

TOWN OF OPHIR ORDINANCE NO. 2008- 7.

**AN ORDINANCE FOR THE REGULATION OF WINTER PARKING AND TRAFFIC
BY THE TOWN OF OPHIR, COLORADO;
ADOPTING IMPOUND AND TOWING AND FEE COLLECTION AUTHORITY;
ADOPTING BY REFERENCE THE 2003 REVISED EDITION OF THE COLORADO
"MODEL TRAFFIC CODE", AS HEREBY AMENDED;
REPEALING ALL ORDINANCES IN CONFLICT
THEREWITH; AND PROVIDING PENALTIES FOR VIOLATION
THEREOF.**

BE IT ORDAINED BY THE GENERAL ASSEMBLY OF THE TOWN OF OPHIR,
COLORADO:

Section 1. Adoption.

- A. Pursuant to parts 1 and 2 of article 16 of title 31 and part 4 of article 15 of title 30, C.R.S., there is hereby adopted by reference the 2003 revised edition of the "Model Traffic Code" promulgated and published as such by the Colorado Department of Transportation, Safety and Traffic Engineering Branch, 4201 East Arkansas Avenue, EP 700., Denver, CO 80222, together with and subject to the additions, modifications, and deletions adopted herein. Said Model Traffic Code as so amended is hereinafter referred to as the Model Traffic Code. All references in the Model Traffic Code to the Code or the Model Traffic Code shall be deemed to refer to the Model Traffic Code as hereby or subsequently amended.
- B. The subject matter of the Model Traffic Code relates primarily to comprehensive traffic control regulations for the Town of Ophir. The purpose of this Ordinance and the Model Traffic Code is to provide a system of traffic regulations consistent with state law and generally conforming to similar regulations throughout the state and the nation.
- C. Three (3) copies of the Model Traffic Code as adopted herein are now filed in the office of the Clerk of the Town of Ophir, Colorado, and may be inspected during the Town Clerk's regular business hours or on-line.
- D. The Ophir Town Manager and/or his or her designee shall be the Ophir traffic and parking control officer(s), with primary but not exclusive Model Traffic Code enforcement authority, in addition to any State, County or municipal law enforcement officer. Such persons are hereby designated as "Peace Officers" for purposes of administering and enforcing the Model Traffic Code. The Town Manager and his or her designee are also hereinafter referred to from time to time as "Parking Officer".

Section 2. Deletions. The said Model Traffic Code is adopted as if set out at length save and except the following articles and/or sections which are declared to be inapplicable to this municipality and are therefore expressly deleted:

- A. Sub-section (9) of Section 109, "Motorized bicycles, animals, skis, skates, toy vehicles, and all terrain recreational vehicles on highways.
- B. Part 5, "Size – Weight – Load", pp. 44-54, is deleted.
- C. The following sections of Part 7, "Rights-Of-Way", are deleted:
 - Section 706, "Obedience to a Railroad Signal";
 - Section 707, "Certain Vehicles Must Stop At Railroad Grade Crossings";
 - Section 708, "Moving Heavy Equipment at Railroad Grade Crossing".
- D. The following Sections of Part 10, "Driving – Overtaking – Passing", are deleted:
 - Section 1010, Driving on Divided or Controlled Access Highways;
 - Section 1011, Use of Runaway Vehicle Ramps; and
 - Section 1012, High Occupancy Vehicle Lanes.
- E. Section 1104, "Speed Limits on Elevated Structures", of Part 11, "Speed Regulations", is deleted.
- F. Section 1210, "Designated Areas on Private Property for Authorized Vehicles - County - Unincorporated areas", is deleted.
- G. The following sections of Part 14, "Other Offenses", are deleted:
 - Section 1407.5, "Splash Guards, When Required";
 - Section 1408, "Operation of Motor Vehicles on Property Under Control of Park and Recreation District";
 - Section 1410, Untitled;
 - Section 1411, "Use of Earphones while Driving";
 - Section 1414, "Moving Construction Related Equipment"; and
 - Section 1415, "Use of Dyed Fuel on Highways Prohibited".
- H. Section 1701(3), concerning authority of the Municipal Court to adopt the schedule of fines, is hereby deleted.
- I. Section 1702, Counties – Traffic Offenses Classified – Schedule of Fines, of Part 17, Penalties and Procedure, is deleted.
- J. Part 19, "School Buses", pp. 113-117, is deleted.
- K. Appendices A through G, pp.130-143, are hereby deleted.
- L. Index, pp. 144-147, is hereby deleted.

Section 3. Additions or Modifications. The said adopted Model Traffic Code is subject to the following additions or modifications:

- A. Section 1203, untitled and blank, is hereby amended, completed and retitled to read as follows:

Section 1203. Winter Parking. Notwithstanding anything to the contrary in Model Traffic Code sections 601, section 1204(1)(k), or the Manual of Uniform Traffic Control Devices, signage for winter (i.e., November 1 through May 1 of each year) parking regulations prohibiting parking on certain streets, sides of streets and/or right-of-ways on certain days need not be an official traffic control device, if uniform throughout the Town, may be posted at a single prominent location at or near the western boundary of the Town as determined by the Town Manager, and may consist of a single sign. In order to facilitate winter plowing, the General Assembly may establish by resolution such seasonal parking restrictions as it deems necessary to promote the public good. Such restrictions may include, but are not limited to, alternate street side and overnight parking restrictions.

- B. Section 1701(4), "Municipalities – Traffic Expenses Classified – Schedule of Fines", is amended by the addition of the following sentence at the end of said subsection (2):

Payment of winter parking regulation violation penalties, fines or fees may be handled by the penalty assessment notice procedure and fines may be payable to the Town Clerk, Municipal Court Clerk, or Town Manager, or his or her designee. If not paid to the Municipal Court Clerk, said penalties, fines or fees shall be promptly accounted for and paid over to the Municipal Court Clerk.

- C. Notwithstanding anything to the contrary in this Ordinance or the Model Traffic Code, nothing in this Ordinance or in the Model Traffic Code shall constitute a designation of any road, street or highway in Ophir, as "open" to off-highway vehicle operation pursuant to C.R.C. 33-14.5- 108.

Section 4 Violations and Punishment.

There is hereby added to Part 17 of the Model Traffic Code, the following section 1718:

Sec.1718. Penalties.

- A. Violation of any portion of the Model Traffic Code, other than those cases described in Model Traffic Code section 1705(1)(b), (c), (d),(e), or (f), is a civil matter to be tried before the Municipal Court without right to jury trial. The maximum fine upon a finding of guilty or conviction for any violation of this Model Traffic Code shall be a fine not to exceed THREE HUNDRED DOLLARS (\$300.00). No person found guilty of a traffic offense for which a penalty assessment notice may be issued, other than offenses described in Model Traffic Code section 1705(1)(b), (c), (d),(e), or (f) and no person found guilty of a parking violation under this Ordinance or the Model Traffic Code, shall be punished by imprisonment.
- B. Violation of Model Traffic Code in cases described below shall be tried before the Municipal Court with right to jury trial, and upon a finding of guilty or conviction shall be punished by a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00), or by imprisonment not exceeding NINETY (90) days, or by both such fine and imprisonment:
1. MTC Section 1705(1)(b): Offense under this Code causing or contributing to an accident resulting in injury or death;
 2. MTC section 1705(1)(c): Failure to stop in the event of an accident causing death, personal injuries, or damage to property;
 3. MTC section 1705(1)(d): Reckless Driving.
 4. MTC section 1705(1)(e): Exceeding speed limit by more than nineteen miles per hour;
 5. MTC section 1705(1)(f): Exhibition of speed or speed contest.

Section 5 Abandonment, Impoundment and Towing.

Part 18 of the Model Traffic Code, "Towing and Storage", is hereby completed and amended to read as follows:

PART 18 ABANDONMENT, IMPOUNDMENT AND TOWING

Sec. 18-1-10. Abandonment Unlawful.

(a) A person commits abandonment of a motor vehicle who abandons any motor vehicle upon any street, highway, right-of-way or other public property, or upon any private property without the express consent of the owner or person in lawful charge of the property.

(b) To *abandon*, in this Section, means to leave the vehicle with the intention not to retain possession of it or not to assert ownership over it.

(c) The following circumstances are prima facie evidence of the necessary intent:

(1) The motor vehicle has been left for more than thirty (30) days unattended and unmoved;

(2) License plates or other identifying marks have been removed from the motor vehicle; or

(3) The owner has been notified by a law enforcement agency or the Parking Officer to remove the motor vehicle, and it has not been removed within three (3) days after notification.

Sec. 18-1-20. Impoundment Authority.

(a) The Parking Officer is authorized to remove, have removed at their direction or impound any vehicle, including temporary immobilization, under the circumstances enumerated in Sections 18-1-30 and 18-1-40 below. Such vehicle may be immobilized on or removed from any street, alley, highway, roadway, sidewalk, ditch or other public place, and from any restricted or prohibited parking area or, in the case of Subsection 18-1-30(10) below, from private property, to any place authorized by the General Assembly or certified by the Town Manager or Parking Officer for the storage of impounded vehicles.

(b) Whenever the Parking Officer finds a vehicle standing upon a street, highway or public way in violation of this Ordinance or the Model Traffic Code prohibiting the standing of such vehicle in such place, the Parking Officer is hereby authorized to move or remove such vehicle, or require the driver or other person in charge of the vehicle to move it, to a legal standing or parking position.

Sec. 18-1-30. Impoundment Grounds.

The following circumstances constitute a public nuisance or an obstruction to traffic for purposes of the Parking Officer's authority to immobilize, remove or impound a vehicle under Section 18-1-20 above:

- (1) When any vehicle is left unattended upon any bridge, or where such vehicle constitutes an obstruction to traffic.
- (2) When any vehicle is left unattended upon a street or parked illegally so as to constitute a definite hazard or obstruction to the normal movement of traffic including snow plows, or left unattended on any public street with the engine running.
- (3) When the driver of the vehicle is incapacitated (by injury, illness or other cause) to such an extent as to be unable to remove the vehicle from a street, highway, restricted parking area or other public way.
- (4) When any vehicle is parked, left standing or left unattended upon any area or portion of public street in violation of or contrary to a parking restriction, limitation or prohibition established by the Town, provided that other than for purposes of winter parking regulation, such area or portion of such public street has been posted with an official sign giving notice of such limitation or prohibition and that the area or portion of such public street is a "tow-away" area.
- (5) When any vehicle is parked in violation of any traffic ordinance or provision of the Model Traffic Code and is an obstruction, hazard or potential obstruction or hazard to any lawful law enforcement or public safety function, or limits the normal access to use of any public or private property.
- (6) When any vehicle appears to have been abandoned or has been left in one (1) place on any public street or public property continuously for more than seventy-two (72) hours after notice is posted on the windshield that the vehicle will be towed or impounded.
- (7) When any vehicle is reasonably suspected to have been involved in a hit-and-run accident or to be a stolen vehicle, or its parts to be stolen parts.
- (8) When the driver of any vehicle is taken into custody for a suspected offense or when the vehicle is reasonably suspected to contain stolen goods or other contraband, and the vehicle would thereby be left unattended upon a street, highway, restricted parking area or other public way.
- (9) When any motor vehicle, by reason of having no muffler or of having a defective or inadequate muffler, emits an excessive or unusual noise.
- (10) When a vehicle is parked upon private property without permission of the owner or occupant thereof.
- (11) When the records of the Parking Officer indicate that a parking, standing or stopping violation citation has been issued to the driver, owner or person in charge of the vehicle and has not been paid or otherwise legally disposed of, and such person has failed to respond to the additional notice provided for in Subsection 18-1-40(d) below.

(12) When there is an outstanding lien on the vehicle for unpaid municipal use tax and the Town Manager orders the impoundment or towing for purposes of enforcing the lien.

(13) When any vehicle which must be registered pursuant to Section 42-3-101, et seq., C.R.S., and which either is not so registered or does not have attached thereto and displayed thereon the proper license plates or license permit assigned thereto by the Colorado Department of Revenue for the current registration year, is parked or operated on any right-of-way of the Town.

(14) When any vehicle is parked or stopped in an emergency access lane in violation of or contrary to a parking limitation, restriction or prohibition established by the, provided that such emergency access lane has been posted with an authorized sign giving notice both of such limitation or prohibition and of the fact that such area or portion of such public roadway or private property is a "tow-away" area.

(15) When any vehicle is stopped, parked, left standing or left unattended in violation of any portion of Part 12 of the Model Traffic Code.

(16) When any nonmotorized vehicle is stopped, parked or left standing on any public street, right-of-way or in any public parking lot for more than seventy-two (72) hours or for the principal purpose of storage for more than seventy-two (72) hours.

Sec. 18-1-40. Temporary Immobilization.

(a) Under the circumstances set forth in Paragraphs 18-1-30(6) through 18-1-30(13) or 18-3-30(15) above, employees of the Town, acting in their official capacity, and the Parking Officer may, and they are hereby authorized to, temporarily and for a period of seventy-two (72) hours, immobilize such vehicles by installing on or attaching to such vehicle a device designed to restrict the normal movement of such vehicle. If such vehicle is so immobilized, the person installing or attaching such device shall conspicuously affix to such vehicle a notice, in writing, on a form provided by the Town Manager, advising the owner, driver or person in charge of such vehicle that such vehicle has been immobilized by the Town for violation of one (1) or more specified provisions of this Ordinance or the Model Traffic Code, and that release from such immobilization may be obtained at a designated place; that, unless arrangements are made for the release of such vehicle within seventy-two (72) hours, the vehicle will be removed from the streets at the direction of the Parking Officer, by employees of the Town acting in their official capacity, or by an agent of the Town; and that removing or attempting to remove the device before a release is obtained is unlawful, and containing such information as the Town Manager shall deem necessary.

(b) It is unlawful for any person to remove or attempt to remove any such device before a release is obtained as herein provided, or to move any such vehicle before the same is released by the Town Manager, Parking Officer, Municipal Court Clerk or Municipal Judge; and where such vehicle has been properly immobilized in such a manner, a fee shall be charged by the Parking Officer, Municipal Court Clerk or Municipal Judge before releasing such vehicle, in accordance with Section 18-1-50 below.

(c) Parking restrictions, if any, otherwise applicable shall not apply while such vehicle is so immobilized. If the vehicle has remained immobilized for a period of seventy-two (72) hours and release has not been obtained, the Parking Officer or employee of the Town causing such immobilization shall have the vehicle removed and impounded.

(d) If a violator of the restrictions on idling, stopping, standing or parking under this Ordinance or the Model Traffic Code does not respond to a penalty assessment notice affixed to such motor vehicle, by appearance at the Municipal Court at the date and time specified in the notice, by previously arranging for payment with the Municipal Court Clerk or by other disposition of the charge, the Municipal Court Clerk shall send a notice that default judgment has been entered by the Court, by mail to the registered owner of the vehicle to which the original summons or notice was affixed. If the mailed notice is disregarded for a period of seven (7) days and the owner has not appeared at the Municipal Court Clerk's office or Parking Officer and made payment, the vehicle upon which the illegally parked notice was affixed may be temporarily immobilized and impounded in accordance with this Article or the Town may exercise any available legal remedy.

Sec. 18-1-50. Impoundment and Towing Fees.

(a) For any vehicle immobilized, impounded or towed pursuant to Section 18-1-20 above, there shall be charged an immobilization fee if applicable; a towing fee; and an impound fee for each and every day the vehicle remains in the Town's or Tow Operator's custody. For purposes of assessing fees under this Section, a vehicle shall be considered to be in the Town's or Tow Operator's custody when such vehicle is held or impounded on property owned or leased by the Town or Tow Operator. Fines are payable to the Municipal Court Clerk, Parking Officer, or Town Clerk. Fees are payable to the individual or entity with whom the Town has contracted to provide towing, immobilization and impound services, if any. If the Town is providing such services, fees for such services shall be payable to the Municipal Court Clerk. The immobilization fee, the towing fee and impound fee shall be established and amended by a resolution of the General Assembly.

(b) No vehicle removed and/or impounded under Section 18-1-20 above shall be released until any fees for immobilization, towing or impoundment have been paid, waived or otherwise disposed of.

(c) In the event that, for any reason, the defendant is not found liable for a violation of this Chapter, the Municipal Court may order the return of all or any part of the towing and impoundment fees.

(d) The Town Manager, Municipal Judge and Municipal Court Clerk shall be and are hereby authorized and empowered to waive or adjust any charges imposed by or described in this Section whenever in their judgment it would be inequitable or result in an injustice to collect or require the payment of such charges. Charges resulting from the following circumstances will routinely be waived or refunded if previously paid, unless exceptional circumstances (such as failure to claim a vehicle within a reasonable period of time) make the collection of charges proper:

(1) When the vehicle was impounded as a result of the operator being taken into custody and the operator has been released without charges being filed;

(2) When the vehicle licensed in the County was reported as stolen and subsequently was recovered and impounded by the police; or

(3) When a vehicle has accumulated storage charges while being held as evidence, if the operator is not convicted of an offense associated with the impoundment.

Sec. 18-1-60. Notice and Hearing.

Within five (5) days of the impoundment of any vehicle by the Town, and if the vehicle is not first reclaimed, the Parking Officer shall mail written notice of removal and impoundment to the registered owner of the vehicle, the reason therefore, and the place to which such vehicle has been removed. The written notice shall advise the owner of his or her right to file, within ten (10) days, a written demand for a probable cause hearing in the Municipal Court. Within five (5) days of receipt of such written demand, excluding weekends and holidays, the Municipal Court shall conduct a post-deprivation hearing for the purpose of determining whether there was probable cause to impound the vehicle. The Town shall have the burden of proof at the hearing. If there is a finding of no probable cause, the vehicle must be released and towing or storage fees shall be reimbursed to the owner.

Section 6. Violations, Penalties, Fines.

- A. It is unlawful for any person to violate any of the provisions adopted in this Ordinance or in the Model Traffic Code.
- B. Violation of any portion of the Model Traffic Code, other than those cases described in Model Traffic Code section 1705(1)(b), (c), (d),(e), or (f), is a civil matter to be tried before the Municipal Court without right to jury trial. The maximum fine upon a finding of guilty or conviction for any violation of this Model Traffic Code shall be a fine not to exceed THREE HUNDRED DOLLARS (\$300.00). No person found guilty of a traffic offense for which a penalty assessment notice may be issued, other than offenses described in Model Traffic Code section 1705(1)(b), (c), (d),(e), or (f) and no person found guilty of a parking violation under this Ordinance or the Model Traffic Code, shall be punished by imprisonment.
- C. Violation of Model Traffic Code in cases described below shall be tried before the Municipal Court with right to jury trial, and upon a finding of guilty or conviction shall be punished by a fine not exceeding FIVE HUNDRED DOLLARS (\$500.00), or by imprisonment not exceeding NINETY (90) days, or by both such fine and imprisonment:
 - 6. MTC Section 1705(1)(b): Offense under this Code causing or contributing to an accident resulting in injury or death;
 - 7. MTC section 1705(1)(c): Failure to stop in the event of an accident causing death, personal injuries, or damage to property;
 - 8. MTC section 1705(1)(d): Reckless Driving.

9. MTC section 1705(1)(e): Exceeding speed limit by more than nineteen miles per hour;
10. MTC section 1705(1)(f): Exhibition of speed or speed contest.

- D. Notwithstanding the foregoing, however, the penalty assessment notice procedure provided in Model Traffic Code section 1707, may be followed by the Parking Officer or any arresting or authorized law enforcement officer for any violation of this Ordinance or the Model Traffic Code, except those offenses or circumstances listed in Model Traffic Code section 1705(1).
- E. The General Assembly hereby adopts a Model Traffic Code traffic violation fine and surcharge schedule for penalty assessment violations attached hereto. Such schedule may be amended from time to time by resolution, provided that said fines and surcharges may not exceed the maximum fines established by this Ordinance.

Section 7. Application. This Ordinance shall apply to every street, alley, sidewalk area, driveway, park, and to every other public way or public place or public parking area, either within or outside the corporate limits of this municipality, the use of which this municipality has jurisdiction and authority to regulate. The provisions of sections 1401, 1402, and 1413 of the Model Traffic Code, respectively concerning reckless driving, careless driving, eluding a police officer, shall apply not only to public places and ways but also throughout Ophir.

Section 8. Validity. If any part or parts of this Ordinance are for any reason held to be invalid such decision shall not affect the validity of the remaining portions of this ordinance. The Ophir General Assembly hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 9. Repeal. Existing or parts of Ordinances, including but not limited to Ordinance No.1981-1, covering the same matters as embraced in this ordinance, other than ordinances affecting the Municipal Court, are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this ordinance.

Section 10. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose to conform to the State of Colorado's uniform system for the regulation of vehicles and traffic. Article and section headings of this Ordinance and the said adopted Model Traffic Code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or extent of the provisions of any article or section thereof.

Section 11. Certification. The Town Clerk shall certify to the passage of this Ordinance and make not less than three copies of the adopted Model Traffic Code available for inspection by the public during regular Town Clerk's business hours, or on-line via the Town's web-site.

Section 112 Effective Date. The passage of this Ordinance is necessary for the immediate preservation of the public health, safety and welfare. This Ordinance shall take effect immediately upon final adoption. The Town Clerk shall publish this Ordinance as finally passed by title together with the Penalty clause is section 6, above.

Introduced, Read, and Approved on First Reading by the General Assembly on the 10th day of November, 2008.

By: _____

Randy Barnes, Mayor

Attest: _____

Rhonda Claridge, Town Clerk

Heard, Approved and Adopted As Amended on Second and Final Reading by the General Assembly of the Town of Ophir on the 17th day of November, 2008.

By: _____

Randy Barnes, Mayor

Attest: _____

Rhonda Claridge, Town Clerk

Approved as to Form:

Town Attorney

Attached: Fine and Penalty Assessment Schedule
See also: Section 3.A., above: Resolution of Ophir Winter Parking Restrictions
See also: Schedule of Immobilization, Impoundment and Towing Fees

Fine and Penalty Assessment Schedule. The following schedule sets forth the penalty assessments which may be offered for violations of this Ordinance No. 2008-7 or the Model Traffic Code. In the event the penalty assessment is not paid prior to the court date, the penalty assessment shall double: **Penalty Assessment Schedule**

<i>Section</i>	<i>If Paid Prior to Court Date</i>	<i>If Paid on or After Court Date</i>
	\$15.00	\$ 30.00
	50.00	100.00
	35.00	70.00
	20.00	40.00
	20.00	40.00