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PART 11. IMPOUNDING OF VEHICLES

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Sec. 804.1101. Authority to impound certain vehicles.

The Sheriff, or Public Parking Officer with reference to subsections (a), (c), and (d) below, may cause to be impounded:

- (a) A motor vehicle unlawfully parked in violation of a provision of this Code which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.
- (b) A motor vehicle which:
 - (1) Is a stolen motor vehicle.
 - (2) Is subject to seizure and forfeiture under the laws of the state.
 - (3) Is subject to being held for use as evidence in a criminal trial.
- (c) A motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.
- (d) A motor vehicle immobilized for more than 24 hours by a device that is capable of immobilizing a motor vehicle pursuant to Section 802.112 (Immobilizing of vehicles).

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1; Ord. 2000-22-E, § 5)

Note—Former § 312.1101.

Sec. 804.1102. Maintenance of storage places for impounded vehicles.

The City shall maintain a storage place for motor vehicles impounded pursuant to Section 804.1101(b). The City is authorized to maintain a public storage place for motor vehicles impounded pursuant to Section 804.1101(a) or (c) but the Sheriff may also authorize storage of the impounded motor vehicles at another location, public or private, which is zoned for the storage of motor vehicles.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Note—Former § 312.1102.

Sec. 804.1103. Notice of impoundment.

- (a) *When owner present.* When the Sheriff intends to impound a motor vehicle pursuant to Section 804.1101 and the owner of the motor vehicle is then present, the Sheriff shall, before the motor vehicle is removed, provide the owner with a notice, in a form prescribed by the Sheriff, that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed for storage without prepayment of towing and storage charges upon posting with the custodian of the vehicle, a cash or surety bond in the amount of the accrued towing and storage charges, and that the owner may request a hearing as to the propriety of the impoundment and as to the amount of and the owner's liability for the towing and storage charges. The notice shall also state the location where the impounded motor vehicle will be stored and the place where the owner may make his request for the hearing. The notice shall also state, in prominent language, that failure by the owner to request a hearing within five days after receipt of the notice may act as a waiver of his right to a hearing and that this may result in the placing of a lien against the motor vehicle for the towing and storage charges without further notice to the owner or forfeiture of the cash or surety bond posted in lieu of payment of the towing and storage charges. The owner of the impounded motor vehicle shall sign the notice as an acknowledgment that he has received a copy of the notice and a copy of the notice shall be provided to the owner.
- (b) *When owner not present.*
 - (1) When the Sheriff impounds and removes a motor vehicle pursuant to Section 804.1101(a) and the owner of the motor vehicle is not present at the time of the impoundment, the Sheriff shall, if the owner resides in the City, as appears from the motor vehicle registration, immediately serve upon the owner of the impounded motor vehicle, at the address on the motor vehicle registration, a notice, in a form prescribed by the Sheriff, containing the same information as required by subsection (a) of this Section. Service shall be made as provided by law for service of process generally. If the owner cannot be found at the address on the motor vehicle registration and there is no other known address of the owner, he shall be deemed to be a resident of the state whose whereabouts are unknown and service shall be made on the Secretary of State as provided in F.S. § 48.171.
 - (2) If the owner does not reside in the City, as appears from the motor vehicle registration, the owner shall be deemed to be either a resident of the state whose whereabouts are unknown or a nonresident of the state and service shall be made on the Secretary of State as provided in F.S. Ch. 49.

- (c) *Failure or refusal to sign notice.* If a person required by this Section to sign a notice of impoundment wilfully fails or refuses to do so or if the person cannot be found, the Sheriff shall note this fact on the face of the notice, which shall constitute *prima facie* evidence of delivery or service of notice as required by this Section.
- (d) *Sheriff to send notice to any lienholders; notice to entity providing temporary tag.* In addition to the notice required herein, when the Sheriff impounds and removes a motor vehicle pursuant to Section 804.1101, he shall also send a similar notice of such impoundment, in writing within seven days of the date of such impoundment, to any and all lienholders of record (as appears on the motor vehicle registration or as disclosed by the records in the State Department of Highway Safety and Motor Vehicles). In the event the impounded motor vehicle has a temporary license tag affixed to it, the Sheriff shall provide, if possible, the same notice required herein to the entity to which the temporary license tag was issued.
- (e) *No notice by Sheriff necessary if provided by wrecker or towing firm.* Notwithstanding any provisions to the contrary contained in this Section, it shall not be necessary for the Sheriff to provide to the owner or lienholder of an impounded motor vehicle notice of impoundment or storage as required by this Chapter if such notice is to be or has been provided by the wrecker or towing firm storing the vehicle pursuant to Section 804.1204.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1; Ord. 85-1335-745, § 1; Ord. 87-453-366, § 1; Ord. 94-907-526, § 1)

Note—Former § 312.1103.

Sec. 804.1104. Impoundment after request to leave motor vehicle.

In all cases wherein the owner or operator of a motor vehicle which is on a public street has requested that the motor vehicle be left unattended at that location, in lieu of impoundment of the motor vehicle pursuant to Section 804.1101, the Sheriff may honor the request for a period of time not exceeding 24 hours, after which time the motor vehicle shall either be removed from the location by the owner or operator or be impounded by the Sheriff pursuant to Section 804.1101. The Sheriff shall be immune from liability for damage, loss or destruction of the motor vehicle occasioned by its being left unattended pursuant to the request of the owner or operator thereof in lieu of impoundment. Nothing in this Section shall be construed to limit the authority of the Sheriff to order the removal of a motor vehicle by its owner or operator or to impound a motor vehicle pursuant to Section 804.1101 at any time whenever, in his judgment, the presence of the unattended motor vehicle constitutes a danger to the public safety.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Note—Former § 312.1104.

Sec. 804.1105. Release of motor vehicle from impoundment.

- (a) Unless the vehicle is impounded pursuant to Section 804.1101(b), the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting the release and presenting proof of ownership satisfactory to the custodian of the place where the motor vehicle is stored. If the custodian is satisfied that the person making the request is the owner or his authorized agent, he shall release the motor vehicle to the owner or his agent upon payment of the accrued towing and storage charges, if the owner requests a hearing pursuant to this Part upon posting, with the custodian of the vehicle, a cash or surety bond in the amount of the accrued towing and storage charges. At the same time as the owner or his agent requests release of the impounded motor vehicle and if the request is made within 40 days after the owner receives a copy of the notice of impoundment, the Sheriff shall provide him an opportunity to make a request for a hearing on the propriety of the impoundment and on the amount and his liability for the towing and storage charges occasioned by impoundment; provided, that, if the owner or his agent requests release of the impounded motor vehicle more than 40 days after the owner receives a copy of the notice of impoundment, no hearing may be requested on the impoundment or on the towing and storage charges and the owner shall be conclusively presumed to have consented to the impoundment and to the amount of and his liability for the towing and storage charges.
- (b) If the ownership of the impounded motor vehicle is evidenced by a title certificate issued by the State Department of Highway Safety and Motor Vehicles, the owner or his agent may secure the release of the motor vehicle from impoundment without the payment of towing or storage charges or the deposit of security for the payment thereof. If the ownership of the impounded motor vehicle is evidenced by a foreign title instrument or if the jurisdiction in which title is recorded is not evident from the document establishing ownership, the owner or his agent, before the custodian of the place where the motor vehicle is stored authorizes release of the motor vehicle from impoundment, shall deposit with the custodian cash in the amount of the towing and storage charges to the date of the request. If the owner or his agent refuses to provide the cash deposit, the custodian shall not authorize release of the impounded motor vehicle but if the request is timely made, a date shall be set for the hearing on the impoundment and charges.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1; Ord. 85-1335-745, § 2)

Note—Former § 312.1105.

Sec. 804.1106. Hearing.

- (a) If the owner of an impounded motor vehicle or his agent timely requests the release of the motor vehicle from impoundment and a hearing on the impoundment and charges, as provided in Section 804.1105, a date shall be set, not more than ten days after the date of request, for the hearing. The General Counsel shall provide a hearing examiner to conduct the hearings required by this Section.
- (b) At the hearing, the owner, his agent or his attorney shall be afforded an opportunity to present, by oral testimony or documentary evidence, his objections to:
 - (1) The impoundment of the motor vehicle.
 - (2) (i) The amount of the towing and storage charges.
 - (ii) His liability for the payment thereof.

If the owner or his agent requests the hearing more than five days but not more than 40 days after the owner received a copy of the notice of impoundment, the owner, his agent or his attorney shall be required at the hearing, as a condition precedent to the presentation of any objections by the owner, to show good cause for the delay in making the request more than five days after the owner received a copy of the notice of impoundment. If good cause cannot be shown, the hearing examiner shall dismiss the hearing and make the finding stated in subsection (c)(2) of this Section; otherwise, the hearing examiner shall proceed to hear the owner's objections.

- (c) At the conclusion of the hearing on the owner's objections, the hearing examiner shall render his decision. If the hearing examiner:
 - (1)

- Finds that the impoundment was improper, he shall:
- (i) Find that the owner is not liable for a towing or storage charges occasioned by the impoundment.
 - (ii) Determine whether and to what extent the City shall bear the expense of the towing and storage charges.
- (2) Finds that the impoundment was proper, he shall establish:
- (i) The amount of the towing and storage charges to be assessed against the impounded motor vehicle.
 - (ii) The extent of the liability of the owner for payment of the towing and storage charges so established.

The decision of the hearing examiner shall be final, and a copy of the decision shall be furnished to the owner of the impounded motor vehicle, to the custodian of the place where the motor vehicle is stored and to the General Counsel.

(Ord. 78-476-182, § 1; Ord. 78-1129-586, § 1; Ord. 83-591-400, § 1; Ord. 2007-2-E, § 2)

Note—Former § 312.1106.

Sec. 804.1107. Towing and storage charges to constitute lien; notice requirements; limitations.

The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to Section 804.1101 shall be and constitute a lien upon the impounded motor vehicle, except as provided in this Section. If the hearing examiner finds pursuant to Section 804.1106 that the impoundment was improper and if he determines that the City shall bear part or all of the towing and storage charges, the lien created by this Section shall be discharged. If the hearing examiner finds pursuant to Section 804.1106 that the impoundment was proper but that the towing and storage charges should be in an amount less than the amount of the lien, the lien created by this Section shall be discharged to the extent that it exceeds the amount established by the hearing examiner. The holder of a lien created by this Section may perfect the lien by sending notice by registered or certified mail to the registered owner and all persons claiming a lien within 14 days of the date of possession. Such notice shall state the fact of possession of the vehicle, that a lien as provided in this Section is claimed, that the lien is subject to enforcement pursuant to law, and that the owner or lienholder, if any, has a right to a hearing as set forth in Section 804.1106. The holder of a lien created by this Section may not retain possession of the motor vehicle when it has been released pursuant to Section 804.1105(a). In the event that the impounded motor vehicle is released from impoundment and the owner or his agent has provided security for payment of charges as required by Section 804.1105(a), the lien created by this Section shall also be a lien against the security so provided, subject to being wholly or partially discharged as provided in this Section.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1; Ord. 85-1335-745, § 3; Ord. 87-453-366, § 4)

Note—Former § 312.1107.

Sec. 804.1108. Satisfaction of lien; notice of public sale.

The holder of a lien against a motor vehicle created by Section 804.1107, to the extent that the lien has not been discharged as provided in Section 804.1107 or otherwise satisfied, may enforce the lien in any manner provided by law after 60 days from the date the motor vehicle is impounded by the Sheriff. If the owner of the motor vehicle or his agent has provided security for the payment of the towing and storage charges as provided in Section 804.1105(a), the lien shall first be satisfied out of the security so provided and, if a portion of the lien remains unsatisfied and undischarged, may then be enforced in any manner provided by law. If the motor vehicle against which the lien is created pursuant to Section 804.1107 is still under impoundment 60 days from the date it is impounded by the Sheriff and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and storage charges that are the basis for the lien, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. Notice of the sale shall be given in writing to the owner and any person claiming a lien on the motor vehicle shown by the records of the State Division of Motor Vehicles and by publication one time in a daily newspaper of general circulation in the City, at least ten days prior to the date of the sale. This publication may be made before the termination of the 60-day period for a sale thereafter. If the sale is to be conducted by the City as holder of a lien created by Section 804.1107, the time and place of the sale shall be fixed by the Sheriff, who shall give notice of and conduct the sale in the name and on behalf of the City.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1; Ord. 85-1335-745, § 4)

Note—Former § 312.1108.

Sec. 804.1109. Redemption before public sale.

If the City is to conduct the sale:

- (a) A holder of a recorded lien or retained title on a motor vehicle to be sold by the City under the provisions of Section 804.1108 may claim and take possession thereof, upon payment of accrued charges and estimated costs of publication of the notice of sale to the Sheriff and the deposit with the Sheriff's Office of sufficient assurance by surety bond or otherwise, approved by the Office of General Counsel, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The Sheriff shall, within three days, make a report to the Director of Finance and deliver the charges and costs so paid to the Tax Collector, taking a receipt therefor and filing it, together with a duplicate copy of the report to the Director of Finance, in the records of his office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the Sheriff shall notify the lienholder or retained titleholder of the time and place for the sale and the lienholder or retained titleholder shall deliver the motor vehicle to the Sheriff at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the Sheriff shall report this fact to the Director of Finance and the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the City for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to a person other than the lienholder or retained titleholder, the Sheriff shall report this fact to the Director of Finance and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.
- (b) If the rightful owner of the motor vehicle claims it before the sale by payment of the accrued charges, the Sheriff shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he shall return the motor vehicle to the Sheriff within 12 hours. The Sheriff shall report this redemption by the rightful owner to the Director of Finance and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Editor's note—

Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

Note—Former § 312.1109.

Sec. 804.1110. Disposition of proceeds derived from sale. 

The proceeds of a public sale held pursuant to Section 804.1108, whether the sale was conducted by the City or by another person, after payment of the towing and storage charges and costs and expenses incident to the sale, shall be deposited with the Tax Collector, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this Section remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the City, be released from the trust account and be paid into the General Fund-General Services District as miscellaneous revenues.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Note—Former § 312.1110.

Sec. 804.1111. Nothing herein to interfere with statutory procedures. 

Nothing in this Part 11 shall be construed to augment, diminish, supersede or otherwise interfere with any statutory procedures established by the Legislature for the collection of unpaid towing and storage charges. The procedures in this Part 11 are supplementary and cumulative to any statutory procedures.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Note—Former § 312.1111.

Sec. 804.1112. Rules for implementation and administration of part. 

The Sheriff, Tax Collector and Director of Finance are authorized to make rules for the implementation and administration of this Part 11.

(Ord. 78-476-182, § 1; Ord. 83-591-400, § 1)

Editor's note—

Ordinance 2007-839-E, § 18, authorized updated department/division names pursuant to reorganization.

Note—Former § 312.1112.