



Oregon

Tina Kotek, Governor

State Board of Towing
DMV HQ - 1905 Lana Ave, NE
Salem, OR 97314

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OREGON STATE BOARD OF TOWING Board Meeting Minutes June 11, 2024

Work Session Location:

Oregon DMV HQ
1905 Lana Avenue
Salem, OR 97314

Attending Board Member:

Chuck Riley, Chair
Bruce Anderson
Kevin Baker
Chris Coughlin
Trent Hanson, Vice Chair
Chief Michael Iwai
Lt. Jason Lindland
Gary McClellan
Jason Shaner

Board and DMV Staff:

Torey McCullough, Board Administrator

Meeting Called to Order:

Chair Riley called the meeting to order at 1:00 p.m.
Self-introductions were made. All members attended the meeting.

Agenda approved by consensus.

The following were approved by consensus:

- February 13, 2024 meeting minutes
- March 19, 2024 work session notes
- April 23, 2024 work session notes
- May 14, 2024 work session notes

Reports:

McCullough provided a summary of the attached Administrator and Compliance Reports.

- The Board has conducted a series of work sessions defining the requirements and expectations of ORS 98.853 and 98.854.
- Two board member positions are set to expire June 30, 2024.
 - Both current members applied for reappointment.
 - The Governor's office will review applications and should have appointments made by the end of the month.
- The Board's Bylaws were verbally approved at the April work session. Formal board vote required to adopt the bylaws.
- McCullough has been working with ODOT IT and Dept. of Administrative Services in approving a case management system. Both ODOT and DAS have given verbal approval. More information is available in the attached report.
- Public and Community Outreach:
 - Four tenant advisory groups and 20 property management/owner associations have been contacted regarding the Board's work with the PPI requirements.
 - The 36 county and 211 city government officials have also been contacted regarding the PPI work, and a general introduction of the Board.
 - The local governments have been asked to confirm the website or contact information for consumers whose vehicles were towed by law enforcement or code enforcement. The information will be added to the Board's website in a publicly available directory.
 - Law Enforcement offices had been contacted last year, and given the option to join the Board's distribution list. The other local government offices were contacted with the PPI work to ensure full communication on upcoming policy and rule changes and requirements.
 - Public Policy and Rules Advisory Group: The Board is offering complainants an opportunity to join a distribution list specific to providing information and opportunities for public comment as the Board develops its public policy and proposed administrative rules. Currently there are 23 members in the group. This number should increase significantly as the 2024 complaints are entered into the new database. Individuals can opt out of the email list at any time.
 - The Tower Focus Group continues to offer input and feedback on questions from board staff.
- Website has been updated to include board member positions, requirements, and how a person can apply to become a board member.
- Case and complaint tracking information will be available once the new data system is operational.
- McCullough shared the complaint, investigation, and disciplinary action data points to be tracked in the new database.

Board vote:

Case Management System:

Lindland moved to approve the Board's purchase of the FileVine Case Management System. Anderson seconded the motion. Ayes: Towers Anderson and McClellan, Coughlin, Iwai, Lindland, Hanson and Riley. Absent: Shaner. Motion approved.

Bylaws:

Anderson moved to approve the Board's purchase of the FileVine Case Management System. Lindland seconded the motion. Ayes: Towers Baker and McClellan, Coughlin, Iwai, Lindland, Hanson and Riley. Absent: Shaner. Motion approved.

Work Session:

PPI Objectives and Policy Expectations

The Board reviewed updated objectives and expectations.

The Board confirmed:

- "Operator" is defined as a person with the capability to move the vehicle. After discussion, the consensus of the Board is that - to allow compliance with the intent of ORS 98.853 (3) (a), and to protect the public:
 - Towers cannot require a person to provide a form of identification or contact information for the purposes of releasing the vehicle prior to the tow under ORS 98.853 (3) (a).
 - The Board discussed indemnification of the towers in these scenarios. It was determined to table discussion; the legal requirement remains the release of the vehicle prior to the towing of the vehicle. The Board will monitor complaints to determine if more requirements may be necessary.
- Third-party contractors and surveillance options
 - Parking facility owners may contract with security companies, security personnel or other contractors to serve as the owner's agent as long as:
 1. The contracted party is an agent of the property owner, not the tower.
 2. The tower has no ownership or financial interest in the contracted party.
 3. Signs are posted on the parking facility as required.
 4. All other PPI requirements are met.
 - Video surveillance of the property is permitted, so long as the person(s) monitoring the property is not the tower, its employee(s), or is not otherwise affiliated with the towing company.
- There are two legal definitions for towing across all types of tows (law and code enforcement, PPIs, repossessions, salvage, etc.)

- Lawful or valid tow, when all legal requirements of the tow are met, and
- Unlawful or invalid tow, when not all legal requirements are met.

The following are examples of unlawful/invalid tows:

- No authorized signature from the owner or owner's agent at the time of tow
- Tow operator, dispatch, or tower's agent acts as the parking facility owner's agent to identify or authorize a vehicle to be towed.
- Signed authorization does not include all required information.
- There is no photograph taken by the tower that clearly shows the towed vehicle parked in violation of the parking facility rules prior to hook up.
- Failure to stop or cease hook up procedures when the vehicle owner or operator is present at the time of the tow.
- Signage remains a requirement of a lawful tow; the Board will discuss the intent and requirement for signage at a different work session.

- The Board is aware that a tow maybe unlawful due to the actions of the authorization of the tow, and not the actions of the tower. It is the intent of the Board that there be indemnification of a tower who, in good faith, tows a vehicle authorized signature, similar to:

ORS 98.830 (2)

A tower who tows a vehicle pursuant to this section is immune from civil liability for towing the vehicle if the tower has a form described in subsection (1) of this section, filled out by a person purporting to be the owner or a person in lawful possession of the private property from which the vehicle is towed. This subsection does not grant immunity for any loss, damage or injury arising out of any negligent or willful damage to, or destruction of, the vehicle that occurs during the course of the towing.

- Note: The indemnification is not extended if there is a reasonable relationship between the tower and the parking facility owner or its agent where the tower acts as the owner's agent in identifying vehicles to be towed, when the legal requirements for a tow are not met, or other evidence of unethical or in violation of the laws and rules.
- Board expectation when a tower becomes aware of an invalid tow: pre-Board complaint.
 - Indemnification of the tower is only when the tower complies with all laws and requirements of a tow, and it is the parking facility owner or their agent who authorizes an unlawful tow.
 - If the tow is unlawful or invalid because of the tower's action (no picture, no signature authority at time of tow, refusal to discontinue or unhook vehicle, etc.) the expectation is that the tower will make the consumer whole;

- If the vehicle was towed, the vehicle is returned in the same condition.
- If costs or fees were paid, those costs and fees are reimbursed.
- Continued, repeated conduct and behavior resulting in unlawful tows will result in increased civil penalties and other disciplinary actions.

Note: Towers are responsible for the actions of their tow operators; if an employee unlawfully tows a vehicle (willfully, intentionally, recklessly, or negligently) then the tower remains responsible for actions of their employee in compensating a consumer for an unlawful tow.

- Once Board public policy is established: staff will begin processing and responding to complaints directly.
- Complaints requiring Board action will be forwarded to the Board for resolution.
- With the new case management system, Board members will be able to review submitted complaints (at a high level) during public session, reserving Executive Session for discussion of complex complaints and disciplinary actions.
- Photos taken under ORS 98.853 (2):
 - Must show the vehicle parked and in clear violation of the private parking facility rules prior to hook up.
 - The intent of the photo is to clearly demonstrate the violation to (1) the vehicle owner or the vehicle owner's representative and (2) the Board.
 - PPI tows that do not have photos adequately showing the vehicle prior to the tow are unlawful/invalid tows.

- Gate Fees.

It is a violation, subject to disciplinary action by the Board, to charge a consumer a gate fee between the hours of 8 a.m. and 6 p.m. to retrieve their vehicle or emergency personal property.

- Appointments.

The Board discussed at length requiring appointments during hours of operation.

The Board recognized the requirement for all parties to be reasonable and responsible, and will develop best practices in addition to the Board's public policy.

- It is the expectation of the Board that if a tower is unable to accommodate a consumer's request to schedule a same-day appointment, the tower will not charge storage fees for that day, regardless of the reason the appointment cannot be scheduled.

Note:

- *If a tower cannot accommodate a consumer's reasonable request to schedule an on-site appointment by 6:00 p.m. on Friday, through no fault of the consumer, the expectation is that the tower will not charge storage or gate fees if the first available appointment **for the tower** is after hours or on non-business days.*
- *It is the expectation that consumers provide flexibility when required to schedule an appointment, should not expect to be able to show up at the gate and expect to be able to retrieve their vehicle, have the tow company hold a vehicle for several days without incurring storage fees and other costs, or no-show for scheduled appointments.*
- ***"Appointment fees" for appointments scheduled between the hours of 8 am – 6 pm, Monday – Friday (excluding holidays) for purposes of removing items not considered emergency personal items:*

Note: If a consumer requests an appointment for a future day, and not the same day, the tower is expected to inform the consumer of the daily storage charges and the expected lien fee, as appropriate.

- Time limits and the number of times a consumer can retrieve items from the vehicle.
- The Board recognizes the encumbrance this expectation may make on sole proprietors.
- The Board will develop best practices and guidelines to assist towers and the public.
- The Board will further review the issue as it monitors and processes complaints.
- Inventory.
The Board recognized that inventory and a tower's access to the vehicle contents has been an issue in both board and law enforcement complaints. The Board tabled the discussion topic for future review.
- Definition of ORS 98.852 (6) – personal property, emergency in nature.
The Board will consider the items to include and consider under this statute at a later date.
- No tower is to attempt to hook up a vehicle with an animal or person in it, unless directed to do so by law enforcement or an appropriate government agency with legal authority.

- **Towing Service Agreements**
The Board has no current interest in overseeing Towing Service Agreements, excepting:
 1. The Towing Service Agreement complies with Oregon's laws and requirements, and
 2. The Towing Service Agreement cannot designate or appoint a tower (or a tower employee, agent, or a business that the tower has a financial interest in) as the parking facility owner's agent or representative for the purposes of authorizing tows.
- **Commercial property exceptions**
The board will provide FAQ's for the public differentiating between PPIs on commercial properties, and parking on empty commercial properties not reasonably used as a parking facility.

Public Comments

The Board reviewed written comments from the Building Owners & Managers Association – Oregon (BOMA Oregon) regarding notice requirements under ORS 98.853 to add exemptions for when a vehicle is legally parked, but must be moved due to an unforeseen emergency (i.e., an actual emergency including fire, flooding, structural damage) or if it is blocking access to an area where emergency access is required (electrical, mechanical, etc.).

The Board concurred that this access is reasonable and will look at adding the exception to either rule or as a public policy.

PPI Public Policy - Next Steps:

- The initial concept summary will be updated to include the clarifications and discussions from the May 14 and June 11 meeting.
- The Board will meet for a one hour, remote only, board meeting on June 25, 2024 to review the draft proposed public policy.

Board Officer Elections:

Board elections for the Chair and Vice Chair positions are held at the last regular meeting of each fiscal year.

Chair:

Lindland nominated Riley for the Chair position.

No other nominations were made.

Vote held: Riley was unanimously elected as the Board Chair.

Vice-Chair:

Baker nominated Hanson for the Vice-Chair position.

No other nominations were made.

Vote held: Hanson was unanimously elected as the Board Vice-Chair.

Next Steps, Announcements, and Future Meetings

- OTTA Quarterly meeting in Bend, Oregon
Date: June 22, 2024
Of interest to the Board:
 - Updates on OTTA's legislation and the RV Bill
 - Public Comment Session for the Board's PPI proposed public policy
 - Considerations when towing electric vehicles
- Special Board Meeting – Remote Only
Date: June 25, 2024
Board review of proposed public policy on PPI statutes
- Special Board Meeting – Complaint review
The Board will review 2024 complaints in Executive Session using the new case management system.
- First Annual Business Meeting of the Board.
Date: October 29, 2024. Location TBD
Meeting topics will include:
 1. Review of proposed administrative rules, rules hearing
 2. Goals and Objectives for 2025, and 2-5 year and long-term planning
 3. Board budget and finances

Adjourned:

There being no further business before the Board, and no public comments, Chair Riley adjourned the meeting at 2:30 p.m.

Documents Considered by the Board

- Agenda
- Previous Meeting Minutes
- Administrator Report and attachments
- Compliance Report and attachments
- Case Management System
- Bylaws
- Work Session Materials

Minutes prepared by Torey McCullough
Minutes APPROVED by Board vote:

DRAFT