Ordinance No. 3569
(Amending or Repealing Ordinances)

CFN-122 = Police/Fire Department
Passed 8/7/2001
Amending Sec. 9.39.030 relating to the impoundment of vehicles when driver arrested for violation of driving while license suspended or revoked or operation of motor vehicle under other license while suspended.

Amends Ord. 3464

Amended by Ord. 4030
ORDINANCE NO. 3569

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Section 9.39.030 of the Kent City Code relating to the impoundment of vehicles when driver arrested for violation of driving while license suspended or revoked or operation of motor vehicle under other license while suspended.

WHEREAS, Ordinance No. 3464, adopted July 6, 1999, repealed the existing Chapter 9.39 of the Kent City Code and enacted a new Chapter 9.39 relating to the towing of vehicles, including those vehicles driven by persons with suspended licenses; and

WHEREAS, Section 9.39.030 of the Kent City Code makes numerous references to RCW 46.20.420; and

WHEREAS, in the Fall of 1999, the Office of the Code Reviser recodified RCW 46.20.420 to RCW 46.20.345. Accordingly, it is now necessary to reflect this recodification in the Kent City Code;

WHEREAS, the removal of mandatory impound periods for persons who drive with a suspended license in the third degree will deter such drivers from committing future violations and will encourage them to obtain a valid license in a

1 Towing/Impoundment
short period of time to prevent the additional costs for storage of the vehicle; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 9.39.030 of the Kent City Code, entitled “Impoundment of vehicles when driver arrested for violation of driving while license suspended or revoked or operation of motor vehicle under other license while suspended,” is hereby amended to read as follows:

Sec. 9.39.030. Impoundment of vehicles when driver arrested for violation of driving while license suspended or revoked or operation of motor vehicle under other license while suspended.

A. Impoundment of Vehicles Authorized.

1. Whenever the driver of a vehicle is arrested for a violation of driving while license suspended or revoked (RCW 46.20.342) or operation of motor vehicle under other license or permit prohibited while license is suspended or revoked (RCW 46.20.420 46.20.345), as these provisions are currently enacted or hereafter amended, the vehicle is subject to impoundment at the direction of a law enforcement officer.

2. It shall be the responsibility of the owner or other person lawfully charged with possession of a vehicle to ensure that any person driving such vehicle has a valid license. It shall not be a defense to impoundment or to the payment of any of the costs of impound that the owner or other person lawfully charged with the vehicle was not aware that the driver’s license was suspended, revoked, or otherwise invalid.

B. Impoundment Periods.

1. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(c) (driving while license suspended or revoked in the third degree) or 46.20.420 RCW 46.20.345, as the Washington Department of Licensing
records show that the driver has not been convicted for a violation of RCW 46.20.342 or 46.20.420, or equivalent local ordinance within the past five (5) years, the vehicle shall be redeemable immediately pursuant to subsection (B)(86) of this section.

2. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(c) or 46.20.420, and the Washington Department of Licensing’s records show that the driver has been convicted one (1) time of a violation of RCW 46.20.342 or 46.20.420, or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for fifteen (15) days.

3. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(c) or 46.20.420, and the Washington Department of Licensing’s records show that the driver has been convicted two (2) or more times of a violation of RCW 46.20.342 or 46.20.420, or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for thirty (30) days.

4. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(a) (driving while license suspended or revoked in the first degree) or 46.20.342(1)(b) (driving while license suspended or revoked in the second degree) and the Washington Department of Licensing’s records show that the driver has not been convicted of a violation of RCW 46.20.342(1)(a) or (b) or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for thirty (30) days.

5. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342(1)(a) or (b) and the Washington Department of Licensing’s records show that the driver has been convicted one (1) time of a violation of RCW 46.20.342(1)(a) or (b) or equivalent local ordinance within the past five (5) years, the vehicle shall be impounded for sixty (60) days.

6. If a vehicle is impounded because the driver is arrested for a violation of RCW 46.20.342 (1)(a) or (b) and 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) or equivalent local ordinance two (2) or more times within the past five (5) years, the vehicle shall be impounded for ninety (90) days.
75. At the conclusion of the applicable period of impoundment, if any, the registered owner, a person authorized by the registered owner, or one who has purchased the vehicle from the registered owner, who produces proof of ownership or authorization and signs a receipt therefor, may redeem an impounded vehicle. A towing contractor may use any reasonable means necessary to confirm that the person redeeming the vehicle is authorized to redeem the vehicle, and neither the City nor the tow company shall be responsible for any loss resulting from a delay during the time in which the towing contractor is confirming authorization. A person redeeming a vehicle impounded pursuant to this section must, prior to redemption, establish that he or she has a valid driver's license.

86. Prior to redeeming the impounded vehicle, any person redeeming a vehicle impounded pursuant to this section shall pay the towing contractor for the costs of impoundment, including removal, towing, and storage fees accrued as a result of the during and after the applicable impoundment period. The towing contractor shall accept payment as provided in RCW 46.55.120 and other applicable statutes as currently enacted or hereafter amended. If the vehicle was impounded pursuant to this section and was being operated by the registered owner when it was impounded, it may not be released to any person until all traffic-related penalties, fines, and forfeitures owed by the registered owner have been satisfied—and—the registered owner establishes that he or she has a valid driver's license.

97. A vehicle impounded pursuant to this section may be searched incident to the arrest of the driver, or inventoried incident to the impound of the vehicle pursuant to the laws of the state of Washington and the United States. With the exception of personal property seized by a police officer, personal property contained within an impounded vehicle shall continue to be the responsibility of its owner, or the person driving the vehicle, and shall be dealt with pursuant to the requirements of RCW 46.55.090 and other applicable statutes as now enacted or hereafter amended. Property which is attached to the vehicle with electronic wiring, or by bolts, screws, glue, or other adhesive material, shall be considered a component of, or a part of, the vehicle for purposes of impoundment.
C.  **Impound Hearing.**

1. When a vehicle is impounded pursuant to this section, the tow truck operator shall send notice to the legal and registered owners as required by RCW 46.55.110 and other applicable statutes as now enacted or hereafter amended.

2. Any person seeking to redeem a vehicle impounded pursuant to this section has a right to a hearing in the Kent municipal court without a jury. The purpose of this hearing is solely to contest the validity of the impoundment or the amount of removal, towing, and storage fees. A person may waive the right to a hearing and, subject to the requirements of subsection (B) of this section, redeem the vehicle at the end of the applicable period. Failure to request a hearing pursuant to this subsection (C) shall constitute a waiver of the hearing.

3. A request for a hearing must: (a) be in writing in a form approved by the administrator of the Kent municipal court, (b) be signed by the person contesting the impound, and (c) be received by the Kent municipal court within ten (10) days of the date the notice of impoundment was mailed or given to such person pursuant to RCW 46.55.110 or 46.55.120(2)(a), whichever is later. At the time of the filing of the request for hearing, the petitioner must pay to the court a filing fee in the amount of thirty-nine dollars ($39.00).

4. The hearing shall be provided as follows:

   a. The court, within five (5) days after a proper request for a hearing has been received, shall set the hearing date and send notice of the date, time, and location of the hearing to the registered and legal owners of the vehicle or other item of personal property registered or titled with the Department of Licensing, the person requesting the hearing if not the owner, the tow truck operator, and the person or agency authorizing the impound.

   b. If the vehicle is still impounded at the time the written request is received, the court shall set the hearing within seven (7) days of receipt of the written request. If the vehicle has been released from impound at the time the written request is received, the court shall set the hearing within forty-five (45) days.
c. Any person seeking a hearing who has failed to request such hearing within the time requirements set forth in subsection (C)(3) of this section may petition the court for an extension to file a request for hearing. Such extension shall be granted only upon the demonstration of good cause as to the reason(s) the request for hearing was not timely filed and only in the event that notice of the auction of the vehicle has not been published by the tow truck operator pursuant to the requirements of RCW 46.55.110, 46.55.130, and other applicable statutes as now enacted or hereafter amended. 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 date of granting the extension shall be treated as the date the hearing request was received. In the event that an extension is granted, additional fees resulting from the storage of the vehicle caused by the delay in the hearing shall be paid by the person requesting the extension, regardless of whether the impound is determined to be lawful or unlawful.

d. If a person fails to file a request for hearing within the time periods required, and no extension to file a request has been granted, the right to a hearing is waived, the impoundment and the associated costs of impoundment are deemed to be proper, and the city shall not be liable for any charges arising from the impound.

e. For the purposes of this section, any computation of time shall be in accordance with Civil Rule 6(a) of the Washington Court Rules.

f. Delivery of notices required by this section shall be deemed proper three (3) calendar days after the date such notice is sent by regular first class mail, or in any other manner reasonably calculated to reach the intended recipient. For the purposes of delivering notices required by this section, the address of the intended recipient which is either listed on a citation issued by a police officer, or which appears on any record maintained by or for the Department of Licensing, or which appears on any document or correspondence filed with the court by the
intended recipient, shall be an appropriate and accurate address of the intended recipient.

5. Hearings shall, at the discretion of the court, be held by a judge, commissioner, judge pro tempore, or magistrate of the Kent municipal court, who shall determine whether the impoundment was proper and/or whether the associated removal, towing, storage, and any administrative fees were proper. The court may not adjust fees or charges that are in compliance with the posted or contracted rates.

6. The court may consider the criminal citation, the notice of traffic infraction, the authorization to impound created pursuant to KCC 9.39.040, and any other written report made under penalty of perjury submitted by the City of Kent or other impounding agency in lieu of the officer’s personal appearance at the hearing. The court may also consider an abstract of driving record and electronically printed registration information, without further evidentiary foundation. Such records shall constitute prima facie evidence of the status of the driver’s or contestant’s license to drive a motor vehicle, the proper period of impoundment, or the ownership of the impounded motor vehicle. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court.

7. The burden of proof is upon the city to establish that the impound was proper by a preponderance of the evidence.

8. If the impoundment is found to be proper, the court shall enter an order so stating. The court’s order shall provide that the impounded vehicle shall be released only after the applicable impound period has expired and the redemption requirements of subsections (B)(7) (5) and (8) (6) of this section have been satisfied. The court shall grant time payments only in the cases of extreme financial need, and only after a finding of such extreme financial need, and only where there is an assured and effective guarantee of payment.

9. If the impoundment is found to be improper, the court shall enter an order so stating and order the immediate release of the vehicle. If the costs of impoundment have already been paid, the court shall order the refund by the city of
the costs of impoundment. If the impoundment is determined to be improper, and a filing fee was paid, the filing fee shall be returned to the payor.

10. In the event the court finds that the impoundment was proper, but the removal, towing, storage, or administrative fees charged for impoundment were not in compliance with the posted or contracted rates, the court shall determine the correct fees to be charged. If the costs of impoundment have been overpaid, the court shall order a refund by the towing company of the costs of impoundment for the amount of the overpayment. If the costs of impoundment have been overpaid, and a filing fee was paid, the filing fee shall be returned to the payor.

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

12. The hearing procedures set forth in this subsection shall apply only to hearings set pursuant to this section.

13. The court, in its discretion, may waive the filing fee required by subsection (C)(3) of this section upon proof by competent evidence that the person who is requesting the hearing is indigent as that term is defined in RCW 10.101.010(1).

D. Economic or personal hardship – Rental cars – Vehicle dealer or lender with perfected security interest – Exceptions.

1. The court is authorized to release a vehicle impounded pursuant to this section prior to the expiration of any period of impoundment upon petition of a family member or dependent person the spouse of the driver based upon economic or personal hardship to such family member or dependent person spouse 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. If such release is authorized, the person redeeming the vehicle must satisfy the redemption requirements of subsection (B)(7) (5) and (6) of this section. The
decision to release the vehicle pursuant to this subsection shall not create any duty to protect any individual. The release of a vehicle pursuant to this subsection shall be available to a relative or dependent person of the driver one (1) time only.

2. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, and notwithstanding the provisions of subsection (B) of this section, a rental car business may immediately redeem a rental vehicle it owns prior to the expiration of any period of impoundment upon payment of the costs of removal, towing, and storage.

3. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, and notwithstanding the provisions of subsection (B) of this section, a motor vehicle dealer or lender with a perfected security interest in the vehicle may immediately redeem or repossess a vehicle it owns prior to the expiration of any period of impoundment upon payment of the costs of removal, towing, and storage.

E. **Sale of Vehicle.** Any vehicle impounded pursuant to this section shall be subject to the sale provisions of RCW 46.55.130 and other applicable statutes, as now enacted or hereafter amended.

F. **Authority to Enforce.** The chief of police, or his or her designee, and the court are hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this section.

**SECTION 2.** – **Severability.** If any one or more sections, subsections, or sentences of this Ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance and the same shall remain in full force and effect.
SECTION 3. Effective Date. This Ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER LUBOVICH, CITY ATTORNEY


I hereby certify that this is a true copy of Ordinance No. 3569 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER (SEAL)
BRENDA JACOBER, CITY CLERK