

(O-88-131)

ORDINANCE NUMBER O- 17048 (NEW SERIES)

ADOPTED ON APR 04 1988

AN ORDINANCE AMENDING CHAPTER VIII, ARTICLE 6, DIVISION 20, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 86.28 AND 86.29 RELATING TO POST-STORAGE HEARINGS FOR IMPOUNDED VEHICLES.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VIII, Article 6, Division 20, of the San Diego Municipal Code be and the same is hereby amended by amending Sections 86.28 and 86.29 to read as follows:

SEC. 86.28 POST-STORAGE HEARINGS FOR IMPOUNDED VEHICLES

As to any vehicle impounded pursuant to this chapter by or at the request of The City of San Diego, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to request a post-storage hearing in person, in writing or by telephone to determine whether there was probable cause to impound the vehicle. Requests shall be made to The City of San Diego 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.

SEC. 86.29 CONDUCT OF HEARING

A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight (48) hours of receipt of a demand therefor 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 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" 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.

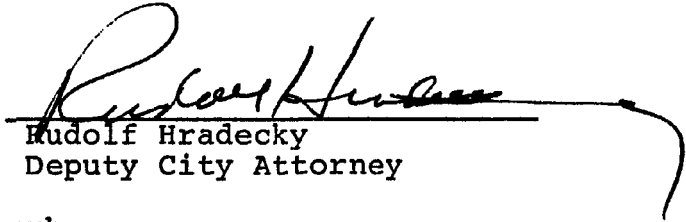
The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Police Department shall carry the burden 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 that any criminal charges involved in such proceeding 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 a post-storage hearing in person, in writing or by telephone shall be deemed a waiver of the right to such hearing.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: John W. Witt, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:mrh
01/29/88
Or.Dept:Risk.Mgmt.
O-88-131
Form=o.none

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(0-88-131)

OLD LANGUAGE: STRUCK OUT
NEW LANGUAGE: UNDERLINED

SEC. 86.28 POST-STORAGE HEARINGS FOR IMPOUNDED VEHICLES

As to any vehicle impounded pursuant to this chapter by or at the request of The City of San Diego, 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~~ request a post-storage hearing in person, in writing or by telephone 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~~ Requests shall be made to The City of San Diego 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.

SEC. 86.29 CONDUCT OF HEARING

A hearing shall be conducted before a hearing officer designated by the City Manager within forty-eight (48) hours of receipt of a ~~written~~ demand therefor 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 48-hour period. The hearing officer shall be

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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" 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.

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 that any criminal charges involved in such proceeding 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~~ a post-storage hearing in person, in writing or by telephone shall be deemed a waiver of the right to such hearing.

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Passed and adopted by the Council of The City of San Diego on
by the following vote:

| Council Members | Yeas | Nays | Not Present | Ineligible |
|------------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Abbe Wolfsheimer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ron Roberts | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Gloria McColl | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| H. Wes Pratt | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Ed Struiksma | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| J. Bruce Henderson | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Judy McCarty | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Bob Filner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Mayor Maureen O'Connor | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana D. Martin*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 21 1988

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~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Jana D. Martin*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 0-17048 Adopted APR 04 1988

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE
1988 APR 28 PM 12:14
SAN DIEGO, CALIF.

CITY OF SAN DIEGO
202 C STREET, 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: TENA MARTIN

IN THE MATTER OF
AN ORDINANCE AMENDING CHAPTER VIII, ARTICLE 6,
DIVISION 20, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 86.28 AND 86.29 RELATING TO
POST-STORAGE HEARINGS FOR IMPOUNDED VEHICLES.

NO.

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DIVISION 20, OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 86.28 AND 86.29 RELATING TO
POST-STORAGE HEARINGS FOR IMPOUNDED VEHICLES.**

This ordinance amends San Diego Municipal Code sections 86.28 and 86.29 to allow a person with legal entitlement to possession of a vehicle that has been impounded by the Police to request a post-storage impound hearing either in person, in writing or by telephone. Such requests are made to The City of San Diego within ten (10) days after the vehicle is impounded.

Introduced on MAR 21 1988
Passed and adopted by the Council of The City of San Diego on APR 04 1988

ATTESTED BY: MAUREEN O'CONNOR
Mayor of The City of San Diego, California
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California
By Tena Martin, Deputy

108896

I, THOMAS D. KELLEHER, am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER O-17048 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

APRIL 20

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 20 day of APRIL, 19 88.

Thomas D. Kelleher

(Signature)

22 lines x .99 = \$43.12
2" x 2 x 10.78 = \$43.12