

**10.40.090 – Illegally parked vehicles - Removal by police - Storage - Post-storage hearings for impounded vehicles - Conduct of hearing - Decisions of the hearing officers and their effect.**

- A. The police department and all members thereof assigned to traffic duty are authorized to remove and tow away, or have removed and towed away by commercial towing service, any car or other vehicle illegally parked, or in any place where such parked vehicle creates or constitutes a traffic hazard, blocks the use of a fire hydrant; or obstructs, or may obstruct, the movement of any emergency vehicle; or any vehicle which has been parked in any public street or other public place for a period of twenty-four (24) consecutive hours or more.
- B. Cars so towed away shall be stored on any city property or in a public garage or parking lot and shall be restored to the owner or operator thereof after payment of the expense incurred by the City in removing and storing such vehicles.
- C. Post-storage Hearings for Impounded Vehicles: As to any vehicle impounded pursuant to this chapter by or at the request of the City, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand, on forms so provided for such a hearing, with the City within ten (10) days after such person has learned such vehicle has been impounded or within ten (10) days after the mailing of the date set in the notice of stored vehicle, whichever occurs first. The notice of stored vehicle shall be sent in the mail to the legal and registered owner, or their agent, and to the garage where the vehicle is stored within forty-eight (48) hours, excluding weekends and holidays, after impounding and storage of the vehicle.
- D. Conduct of Hearing: A hearing shall be conducted before a hearing officer designated by the Mayor within forty-eight (48) hours of receipt of a written demand therefore from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays, and City holidays are to be excluded from the calculation of the forty-eight (48) hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question. "Probable cause to impound" means 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. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Police Department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not, the person requesting the hearing). 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 proceedings may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or their agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.
- E. Decisions of the Hearing Officers and Their Effect: The hearing officer shall only determine that, as to the vehicle in issue, either:
  - 1. There was probable cause to impound the vehicle; or
  - 2. There was no such probable cause.In the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the vehicle and the Police Department. Upon receipt of the possessor's copy of such certificate, the official police garage having custody of the vehicle shall release the vehicle to its possessor. 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 the official police garages. If the possessor fails to present such certificate to the official police garage having custody of the vehicle within twenty-four (24) hours of its receipt, excluding such days when the official police garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

(2004-M-17 : § 1)