

ORDINANCE

AN ORDINANCE AMENDING SECTION 10.12 “PARKING” OF THE CODE OF ORDINANCES CONCERNING THE REGULATIONS FOR IMMOBILIZATION AND IMPOUNDING OF VEHICLES AND THE REGULATIONS FOR EMERGENCY SNOW ROUTES WITHIN THE CITY OF MANITOU SPRINGS.

WHEREAS the Parking Authority Board and Standard Parking, who manages the City’s parking enforcement program, have recommended amendment of the current regulations addressing the impoundment and immobilization, or booting, of vehicles for nonpayment of tickets; and

WHEREAS upon review of the proposed amendments, the City Attorney recommended amendments to the Snow Emergency Route regulations; and

WHEREAS the intent of the proposed amendments is to bring the City’s regulations into compliance with established parking enforcement practices and provide greater clarity in regard to the process and timing for immobilization and impoundment of vehicles and for the establishment of snow emergency routes within the City of Manitou Springs; and

WHEREAS the ordinance also reorders portions of this section in order to make it more easily readable and understandable; and

WHEREAS City Council hereby finds and concludes that the proposed amendments indicated below bring necessary clarity to this section of the municipal code, provides guidance to those responsible for implementing and enforcing the City’s regulations, and upgrades the procedures to comply with best management practices for parking enforcement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANITOU SPRINGS, COLORADO, THAT:

Section 1: 10.12.020.B of the “Violation” section of the Manitou Springs Municipal Code is hereby repealed in its entirety

Section 2: Section 10.12.016 “Immobilized or Impounded Vehicles” of the Manitou Springs Municipal Code is hereby repealed in its entirety and replaced as follows:

A. Authority to impound vehicle. The Police Department and any authorized agent of the City of Manitou Springs shall have the authority to order vehicles towed from any public right of way or publically owned parking lot within this City when such vehicle is in violation of any City Ordinance. Immobilized vehicles under Section 10.12.16.B may be towed after 24 hours of immobilization or immediately if there is any public safety issue regarding the location of vehicle. Any such impoundment shall be subject to the procedures and provisions set forth in this section.

B. Authority to immobilize vehicle. Whenever the Police Department or any authorized agent of the City of Manitou Springs finds the registered owner of any vehicle has not paid fines for three or more previous violations of the provisions of this chapter, they shall have the authority to impound or otherwise take control of the vehicle and charge the owner for the costs of doing so, for all unpaid fines and for fees per the schedule as published by the city council, to be paid by the

owner prior to release of the vehicle. Any such immobilization shall be subject to the procedures and provisions set forth in this section.

C. Owners or operators of vehicles which have been immobilized for nonpayment of parking citations may apply to any authorized agent of the city for removal of the boot. Authorized personnel shall promptly remove the boot upon receipt of payment by cash, credit, money order, or cashier's check only for all unpaid parking citations issued to such vehicle and all other unpaid citations issued to other vehicles with the same registered owner, as well as payment of a fee for the removal of the boot. The removal fee shall be as established by the fine schedule published by the city council.

D. Notices of impoundment or immobilization of vehicles and of the right to a hearing as to whether or not there was probable cause to immobilize or impound the vehicle shall be provided as follows:

1. The authorized personnel or agent of the city who caused the vehicle to be immobilized or impounded shall make diligent effort to ascertain from the registration or other records, the name and address of the owner or any other person legally entitled to possession of the vehicle, and shall immediately give or cause to be given notice in writing to such owner or legally-entitled person which notice shall indicate the:

- a) Fact of such immobilization or impoundment
- b) Reason therefore
- c) Place in which such vehicle has been impounded if impoundment has occurred; and
- d) Right to an administrative appeal hearing as set forth in this section.

Written notice shall be mailed to such owner or person legally entitled to possession within seventy-two hours of the immobilization or impoundment.

E. Administrative Appeal. Any person demonstrating a legal entitlement to possession of an immobilized or impounded vehicle has a right to an administrative appeal hearing to determine whether there was probable cause to immobilize or impound the vehicle, and shall be so advised in the written notice and at the time the vehicle is retrieved. Demand for a hearing must be filed in writing on forms provided for such hearing, with the police department within ten days after the vehicle has been immobilized.

1. Upon receipt of a written request that has been filed consistent with the provisions of 10.12.016.E the mayor shall appoint a hearing officer in writing. The hearing officer may be a member of the city council or a department head of the city who was not involved with the immobilization or impoundment. Unless the applicant waives the right to a speedy hearing, the hearing officer shall schedule and hold an administrative hearing within seventy-two hours of the receipt of the written request from the person seeking the hearing. Saturdays, Sundays and city holidays shall be excluded from the calculation of the seventy-two hour period and written notice of the hearing date shall be given to the applicant. The sole issue before the hearing officer shall be whether there was probable cause to immobilize or impound the vehicle. "Probable cause to immobilize or 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 immobilization or impoundment of the vehicle.

2. The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The authorized personnel or agent responsible for the immobilization or impoundment shall have the burden of establishing that there was probable cause to immobilize or impound the vehicle. 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 to the registered owner of the vehicle, if the owner is not the person who has requested the hearing. The hearing officer's decision shall in no way affect any traffic or criminal proceedings in connection with the immobilization or impoundment, and such traffic or criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer shall be final. Failure of the owner or person entitled to possession to request such a hearing within the time provided for in subsection 10.13.016.E, or to attend a scheduled hearing, shall be deemed a waiver of the right to such hearing.

3. 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, a copy of which shall be given to the person who requested the hearing as well as to the authorized personnel or agent who caused the vehicle to be immobilized or impounded. Upon presentation of such certificate by the person requesting the hearing to the police department, the police shall release the vehicle to such person. Upon a finding of no probable cause, fees for the removal of the immobilization device, or fees for towing or storage shall be assumed by the city. In the event such fees have already been paid, they shall be reimbursed by the city.

Section 3: Section 10.12.017 “Snow Emergency Routes” is hereby established as follows:

A. Whenever the city administrator or his designee finds and so determines that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on all snow emergency routes be prohibited for snow plowing and other purposes, the city administrator or his designee may put into effect a parking prohibition upon all snow emergency routes. Once in effect, a parking prohibition shall remain in effect until terminated by announcement by the city administrator. No person shall park or allow to remain parked any vehicle on any portion of a snow emergency route to which such prohibition applies. Snow emergency routes are those streets marked as such in accordance with the provisions of this section.

B. When snow parking restrictions are declared to be in effect, reasonable efforts shall be made immediately to advise all persons in the city through radio, television and other available means. It shall be the duty of all persons operating or parking vehicles on the streets to be aware of the declaration of snow parking restrictions.

C. During the time that snow parking restrictions are in effect, any police officer or other designee whose duty it is to clear the snow emergency routes is authorized to order the immediate removal of any vehicle which is in violation of the provisions of this section. If the owner or operator of such vehicles fails or refuses to immediately comply with such order, the vehicle may be immediately removed from the snow emergency route and impounded per the provisions of section 10.12.016.

D. The owner or operator of a vehicle removed from a snow emergency route pursuant to this section shall be responsible for all costs incurred as the result of the removal of the vehicle.

E. On each street designated as a snow emergency route, the city administrator shall cause special traffic signs to be posted at reasonable intervals indicating by the appropriate wording that the street has been designated as a snow emergency route. The covering of such sign by snow or ice shall not excuse the driver of any vehicle from complying with the provisions of this section.

Section 4: If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5: The repeal or modification of any provision of Manitou Springs Municipal Code by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 6: This ordinance shall take effect five (5) days after final approval and adoption on second reading.

Passed on First Reading and Ordered Published this 19th day of November 2013.

/s/ Donna Kast
City Clerk

A Public Hearing will be held at the December 3, 2013 City Council meeting. The Council Meeting will be held at 7:00 P.M. at City Hall, 606 Manitou Avenue, Manitou Springs, Colorado.

Ordinance Published November 21, 2013 (in full)
City's Official Website and City Hall

Passed on Second Reading and Ordered Published this 3rd day of December 2013.

Approved: /s/ Marc A. Snyder
Mayor and City Council

Attest: /s/ Donna Kast
City Clerk

Published December 5, 2013 (in full)
City's Official Website and City Hall