

Chapter 7.25 Pay and Park and Non-Pay Private Parking Facilities

- Note

(Chapter added by Ordinance No. 185835, effective January 18, 2013.)

7.25.010 Purpose.

The purposes of this Section are to ensure that the regulation of parking at pay and park and non-pay private parking facilities is applied objectively with proper notice; and to protect fairness and convenience for the parking public.

7.25.020 Savings Clause.

If any provision of this Section is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, such holding has no effect on the validity, legality and enforceability of any other provision of this Section.

7.25.030 Definitions.

Except where the context requires otherwise, the following words and phrases have the definitions given in this Section:

- A. **"Administrative Fee"** means a fee assessed by a department of motor vehicles for the purpose of determining the registered owner of a vehicle.
- B. **"Boot"** means a mechanical device attached to a vehicle to prevent its movement.
- C. **"Director"** means the Director of the Revenue Bureau or his or her designee.
- D. **"Operator"** means any person or entity whose business includes assessing and collecting penalties at registered parking facilities.
- E. **"Park"** means to leave a vehicle standing, while the driver has exited the registered parking facility, or **to leave a vehicle standing** for more than 5 minutes ~~with no driver at the wheel~~.
- F. **"Parker"** means any person in control of any vehicle that is parking at a registered parking facility.
- G. **"Payment device"** means any device capable of accepting or receiving parking fee payments by cash or credit card and issuing sequentially numbered receipts or tickets.
- H. **"Penalty"** means an amount assessed for failure to pay, or properly display proof of payment, for parking at a pay and park facility or for unauthorized or over-time parking at a non-pay private parking facility.

I. “Penalty payment letter” means the letter that must be sent by the operator to the registered owner if payment of the penalty is not received by the operator within 10 days of the date the penalty notice was affixed to a vehicle.

J. "Penalty notice" means the notice affixed to vehicles parked without payment, parked without properly displaying proof of payment or parked without authorization at a registered facility, and which is the initial demand for payment.

K. "Registered Facility" means a parking lot or structure that is accessible to the public that has been registered with the Revenue Bureau and is either:

1. A non-pay private parking facility at which the free parking or storage of vehicles is limited by time or authorization by the property owner/operator, **where the limitations are enforced by issuance of penalty notices**; or
2. A pay and park facility that is open for parking or storage of vehicles by the general public, at which a fee must be paid for parking, where payment of parking fees is enforced by issuance of penalty notices, and where parkers receive a receipt or ticket at the time of payment that has the parking expiration time printed on it.

L. “Registered Facility” does not include property used for governmental purposes by any agency or special district.

M. “Second penalty payment letter” means the letter that must be sent by the operator to the registered owner if payment of the penalty is not received by the operator within 30 days of the mailing date of the first penalty demand for payment letter.

7.25.040 Authorization.

A. Enforcement. The Director is authorized to enforce all provisions of this Chapter.

1. Investigation. The Director has the power to investigate any and all complaints regarding alleged violations of this Chapter.
2. Inspection. The Director may inspect any operator records required to be maintained pursuant to this Section. Such records must be made available for inspection during normal business hours within 24 hours of notice by the Director.

3. Delegation. The Director may delegate the authority provided under this Section to any City employee or agent thereof.

B. Procedures and forms. The Director may adopt procedures and forms to implement the provisions of this Chapter.

C. Adoption of rules. The Director may adopt rules pertaining to matters within the scope of this Chapter.

1. Before the Director adopts a rule, a public hearing must be conducted. The Director must give notice of the public hearing in a reasonable manner not less than 10 nor more than 30 days before the hearing. The notice must include the place and time of the hearing; where copies of the full text of the proposed rules may be obtained; and a brief description of the proposed rules.
2. During the hearing the Director will consider oral and/or written testimony. The Director will adopt, modify or reject the proposed rule based on the testimony received. Unless otherwise stated, all rules are effective upon adoption by the Director and will be kept on file at the Bureau. Copies of all rules will be made available to the public upon request.
3. Notwithstanding Subsections 1. and 2. above, the Director may adopt an interim rule without prior public notice upon a finding by the Director that failure to act promptly would result in serious prejudice to the public interest. In so doing, the Director must include the specific reasons for such prejudice. Any rule adopted pursuant to this Subsection will be effective for a period of not longer than 180 days.

7.25.050 Registration as the Operator of a Facility.

No person may assess any penalty at any facility unless that person is in compliance with the provisions of this Chapter.

A. Applications. An applicant for registration as an operator of a facility must submit to the Bureau:

1. The name, address and telephone number of the applicant;
2. The name, email address and telephone number of the person that will be the point of contact for the Bureau. This person will be available to respond to inquiries, informational requests, or complaints at all times during normal business hours from 9 a.m. to 5 p.m. Monday through Friday;
3. Proof of valid insurance as described in this Chapter;
4. A sample copy of the proposed penalty notice;
5. A sample copy of the proposed penalty payment letters;
6. The name, address and telephone number of any collection agency that may be employed by the operator for collection of delinquent payments;
7. Such other information relating to the purposes of this Chapter as the Director may require.

B. Penalty notices, penalty payment letters and any subsequent demands for payment must include:

1. The name, address and telephone number of the operator;
2. The vehicle's make, model, color and license plate number;
3. The time and date the penalty notice was issued;

4. The ~~exact~~ location of the facility, including the street address or the intersection nearest the entrance as provided on the original registration application;
5. Any facility number that may be assigned by the operator;
6. The amount of the penalty demanded;
7. Instructions describing deadlines and acceptable methods of payment;
8. Warning that an Administrative Fee may be assessed if the payment of the penalty is not received within 10 days of issuance of a penalty notice;
9. Any additional penalty that may be added if not paid within 30 days; and
10. A statement that the vehicle owner may submit a written complaint to the Revenue Bureau if attempts to resolve the complaint with the operator have been unsuccessful anytime within 90 days of the date of the first penalty payment letter. The Bureau representative's contact information, mailing address and website address for complaints must be included on penalty payment letters.

C. The penalty notice must not represent to be a document issued by any government agency or government official, or otherwise simulate legal or judicial process. The penalty notice form is subject to review and approval by the City Attorney's Office.

D. The Bureau must approve all notices and letters. If a proposed penalty notice or penalty payment letter is rejected by the Bureau, it will be returned to the applicant for amendment and resubmission without additional fees. If such documents have previously been approved by the City and if no changes to the Section have been made, it is not necessary to resubmit them with each new location application. Changes to penalty notices and letters proposed by the operator must be approved by the Bureau before they are implemented.

E. The Director shall reject any incomplete application.

7.25.060 Registration of a Facility.

No operator shall assess any penalties at any facility unless it is registered with the Revenue Bureau.

A. Application. To register a facility with the Bureau an operator must submit:

1. A written request from the registered operator that includes the facility's number (designated by the operator) and the facility's address;
2. A drawing of the facility showing adjacent street names, facility entrances and exits, and location of payment devices;
3. A nonrefundable registration fee for each facility in an amount as required by Administrative Rule.

B. As a condition of registering a pay and park or non-pay private parking facility under this Chapter, the operator shall hold the City of Portland and its officers and employees free and harmless, and shall defend and indemnify the City for any claims for damage to property or injury to person that may be occasioned by any work and/or services furnished or carried on under the terms of registration.

C. The Director shall inspect an operator's facility following receipt of the written request for registration, the facility drawing, and the registration fee. If the Director determines that a facility complies with this Chapter's requirements, the Director will issue a registration certificate to the operator for the facility. If the Director determines that the facility does not comply with this Chapter's requirements, the application will be denied and notice will be sent to the operator that lists the requirements the facility failed to meet. If an application is denied, the operator may resubmit the application without payment of additional registration fees at any time within 60 days of the notice date if the deficiencies noted in the original denial have been corrected. Only one such reapplication without payment of registration fees may be made with respect to each facility. If upon such reapplication the registration is again denied, the operator must file a new facility application accompanied by the required registration fee.

D. Facility registrations are valid from the date of issuance until the last day of that same month the following year.

E. Reporting Changes. Operators must notify the Director of any changes to the operator's office location, contact information, and insurance provider prior to implementation of the change. Operators must also notify the Director of any changes to a facility that affect a parker's use of the facility including, but not limited to, location of entrances and exits and location of a payment machine. Changed facilities must be reinspected before any penalty notices are issued.

F. Renewal. The Bureau will send invoices for facility registration renewal to all operators at least 1 month prior to the expiration date. Registrations will be renewed upon payment of the nonrefundable fee for each facility as required by the Administrative Rules.

G. Non-assignability. A registration issued or renewed pursuant to the provisions of this Chapter is not assignable or otherwise transferable.

7.25.070 Payment Device.

Payment devices must be placed and maintained at pay and park facilities in locations convenient and accessible to all parkers.

7.25.080 Signage Requirements.

All signs required pursuant to this Section must be unobstructed, reflectorized and visible during all hours of operation. All signs required to be posted at a facility entrance must be no more than 10 feet from the entrance, must be located within 2 feet of the property line, and the center of such sign must be at least 4 feet from the ground.

A. Pay and Park Signage.

1. Pay and Park facilities must have a sign posted at each entrance (in letters at least 7 inches high) stating either "PAY TO PARK ALL HOURS," or "PAY TO PARK POSTED HOURS." For facilities with a "POSTED HOURS" sign, the sign must also state (in letters at least 3 inches high) the exact hours that the facility is operated as a pay and park facility.
2. At each facility containing a payment device, there must be a sign (in letters at least 9 inches high) visible from every vehicle entrance stating "PAY HERE," indicating the location of the payment device.
3. At each payment location there must be a sign(s) that states (in letters at least 2 inches high):
 - a. all applicable charges for parking including the posted hours at a "PAY TO PARK POSTED HOURS" facility;
 - b. that proof of payment must be displayed and clearly visible through the windshield;
 - c. the phone number for the release of vehicles if they are subject to being towed;
 - d. a warning that the facility may be monitored; and
 - e. that vehicles parked without valid proof of payment or permit are subject to a parking penalty.
4. In spaces reserved for parkers with a disabled person parking permit, the operator must attach a sticker or sign to the disabled parking sign at the front of each space that notifies the disabled parking customer that he/she is responsible for payment, regardless of having a disabled person parking permit.

B. Non-Pay Private Parking Signage.

1. Non-pay facilities must have a sign posted at each entrance stating:
 - a. that parking is prohibited, reserved or otherwise restricted;
 - b. who is authorized to park;
 - c. all limitations on parking;
 - d. the hours during which parking is restricted;
 - e. that the facility may be monitored; and
 - f. that parking in violation of posted restrictions may result in assessment of a penalty or towing and storage of a vehicle at the vehicle owner's expense.
2. If a private parking facility is shared by more than one business, the parking spaces must be marked (or signs posted) clearly indicating which spaces are reserved for each business.

C. Notwithstanding Section 7.25.080 A and B, in order to provide consumer information and consumer protection, and in order to clearly identify a parking facility and rules of operation, the Director may impose additional requirements as needed due to the lot configuration or location of a facility. These additional requirements may include, but are not limited to, additional lighting and signage, or restriction of the hours or circumstances under which penalties may be issued.

7.25.090 Assessment of Penalties.

A. Pay and park facilities. The operator of a pay and park facility may assess and collect a penalty from any parker found to have either parked without paying the required parking fees upon parking the vehicle, or parked without placing the proof of payment in the vehicle so that it is clearly visible through the windshield.

B. Non-pay private parking facilities. The operator of a non-pay private parking facility may assess and collect a penalty from any parker found to have parked without authorization.

C. The penalty amount assessed to vehicles described in Subsections A. and B. above must not exceed the following amounts:

1. Not more than the overtime parking penalty set by Multnomah County Circuit Court if paid within 30 days of the mailing date of the penalty payment letter.
2. Not more than double the overtime parking penalty set by Multnomah County Circuit Court if paid after 30 days from the mailing date of the penalty payment letter.

7.25.100 Parking Penalty Notice.

A. When a vehicle is parked in violation of a registered facility's requirements, the operator may affix to the vehicle, in a prominent location, a penalty notice.

B. The penalty notice must be processed as follows:

1. A copy must be affixed to the vehicle,
2. A record of the notice must be retained by the operator for not less than 1 year, and
3. All records of penalty notices must be available to the Director upon request.

7.25.110 Penalty Payment Letters.

A. If the operator does not receive payment within 10 days from the day the operator affixed the penalty notice to the vehicle, the operator may mail a penalty payment letter to the registered owner(s) and any other persons who reasonably appear to have any interest in the vehicle. The letter must be mailed no earlier than 10 days nor later than 30 days from the penalty notice issuance date. The letter must include:

1. The amount demanded;
2. Acceptable method(s) of payment;
3. The schedule of increases for continued non-payment as described in ~~Section 7.24.020~~ **Chapter 7.25**;
4. Space for the recipient to inform the operator that the person to whom the letter was sent is not the current registered owner of the vehicle;
5. A statement that the vehicle owner may submit a written complaint to the Bureau if attempts to resolve any disputes with the operator have been unsuccessful;
6. The mailing address of the Bureau, and
7. A statement to the effect that the Bureau will only investigate complaints by parkers regarding the issuance of a parking penalty notice filed within 90 days of the date of the first penalty payment letter.

B. Administrative Fees.

1. If an operator incurs costs from the Department of Motor Vehicles (DMV) in its efforts to obtain the name and address of a vehicle's registered owner, the operator may add a one-time administrative fee in addition to the penalty amount, provided that:
 - a. 10 days have elapsed since the penalty notice issuance;
 - b. The operator indicates the amount assessed as a separate itemized amount on the penalty payment letter;
 - c. The amount assessed is no more than the amount charged to the operator by the DMV.
2. Operators may not demand payment for an administrative fee until they have been charged said fee by the DMV.
3. Although operators may only charge the administrative fee once, the fee may be a combination of more than one DMV charge if the first attempt to obtain registered owner information resulted in invalid information. In no event may an operator charge for more than two attempts.

7.25.120 Unlawful to Tow Vehicles.

It is unlawful for any person to tow any vehicle parked at any registered facility without the permission of the parker unless:

- A.** The vehicle has been parked at the registered facility without the payment of the required parking fees or without authorization for a period in excess of 24 hours after the period for which parking fees have been paid or authorization has been given; or

B. The vehicle is parked at the registered facility in such a manner as to clearly impede vehicular ingress or egress to and from designated parking stalls or the facility itself, or is parked in any area that is clearly and conspicuously designated by signs or other traffic control devices as areas in which parking is restricted or forbidden; or

C. The vehicle is parked at any of the operator's registered parking facilities, and:

1. Within the previous 2-year period, the vehicle was parked at any of the operator's registered facilities without payment of parking fees or authorization, three times or more; and

2. During that time the operator affixed and mailed the notices and payment letters as provided for in this Chapter; and

3. Three or more penalties remain unpaid; and

4. The operator has mailed a notice by certificate of mailing, and a reasonable amount of time has elapsed for service of the notice, advising the registered owner(s) and any other persons who reasonably appear to have any interest in the vehicle stating that the vehicle will be towed if the vehicle is again parked at a registered parking facility. The notice must also state the total amount due for outstanding penalties, the issue date and parking facility location for each outstanding penalty, the method(s) of payment accepted, the name, address and phone number of the operator, and that the vehicle owner may submit a written complaint to the Bureau if attempts to resolve the complaint with the operator are unsuccessful. The operator shall retain a copy of each notice for not less than 1 year and make such copies available upon request of the Director. The notice must be in a form approved by the City Attorney's Office; and,

5. Such towing is performed in compliance with Chapter 7.24 Private Property Impound Towing.

7.25.130 Complaint Handling Procedures.

A. Operators responding to the complaints of parkers or registered owners of vehicles must follow these guidelines:

1. The operator must be available by telephone, fax and e-mail to the public during normal business hours to accept and respond to public complaints. The operator must have voicemail and must respond to telephone messages by the end of the next business day.

2. The operator must respond in writing to written complaints within 10 days from the date the operator received the complaint.

3. The operator's written response must include the mailing address of the Revenue Bureau and a statement that the parker or registered owner of the vehicle may submit a written complaint to the Bureau if attempts to resolve the complaint with the operator are unsuccessful.

4. All efforts to collect the penalty and related amounts must be suspended upon the filing of a complaint with the operator or the Director, pending final resolution.

5. The operator must respond in writing and within ten days, providing all records requested, in response to inquiries from the Director regarding complaints or operation of a registered facility.

6. Penalties must not increase from the time a complaint is received by the operator or the Director, pending final resolution.

7. The operator must void the penalty if the parker or registered owner provides evidence within 30 days of issuance of the penalty notice that the parking fee payment was made at the time the vehicle was parked at the facility or that the parker was authorized to park.

8. The operator must notify appropriate credit agencies immediately upon voiding any penalty.

B. Upon receipt of a complaint the Director shall conduct an investigation.

1. Upon a finding by the Director or Bureau staff that a penalty is invalid, the operator must immediately cancel the penalty, cease all efforts to collect the penalty, and refund any payments that have been made.

2. If the investigation determines that a violation of this Chapter has occurred, the Director will initiate remedies provided in this Chapter.

3. The Director shall not investigate complaints by parkers regarding the issuance of a notice of demand for payment of penalties filed any time after 90 days from the date of the first mailed penalty payment letter.

7.25.140 Maintenance of Records and Reporting Requirements.

A. The operator shall keep and maintain records of all penalties, any transactions relating to collection of past due accounts, written warnings, requests for vehicle towing, and any other transactions or written complaints relating to penalties or the impoundment of vehicles for a period of at least 1 year from the date the penalty notice was issued.

B. The operator must provide by the 10th day of each month, in the form required by the Bureau, monthly reports for the previous month as required by Administrative Rule. These reports may include, but are not limited to: date, location and amount of penalties issued; accounts turned over for collection; information regarding penalties and parking fees assessed or collected; information regarding fees turned over to the parking facility owner; date, location and number of vehicles towed; and descriptions and determinations regarding complaints received; financial and operating data related to the investigation of complaints.

7.25.150 Insurance Required.

Operators must provide and maintain commercial general liability insurance covering any and all claims for damage to property or personal injury, including death and automobile damage that may arise from operations under the registration.

A. Such insurance must provide coverage of not less than \$1 million combined single limit per occurrence, with aggregate of \$1 million for bodily injury or property damage.

B. The limits of the insurance are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the registration.

- C. The insurance must be without prejudice to coverage otherwise existing.
- D. The insurance must name as additional insured the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts which the insurer would have been liable if only one person or interest had been named as insured.
- E. The coverage must apply as to claims between insureds on the policy.
- F. The insurance policy must provide that it will not terminate or be canceled without 30 days written notice first being given to the Director.
- G. The adequacy of the insurance is subject to the approval of the City Attorney.
- H. Failure to maintain liability insurance is cause for immediate revocation of the registration of the operator by the City.

7.25.160 Prohibitions.

No operator shall:

- A. Require any person to make any statement or sign any document promising not to dispute the validity of a penalty or relieving the operator from responsibility for the condition of the vehicle.
- B. Solicit business by means of payment of a gratuity, commission or other consideration to the property owner, manager or employee of a facility.
- C. Attach a mechanical boot or any other immobilization device to any vehicle parked on private property or public right-of-way for the purpose of collecting a fee for the release of the vehicle.

7.25.170 Remedies.

Upon a violation by the operator of any requirements of this Chapter, the Director may exercise the following authority and may apply one or more of the following remedies:

- A. Suspension or revocation. The Director may suspend a registration of any facility if investigation reveals that the violation has an impact on the public that informal compliance methods have failed to resolve. Suspension of registration may be for a period of up to 14 calendar days. The suspension will be effective from the operator's receipt of written notice of suspension. If the violation is not corrected within the 14 calendar day period, then the Director may revoke the registration. The revocation will be effective upon the mailing of written notice by the Director.
- B. Civil Penalty. The Director may impose a civil penalty of up to \$500 for each violation.

7.25.180 Appeals.

Any operator aggrieved by a determination of the Director may appeal such determination to the Code Hearings Officer of the City of Portland, as set out in Chapter 22.10.

7.25.190 Locking Parked Cars.

It is unlawful for the operator or an employee of a public parking lot to close and leave the lot without first removing the keys from any vehicle remaining upon the lot. It is unlawful for the operator or employee to close and leave the lot prior to the posted time of closing without locking any vehicle remaining on the lot. If no closing time is posted it shall be unlawful for the operator or an employee to close and leave the lot without locking any vehicle remaining on the lot. The operator of any lot where the operator or employee removes keys to any location other than the lot itself shall post and maintain a sign on the premises stating where and during what hours keys may be obtained when the lot is not attended. The sign shall be placed in a location meeting the requirements of signs giving notice of impoundment fees required by Section 7.25.080 of this Code.