ORDINANCE NO. 2012-5

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, RELATING TO IMPOUNDING OF VEHICLES AND RECOVERY OF COSTS INCURRED AS A RESULT OF CERTAIN DRIVING OFFENSES, AMENDING SECTIONS 10.21.010, 10.21.020, 10.21.030, AND 10.21.040 OF THE EATONVILLE MUNICIPAL CODE; ADDING TWO NEW SECTIONS TO CHAPTER 10.21 EMC; ADDING A NEW CHAPTER TO TITLE 3 EMC; AND PROVIDING FOR SAVINGS, SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, RCW 46.55.113 provides municipalities the option of creating local ordinances to allow the impoundment of vehicles after the arrest of a driver for driving while his or her license was suspended (DWLS);

WHEREAS, in 2011, the Legislature enacted "Hailey's Law," which set forth mandatory impound procedures whenever a driver is arrested for driving under the influence or physical control under the influence;

WHEREAS, RCW 38.52.430 permits the Town to recover costs of emergency response services, which include incidents caused by a motorist's intoxication;

WHEREAS, the Council desires to update its municipal code to more accurately reflect state law;

THEREFORE, BE IT ORDAINED by the Council of the Town of Eatonville as follows:

Section 1. Section 1 of Ordinance 99-02, codified as EMC 10.21.010, is amended to read as follows:

10.21.010 REMOVAL BY POLICE OFFICER/ PERIOD OF IMPOUNDMENT

A. Whenever the driver of a vehicle is arrested for a violation of ~~RCW 46.51.502, 46.51.504,~~ 46.20.342~~,~~ or 46.20.420, which sections have been adopted as part of the Eatonville Traffic Code under EMC 10.04.010, pursuant to the Washington Model Traffic Ordinance, Chapter 308-330 WAC, or subsequent amendments thereto, the vehicle is subject to summary impoundment at the direction of a police officer.

B. If a vehicle is impounded because the driver is arrested for a violation of Driving While License Suspended (DWLS) in the Third Degree, as defined in RCW 46.20.342(1)(c), and the records of the Washington Department of Licensing (DOL) records show that the driver has no prior convictions of RCW 46.20.342 or other similar local ordinance,~~'s status is suspended third degree,~~ the impounded vehicle may released as soon as all the requirements of ~~be impounded until a~~

~~person eligible to redeem it under~~ EMC ~~Section~~ 10.21.020(A) ~~satisfies the requirements of~~ and EMC ~~Section~~ 10.21.020(B) are met.

C. If a vehicle is impounded because the driver is arrested for a violation of Driving While License Suspended (DWLS) in the Third Degree, as defined in RCW 46.20.342(1)(c), and the records of the DOL show that the driver has one or more prior convictions of a violation of RCW 46.20.342 or similar local ordinance within the past five years, the vehicle may be impounded for thirty (30) days.

~~C~~D. If a vehicle is impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in~~is in violation of~~ RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), as amended, and the records of the DOL show that the driver has no prior convictions for a violation of RCW 46.20.342 or similar local ordinance within the past five years, the vehicle may be impounded for up to thirty (30) days~~at the written direction of the Eatonville Police Department~~.

~~D~~E. If the vehicle was impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), and the records of the DOL show that the driver has one prior conviction for a violation of RCW 46.20.342(1)(a) or 46.20.342(1)(b) or similar local ordinance within the past five years, the vehicle may be impounded for sixty (60) days.~~If the Washington Department of Licensing's records show that the driver has been convicted of a violation of RCW 46.20.342(1)(a) or (b) within the past five years, the vehicle may be impounded at the written direction of the Eatonville Police Department for up to sixty (60) days, and for up to ninety (90) days if the driver has two or more such prior offenses.~~

F. If the vehicle was impounded because the driver was arrested for DWLS in the First or Second Degree, as defined in RCW 46.20.342(1)(a) or RCW 46.20.342(1)(b), and the records of the DOL show that the driver has two or more prior convictions for a violation of RCW 46.20.342(1)(a) or 46.20.342(1)(b) or similar local ordinance within the past five years, the vehicle may be impounded for ninety (90) days.

G. If the vehicle was impounded because the driver was arrested for a violation of RCW 46.20.345, which section has been adopted as part of the Eatonville Traffic Code under EMC 10.04.010, pursuant to the Washington Model Traffic Ordinance, WAC 308-330-307, or subsequent amendments thereto, the vehicle may be impounded for thirty (30) days.

H. When an arrest is made for a violation of RCW 46.20.342, if the vehicle is a commercial vehicle or farm transport vehicle and the driver of the vehicle is not the owner of the vehicle, before the summary impoundment directed under subsection (1) of this section, the police officer shall attempt in a reasonable and timely manner to

contact the owner of the vehicle and may release the vehicle to the owner if the owner is reasonably available, as long as the owner was not in the vehicle at the time of the stop and arrest and the owner has not received a prior release under this subsection, RCW 46.55.120(1)(a)(ii), as amended, or this chapter.

I. A rental car business or a motor vehicle dealer or lender with a perfected security interest may immediately redeem a vehicle it owns that has been impounded pursuant to this section by payment of the costs of removal, towing and storage. Upon such payment the vehicle will not be held for the period of impoundment stated in this section.

Section 2. A new section is added to chapter 10.21 of the Eatonville Municipal Code, to be entitled "Owner of Impounded Vehicle to Be Notified", and to be codified as EMC 10.21.015, to read as follows:

10.21.015 OWNER OF IMPOUNDED VEHICLE TO BE NOTIFIED

A. Not more than twenty-four (24) hours after impoundment of any vehicle, the tow contractor shall mail a notice by first class mail to the last known legal and registered owners of the vehicles, as may be disclosed by the vehicle identification number, and as provided by the Department of Licensing. The notice shall include the name of the impounding tow firm, its address, and telephone number. The notice shall include the location and time of the impound, and by whose authority the vehicle was impounded. The notice shall include the written notice of the right of redemption and opportunity for a hearing to contest the validity of the impound or the amount of towing and storage charges. The notice shall state the length of the impound.

B. The notice required in subsection A of this section shall state that a person who desires to redeem a vehicle impounded must, within five days of the impound at the request of the tow truck operator, pay a security deposit to the tow truck operator of not more than half of the applicable impound storage rate for each day of the proposed suspended license impound to ensure payment of the costs of the removal, towing, and storage of the vehicle pursuant to RCW 46.55.120(1)(b).

C. The notification required in subsection A of this section shall state that if the security deposit is not posted within five days of the impound the vehicle will immediately be processed and sold at auction as an abandoned vehicle pursuant to RCW 46.55.130(1). The notice shall state the requirements set out in EMC 10.21.020 regarding the payment of the costs of removal, towing, and storage as well as providing proof of satisfaction of any penalties, fines, or forfeitures before redemption. The notice must also state that the registered owner is ineligible to purchase the vehicle at the abandoned vehicle auction, if held.

D. If the date on which a notice required by subsection A of this section is to be mailed falls upon a Saturday, Sunday, or postal holiday, the notice may be mailed on the next day that is neither a Saturday, Sunday, nor a postal holiday.

E. Similar notice shall be given to each person who seeks to redeem an impounded vehicle, except that if a vehicle is redeemed prior to the mailing of notice, then notice need not be mailed.

F. The Eatonville Police Department shall give written notification to the last registered and legal owner that the investigatory hold has been removed, except that if a vehicle is redeemed following notice by telephone and prior to the mailing of notice, then notice need not be mailed. In addition, the Police Department shall notify the towing contractor, by telephone, fax or in writing, of the authorization to release such vehicle.

G. As provided for in RCW 46.55.120(4), as now stated or hereinafter amended, notwithstanding the statements contained in the notice described above, the legal owner of a vehicle or personal property subject to impound under this section may redeem such property before the start of an auction by payment of the applicable towing, administrative and storage fees, as well as all applicable or necessary fines and interest.

Section 3. Section 2 of Ordinance 99-02, codified as EMC 10.21.020, is amended to read as follows:

10.21.020 REDEMPTION OF IMPOUNDED VEHICLES –
Vehicles impounded by the Town shall be redeemed only under the following circumstances:

A. Only the legal owner, registered owner, a person authorized in writing by the registered owner, or one who has purchased the vehicle from the registered owner, who produces proof of ownership or written authorization and signs receipt therefor~~e~~, may redeem an impounded vehicle. A person redeeming a vehicle impounded pursuant to ~~EMC Section 10.21.010~~ this chapter must, prior to redemption, establish that he or she has a valid driver's license and is in compliance with RCW 46.30.020. A vehicle impounded pursuant to this chapter~~EMC Section 10.21.010~~ can be released only pursuant to a written order from the police department or a court of competent jurisdiction.

B. Any person so redeeming a vehicle impounded by the Town shall pay the towing contractor for costs of impoundment (towing and storage) and shall pay the Town the administrative fee established by this chapter ~~all towing, removal, storage, and administrative fees~~ prior to redeeming such vehicle. Such towing contractor shall accept payment as provided in RCW 46.55.120(1)(b), as now or hereafter amended. If the vehicle was impounded pursuant to this chapter ~~EMC Section 10.21.010 of this Ordinance because the operator was arrested for a violation of RCW~~

~~46.20.342 or 46.20.420~~ and was being operated by the registered owner when it was impounded, it may not be released to any person until all penalties, fines, or forfeitures owed by the registered owner have been satisfied.

C. In accordance with RCW 46.55.120(2)(a), the registered towing operator shall give to each person who seeks to redeem an impounded vehicle written notice of the right of redemption and opportunity for a hearing, which notice shall be accompanied by a form to be used for requesting a hearing, the name of the person or agency authorizing the impound, and a copy of the towing and storage invoice. The registered towing operator shall maintain a record evidenced by the redeeming person's signature that such notification was provided. The towing operator shall accept payment as provided in RCW 46.55.120(1)(b), as now and hereafter amended.

D. The Chief of Police is authorized to release a vehicle impounded pursuant to this Chapter ~~EMC Section 10.21.010~~ prior to the expiration of any period of impoundment upon petition of the spouse or registered domestic partner of the driver, based on economic or personal hardship to such spouse or registered domestic partner resulting from the unavailability of the vehicle and after consideration of the threat to public safety that may result from the release of the vehicle, including, but not limited to, the driver's criminal history, driving record, license status and access to the vehicle. ~~Provided they meet the requirements of EMC Sections 10.21.020(A) and (B).~~ A vehicle may be released prior to the expiration of the impound period if the owner of the vehicle was not the driver, the owner did not know the driver's license was suspended or revoked, and the owner has not received a prior release under this section or under EMC 10.21.010. Other than for the reasons expressed above, in order to avoid discriminatory application, early release of an impounded vehicle shall be denied in all other circumstances without discretion.

E. Any person seeking to redeem a vehicle impounded as a result of a traffic arrest, pursuant this Chapter, has a right to a hearing, before the Police Chief or designee, as the administrative hearings officer, to contest the validity of an impoundment or the amount of towing and storage charges, if such request for hearing is in writing, in a form approved by the Chief of Police and signed by such person, and is received by the Chief of Police within ten (10) days (including Saturdays, Sundays, and holidays) of the latter of the date the notice was mailed to such person pursuant to EMC 10.21.015, or the date the notice was given to such person by the registered tow truck operator, pursuant to RCW 46.55.120(2)(a). Such hearing shall be provided as follows:

1. If all the requirements to redeem the vehicle, including expiration of any period of impoundment under EMC 10.21.010, have been satisfied, then the impounded vehicle shall be released immediately, and a hearing as provided for in EMC 10.21.030 shall be held within ninety (90) days of the written request for hearing.

2. If all of the requirements to redeem the vehicle, including expiration of any period of impoundment under EMC 10.21.010, have not been satisfied, then the impounded vehicle shall not be released until after the hearing which, pursuant to EMC 10.21.030, shall be held within ten (10) business days (excluding Saturdays, Sundays and holidays) of the written request for hearing.

3. Any person seeking a hearing who has failed to request such hearing within the time specified in EMC 10.21.030, may petition the Chief of Police for an extension to file a request for hearing. Such extension shall only be granted upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed. For the purposes of this section, good cause shall be defined as circumstances beyond the control of the person seeking the hearing, that prevented such person from filing a timely request for hearing. In the event such extension is granted, the person receiving such extension shall be granted a hearing in accordance with this chapter.

4. If a person fails to file a timely request for hearing, and an extension to file such a request has not been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment are deemed to be proper, and the Town shall not be liable for towing and storage charges arising from the impoundment.

5. In accordance with RCW 46.55.240(1)(d), a decision made by the Police Chief or designee, as administrative hearings officer, may be appealed to the Pierce County District Court for final judgment. The hearing on the appeal, under this subsection, shall be de novo. A person appealing such a decision must file a request for an appeal in the District Court within fifteen (15) days after the decision of the administrative hearings officer and pay the requisite filing fee. If a person fails to file a request for an appeal within the time specified by this section, or does not pay the filing fee within the time specified by

this section, the right to an appeal is waived and the administrative hearings officer's decision is final.

Section 4. Section 3 of Ordinance 99-02, codified as EMC 10.21.030, is amended to read as follows:

10.21.030 POST-IMPOUNDMENT HEARING PROCEDURE –

~~A person aggrieved by the impoundment procedure has a right to contest the validity thereof by filing a written request on a form provided by the Town with the Eatonville Municipal Court and paying a filing fee in the amount of the civil filing fees for District Court. The application must be filed within ten (10) days of the date a written notice was issued by the tow truck operator pursuant to RCW 46.55.120 (2)(a), or the right to a hearing is waived. RCW 46.55.120 is hereby adopted by reference including any subsequent amendments thereto. The court shall hold a hearing on the petition and grant relief in accordance with RCW 46.55.120.~~

Hearings requested pursuant to EMC 10.21.020 shall be held by the Police Chief or designee, as administrative hearings officer, who shall determine whether the impoundment was proper, and whether the associated towing, storage, and administrative fees were proper.

A. At the hearing, an abstract of the driver's driving record is admissible, without further evidentiary foundation, and is prima facie evidence of the status of the driver's license, permit, or privilege to drive and that the driver was convicted of each offense shown on the abstract. In addition, police officers may testify as to whom they believe to be the legal or registered owner of the vehicle and the basis or source of the information upon which they base this belief.

B. If the impoundment is found to be proper, the Police Chief or designee, as administrative hearings officer, shall enter an order so stating. In the event that the costs of impoundment (towing, storage, and special fees, including administrative fee under EMC 10.21.040) have not been paid, or any other applicable requirements of EMC 10.21.020 have not been satisfied, or any period of impoundment under EMC 10.21.010 has not expired, the administrative hearings officer's order shall also provide that the impounded vehicle shall be released only after payment to the Town of any fines imposed on any underlying traffic infraction, satisfaction of any other applicable requirements of EMC 10.21.020 and EMC 10.21.040, after payment of the costs of impoundment to the towing company, and after the expiration of any period of impoundment under EMC 10.21.010. In the event that the Police Chief or designee, as administrative hearings officer, grants time payments, the Town shall be responsible for paying the costs of impoundment to the towing company. The Police Chief or designee, as administrative hearings officer, shall grant time payments only in cases of extreme financial need, and where there is an effective guarantee of payment.

C. If the impoundment is found to be improper, the Police Chief or designee, as administrative hearings officer, shall enter an order so stating, and order the immediate release of the vehicle. If the costs of impoundment have already been paid, the Police Chief or designee, as administrative hearings officer, shall enter judgment against the Town and in favor of the person who has paid the costs of impoundment in the amount of the costs of the impoundment and any administrative fee.

D. In the event that the Police Chief or designee, as administrative hearings officer, finds that the impound was proper, but that the towing, storage, administrative and/or special fees charged for the impoundment were improper, the administrative hearings officer shall determine the correct fees to be charged. If the costs of impoundment have been paid, the administrative hearings officer shall notify the Town to reimburse the person who has paid the costs of impoundment for the amount of overpayment and any filing fee.

E. No determination of facts made at a hearing, under this section, shall have any collateral estoppel effect on a subsequent criminal prosecution, and shall not preclude litigation of those same facts in a subsequent criminal prosecution.

F. An appeal of the administrative hearings officer's decision to the Pierce County District Court shall be subject to and conducted according to the procedures of this Section.

Section 5. Section 4 of Ordinance 99-02, codified as EMC 10.21.040, is amended to read as follows:

10.21.040 ADMINISTRATIVE FEE ~~(STORAGE)~~ – If a vehicle is impounded pursuant to the provisions of this chapter, an~~A~~ administrative ~~storage~~ fee of ~~Eight~~ Fifty Dollars ($~~8~~50.00) ~~per day~~ shall be paid prior to the redemption of the vehicle as provided by this Chapter. ~~levied upon each vehicle redeemed under the specifications of EMC Section 10.21.020.~~ The fee shall be remitted to the Eatonville Town Clerk. The fee shall be for the purpose of offsetting, to the extent practicable, the cost to the Town of implementing, enforcing, and administering the provisions of this chapter and shall be deposited in an appropriate account.

Section 6. A new section is added to chapter 10.21 of the Eatonville Municipal Code, to be entitled "Impoundment When Driver Arrested for Driving or Physical Control Under the Influence", and to be codified as EMC 10.21.050, to read as follows:

10.21.050 IMPOUNDMENT WHEN DRIVER ARRESTED FOR DRIVING OR PHYSICAL CONTROL UNDER THE INFLUENCE

RCW 46.55.350, 46.55.360, and 46.55.370, also known as "Hailey's Law," are hereby adopted by reference and shall control whenever a driver of a vehicle is arrested for a violation of RCW 46.51.502 or 46.51.504, which sections have been adopted as part of the Eatonville Traffic Code under EMC 10.04.010, pursuant to the Washington Model Traffic Ordinance, Chapter 308-330 WAC, or subsequent amendments thereto, notwithstanding any provision of this Chapter to the contrary.

Section 7. A new chapter is added to Title 3 of the Eatonville Municipal Code, to be entitled "Emergency Response Costs," and shall be codified as chapter 3.40 EMC. A new section is added to chapter 3.40 EMC, to be codified as EMC 3.40.010, to be entitled "Emergency Response Caused by Person's Intoxication – Collection and Use," to read as follows:

3.40.010 EMERGENCY RESPONSE CAUSED BY PERSON'S INTOXICATION – COLLECTION AND USE – APPEAL

A. The definitions of RCW 38.52.010, as now and hereafter amended, are hereby adopted by reference.

B. For purposes of recovering expenses of an emergency response allowed by RCW 38.52.430, the Town may submit a notice of liability for the expense of an emergency response. The notice shall set forth the name of the responsible person, the date of the emergency response, the date of conviction or deferred prosecution, and the amount owing to the Town. The total emergency response cost may be ordered by the court as restitution. If the total emergency response cost is not ordered by the court upon conviction or deferred prosecution for the crimes enumerated in RCW 38.52.430, the Town may collect the expense of the emergency response in the same manner as a contract by sending notice to the person responsible via certified mail with a return receipt, or first class mail postage prepaid, to the person's last known address. Notice, sent to the last known address, shall be deemed delivered three days after mailing.

C. Any fees not collected within 60 days of the court order commanding restitution if the total emergency response cost is so included, or within 60 days of the date on which the responsible person receives or is deemed to have received the notice of liability will be referred to a collection agency. The cost of collection shall be added to the amount owed by the responsible person.

D. Any person who is ordered to pay the emergency response costs may appeal the determination or amount of liability only as provided in this section. Failure to strictly comply with the procedures set forth in this section shall be deemed a waiver of the right to challenge both the determination of liability and the amount of liability.

1. The person who is deemed liable under RCW 38.52.430 must, in order to perfect an appeal, file a written request for hearing with

the Chief of Police, as administrative hearings officer, not later than ten (10) days after the notice of liability is actually received or deemed received under EMC 3.40.010(B), whichever date is earlier. A written statement is "filed" with the Chief of Police if it is delivered to Town Hall or mailed and postmarked to Town Hall within the time specified herein. Facsimile or electronic mail is insufficient to comply with the filing requirement of this section.

2. If a written request for hearing is timely filed, the Chief of Police, or his or her designee, as administrative hearings officer, will then set a hearing to take place within thirty (30) days of the request for hearing. The time period may be extended by the Chief of Police for good cause.

3. At the hearing, the person appealing the determination or amount of liability, or both, shall be entitled to present all relevant evidence bearing on the issue. The Chief of Police, or his or her designee, as administrative hearings officer, shall then make a determination on the appeal pursuant to the provisions of RCW 38.52.430 and this Chapter. If the person challenging liability or the amount of liability assessed by the Town fails to appear for hearing, the appeal shall be dismissed.

4. A person who is aggrieved by the decision of the Chief of Police shall be entitled to seek judicial review of said decision under the Administrative Procedure Act, ch. 34.05 RCW.

Section 8. Ordinance 99-02, which is amended by this ordinance, shall remain in full force and effect until this ordinance takes effect.

Section 9. If any clause, sentence, paragraph, section, or part of this ordinance of the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

Section 10. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING: 05/29/2012
2ND READING: __/__/2012 / 2ND READING WAIVED (EMC 2.04.009(C))

Passed by the Council of the Town of Eatonville at a regular meeting held this _____ day of _____, 2012.

_____
Ray Harper, Mayor

ATTEST:

_____
Kathy Linnemeyer, InterimTown Clerk

APPROVED AS TO FORM:

_____
Town Attorney