ORDINANCE NO. 4030

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 9.39 of the Kent City Code, entitled "Towing," updating provisions in order to be consistent with current state law and recent Supreme Court decisions.

RECITALS

A. On April 21, 2009, the United States Supreme Court ruled that warrantless searches of a motor vehicle after a driver's arrest and detention were violative of Amend. IV of the United States Constitution. Later that same year, the Washington State Supreme Court similarly ruled that warrantless searches violated article I, §7 of the Washington Constitution.

B. This City's decision to amend the code by removing the provision allowing for a search incident to the arrest of the driver reflects these changes to the federal and state law.

C. The city of Kent recognizes a hardship exists for the legal owner of a motor vehicle when his or her vehicle is impounded for a set period of time after a driver is arrested for violation of RCW 46.20.342 (1)(a) (driving while license suspended or revoked in the first degree) or (1)(b) (driving while license suspended or revoked in the second degree).

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In those circumstances where the legal owner of motor vehicle impounded after the driver is arrested for violation of RCW 46 20 342(1)(a) or (b), and the legal owner was neither the arrested driver nor aware the arrested driver was suspended, the City seeks to create a one-time hardship exemption whereby the legal owner may immediately redeem his or her motor vehicle upon satisfaction of certain conditions as well as payment of all costs and fees associated with towing, impound, and storage.

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

ORDINANCE

SECTION 1. - Amendment. Chapter 9.39 of the Kent City Code is amended as follows:

Sec. 9.39.010. Title and purpose. This chapter shall be known and cited as the towing ordinance and shall supplement Chapter 46.55 RCW which is currently adopted in KCC 9.36.010 (Model Traffic Ordinance). In the event that a conflict exists between the provisions of this chapter and Chapter 46.55 RCW, this chapter shall prevail.

Sec. 9.39.020. Removal by police officer. In addition to the provisions of RCW 46.55.113, a police officer may take custody of a vehicle and provide for its prompt removal to a place of safety whenever a police officer finds a vehicle standing or parked in violation of RCW 46.61.570.

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 46.20.345), 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 46.20.345, the vehicle shall be redeemable immediately pursuant to subsection (B)(6) of this section.

2. 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

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ordinance within the past five (5) years, the vehicle shall be impounded for thirty (30) days.

3. 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.

4. 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.

5. 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.

6. 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 impoundment. 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.

7. 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

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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.

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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)(5) and (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

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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 – Commercial or farm transport vehicles - 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 the owner of the motor vehicle who was not the driver, provided he or she states under penalty of perjury that he or she was unaware the driver was suspended or revoked at the time of impoundment, or of a family member or dependent person of the driver based upon economic or personal hardship to such family member or dependent person 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)(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—nor shall it impart any costs, fees, or
other financial obligations associated with the removal, towing, and/or storage of the vehicle to the City, provided the removal, towing, and/or storage were lawful under the Kent Municipal Code or the Revised Code of Washington. Further, neither the decision to release the vehicle nor any determination of facts at a hearing under this section, shall provide a defense in any subsequent criminal prosecution, or have any collateral estoppel effect or preclude litigation of those same facts in a subsequent criminal prosecution. The release of a vehicle pursuant to this subsection shall be available to an owner or -relative or dependent person of the driver one (1) time only.

2. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, a rental car business may immediately redeem a rental vehicle it owns upon payment of the costs of removal, towing, and storage.

3. Pursuant to RCW 46.55.120, as now enacted or hereafter amended, a motor vehicle dealer or lender with a perfected security interest in the vehicle may immediately redeem or repossession a vehicle it owns upon payment of the costs of removal, towing, and storage.

4. Pursuant to RCW 46.55.113(3), as now enacted or hereafter amended, before the summary impoundment of a commercial vehicle or farm transport vehicle when the driver is not the owner of the vehicle, 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, or designee of the owner, if either is reasonably available, as long as the owner or designee states under penalty of perjury that he or she was unaware the driver was suspended or revoked. This remedy shall not be available when the owner has received a prior release under this subsection or RCW 46.55.120(1)(a)(ii). In the event that the owner or
designee cannot be contacted in a reasonable and timely manner, or is not reasonably available, then he or she may immediately redeem the vehicle he or she owns upon payment of towing, removal, and storage costs.

5. Nothing in this section may derogate from the powers of police officers under the common law.

6. For the purposes of this section, "farm transport vehicle" means a motor vehicle owned by a farmer and that is being actively used in the transportation of the farmer's or another farmer's farm, orchard, aquatic farm, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, aquatic farm, or dairy, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

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.

Sec. 9.39.040. Authorization to impound. When an officer authorizes the impound of a motor vehicle pursuant to this chapter, such authorization shall state the basis for the impound; the ordinance or statute which authorizes the impound; the date, time, and place of the impound; and the officer who authorized the impound. Such authorization shall be delivered to the towing contractor within twenty-four (24) hours of

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the impoundment. The towing contractor shall deliver the authorization to impound to the registered and legal owners of the vehicle with the other required information and within the time period required by RCW 46.55 110.

SECTION 2. - Severability. If any one or more section, subsection, or sentence of this ordinance is 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. - Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 4. - Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage as provided by law.

ATTEST:

SUZETTE COOKE, MAYOR

BRENDA JACOBER, CITY CLERK

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APPROVED AS TO FORM:

TOM BRUBAKER, CITY ATTORNEY

PASSED: 21 day of February, 2012.
APPROVED: 21 day of February, 2012.
PUBLISHED: 24 day of February, 2012.

I hereby certify that this is a true copy of Ordinance No. 4030 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, CITY CLERK
(SEAL)

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