

SANDOVAL COUNTY, NEW MEXICO

ORDINANCE NO. 02-10-17.10B

AUTHORIZING TOWING OF VEHICLES

BY THE SHERIFF'S DEPARTMENT

I. DEFINITIONS.

The following definitions shall apply unless the context clearly indicates or requires a different meaning.

SHERIFF. The Sheriff of Sandoval County or designated representative.

IMPOUND. The towing and/or storage of a motor vehicle by a wrecker service as authorized by the County or other transport of a motor vehicle by the Sheriff's Department for temporary storage pursuant to the execution of lawful police purposes.

OWNER. The registered owner or owners of a vehicle as recorded with the New Mexico Department of Motor Vehicles or similar agency of a state outside New Mexico. Where written notice to the owner is required, such notice shall be given in person or by mail to each registered owner. Where appearance of the owner is required, appearance may be made by a person authorized in writing by the owner to appear on his behalf.

WRITTEN NOTICE. Notice shall be sent by mail, to the owner's address as provided by State Motor Vehicle Division, files except as provided herein:

1. When such notice is required, weekends and holidays shall not be included when calculating the time for mailing notice.
2. When a vehicle is registered in a state outside New Mexico, the Sheriff shall make all reasonable and diligent efforts to ascertain from the appropriate motor vehicle regulatory agency the name and address of all registered owners. If the name and address information for an in-state or out-of-state registered vehicle is not available soon enough to meet the time deadlines for mailing written notice, then the notice shall be mailed as soon as possible after the information is received.
3. In lieu of mailed notice, notice may be given by personal service or in any other reasonable manner, so long as actual notice is given within the time limits provided. Notice may be verbal to an owner who is present prior to or at the time of the towing of his vehicle, or to the driver or passenger of a vehicle, if the driver or passenger reasonably appears to have custody of the vehicle with the owner's knowledge and permission. Such notice shall be valid, however, only if the person so notified is

informed in writing of the location of the storage facility where the vehicle will be stored and a phone number where the owner can obtain further information from the County.

II. PROHIBITION OF REMOVAL AND RELOCATION.

It is unlawful for a Sheriff's deputy, or any County employee, to remove or relocate, or cause to be removed or replaced, any unattended vehicle from any street, alley or public way within the unincorporated County limits.

III. ABANDONED VEHICLES.

A. A vehicle is abandoned if:

1. The vehicle is parked on or along any street, alley or public way and the vehicle displays no current license plate; or
2. The vehicle is left unattended on or along any street, alley or public way in the same place for a period of 72 hours without a valid Sheriff sticker as defined in Section III B of this section.

B. The Sheriff may issue a sticker temporarily permitting street storage, upon

application of any owner or agent of an owner for any vehicle which is operable and has a current license plate. Stickers shall expire 15 days after issuance. No owner, whether an individual, business, corporation, organization, partnership or trust, is entitled to more than four stickers at any time.

C. When a vehicle is abandoned on or along a street, alley or public way under circumstances which do not allow summary removal or relocation, a notification tag shall be attached to the vehicle in a manner which is readily visible containing the following information:

1. The date and time the tag is affixed to the automobile.
2. A statement that, pursuant to this section, the vehicle may be towed and stored at the owner's expense if it is not removed within ten days of the time the tag is affixed.
3. A statement that the owner has the opportunity to challenge the proposed action at a hearing if a written request is submitted to the Sheriff in a specified manner within 96 hours of the time the tag is affixed, not including weekends and county holidays.

4. The telephone number where additional information can be obtained; and
 5. The identity of the affixing person.
- D. Written notice containing the same information specified in Section III C of this section plus the location and a description of the vehicle shall be mailed to the owner of the vehicle within 24 hours of affixing the notification tag pursuant to Section III C above.
- E. Upon timely receipt of a request for a hearing as defined in Section C3 of this section, the Sheriff shall order a delay of towing the vehicle until after the hearing unless the vehicle is blocking a public right-of-way or creating a current dangerous condition.
- F. The hearing, if requested within the 96-hour period set forth above, shall be conducted by the Director of Public Works or his designee. The hearing shall be held within 72 hours (excluding weekends and county holidays) of receipt of the request unless the hearing is continued with the agreement of the owner. The hearing shall be informal and not bound by the technical rules of evidence. At the request of any party a record will be made of the hearing. The Hearing Officer shall only determine whether the vehicle is or is not abandoned. The Hearing Officer shall prepare a written decision within 48 hours of the hearing (excluding weekends and holidays) and shall mail written notice of the same to the owner within five working days of the hearing.
- G. If the Hearing Officer determines that the vehicle is abandoned, he shall so notify the Sheriff, who shall authorize towing and impoundment of the vehicle.
- H. If the vehicle is removed, the person challenging the impoundment shall be entitled to challenge the decision of the Hearing Officer by appeal to District Court.
- I. If the hearing is requested pursuant to Section III F above, and the vehicle is not removed within 120 hours of the time the notification tag was affixed, the vehicle may be ordered impounded by a Sheriff's officer who is authorized to direct traffic or enforce state or local parking or motor vehicle laws.

IV. CIRCUMSTANCES PERMITTING SUMMARY VEHICLE IMPOUNDMENT

OR RELOCATION.

- A. Any Sheriff's officer or County employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws, may order the impoundment of any vehicle within the County limits, without prior notice to the owner or operator thereof, under the following circumstances:

1. When any vehicle is left unattended upon any bridge, viaduct, or causeway or in any tube or tunnel where the vehicle constitutes an obstruction or hazard to traffic;
2. When any vehicle is parked or left standing upon a street, alley, or public way in such a position as to obstruct the normal movement of traffic or in such a condition as to create a hazard to other traffic;
3. When any vehicle is found upon a street, alley, public way or private property, and an offense report has previously been made that the vehicle has been stolen or a complaint has been filed and a warrant thereon issued charging that the vehicle has been stolen, and the owner is not available to, or cannot, immediately provide for its custody or removal;
4. When any vehicle is illegally parked so as to block the entrance to a private driveway;
5. When any vehicle is illegally parked so as to prevent access by firefighting equipment to a fire hydrant, or is illegally parked in a properly designated fire lane;
6. When the person or persons in charge of a vehicle are by reason of physical injuries, intoxication, or illness incapacitated to such an extent as to be unable to provide for its custody or removal, or the location of the vehicle is such that a reasonable person would believe that its owner would desire its relocation or removal;
7. When the driver or person in control of a vehicle is lawfully taken into custody by a police officer, and the person is unable to immediately provide for the custody or removal of the vehicle, and the vehicle is left as described elsewhere in this Section IV A, or the location of the vehicle is such that a reasonable person would believe that its owner would desire its relocation or removal;
8. When an abandoned, unattended, wrecked, burned or partially dismantled vehicle is creating a traffic hazard because of its position in relation to the street, alley or public way, or its physical appearance is impeding traffic;
9. Whenever the use of the street, alley or public way or any portion thereof is authorized by the County for the purpose other than the normal flow of traffic or the movement of equipment, articles, or structures of unusual size, and the parking of any vehicle would prohibit or interfere with such use of movement, and signs giving notice that such a vehicle may be removed are erected or placed at least 24 hours prior to the removal.

10. When any vehicle is parked or left standing where prohibited by ordinance or other state or local law. No vehicle may be removed pursuant to Section III unless signs are posted giving notice of its removal at least 24 hours prior to the removal.
11. When any vehicle is parked or standing in a manner so as to obstruct necessary emergency services, or the routing of traffic at the scene of a disaster or removal is otherwise necessary in the interest of public safety because of any emergency, and moving the vehicle to a legal parking location is impractical. However, the owner or operator of a vehicle so relocated or removed shall not be subject to any relocation, removal or storage charges, if the vehicle is otherwise lawfully parked. Such charges shall be paid by the County, except that in the case of emergency utility repairs when such charges shall be paid in advance by the utility company seeking removal.
12. When a vehicle is parked, left unattended or abandoned during a fire, flood, storm or other public emergency which is apt to cause substantial damage to the vehicle, removal is in the best interest of the owner, and moving the vehicle to a safe location is impractical; or
13. When a vehicle is either unattended or disabled and loaded with either a dangerous, flammable, combustible or explosive substance which, either by its presence or load conditions is likely to harm the health or safety of the public and moving the vehicle to a safe, legal location is impractical;
14. When any vehicle is parked in such a manner as to obstruct or interfere with any road, sidewalk or right-of-way maintenance or construction, or any non-emergency utility work, and it is impractical to relocate the vehicle to another point where parking is legal. No vehicle shall be removed unless signs are posted giving notice of the work to be done and the possibility of removal at least 24 hours prior to the removal.
15. When a vehicle is being driven in an unsafe manner under the state law due to one of the following:
 - (a) Failure to have insurance on the vehicle as required under state law and as documented by one of the following:
 - (1) An admission by the driver or other occupant of the vehicle;
 - (2) Confirmation through the New Mexico Department of Motor Vehicle records showing a prior citation for failure to have insurance within the past six months;
 - (3) Confirmation by the citing officer that the insurance company driver claims covers the vehicle does not in fact insure it;

- (b) Failure to have a driver's license as shown by New Mexico Department of Motor Vehicle records; or
- (c) Driving when the driver's license has been suspended or revoked as shown by New Mexico Department of Motor Vehicle records.

V. NOTICE AND PROCEDURE

FOLLOWING SUMMARY

IMPOUNDMENT

- A. Immediately after a vehicle is towed under Section IV, the Sheriff shall promptly notify the Director of Public Works, who shall within 24 hours of towing send written notice to the owner of the removal of the vehicle.
- B. The notice shall contain information to be designated by the Sheriff, which shall include the following:
 - 1. The license plate number, make, type and color of the vehicle;
 - 2. The former location of the vehicle;
 - 3. A statement that the vehicle has been taken into custody and stored;
 - 4. The reason for the impoundment;
 - 5. The location and telephone number of the storage facility where the vehicle is being kept;
 - 6. A statement that daily storage charges will be assessed in addition to a towing charge;
 - 7. A statement that the owner may obtain release of the vehicle by paying the charges in full to the storage facility;
 - 8. A statement that the owner has the right to contest the validity of the impoundment by requesting a hearing in writing within ten days of mailing of the notice;

9. A statement that failure to obtain release of the vehicle will cause it to be sold or otherwise disposed of in accordance with state law.
 10. A phone number and name or title of a County employee from whom the owner can obtain further information;
- C. The Hearing Officer's decision shall be limited to:
1. Whether the vehicle was lawfully impounded for one or more of the reasons set forth herein.
 2. Whether the vehicle, although lawfully impounded, should be released at the County expense.
- D. The decision of the Hearing Officer may be challenged by filing a notice of appeal with the District Court as provided by law. The owner shall have the burden of proving that the Hearing Officer's decision is unsupported by the evidence. The Hearing Officer shall determine whether or not the vehicle was lawfully impounded or should otherwise be released at the County's expense, and may substitute judgment for that of the Hearing Officer.
- E. If the District Court finds the vehicle in question was not lawfully impounded or the vehicle should otherwise be released at the County's expense. The authorized garage having custody of the vehicle shall release the vehicle to its owner and towing and storage fees shall be paid by the County in accordance with arrangements to be made between the County and authorized garages. If the owner fails to present such certificate to the authorized garage having custody of the vehicle within 24 hours of its receipt, excluding days when the garage is not open for business, the owner shall assume liability for all subsequent storage charges. The certificate shall advise the owner of such requirement.
- F. In lieu of towing and impoundment by a Sheriff's deputy, or any County employee who is authorized to direct traffic or enforce state or local parking or motor vehicle laws, the County may relocate or cause to be relocated any vehicle from any street, alley or public way within the County limits, without prior notice to the owner or operator thereof when the relocation is to a safe, legal location, is practical without the use of a wrecker and the vehicle is found under the circumstances set forth above.

- G. Whenever a vehicle could be impounded or removed, and the driver of the vehicle is present, the deputy or authorized employee may order the driver to move the vehicle to another location.
- H. Whenever a sign is required to give notice of the possibility of removal of a vehicle, such sign shall:
 - 1. State that the area is a tow-way zone, or that violations of the restrictions stated on the sign may result in towing; and
 - 2. Be readily visible from the point of removal.

VI. IMPOUNDMENT FOR INVESTIGATION EVIDENCE OR FORFEITURE

The notice, hearing and bond provisions set forth herein shall not apply to impoundment of the following vehicles, which impoundment is hereby authorized:

- A. A vehicle which is impounded for purposes of a criminal investigation or as evidence of a crime; or
- B. A vehicle which is lawfully seized pursuant to state or federal law.

VII. IMPOUNDMENT OF VEHICLES GENERALLY

- A. Any vehicle impounded shall be towed, in accordance with state and local law, to an authorized storage facility or an area designated or maintained by the Sheriff's Department or by this County. The Sheriff's Department member authorizing impoundment shall obtain a receipt from the wrecker service to which such vehicle is delivered indicating the date, hour and place of delivery and the identification of the vehicle. In the event such vehicle is stored in a public garage, the Sheriff's Department member shall issue signed and dated instructions in writing to the garage (or wrecker) specifically stating whether the vehicle is to be held for investigation or as evidence, or as the subject of forfeiture proceedings, or whether it may be released to the owner after all attendant charges have been satisfied.

- B. If any vehicle is about to be removed or is in the process of being removed

from such street and the owner thereof or his agent appears and claims the vehicle and agrees to immediately remove it from such street, such vehicle shall be delivered to such owner or agent upon demand therefor and upon furnishing satisfactory evidence of identity and ownership or agency. If any such owner or agent shall fail, refuse or neglect to forthwith remove such vehicle, such vehicle shall nevertheless be removed and impounded. Removal by such owner or agent shall not relieve the offender of liability for any towing costs already incurred or for any fine or penalty for the violation of any law or ordinance for which the vehicle was to be removed.

VIII. RELEASE OF VEHICLES; FEES

- A. The Director of Public Works or his/her designated representative shall order

release of an impounded vehicle at the County's expense upon presentation to the garage of impoundment, proof of ownership, and a Certificate of Release from the County's Hearing Officer, presented within 24 hours after its receipt. If the vehicle is not removed within one working day of such an order, additional charges shall be borne by the owner. _____

- B. In all other cases, upon proof of ownership and certification from the Sheriff

that the vehicle is insured as required under state law, an impounded vehicle shall be released only after direct payment of the accumulated impoundment fees by the owner or the owner's designee. The Sheriff will provide such certification upon receiving proof that the vehicle is insured as required under state law.

- C. An owner who desires a hearing on the validity of an impoundment shall

request, and the garage shall issue, a receipt for the amount paid in satisfaction of impoundment charges.

1. The owner shall forfeit the amount paid if: the owner fails to appear

at the hearing before the County's Hearing Officer or, in the case of an appeal, before the Court, or if it is finally determined, after the hearing or appeal, that the impoundment was valid.

2. The owner shall be entitled to reimbursement from the County for the

full amount paid upon presentation of the receipt required herein if, after hearing and appeal, if any, it is determined that the impoundment was not valid.

- D. This Ordinance does not authorize release of any vehicle held for

investigation or as evidence of a crime or seized pursuant to state or federal law. Such vehicle shall be released only upon the written order of the Sheriff's deputy responsible for its impoundment or upon an affirmative written statement by the Sheriff that such vehicle is no longer needed for investigative or evidentiary purposes or for forfeiture proceedings. The County shall bear the cost of towing and storage for such impoundments if the owner or any person operating the vehicle with his permission was not involved in any criminal activity that was any part of the reason for the impoundment. The burden of proving such lack of involvement shall be upon the person claiming it. The Sheriff or his designee may execute a Certificate of Release.

This Ordinance shall become effective and be in full force and effect, from and after January 1, 2003.