

Highway Division Maintenance Leadership Team Operational Notice

NUMBER	SUPERSEDES	EFFECTIVE DATE	CANCELLATION DATE
MG 8-1		1/1/2010	
SUBJECT		ISSUING BODY	
Tow Hearing Process		Maintenance Leadership Team	

PURPOSE: Define the process for holding a tow hearing.

BACKGROUND: HB 2738 of the 2009 Legislative Session modified ORS 819 to make the agency responsible for ordering the tow of an abandoned hazard or an abandoned non-hazard vehicle also responsible for the tow hearing regarding the validity of the tow.

PROCESS:

Tow Process - Abandoned Non-Hazard Vehicle on ODOT Facility:

1. ODOT employee affixes a notice to the abandoned non-hazard vehicle.
Note: See Appendix C for a sample of the notice, which explains an owner, possessor or person having an interest in the vehicle may contest the proposed tow.
2. ODOT may request a tow company to tow the vehicle, if both the following are true:
 - a. Notice has been affixed to the vehicle for at least 24 hours, **and**
Note: 24 hour timeframe includes Saturdays, Sundays, and holidays.
 - b. Vehicle has not been moved
Note: If the vehicle has been moved the 24 hour clock begins again.

Tow Hearing Request - Abandoned Non-Hazard Vehicle:

1. A written request for an administrative hearing must be received within 5 days of the date the notice is affixed to the vehicle, not including Saturdays, Sundays, or holidays.
2. The hearing request must be from an individual that reasonably appears to have an interest in the vehicle.
3. Upon receipt of a hearing request, date and time stamp the request.
4. The date and time the notice was affixed to the vehicle as well as the ODOT employee that ordered the tow can be obtained by contacting an ODOT Transportation Operations Center (TOC) with the incident number.
5. Within 72 hours of receipt of the hearing request, not including Saturdays, Sundays, or holidays, the District Manager (DM) or designee will:
 - a. Schedule the hearing to occur in person or via telephone, **and**
 - b. Mail a notice of the date and time to the person requesting the hearing and, if applicable, the owner of the vehicle (if not the hearing requestor). Example: Vehicle Lien Holder. Contact the Transportation Operations Center to obtain Owner/Lien Holder information and addresses.
 - i. Notice will be similar to the sample letter provided in Appendix E
Note: A telephone call and/or email may supplement the letter if the DM, or designee, chooses to do so.
 - c. Schedule any ODOT staff that may be presenting evidence, regarding the decision to tow the vehicle, to appear at the hearing.

Tow Process - Abandoned Hazard Vehicle on ODOT Facility:

1. ODOT employee affixes a notice to the abandoned hazard vehicle and notifies ODOT Transportation Operations Center (TOC).
Note: See Appendix D for a sample of the notice, which explains an owner, possessor or person having an interest in the vehicle may pursue an administrative hearing to contest the tow.
2. ODOT TOC immediately requests a tow company to tow a vehicle constituting a hazard.
3. After the tow company has the hazard vehicle in custody, the TOC sends a follow-up Hazard Tow letter to vehicle owner by certified mail within 48 hours of the removal (not including Saturdays, Sundays, or holidays). A copy of the letter is filed and is also mailed to the district office, tow company and lien holder, if applicable. The letter states the location of the towed vehicle, the procedure for the release of the vehicle, and how to pursue an administrative hearing if the owner chooses to do so.

Tow Hearing Request - Abandoned Hazard Vehicle:

1. A written request for an administrative hearing must be received within 5 days of the mailing date of the Hazard Tow Letter, not including Saturdays, Sundays, or holidays.
2. Upon receipt of the hearing request, date and time stamp the request.
3. Within 72 hours of receipt of the hearing request, not including Saturdays, Sundays, or holidays, the District Manager (DM) or designee will:
 - a. Schedule the hearing to occur in person or via telephone, **and**
 - b. Mail a notice of the date and time to the person requesting the hearing and, if applicable, the owner of the vehicle (if not the hearing requestor). Example: Vehicle Lien Holder. Contact the Transportation Operations Center to obtain Owner/Lien Holder information and addresses.
 - i. Notice will include ODOT's evidence, if available.
Note: If the evidence is not available at the time the notice is mailed, it will be mailed in a follow up letter as soon as it is available prior to the hearing.
 - ii. Notice will be similar to the sample letter provided in Appendix E
Note: A telephone call and/or email may supplement the letter if the DM, or designee, chooses to do so.
 - c. Schedule any ODOT staff that may be presenting evidence regarding the decision to tow the vehicle to appear at the hearing.

Hearing Procedures – Abandoned Non-Hazard and Abandoned Hazard Vehicles:

1. DM or a designee will serve as the hearing officer; however, you may not preside over the hearing if you had any role in the decision to tow the vehicle.
2. DM or the designee must act as an impartial party, while presiding over the hearing, and may not present evidence or represent ODOT, as the towing agency.
3. Only one hearing shall be held.
Note: In the event the requestor fails to show, it is at the DM or designee's discretion if the reason(s) for not showing is satisfactory and if another hearing may be scheduled.
4. Presentation of evidence, by all parties, shall be consistent with ORS 183.450, see Appendix B.
Note: If the hearing is conducted via telephone, evidence can be submitted electronically prior to the hearing. ODOT staff will need to similarly share any evidence they plan to present at the hearing with the person requesting the hearing.

Key points in ORS 183.450 include:

- a. Irrelevant or repetitious evidence can be excluded.
 - b. Objections to evidence can be made and shall be noted in the hearing record
 - c. All evidence offered shall be included in the hearing record
 - d. The burden of presenting evidence to support a fact rests with the proponent of that fact.
 - e. Every party has the right to cross-examine witnesses who testify and submit rebuttal evidence.
 - f. The hearing officer may utilize the hearing officer's specialized knowledge in evaluation of the evidence presented.
5. If the person requesting the hearing contests the reasonableness of the charges for towing and storage, the DM or designee, shall consider such request only when the department has used its own personnel, equipment and facilities for the towing and storage of vehicles. In which case, the DM or designee shall provide a determination concerning the reasonableness of the department's charges, if any, in the written statement of the disposition of the hearing. The individual requesting the hearing has the right to contest the tow and storage charges, but ODOT has no authority to regulate tow charges. If this comes up as an issue at the hearing, the individual can be referred to the Department of Justice Consumer Fraud Program (877-877-9392 to request a consumer complaint form or download at <http://www.doj.state.or.us/finfraud/engexplanation.shtml>).
 6. At the conclusion of the hearing, inform the hearing participants as to the determination of the tow being valid or invalid. The decision of the District Manager or designee is final and not subject to appeal.
 7. DM, or designee, shall document the hearing decision, in a letter (Appendix F), mailed within 72 hours of the hearing (not including Saturdays, Sundays or holidays) to the person who requested the hearing and, if applicable, the vehicle owner and/or lien holder (if not the hearing requestor).
 8. A copy of the letter and all notes, submitted evidence, and hearing documents shall be saved in the District office file for 5 years.

Tow and Storage Fee Payment Process

1. If the tow is determined ***valid*** by the DM, or designee:
 - a. If the vehicle is still in custody, the vehicle will remain in custody until the towing and storage costs are paid by the party claiming the vehicle.
2. If the tow is determined ***invalid*** by the DM, or designee:
 - a. If the towing/storage charges are ***unpaid*** and the vehicle is in custody:
 - i. Vehicle shall be released as soon as reasonably possible; the person to whom the vehicle is released is not liable for any towing or storage charges.
 - ii. Pay the towing and storage charges as soon as possible via one of the three following methods:
 1. Agreement with the towing company to release the vehicle and invoice ODOT for the towing and storage charges.
 2. Payment of towing and storage charges with a SPOTS Card.
 3. Expedited request for a check through the normal bill payment process. This will require an invoice from the towing company.
 - iii. Notify the party claiming the vehicle that the vehicle has been released and can be picked up. Provide this notification as soon as possible to avoid additional storage charges. Per ORS 819.190, new storage charges can begin to accrue 24 hours after release of the vehicle.

- b. If the towing/storage charges have already been paid:
 - i. Reimburse the person who paid the charges as soon as possible upon presentation of satisfactory proof of payment. Payment will be via check through our bill payment process.
 - 1. Examples of Acceptable Proof of Payment would be:
 - i. Copy of a cleared check made payable to the tow company
 - ii. Receipt from the tow company documenting payment was received

Appendix A **OAR 734-020-0148** **Tow Hearing Process**

If a vehicle has been taken into custody by The Oregon Department of Transportation (department) in accordance with ORS 819.110 or 819.120, the department shall provide written notice to the owner of the vehicle in accordance with ORS 819.170 or 819.180. The vehicle owner(s), person entitled to possession or any person with an interest recorded on the title of the vehicle, may request a hearing in writing, which must be received by the department at the address identified in the notice, within 5 days (Saturdays, Sundays, and holidays excluded) from the date of the posting or mailing of the notice, to contest the validity of the towing and custody of the vehicle, and subject to subsection 7 below, the reasonableness of the charges for towing and storage. The hearing shall comply with all of the following:

1. The department shall set a time for the hearing within 72 hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owner(s) of the vehicle, and any lessors or security interest holders shown in the department records. The 72 hour period of time does not include Saturdays, Sundays, or holidays.
2. Actions taken by department, including conducting the hearing, are not subject to ORS chapter 183; and are therefore, not subject to the Administrative Procedures Act and the hearings are not conducted by the Office of Administrative Hearings.
3. The department District Manager for the district within which the tow occurred is hereby designated to act as the department's hearings officer. In the event the District Manager is unable or unavailable to conduct the hearing, a department employee shall be designated by the District Manager to act as hearings officer.
4. The hearing shall be conducted via telephone unless the person requesting the hearing requests other accommodations with justification for the request in which case the hearing shall be held at the District Manager's or the designee's office.
5. If the District Manager, or designee, determines the towing of the vehicle was invalid, the vehicle shall be immediately released upon payment by the department of the towing and storage fees, which shall occur as quickly as reasonably possible. The person to whom the vehicle is released is not liable for any towing or storage charges. If the towing and storage fee has already been paid, the department shall reimburse the person who paid the fee for the charges upon presentation of satisfactory proof of payment.
6. If the District Manager, or designee, determines the custody and towing of the vehicle was valid, the department shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the party claiming the vehicle.
7. If the person requesting the hearing contests the reasonableness of the charges for towing and storage, the District Manager, or designee, shall consider such request only when the department has used its own personnel, equipment and facilities for the towing and storage of vehicles and shall provide a determination concerning the reasonableness of the department's charges in the written statement of the results of the hearing.
8. The department shall only conduct one hearing for each vehicle custody and tow even if the person requesting the hearing, or any other interested party or witness fails to appear at the scheduled hearing unless the person provides reasons satisfactory to the District Manager or designee for such failure to appear.
9. Hearings shall be informal in nature, and the presentation of evidence shall be consistent with the requirements of ORS 183.450.
10. The District Manager, or designee, shall provide a written statement of the results of the hearing to the person requesting the hearing. See Appendix F for a sample for letter documenting the hearing results.
11. The determination of a hearing is final and is not subject to appeal.

Appendix B **ORS 183.450**

Evidence in Contested Cases

In contested cases:

(1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude agency action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible. Agencies and hearing officers shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.

(2) All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in subsection (4) of this section no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(3) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence. Persons appearing in a limited party status shall participate in the manner and to the extent prescribed by rule of the agency.

(4) The hearing officer and agency may take notice of judicially cognizable facts, and may take official notice of general, technical or scientific facts within the specialized knowledge of the hearing officer or agency. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed. The hearing officer and agency may utilize the hearing officer's or agency's experience, technical competence and specialized knowledge in the evaluation of the evidence presented.

(5) No sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party, and as supported by, and in accordance with, reliable, probative and substantial evidence. [1957 c.717 §9; 1971 c.734 §15; 1975 c.759 §12; 1977 c.798 §3; 1979 c.593 §21; 1987 c.833 §1; 1995 c.272 §5; 1997 c.391 §1; 1997 c.801 §76; 1999 c.448 §5; 1999 c.849 §34]

Appendix C Sample Abandoned Vehicle Form

Abandoned Vehicle Notification

This vehicle will be towed and impounded if it is not removed by _____
(Date and Time)

Oregon law, ORS 819.110 states, "After providing notice required under ORS 819.170 and, if required, a hearing under ORS 819.190, an authority described under ORS 819.140 may take a vehicle into custody and tow the vehicle if:

- a) The authority has reason to believe the vehicle is disabled or abandoned; and
- b) The vehicle has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance."

If this vehicle is not removed by the date and time stated above, it will be subject to towing and storage charges. These charges must be paid before the vehicle can be reclaimed by the owner or lawful possessor. A lien will be attached to the vehicle and contents for all unpaid charges. If the vehicle is not claimed within 30 days by the owner or lawful possessor, the vehicle and contents will be sold to pay the charges.

The contact information for the company that towed your vehicle can be obtained by calling the Oregon Department of Transportation (ODOT) Traffic Management Operations Center at 503-283-5859. When contacting ODOT, use reference number _____.

YOU ARE ENTITLED TO AN ADMINISTRATIVE HEARING to contest vehicle custody and challenge the reasonableness of any towing and subsequent storage charges AFTER the vehicle is towed. If the hearings officer finds the custody and towing of the vehicle was valid, you will be financially responsible for the cost of the administrative hearing, towing charges, and storage charges. A request for hearing must be in writing directed to the ODOT District office marked:

District 2A
6000 SW Raab Rd
Portland, OR 97221

District 2B
9200 SE Lawnfield Rd
Clackamas, OR 97015

District 2C
999 NW Frontage Rd Ste 250
Troutdale, OR 97060

Your request must be submitted within five (5) working days from the date of the notice, and it must include the reason(s) you believe vehicle custody was not justified.

Date and time vehicle tagged: _____ ODOT employee: _____

Appendix D Sample Roadway Hazard Notification

Roadway Hazard Notification

Oregon Administrative Rule 734-020-0147 states, pursuant to ORS 819.120, a vehicle that is disabled, abandoned, parked or left standing unattended on a state highway constitutes a hazard or obstruction to motor vehicle traffic and may be taken into immediate custody and removed by an appropriate authority as defined in ORS 819.140, when such vehicle meets any of the following criteria:

- (1) Any vehicle, any part of which is on or extends within the travel portion of any state highway as identified by painted edge lines, or when there are no edge lines, other clear delineation of the travel portion from the highway shoulder;
- (2) Any vehicle, any part of which is on or extends onto the inside or median paved shoulder (i.e., next to the high speed lane) of a freeway; or
- (3) Any vehicle, any part of which is on or extends within a paved shoulder of:
 - (A) Any freeway or expressway within the city limits of any city in this state during the hours of 5 a.m. to 9 a.m. and 2:30 p.m. to 7 p.m. local time if the vehicle has a gross vehicle weight of more than 26,000 pounds;
 - (B) Any freeway or expressway within the city limits of any city in this state at any time if the vehicle has a gross vehicle weight of 26,000 pounds or less;
 - (C) Any freeway or expressway within 1,000 lineal feet of a freeway exit or entrance ramp gore area (the area where the ramp first enters or leaves the freeway);
 - (D) Any freeway ramp;
 - (E) Any state highway during or into a period between sunset and sunrise; or
 - (F) Any state highway where the sight distance is limited to 500 feet or freeway where the sight distance is limited to 1,000 feet because of roadway horizontal or vertical curvature.
- (4) Any vehicle, any part of which is on or extends within a bicycle lane, or within a bicycle path which is immediately adjacent to a state highway.

ODOT TMOC Region 1, 123 NW Flanders St, Portland, OR 97209, 503-731-4652

ODOT NWTOC Region 2, 3225 State St NE, Salem, OR 97301, 503-362-0457

ODOT CTOC Region 4 & 5, 63055 N Highway 97 Bldg K, Bend, OR 97701, 541-383-0121

Date and Time Vehicle Tagged _____ **ODOT employee:** _____ **Reference No.** _____

Appendix E

Sample Letter -- Scheduled Date and Time for Hearing



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation

District X Office

District Office Address

City, Oregon Zip

Administrative Tow Hearing, Case No. *(incident/reference id)*

Today's Date

Vehicle Owner's Name

Address

City, State Zip

On *date request was received*, a request for a hearing was received by the Oregon Department of Transportation (ODOT) with regards to the towing of your vehicle. Your hearing has been scheduled to take place on *date*, at *time*, Pacific Standard Time. The hearing will be conducted via telephone at *(area code) office number* [or for in-person hearings: at the ODOT District xx Office, address, city, zip].

If you will be submitting evidence (e.g. documents or photos), it must be submitted electronically or via mail to *district manager's email address or mailing address* with the following subject line, "Tow Hearing Evidence Case No. *(incident/reference id)*", at least one business day prior to the hearing. [Note: Amount of notice is up to you. For in person hearings it is ok to let the party bring copies of evidence with them. The point of this paragraph is to provide whatever guidance you want regarding submission of evidence.]

The department shall only conduct one hearing for each vehicle tow even if the person requesting the hearing, or any other interested party or witness fails to appear at the scheduled hearing. The determination of a hearing is final and is not subject to appeal.

Appendix F
Sample Letter Documenting Hearing Results



Oregon

Theodore R. Kulongoski, Governor

Department of Transportation
District X Office
District Office Address
City, Oregon Zip

Administrative Tow Hearing Results, Case No. *(incident/reference id)*

Today's Date

Vehicle Owner's Name
Address
City, State Zip

On *date of hearing* at time of hearing, the Oregon Department of Transportation (ODOT) held an administrative hearing regarding the towing of your vehicle. I have found the towing of your vehicle to be *valid/invalid*. *If the DM or designee determined it was an invalid tow, use paragraph 2. If the DM or designee determined it was a valid tow, use paragraph 3.*

[paragraph 2] The vehicle will be released upon payment by the Department of the towing and storage fees, which will occur as quickly as reasonably possible. The person to whom the vehicle is released is not liable for any towing or storage charges up to and including the date the vehicle is released. If any storage or other fees are incurred after the date the vehicle is released, the person retrieving the vehicle will be responsible for those charges. If the towing and storage fees have already been paid, the department shall reimburse the person who paid the fee for the charges upon presentation of satisfactory proof of payment. The determination of a hearing is final and is not subject to appeal.

[paragraph 3] Since the towing and custody of the vehicle was determined to be valid, the vehicle will remain in custody at [tow company location] until all towing and storage costs are paid by the party claiming the vehicle or the vehicle is not reclaimed and is disposed of per ORS 819.210. The determination of a hearing is final and is not subject to appeal.