

AN ORDINANCE PROVIDING FOR NOTICE AND HEARING TO OWNERS OF IMPOUNDED VEHICLES.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, LARIMER COUNTY, COLORADO:

Section 1. Post-Storage Hearings for Impounded Vehicles.

As to any vehicle impounded pursuant to the Municipal Code of the Town of Berthoud or Colorado Revised Statutes by or at the request of the Town of Berthoud its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the vehicle if such person files a written demand, on forms so provided for such a hearing, with the Town of Berthoud within ten (10) days of the postmarked date of the Report of Abandoned Motor Vehicles. A Report of Abandoned Motor Vehicles shall be sent certified mail to the legal owner of record, if ascertained, and any lienholder, if ascertained, and to the towing carrier within five (5) working days of the receipt of the report from the State of Colorado Department of Revenue indicating the name of the owner of record, the lienholder and all other pertinent information.

Section 2. Conduct of Hearing.

Upon receipt of a written request for hearing by the police department of the Town of Berthoud a hearing shall be conducted before the Town Superintendant or a hearing officer designated by the Superintendant within forty-eight (48) hours of receipt of the written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays, and Town holidays are to be excluded from the calculation of the 48-hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the hearing officer shall be whether there was probable cause to impound the vehicle in question.

"Probable cause to impound" shall mean 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 removal of the vehicle.

The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Police Department shall carry the burden of establishing that there was probable cause to impound the vehicle in question. 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 the registered owner of the vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the impound in question and that any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or their agent to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

Section 3. Decisions of the Hearing Officers and Their Effect

The hearing officer shall only determine that as to the vehicle in issue either (a) there was probable cause to impound the vehicle or (b) there was no such probable cause, 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, copies of which shall be given to the possessor of the vehicle and the Police Department. Upon receipt of the possessor's copy of such certificate, the Official Police Garage having custody of the vehicle shall release the vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the Town in accordance with arrangements made between the Town and the Official Police Garages. If the possessor fails to present such certificate to the Official Police Garage having custody of the vehicle within twenty-four (24) hours of its receipt, excluding such days when the Official Police Garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

Section 4. Effective Date

The Board of Trustees of the Town of Berthoud herewith finds, determines, and designates that this Ordinance shall take effect and be in force thirty (30) days after publication.

This Ordinance was introduced and read and a public hearing set for June 10, 1986, by the Board of Trustees of the Town of Berthoud at its meeting held this 27th day of May, 1986. After a public hearing, this Ordinance was read, passed, and ordered published by the Board of Trustees at its meeting this 10th day of June, 1986.

TOWN OF BERTHOUD:

ATTEST:

Debbie Patterson

Town Clerk

Mayor

Tommy D. Lehart