

ORDINANCE NO. 2017-2113

AN ORDINANCE OF THE CITY OF NEW PORT RICHEY, FLORIDA, PROVIDING FOR THE AMENDMENT OF SECTION 23-183 OF THE NEW PORT RICHEY CODE OF ORDINANCES; PERTAINING TO LIENS AGAINST AND SALE OF IMPOUNDED VEHICLES; PROVIDING FOR MORE EXPEDITED DISPOSITION OF SAID VEHICLES; PROVIDING FOR DISPOSAL OF UNSOLD VEHICLES; PROVIDING FOR AN ADMINISTRATIVE FEE; PROVIDING FOR REPEAL OF ARTICLE IV OF CHAPTER 23, SECTIONS 23-76 THROUGH 23-83, PERTAINING TO REMOVAL AND IMPOUNDMENT OF CERTAIN VEHICLES; PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City regularly has possession of impounded vehicles;

WHEREAS, state law mandates minimum storage periods before vehicles may be disposed of to satisfy any liens thereon;

WHEREAS, the City Code mandates a longer storage period than the periods mandated by state law;

WHEREAS, the City wishes to provide for storage periods consistent with state law in order to expedite the disposition of impounded vehicles; and

WHEREAS, it is declared as a matter of legislative determination and public policy that the provisions and prohibitions herein are necessary in the public interest; and it is further declared that the provisions and prohibitions herein are in pursuance of and for the purpose of securing and promoting the public health, safety, welfare and quality of life in the City.

NOW, THEREFORE, THE CITY OF NEW PORT RICHEY, FLORIDA HEREBY ORDAINS:

Section 1. Section 23-183 of the Code of Ordinances, pertaining to liens against and sale of impounded vehicles, is hereby amended as follows (strikeout text is deleted and underlined text is added):

Sec. 23-183. - Enforcement; sale; proceeds; lien.

- (a) A copy of the final order issued by either the city attorney if a preliminary hearing is waived or the preliminary hearing decision is not appealed by the owner to the city council in the time provided in section 23-182 or the mayor of the city council if the preliminary hearing decision was appealed for final hearing pursuant to section 23-182 shall be recorded in the public record and, upon recording shall constitute a lien against the vehicle. The city as holder of a lien against the vehicle, to the extent the lien has not been discharged or otherwise satisfied, may enforce the lien in any manner provided by law after 35 days from the date of the final order if the vehicle is more than 3 years of age or after 50 days from the date of the final order if the vehicle is 3 years of age or less. ~~ninety (90) calendar days from the date of the final order.~~
- (b) If the vehicle against which the lien is created is still under impoundment after 35 days from the date of the final order if the vehicle is more than 3 years of age or after 50 days from the date of the final order if the vehicle is 3 years of age or less, ~~ninety (90) calendar days from the date of the final order~~ and the owner has not satisfied the lien or the lien has not otherwise been discharged, the city may elect to sell the vehicle through a public sale or auction.
- (c) If the custodian elects to sell the vehicle, he or she must do so at public sale by competitive bidding. Notice of the time and place of the sale shall be given to the owner and an advertisement of the sale shall be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. The notice shall include a statement that the sale shall be subject to any and all liens, except the city's lien. The advertisement must include a description of the vehicle and the time and place of the sale. The sale may take place no earlier than ten (10) calendar days after the final publication.
- (d) If the owner is absent from the sale, the proceeds of a public sale pursuant to this section, after payment and satisfaction of the city's lien, an administrative fee of \$200.00 and the costs of transportation, storage and publication of notice, shall be deposited with the city into an interest-bearing trust account not later than thirty (30) calendar days after the date of sale and held there for one (1) year. If no claim is made for these funds within a period of one (1) year after the date of the sale, the proceeds shall become the property of the city and deposited into the appropriate city fund.
- (e) In the event that the sale proceeds are insufficient to satisfy the amount owed pursuant to the final order, the administrative fee, and the costs of transportation, storage and publication of notice, the order shall constitute a lien against any real or personal property owned by the vehicle owner. Such lien shall be superior to all other liens, except a lien for taxes, and shall bear interest at the maximum rate allowed by law, as set forth in F.S. § 687.03, as amended from time to time, from the date of its filing. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the real or personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. The city attorney or his designee is authorized to foreclose any lien established hereby in the same manner as is provided by law for the foreclosure of

other municipal liens or alternatively, as provided by law for the foreclosure of mortgages. No lien created pursuant to this chapter may be foreclosed on real property which is homestead under § 4, Art. X of the State Constitution. In an action to enforce an order or to foreclose on a lien as provided in this section, the city shall be entitled to recover all costs, including a reasonable attorney's fee, which it incurs thereby.

- (f) Any vehicle not disposed by public sale shall become the property of the city and may thereafter be destroyed or otherwise disposed of at the discretion of the city manager, in accordance with the provisions of applicable law. The procedures for disposition of surplus city property shall not be applicable to such vehicles.

Section 2. Chapter 23, Article IV, Sections 23-76 through 23-83, of the Code of Ordinances, pertaining to the removal and impoundment of certain vehicles, is hereby repealed. (strikeout text is deleted and underlined text is added):

~~ARTICLE IV. REMOVAL AND IMPOUNDMENT OF CERTAIN VEHICLES~~

~~Sec. 23-76. Authorized; conditions.~~

~~Any police officer of this city is authorized to order the removal, impoundment and storage of any motor vehicle or motorcycle by a tow truck:~~

- ~~(1) When any motor vehicle or motorcycle is unlawfully parked within this city in violation of any state law or city ordinance and when a traffic citation has been affixed to the vehicle or motorcycle or served on the owner or operator thereof;~~
- ~~(2) When any motor vehicle or motorcycle upon any street in this city is so disabled as to constitute an obstruction to vehicular traffic or the person in charge of such motor vehicle or motorcycle by reason of physical or emotional injury, distress or disability is incapacitated to the extent that any such person is unable to provide for the custody or removal thereof;~~
- ~~(3) When any motor vehicle or motorcycle is parked or placed in such a manner that it constitutes a hazard or obstruction to the movement of traffic and when a traffic citation has been affixed to the vehicle or served on the owner or operator thereof;~~
- ~~(4) When the operator of any motor vehicle or motorcycle is taken into custody by any law enforcement officer and such motor vehicle or motorcycle would thereby be left unattended upon any street or right-of-way in this city;~~
- ~~(5) When any motor vehicle or motorcycle is being operated on a street in this city when such motor vehicle or motorcycle is not in proper operating condition;~~
- ~~(6) When any motor vehicle or motorcycle is parked on private property or upon an area developed as an off-street parking facility without the consent of the owner, lessee or person in charge of any such property or facility and upon complaint to the police department by such owner, lessee or person in charge of such property or facility;~~
- ~~(7) When any motor vehicle or motorcycle is parked on a street or any public place in this city without valid license plates being affixed thereto or which have been reported as stolen and when a traffic citation has been affixed to such motor vehicle or motorcycle or served on the owner or operator thereof;~~

- ~~(8) When a wrecked or abandoned motor vehicle is found anywhere in this city; provided, however, that this subsection shall not apply to any wrecked or abandoned motor vehicle or motorcycle which is in storage on any real property within this city with the consent of the owner of such real property.~~

~~Sec. 23-77. Removal, inventory of personal property, securing vehicle.~~

~~Any police officer who impounds any motor vehicle or motorcycle shall inventory and remove all loose items of personal property therefrom and shall place such items in the police evidence room for safekeeping and custody. When such motor vehicle or motorcycle is to be removed, towed away, impounded and stored, the same shall be secured and locked through the services of a locksmith and the impoundment of such motor vehicle or motorcycle shall be in a location which shall assure the safe, secure storage thereof pending its reclamation by its owner or authorized bailee. All costs associated with the towing, impoundment and storage of the motor vehicle or motorcycle shall be imposed as a lien thereon and the cost and value thereof shall be paid by the owner or bailee as a prerequisite to the release of such motor vehicle or motorcycle to the owner or bailee.~~

~~Sec. 23-78. Permit for towing, impounding, storage.~~

~~(a) The city council shall approve and issue a special permit to all independent contractors who shall be authorized to tow, impound and store any such motor vehicle or motorcycle as described in this chapter. The monetary rates to be charged by any such contractors shall be fixed and uniform and shall be prescribed by the city council in accordance with a rate schedule that shall be binding upon any such independent contractor prior to the issuance of any such permit. Additionally, the city council shall prescribe the following terms and conditions as a prerequisite to the issuance of any such permit:~~

- ~~(1) The permit holder must have and provide a safe and secure location whereupon any such impounded vehicle may be stored.~~
- ~~(2) The permit holder shall be covered by a garageman's liability insurance policy in the minimum amount of one hundred thousand dollars (\$100,000.00) for each single bodily injury, three hundred thousand dollars (\$300,000.00) for bodily injury to more than one (1) person and twenty five thousand dollars (\$25,000.00) in property damage which shall provide insurance coverage in regard to vehicles which are towed away, impounded and stored pursuant to the provisions of this article and which shall be issued by an insurance company that is authorized to do business in the state.~~

~~(b) Any police officer who orders the towing, impoundment and storage of any such motor vehicle shall order the same to be performed only by an independent contractor who has been granted such a permit by the city council.~~

~~Sec. 23-79. Reclaiming vehicle.~~

~~(a) Any person who is the owner or authorized bailee of any such impounded property may reclaim the same at any time prior to the disposition and sale thereof by complying with the following procedure:~~

- ~~(1) Written proof of ownership and/or authorization shall be filed with the police department on forms provided by that department.~~
 - ~~(2) Costs and charges which have been incurred as a result of the towing, impoundment and storage of such property shall be paid. Upon presentation of a receipt for the payment of such charges, the owner or authorized bailee shall be entitled to recover the impounded property from the custody and control of the independent contractor. Thereafter, the police department, through the city clerk's office, shall ensure that property disbursement of all funds collected hereunder is made to all creditors having claims against such impounded property which have arisen as the result of the towing, impoundment and storage thereof.~~
- ~~(b) The owner or authorized bailee of any such motor vehicle or motorcycle shall not be allowed to reclaim the same, without an order from a court of competent jurisdiction, where the police department or any police officer thereof shall have probable cause to believe that the same has been utilized in the commission of the crime or contains stolen property, contraband or those items of narcotics that are prohibited by law or when such motor vehicle or motorcycle is material evidence in the investigation or prosecution of any person where there is probable cause to believe that such person has committed any such crime.~~

~~Sec. 23-80. Council to order sale of unclaimed vehicles.~~

~~At the first regular city council meeting on the first Tuesday of each month, the chief of police shall submit to the city council a list of all motor vehicles or motorcycles which have been impounded under this article and which have been unclaimed for a period of at least thirty (30) days. The city council shall thereupon order the sale of such impounded property at a certain time, date and place no less than thirty (30) days from the date of such council meeting in accordance with the procedure in this article.~~

~~Sec. 23-81. Notice of sale of impounded properties; notice to owner.~~

- ~~(a) Whenever the city council shall decide to offer impounded properties for sale, they shall publish notice of the sale once a week for two (2) successive weeks in a newspaper published in the city and/or county and the first such publication shall be made at least twenty (20) days before the sale. Such publication shall briefly describe the property; state the date, time and place of the sale and that the sale shall be made to the highest bidder at public auction; and state the manufacturer's name, model and motor number and the identity of the record owner, if known; provided, however, that before any such sale, the police department shall cause an investigation to be made for the purpose of determining the identity of the record owner of any such motor vehicle, who shall be notified as follows:~~
- ~~(1) If such owner is a resident of the state, by personal service of the notice of sale in accordance with F.S. chapter 48.~~
 - ~~(2) If such owner is a nonresident of the state, by serving the notice of sale on such nonresident owner via certified mail, return receipt requested, and the date of service shall be considered to be three (3) days subsequent to the date that the notice is actually mailed to such registered owner and the same shall be mailed to the address, if known, of the owner which has been ascertained by diligent search and inquiry.~~

~~(b) Service on such an owner, as contemplated in this section, shall be made at least ten (10) days prior to any such sale.~~

~~Sec. 23-82. Sale to highest bidder; disposition of proceeds.~~

~~The sale of any such impounded property shall be made by the chief of police to the highest bidder and the proceeds thereof shall be disbursed as follows:~~

- ~~(1) By payment of all costs and charges that have been incurred as the result of the impounding of the vehicle or, if the proceeds of the sale are insufficient to pay all of the charges, by the equitable apportionment of such proceeds toward the payment thereof;~~
- ~~(2) The surplus, if any, from the sale shall be paid and disbursed to the owner of the vehicle, if known, or, if unknown, after thirty (30) days, the same shall be paid into the fine and forfeiture fund of the city.~~

~~Sec. 23-83. Report of sale.~~

~~The city council shall make a report of sale of any such motor vehicles or motorcycles by an appropriate affidavit to the state department of motor vehicles which shall identify each motor vehicle or motorcycle sold under the provisions of this article and the identity of the purchaser thereof, in such form as may be required by the state department of motor vehicles.~~

Section 3. Conflict with Other Ordinances and Codes. All ordinances or parts of ordinances of the City of New Port Richey, Florida, in conflict with the provisions of this ordinance, are hereby repealed to the extent of such conflict.

Section 4. Severability. If any provision or portion of this ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this ordinance shall remain in full force and effect.

Section 5. Effective Date. This ordinance shall take effect immediately upon its adoption as provided by law.

The foregoing Ordinance was duly read and approved on first reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2017, and read and adopted on second reading at a duly convened meeting of the City Council of the City of New Port Richey, Florida this _____ day of _____, 2017.

ATTEST:

By: _____
Judy Meyers, City Clerk

By: _____
Robert Marlowe, Mayor-Council Member

(Seal)

APPROVED AS TO FORM AND LEGALITY
FOR THE SOLE USE AND RELIANCE OF THE
CITY OF NEW PORT RICHEY, FLORIDA:

Timothy P. Driscoll, City Attorney