

# TIGARD MUNICIPAL CODE

## **Chapter 7.61 PROPERTY IN THE RIGHT-OF-WAY.**

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### **7.61.010 Definitions.**

A. As used in this chapter, unless the context requires otherwise:

1. “Abandoned personal property” means any personal property, as the term is defined in this chapter, which has been discarded, deserted or relinquished. Personal property shall be considered abandoned if any of the following conditions exist:

a. The personal property is left unattended in the right-of-way for more than five hours;

b. The personal property is placed in the right-of-way in a location or manner as to constitute a potential, imminent or immediate hazard or obstruction to pedestrian or vehicular traffic or to otherwise pose a threat to public health, safety or welfare.

2. “City” means the City of Tigard and any other location under jurisdiction by the City of Tigard.

3. “City Manager” means the City Manager or any designee of the City Manager.

4. “Costs” means all monies incurred and charges associated with the removal, storage, detention, processing, disposition, and maintenance of confiscated items in violation of Sections 7.61.015 and 7.61.020.

5. “Dispose of / Disposal” also includes sell, auction, donate, destroy, repurpose, and recycle.

6. “Junk” means items which have no apparent utility or are in an unsanitary condition.

7. “Owner” means any individual, firm, corporation or unincorporated association, partnership, limited liability company or other entity with a claim, or agent thereof, either individually or jointly, of ownership or any interest of record, legal or equitable, in abandoned personal property or a sign confiscated pursuant to this section.

8. “Personal property” means tangible items, other than signs and vehicles as defined in this chapter, which are reasonably recognizable as belonging to individual persons and which have apparent utility.

9. “Right-of-way” means a strip of land or structure occupied or intended to be occupied by a street, crosswalk, pedestrian or bike path, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, street trees or other special use and all other public ways and areas managed by the City.

10. “Sign” means any materials placed

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or constructed primarily to convey a message or other display and which can be viewed from the right-of-way, another property, or from the air including any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, or other thing designed, intended, or used to advertise or inform. (Ord. 10-06 § 1, 2010).

## **7.61.015 Signs in the Right-of-Way.**

A. It shall be unlawful for any person to place a sign in the right-of-way unless the placement is authorized by a separate provision of any title of the Tigard Municipal Code or Oregon Revised Statutes.

B. The owner(s) of a sign in violation of this chapter shall be responsible for any and all costs associated with disposition of the sign. (Ord. 10-06 § 1, 2010).

## **7.61.020 Abandoned Personal Property in the Right-of-Way.**

A. It shall be unlawful for any person to abandon any personal property in the right-of-way.

B. The owner(s) of the abandoned personal property in violation of this chapter shall be responsible for any and all costs associated with the disposition of the abandoned personal property. (Ord. 10-06 § 1, 2010).

## **7.61.025 City Authority to Remove—Notice Requirements.**

A. The City Manager may confiscate any sign in violation of Section 7.61.015 and any abandoned personal property in violation of Section 7.61.020 without prior notice. The City Manager shall create a policy ensuring that the time and location of a confiscation and a description of the physical characteristics of the confiscated personal property or sign are

recorded.

B. Subject to exemption by Section 7.61.030:

1. If the identity and mailing address of the owner of personal property or signs confiscated under subsection A is known, the City Manager shall notify the owner of the item by certified mail or personal service no later than 30 days following the date of the confiscation.

2. If the identity and mailing address of the owner of personal property or signs is not known, the City Manager shall arrange for the public notice of the confiscation to be provided within 30 days following the confiscation, either by publication in a newspaper of general circulation in the City or by publication on the City website, with a clearly marked link from the City's homepage.

C. A notice under subsection B shall include:

1. A statement that the personal property or sign was in violation of Chapter 7.61 of the Tigard Municipal Code.

2. A description of the personal property or sign and the date, time and location from which the item was confiscated.

3. A copy of Section 7.61.025 notifying the owner of the process and fees required to retrieve the confiscated personal property or sign from the City.

4. The date after which disposal of the personal property or signs shall occur.

D. A notice by publication under subsection B may contain multiple listings of confiscated signs. (Ord. 10-06 § 1, 2010).

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## **7.61.030 Exemption from Notice Requirements.**

A. The City Manager shall establish a written policy which does the following:

1. Determines types of signs that are unlikely to be reclaimed if confiscated; and
2. Exempts from the notice requirements of Section 7.61.025 those types of signs unlikely to be reclaimed if confiscated.

B. In determining the types of signs that are unlikely to be reclaimed, the City Manager may consider the value of the materials the sign is constructed of and the condition of the sign.

C. Signs that are exempt under the written policy established pursuant to subsection A:

1. Shall be stored for a minimum of 14 days after the date of confiscation.
2. Shall be available during the storage period for reclamation by the owner after payment in full of all costs associated with the disposition of the sign.
3. May be disposed of after the storage period without further notification. (Ord. 10-06 § 1, 2010).

## **7.61.035 Reclamation of Confiscated Personal Property and Signs.**

A. The City Manager shall establish a location for the storage of confiscated personal property and signs. The location should be reasonably secure and accessible to City staff so that personal property and signs can be reclaimed.

B. Confiscated personal property and signs shall be stored for no less than 30 days following the provision of notice under Section 7.61.025 or

7.61.030.

C. The City Manager shall establish a procedure by which owners of confiscated personal property and signs can reclaim confiscated items. The procedure shall include the following:

1. The place for an owner to reclaim confiscated property.
2. A fee schedule for reclamation of personal property and signs that may include either or both of the following:
  - a. Provisions allowing the City to recover all costs associated with the confiscated item, and
  - b. Assignment of an appropriate monetary penalty for violations of this section. (Ord. 10-06 § 1, 2010).

## **7.61.040 Disposal of Personal Property, Signs and Junk.**

A. The City Manager may immediately dispose of any junk found in the right-of-way. Disposing of junk under this subsection is not subject to the notice and reclamation provisions of Sections 7.61.025 through 7.61.035.

B. The City Manager may order the destruction or other disposal of any personal property coming into the City's possession which is determined by the City to be dangerous or perishable. Weapons shall be destroyed in accordance with ORS 166.280. Such disposal under this subsection is not subject to the notice and reclamation provisions of Sections 7.61.025 through 7.61.035.

C. At the sole discretion of the City Manager and without provision of notice, the City may donate, dispose of, sell, recycle, or repurpose

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any personal property or sign not reclaimed before expiration of the storage period.

D. In lieu of the disposal of confiscated personal property under this section, at any time the City is authorized to sell or auction the confiscated personal property or sign, the City may convert the personal property or sign to public use by entering it on the City's fixed asset inventory.

1. Notice of the transfer of the personal property or sign to the City shall be given once by publication in a newspaper of general circulation in the City or by publication on the City website at least 30 days before the personal property or sign is converted to City use. The notice shall describe the property and state that the described personal property or sign shall be converted to City use if the personal property or sign is not reclaimed within 30 days.

2. If the personal property or sign is not reclaimed within 30 days after publication of the notice described in subsection (D)(1) of this section, the personal property or sign shall be entered on the City's fixed asset inventory and shall not be subject to the right of redemption. (Ord. 10-06 § 1, 2010).

## **7.61.045 Appeal of Confiscation.**

A. The owner of the confiscated personal property or sign may request a hearing to contest the validity of the confiscation by submitting a written request for hearing with the City not more than five days from the mailing date of the notice or publishing of public notice.

B. The request shall state the reason(s) why the owner believes that the confiscation was invalid and include payment in full for the cost of the hearing.

C. The City shall not consider requests for

hearings which do not meet the requirements of Subsections A and B of this section.

D. The City Manager or designee may establish a fee for the cost of conducting a hearing.

E. A hearing shall comply with all of the following:

1. Upon receipt of a proper request for a hearing, the City shall set a time for a hearing within 30 days of the receipt of the request and shall provide notice of the hearing to the owners of the confiscated personal property or sign.

2. Hearings held under this section may be informal in nature, but shall afford a reasonable opportunity for the person requesting the hearing to demonstrate by the statements of witnesses and other evidence, that the confiscation of the personal property or sign was invalid, or for any other reason not justified.

3. The Hearings Officer may be an officer, official or employee of the City, but may not have participated in any determination or investigation related to the confiscation of the personal property or sign. The City Manager may promulgate rules for conducting hearings.

4. The owner requesting a hearing may be represented by legal counsel; however, legal counsel shall not be provided at public expense. Written notice of representation by legal counsel shall be provided to the City with the written request for a hearing.

5. The City is only required to provide one hearing each time it confiscates personal property or a sign.

6. Appeal of simultaneous confiscation of multiple items of personal property or signs of the same owner may be

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consolidated into a single appeal hearing.

7. If the City finds after a hearing that the confiscation of the personal property or sign was invalid:

a. The City shall order the immediate release of the personal property or sign to the owner of the item(s), if still in possession of the City, and/or

b. Refund to the owner any payment of costs associated with the removal, storage, detention and maintenance of the personal property or sign that has been reclaimed.

c. The owner shall not receive a refund for the cost of the hearing, and shall be liable for storage charges incurred more than 24 hours after the time the personal property or sign is officially ordered released to the person.

8. If the City finds after a hearing that the confiscation of the personal property or sign was valid, the City shall order the personal property or sign be held until the costs of the hearing and all monies incurred or charges associated with the cost of the removal, storage, detention, maintenance and disposition of the confiscated personal property or sign are paid.

9. A person failing to appear at a hearing is not entitled to another hearing or any refund of costs unless the person provides the City satisfactory proof for the person's failure to appear.

10. The City shall provide a written statement of the results of the hearing to the person requesting the hearing.

11. The determination of the Hearings Officer at a hearing is final and not subject to appeal. (Ord. 10-06 § 1, 2010).

## **7.61.050 Exemption For Criminal Investigation.**

A vehicle that is being held as part of any criminal investigation is not subject to any requirements of this chapter. (Ord. 10-06 § 1, 2010).

## **7.61.055 Enforcement—Minimum Requirements.**

A. A finding of a violation of this title which results in confiscation of personal property or signs does not prevent the City from additionally issuing citations for violations of this title or any other title of the Tigard Municipal Code or Oregon Revised Statutes for the same property or incident.

B. This section shall not be read to prohibit in any way alternative remedies set out in this title or any other title of the Tigard Municipal Code or Oregon Revised Statutes which are intended to abate or alleviate code violations, nor shall the City be prevented from recovering, in any manner prescribed by law, any expense incurred by it in abating or removing ordinance violations pursuant to any code provision.

C. Class 1 Penalty. A violation of this title shall constitute a Class 1 civil violation which shall be processed according to the procedures established in Chapter 1.16 of this code.

D. Each violation of a separate provision of any Tigard Municipal and Development Code and/or Oregon Revised Statute shall constitute a separate infraction, and each day that a violation is committed or permitted to continue shall constitute a separate infraction.

E. The provisions of this title are declared to be minimum requirements.

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## 1. Minimum Requirements Intended.

In their interpretation and application, the provisions of this title shall be held to be minimum requirements, adopted for the protection of the public health, safety, and general welfare.

## 2. Most Restrictive Requirements

Apply. When the requirements of this title vary from other provisions of this title or with any other title of the Tigard Municipal Code or Oregon Revised Statutes, the most restrictive or that imposing the highest standard shall govern. (Ord. 10-06 § 1, 2010). ■