduct of the Hearing. This is useful should you be selected as the Hearing Officer.

Please see me with any questions and I appreciate your assistance in this matter.

Brian



Brian K. Cousineau, MS (he, him, his)

Sergeant

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Please see the below training reference vehicle impound hearing requests. Although this doesn't happen often, when it does, it could be cause for some headaches, not to mention the financial implications placed on either the R/O of the vehicle, or the P.D.

What is this?

When a citizen has their vehicle impounded due to it being tagged abandoned, or similar situation, the person who can prove ownership of the vehicle **OR** can claim a legitimate interest in the vehicle, can request a hearing in front of a Hearing Officer, and dispute the charges incurred, i.e. hook bill, lot fees, mileage, etc. The Hearing Officer determines if there was cause to tow the vehicle, and if the City wins, then the City pays nothing further out of pocket. If the citizen wins the hearing, then the City is responsible for all tow/impound/storage fees.

Key Steps

Within 30-days of the vehicle being impounded, notice must be given to the R/O of the vehicle, **OR** an individual who may claim an interest in the vehicle. This notice shall include information on the vehicle, but also information on how they would need to properly request a hearing.

Good news, the tow company takes care of the notification, so there is nothing needed at this point.

However, if at any time prior to the 30-days, the RO of the vehicle **OR** an individual who may claim an interest in the vehicle, wants to dispute the vehicle impound, per policy, they have a right to do so.

- Within 10-days after receipt of notice from the tow company or post-mark of the noticed being sent or documented verbal notification, the RO or an individual who may claim an interest in the vehicle MUST file a request for a hearing regarding a towed vehicle.
- Once the request has been filed, then a hearing MUST be held within 48-hours (excluding holidays and weekends) by the hearing officer or their designee.
- The hearing officer, or their designee, will then make a ruling on whether or not the impound was justified or not.

What do I need to do?

If a person who can prove ownership of the vehicle, **OR** can claim a legitimate interest in a vehicle which has been impounded, requests a hearing, and the requests has been made within 10-days receipt of notice from the tow company or within 10-days of the post-mark of the notice being sent or within 10-days of the documented verbal notification, then have them complete the request for a hearing and seek out primarily the Administrative Sergeant to complete the hearing date/time/location. If the Administrative Sergeant is not around, seek out a sergeant/MPO and they will complete the hearing date/time/location.

DO NOT let the person requesting the hearing leave until they receive a copy of the request for hearing with the date/time/location of the hearing on the copy.

How is the hearing scheduled?

Great question!

In most cases, Records will provide the hearing request paperwork to the person requesting the hearing. Once this paperwork is completed they will contact the Administrative Sergeant, and he will immediately seek out the hearing officer, or their designee, to schedule the hearing within 48-hours of the request being made (excluding holidays and weekends). If the Administrative Sergeant is not available, then this is the same step the on-duty Sergeant or MPO must do.

The hearing officer is the Chief of Police, which is who you would contact to schedule the hearing date/time/location. If the Chief of Police is unavailable then contact the Deputy Chief, or one of the Division Chiefs to schedule the hearing and to act as the hearing officer.

If no one in the Command Group is available, the Administrative Sergeant, can act as the hearing officer.

Final step is to provide the person requesting the hearing with their copy of the hearing request, to include the date/time/location on their copy.

Please place a copy of the hearing request in the records box to be scanned into the case.

Please see me with any questions or suggestions you may have. Thank you!

ENGLEWOOD POLICE DEPARTMENT
3615 South Elati Street
Englewood, CO 80110
(303) 762-2463

CERTIFICATE OF PROBABLE CAUSE []

NO PROBABLE CAUSE []

DATE _____ DR# _____ HEARING OFFICER _____

MAKE _____ MODEL _____ YEAR _____ COLOR _____ MILEAGE _____

LIC. NO. _____ STATE _____ YEAR _____ VIN _____

DATE IMPOUNDED _____ TIME _____ WHERE FROM _____

REASON FOR IMPOUND _____

IMPOUNDING OFFICER _____ WHERE STORED _____

REGISTERED OWNER _____ LIEN HOLDER _____

PERSON REQUESTING HEARING _____

FINDINGS – PROBABLE CAUSE

If charges are not paid and the vehicle has not been removed within (10) ten days of this decision, the vehicle will be sold as abandoned.

Signature of Hearing Officer

FINDINGS – NO PROBABLE CAUSE

All charges for towing and storage are to be paid by the City of Englewood.

You have (24) twenty-four hours from the date of this decision to remove your vehicle from the location of storage. Failure to do so will result in your having to pay the cost for all subsequent storage charges.

Signature of Hearing Officer

ENGLEWOOD POLICE DEPARTMENT

REQUEST FOR HEARING

REGARDING A TOWED VEHICLE

DATE _____ DR# _____

NAME _____ DOB _____

HOME ADDRESS _____

WORK ADDRESS _____

HOME PHONE _____ WORK PHONE _____

MAKE _____ MODEL _____ YEAR _____ COLOR _____ MILEAGE _____

LIC. NO. _____ STATE _____ YEAR _____ VIN _____

DATE IMPOUNDED _____ TIME _____

WHERE IMPOUNDED FROM _____

REASON FOR IMPOUND _____

IMPOUNDING OFFICER _____ WHERE STORED _____

REGISTERED OWNER _____ LIEN HOLDER _____

I am the owner of the above vehicle. I request a hearing to determine the legality of the towing of my vehicle.

I understand that if I fail to appear for my scheduled hearing, I will have no right to request or receive another hearing.

Signature of Owner

Date of Scheduled Hearing

***ARTICLE A. AUTHORITY AND REGULATIONS FOR TOWING, IMPOUNDING,
DISPOSITION OF MOTOR VEHICLES***

11-1A-1: Definition.

As used in this article, unless the context otherwise requires:

Vehicle: Means any device which is capable of moving itself, or of being moved, from place to place upon wheels or endless tracks; such term, for the purpose of this article, shall not include any farm tractor or any implement of husbandry designed primarily or exclusively for use and used in agricultural operation or any device moved by muscular power. This definition also means any self-propelled vehicle which is designed primarily for travel on the public highways and which is generally and commonly used to transport persons and property over the public highways.

(Code 1985, § 11-1A-1)

11-1A-2: Impoundment of Motor Vehicles.

A vehicle, under any of the circumstances set forth below, is considered to be an obstruction to traffic or a public nuisance. Any police officer or Code enforcement officer, at the direction of the City, is hereby authorized to remove or cause to be removed, such obstruction or nuisance from any public or private way or place whenever such vehicle:

- A. Is left unattended upon any bridge, viaduct, subway, tunnel, or where such vehicle constitutes an obstruction to traffic;
- B. Is left unattended upon a public way, and is so disabled as to constitute an obstruction to traffic, and the person in charge of that vehicle is incapacitated by reason of intoxication or physical injury to the extent as to be unable to provide for its custody or appropriate removal;
- C. Is left unattended and illegally parked upon a street or alley, illegally parked so as to constitute a hazard or obstruction to the normal movement of traffic;
- D. Is left unattended on any public street with the engine running, or with the keys in the ignition switch or lock;
- E. Is parked in violation of any traffic ordinance, and is an actual or potential obstruction or hazard to any lawful function or limits the normal access to a use of any public or private property;
- F. Is left without an operator, the operator who has been taken into custody by the City and the vehicle, or motor vehicle, would, thereby, be left unattended upon a street or highway or restricted parking area, or other public right-of-way.
- G. Is being operated upon the street or other public way of the City, is apparently unsafe due to the mechanical condition or is in such a condition that it could not be legally operated upon the City streets or other public way;
- H. Is being operated upon the streets or other public way by a person without a current and valid operator's or chauffeur's license, or in violation of the restrictions imposed upon their license, or while the person's operator's or chauffeur's license has been suspended, denied, revoked, or canceled by the state of issuance and there is no licensed driver present and capable to operate the vehicle;
- I. Is found to be parked unattended on any public way in violation of the registration requirements of the State of Colorado, or has no visible registration number plates attached.
- J. Is found to have all of the following:
 - 1. Three (3) or more outstanding and unpaid parking tickets issued within one (1) calendar year; and
 - 2. Such tickets were not paid within forty-five (45) days of issuance; and
 - 3. None of the tickets as described above is currently under appeal or involved in any other judicial or quasi-judicial proceeding; and
 - 4. The vehicle is currently parked in or on public property, or on private property intended for public use in such a manner that the issuance of a fourth parking ticket may subject the vehicle to being towed and impounded pursuant to Englewood Municipal Code Sections 11-1A-3, 11-1A-4.

This subsection is subject to all rights that the owner may have regarding any hearing regarding the towing of the motor vehicle as set forth in the Englewood Municipal Code Sections 11-1A-6, 11-1A-7 and 11-1A-8.

(Code 1985, § 11-1A-2; Ord. 00-7; Ord. 01-16)

Editor's note(s)—This change was passed by initiative Ballot Question 2D on November 1, 2011 and can only be revised, repealed or amended by electoral vote. (Englewood Home Rule Charter Article VI, Section 48)

11-1A-3: Impoundment of Unattended Vehicles.

- A. Police officers and Code enforcement officers are authorized to remove, or have removed, from any public right of way, or private property when the owner or occupant of the private property does not claim ownership and specifically request the removal, any vehicle which has been left unattended for seventy two (72) consecutive hours, and said vehicle has been posted by a police officer or Code enforcement officer with a notice that if such vehicle is not moved so as to alleviate the nuisance within seventy two (72) consecutive hours, the police or Code enforcement officer shall cause the vehicle to be removed and disposed of. Prior to the issuance of the notice, the police officer or Code enforcement officer will record on said notice:
1. Make of the vehicle;
 2. Serial number, if available.
- B. A vehicle will be towed when left unattended for seventy two (72) consecutive hours after being posted. The vehicle will be held for at least thirty (30) days from the date of sending of notice of opportunity to request hearing prior to being disposed of. The notification of the owner and disposition of the impounded vehicle is set forth in Section 11-1A-4 of this article.

(Code 1985, § 11-1A-3)

11-1A-4: Disposition of Unclaimed Impounded Vehicles.

Whenever a vehicle has been impounded in accordance with provisions of this Article and no claim of ownership or right to possession has been made, or, if made, has not been established to the satisfaction of the City or Hearing Officer and no suit or action to determine such claim has been instituted and pending, the City may dispose of such vehicle by the following means:

- A. The City shall cause notice to be given to all persons known by the City to claim an interest in the vehicle, within thirty (30) days after impoundment of the vehicle. This notice shall be personally delivered, or sent by registered or certified mail, to the last known address of the business or home of the person to be notified. If not otherwise known, the identify of such persons will be obtained from the Motor Vehicle Division of the state in which such vehicle is licensed or registered. The notice will contain:
 1. An itemized statement of the amount of money due for removal and storage of the vehicle as of the date of notice, and the cost of storage per day for continued storage;
 2. A description of the vehicle to include, but not be limited to, the VIN number and the state license/registration;
 3. A demand that the amount due, as stated in the notice, and all additional claims that should accrue, must be paid in full, and the right of possession of the vehicle shall be established to the satisfaction of the City;
 4. A statement that unless the amount of the towing and storage due is paid, and the right to possession of the vehicle is established to the satisfaction of the City within fifteen (15) days after receipt of this notice, the vehicle will be disposed of by public auction or otherwise, as determined by the City.
 5. A statement that the owner of the vehicle has the right within ten (10) days after receipt of this notice to request an administrative hearing to determine the legality of the tow.
- B. The City, either in accordance with the terms of the notice set forth in the preceding subparagraph A, or without giving any notice if no person claiming any interest is known to the City after diligent search, will declare the vehicle abandoned and shall immediately thereafter transmit to the City's purchasing officer the custody of such vehicle, together with a transcript of information and proceedings concerning the vehicle. The City's purchasing officer may then dispose of the vehicle either by:
 1. Public auction;
 2. Sealed bid;
 3. Or, when in the best judgment of the purchasing officer, any bids are disadvantageous to the City, no bids are received, or the vehicle may better be disposed of in other ways, the purchasing officer may dispose of the vehicle to the best advantage of the City, for example:
 - a. Exchange for payment due to the towing agency for tow and storage fee;
 - b. Appropriate the vehicle to the City for use as a City-owned vehicle; cause all costs of towing and storage to be paid; and have the vehicle registration and ownership transferred to the City;
 - c. Conversion to scrap metal.

All such dispositions listed here under Subparagraph B shall terminate the City from any further responsibility or duty to further retain or store the vehicle.

C. When disposition is by public auction, the place of sale shall be the location where the vehicle is stored or impounded. However, if such location is patently unsuitable for that purpose, the vehicle will be transported to a more suitable place designated by the City's purchasing officer. The City's purchasing officer shall publish at least once, but preferably more often, in a newspaper designated by City Council as the City's official newspaper or on the City's official website, a notice of the sale, which shall contain the following:

1. Description of the vehicle to be sold;
2. Statement of when and where the sale will take place.

The sale will be held not less than fifteen (15) days from the date of this notice.

- D. The City's purchasing officer shall pay the amounts due for towing and storage of the vehicle, the reasonable expense for the notice or advertisement, and any auction fees, from the proceeds of the sale. The balance of the proceeds, if any, will be paid into the City Treasury General Fund.
- E. When any vehicle is offered for sale at auction or sealed bid pursuant to the terms of this Section, the City's purchasing officer may announce the total amount of charges or expenses of notice, advertisement and sale, and declare that all bids must be in excess of his total amount. If no bids are received in excess of this total amount, the vehicle shall be declared sold to the City for the amount of the charges; likewise, if any vehicle is offered for sale at auction pursuant to the terms of this Section and there is no bid for same, the vehicle shall be declared sold to the City for the amount of the charges. In either event the vehicle shall be placed in the custody of the service center for the sole benefit and use of the City.
- F. There shall be no right to redemption or recovery from any sale or other disposition made pursuant to the terms of this Section and, after a vehicle has been sold or disposed of pursuant to such terms, neither the City, nor any officer, agent or employee thereof shall be liable for a failure to deliver such vehicle to anyone claiming a right of redemption.

(Code 1985, § 11-1A-4; Ord. 00-7; Ord. 03-78; Ord. 08-24, § 6)

11-1A-5: Disposition of Impounded Vehicles When Ownership Has Been Established.

Whenever a vehicle has been impounded in accordance with provisions of this article, and ownership has been established to the satisfaction of the City or Hearing Officer, or legitimate claim has been made, the owner or claimant will be notified of the location of the vehicle and the owner's or claimant's liability for all fees pending against the vehicle, and the owner's right to request, within ten (10) days after receipt of this notice, an administrative hearing to determine the legality of the tow.

- A. No vehicle will be released from storage or impound until all fees accrued for towing and storage are paid.
- B. If the vehicle is not claimed within fifteen (15) days after notice has been given to remove the vehicle, the provisions of Section 11-1A-4 of this article shall apply and the vehicle may be disposed of in accordance with the provisions of said Section 11-1A-4, Disposition of Unclaimed Impounded Vehicles.
- C. No vehicle shall be released until the owner establishes that all unpaid parking fines and costs have been paid to the City, or such other arrangements have been made and approved by Municipal Court order. Such proof shall be established by a release issued by the City and signed by the Parking Referee or his/her designee.

(Code 1985, § 11-1A-5; Ord. 00-7; Ord. 01-16)

11-1A-6: Owner's Opportunity to Request Hearing.

- A. Whenever a vehicle has been impounded pursuant to the provisions of this article, the registered owner or other individual having right to possession of the vehicle has the right to request a post-seizure administrative hearing to determine whether there was probable cause to impound said vehicle, if such person files a written demand, on forms so provided for such a hearing, with the City. Such hearing shall be requested within ten (10) days after such person has learned said vehicle has been impounded, or within ten (10) days of the postmarked date of sending such notice of impoundment, whichever occurs first. Such notice shall be sent by certified mail to the address of record of the registered owner.
- B. If the vehicle has been impounded as an abandoned vehicle, the City shall follow the requirements set forth at Title 42, Article 4, Part 16, Colorado Revised Statutes 1984, as amended, for the purpose of notification of the registered owner of the vehicle's status and the right to request hearing.
- C. If the vehicle has been impounded for a violation of motor vehicle registration laws, inspection laws, or traffic laws, the City shall notify the registered owner of his right to request a hearing within forty-eight (48) hours of impoundment, excluding weekends and City holidays. Such notice shall include the following information:
 - 1. The address and telephone number of the City;
 - 2. The location of storage of the motor vehicle;
 - 3. A description of the motor vehicle, which shall include, if available, the make, model, license plate number, mileage, and vehicle identification number;
 - 4. The reasons for which the motor vehicle was ordered impounded; and
 - 5. That, in order to obtain a hearing concerning the validity of the impoundment, the owner must request such hearing from the City within ten (10) days after the postmarked date appearing on the notice.
- D. Failure of the owner to request a hearing within the above time frames, or failure to appear for a scheduled hearing, shall be deemed a waiver of the right to such hearing.

(Code 1985, § 11-1A-6; Ord. 00-7)

11-1A-7: Referral to Hearing Officer.

- A. The Hearing Officer shall be designated by the City Manager.
- B. Upon receipt by the City of a written request for a hearing, such hearing shall be conducted by the Hearing Officer within forty-eight (48) hours, excluding weekends and City holidays, unless such person requesting the hearing waives the right to a speedy hearing.
- C. The sole issues before the Hearing Officer shall be (1) whether there was probable cause to impound the vehicle in question. "Probable cause to impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, State or Federal law to grant legal authority for the removal of the vehicle; (2) the person requesting the hearing is the registered owner or other individual having right to possession of the vehicle.

(Code 1985, § 11-1A-7; Ord. 00-7)

11-1A-8: Conduct of Hearing.

- A. The Hearing Officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. Such hearing shall be tape recorded.
- B. The City shall carry the burden of establishing that there was probable cause to impound the vehicle in question.
- C. The Hearing Officer shall only determine that, as to the vehicle in question, the person requesting the hearing is the registered owner or other individual having right to possession, and either (1) there was probable cause to impound the vehicle, or (2) there was no such probable cause.
- D. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the individual requesting the hearing and the City. In the event that the Hearing Officer determines that there was no such probable cause, the Hearing Officer shall prepare a "certificate of no probable cause", copies of which shall be given to the owner of the vehicle, the City, and the garage storing the vehicle. Upon receipt of the owner's copy of such certificate, the police garage having custody of the vehicle shall release the vehicle to its owner.
- E. Upon a finding of no probable cause, towing and storage fees shall be paid by the City in accordance with arrangements made between the City and police garages.
- F. If the owner fails to present such certificate to the police garage having custody of the vehicle within twenty-four (24) hours of its receipt, excluding such days when the garage is not open for business, the owner shall assume liability for all subsequent storage charges. Such certificate shall inform the owner of such requirement.
- G. If the Hearing Officer determines that the impoundment was valid and if the owner does not comply with the appropriate ordinances within ten (10) days of the Hearing Officer's decision and refuses to remove the motor vehicle by means other than under its own power on a public highway, the City of Englewood shall have reasonable grounds to believe the motor vehicle has been abandoned and the provisions of Section 11-1A-4 of this Article shall apply and the vehicle may be disposed of in accordance with the provisions of said Section 11-1A-4, Disposition of Unclaimed Vehicles.
- H. The Hearing Officer's decision in no way affects any criminal proceeding in connection with the impound in question, and any criminal charges involved in such proceeding may only be challenged in the appropriate court.
- I. The decision of the Hearing Officer is final.

(Code 1985, § 11-1A-8; Ord. 00-7)