

**ORDINANCE NO. F-0320**

**AN ORDINANCE AMENDING CHAPTER 70 (TRAFFIC AND VEHICLES), ARTICLE IX (STORAGE OF VEHICLES), OF THE WHEATON CITY CODE**

BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, pursuant to home rule powers, as follows:

Section 1: That Chapter 70 (Traffic and Vehicles), Article IX (Storage of Vehicles), of the Wheaton City Code, 1996, as amended, is hereby deleted in its entirety and replaced with the following:

**ARTICLE IX. ABANDONED AND INOPERABLE VEHICLES**

**Sec. 70-566. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abandoned vehicle* means:

- (1) A vehicle, other than a "hazardous" or "unlawful" vehicle, on the public way or in a public parking lot in such a state of disrepair that it is incapable of being driven; or
- (2) A vehicle, other than a "hazardous" or "unlawful" vehicle, on the public way or in a public parking lot that has not been moved for a period of fourteen (14) days and appears to have been abandoned by its owner based on:
  - a) Its condition;
  - b) The period during which it has not been moved; or
  - c) Other circumstances indicating abandonment; or
- (3) A vehicle on private property without the consent of the property owner, proprietor or agent, which person has requested that the vehicle be towed; or
- (4) A vehicle, other than a "hazardous" or "unlawful" vehicle, defined as abandoned, or subject to being towed, by any ordinance of the city.

*Hazardous vehicle* means:

- (1) A vehicle that has been involved in an accident and is disabled or cannot be immediately moved by the owner or operator of the vehicle; or
- (2) A vehicle that presents an immediate danger to the health or welfare of members of the public; or
- (3) A vehicle on a public street, way or alley that is impeding the orderly flow of traffic or poses a potential danger to pedestrians or operators of other vehicles; or
- (4) A vehicle that is parked in such a way as to block access to a fire hydrant; or
- (5) A vehicle illegally parked which prevents and obstructs snow removal from public street or public parking lots.

"Hazardous vehicle" does not include vehicles which have been rendered temporarily incapable of being driven under their own motor power in order to perform ordinary service or repair operations.

*Inoperable vehicle* means:

- (1) any vehicle, whether on public or private property and in view of the general public from which, for a period of at least fourteen (14) days, the engine, wheels or other parts have been removed, or on which the engine, wheels or other parts have been altered, damaged or otherwise so treated that the vehicle is incapable of being driven under its own motor power; or
- (2) any vehicle on private property and in view of the general public which does not maintain vehicle license plates or license stickers affixed in a manner prescribed in the Illinois Vehicle Code; or
- (3) any vehicle on private property and in view of the general public which has invalid license plates; or
- (4) any vehicle on private property and in view of the general public which is in violation of any provision of the Illinois Vehicle Code which would prohibit the vehicle from being driven.

"Inoperable motor vehicle" shall not include: (1) vehicles kept within a building when not in use; (2) operable historic vehicles over 25 years of age; (3) vehicles on the premises of a place of business engaged in the wrecking or junking of motor vehicles; or (4) vehicles which have been rendered temporarily incapable of being driven under their own motor power in order to perform ordinary service or repair operations.

*Owner* means a person who holds legal title to a vehicle, or the right to possession of a vehicle.

*Unlawful vehicle* means:

- (1) A vehicle that has been reported stolen or is the subject of a search and seizure by the police department; or
- (2) A vehicle in violation of any state statute or local ordinance that authorizes the vehicle to be towed, but only when signs posted at the location of the vehicle indicate that vehicles may be subject to towing; or
- (3) A vehicle parked on public property which is suspected of being abandoned because (a) there are no license plates or valid license sticker(s) affixed in the manner prescribed by the Illinois Vehicle Code, (b) the license plates are invalid, or (c) it is in violation of any provision of the Illinois Vehicle Code which would prohibit the vehicle from being driven.

*Vehicle* means any "vehicle" as defined in the Illinois Motor Vehicle Code as adopted in section 70-2 of this Code.

**Sec. 70-567. Authorization for towing.**

(a) Abandoned and inoperable vehicles may be towed after prior notice and the affording of an opportunity for a hearing as provided in sections 70-569 and 70-572.

(b) Hazardous and unlawful vehicles may be towed without notice. Within twenty-four (24) hours after towing a vehicle pursuant to this subsection, a notice shall be sent to the owner of the vehicle affording the opportunity for a hearing as provided in sections 70-569 and 70-570.

(c) The towing of any vehicle pursuant to this article by the city or by any towing service operator approved by the chief of police shall be authorized only by the chief of police or such other officer or employee as the chief of police shall authorize, and only under the circumstances and in accordance with the procedures herein provided.

(d) Towed vehicles shall be impounded only at facilities approved by the chief of police until lawfully claimed or disposed of pursuant to the provisions of this article or the laws of the state.

(e) The towing service shall safely keep the towed vehicle and its contents, and maintain a record of the tow as set forth in Article II of Chapter 4 of the Illinois Vehicle Code, 625 ILCS 5/4-204 for law enforcement agencies, until the vehicle is claimed by the owner or any other person legally entitled to possession thereof or until it is disposed of as provided in this Article.

(f) Nothing in this article shall prohibit the towing of vehicles in accordance with Article II of Chapter 4 of the Illinois Vehicle code, (625 ILCS 5/4-201 et seq.).

**Sec. 70-568. Pre-tow notice for abandoned and inoperable vehicles.**

(a) Not less than seven (7) days prior to towing any abandoned or inoperable vehicle pursuant to section 70-567, subsection (a), the city shall forward written notice of its intent to tow by certified or registered mail, return receipt requested, and regular mail to the address of the registered owner of the vehicle, lienholder or other person(s) legally entitled to possession of the vehicle, as indicated in the most current registration list of the secretary of state of the state in which such vehicle is registered. If the registered owner, lienholder or other person legally entitled to the possession of the vehicle cannot be identified from the registration files of the secretary of state of this state or from the registration files of a foreign state, the police department shall notify the State Police, for the purpose of identifying the vehicle owner or other person(s) legally entitled to possession of the vehicle. Additionally, prior to sending notice, the police department shall cause the stolen motor vehicle files of the State Police to be searched by a directed communication to the State Police for stolen or wanted information of the vehicle in accordance with Article II, Chapter 4 of the Illinois Vehicle Code (625 ILCS 5/4-205). The notice to the registered owner, lienholder or other person legally entitled to possession of the vehicle shall provide:

- (1) A description of the make, model, year and color of the vehicle; and
- (2) The vehicle identification number, and the number and state of any license plate displayed on the vehicle. If there is no license plate displayed, the notice shall indicate the lack of a license plate; and
- (3) The location of the vehicle and a description of the circumstances indicating that it has been abandoned or deemed inoperable; and
- (4) A statement by the city that the city will tow and store the vehicle at the expense of the owner or other person entitled to legal possession of the vehicle if the vehicle is not moved, a statement of where the vehicle will be towed, and a statement that if the vehicle is not claimed by a certain date, it will be disposed of; and
- (5) A copy of this article, or a description of the owner's rights to contest the legality of the towing and a telephone number of the city through which the owner may obtain more information.

(b) On or before the day of mailing of the aforesaid written notice, a sticker stating the city's intention to tow the vehicle, the earliest date upon which the tow may take place and the address and phone number of the city police department shall be attached to the vehicle.

**Sec. 70-569. Pre-tow hearing procedures.**

(a) The owner of a vehicle to be towed as an abandoned or inoperable vehicle pursuant to section 70-567 subsection (a), shall have seven (7) days after the date of mailing of the notice described in section 70-568 to request, in writing, a pre-tow hearing. The written request shall be delivered to the police department within the seven-day period. Unless such a request is received within the seven-day period, the vehicle may be towed and any hearing rights under the provisions of this section shall be deemed waived.

(b) In the event that a pre-tow hearing is not requested as provided herein, a post-tow hearing shall, upon written request of the owner of a vehicle towed as an abandoned or inoperable vehicle, be provided pursuant to section 70-572.

(c) Upon any request for a pre-tow hearing being made, the city shall schedule a date and time, not later than fifteen (15) days following receipt of such request, for such hearing. Upon receipt of such request, but no less than forty-eight (48) hours before such hearing, the city shall notify the owner of the date and time for such hearing by telephone, by mail, or in person as the circumstances require. Pending a final disposition of such hearing, the vehicle shall not be towed except pursuant to the procedures of this article applicable to hazardous or unlawful vehicles.

(d) Upon any request for a pre-tow hearing being made, the city shall choose an officer or employee of the city to serve as hearing officer. In no case shall the hearing officer be an individual who was involved in the initial decision to tow the vehicle. The hearing officer shall have the authority to require the presence of the enforcement officer who initiated the proposed tow or any other city personnel and to request the presence of other witnesses at the hearing.

(e) Each hearing shall be audio-taped or video-taped and the hearing officer shall deliver the audio-tape or video-tape to the police department, where it shall be retained for a period of at least five years in accordance with subparagraph (k) of this section.

(f) In rendering his or her decision, the hearing officer shall consider: (1) whether proper notice was given pursuant to section 70-568; (2) whether the vehicle to be towed meets the definition of an abandoned or inoperable vehicle, whichever is claimed in the notice, as defined in section 70-566; (3) whether the vehicle to be towed, if claimed to be an inoperable vehicle, is a vehicle excepted from the definition of inoperable vehicle as defined in section 70-566; and (4) any defense or affirmative matter submitted by the owner of the vehicle to be towed.

(g) The city bears the burden of proving that the towing of the vehicle is authorized pursuant to the provisions of this Article.

(h) After receiving all relevant evidence, the hearing officer shall issue a written decision based upon a preponderance of the evidence as to whether the towing of the vehicle is authorized by the laws of the state or the ordinances of the city, citing the specific statutory or ordinance section authorizing the towing. The owner shall be provided a copy of such decision.

(i) If the hearing officer finds that towing is authorized by this article, the hearing officer shall direct that the vehicle be towed, with any towing and storage costs to be imposed upon the owner thereof. The fees to be charged for towing and storage services shall not be more than the rates established in Chapter 82, Section 82-189 of this Code. The owner of the vehicle may avoid the towing by immediately removing the vehicle from the

improper location to a proper, lawful location and correcting any hazardous or unlawful condition of the vehicle.

(j) If the hearing officer finds that towing is not authorized, he shall direct that the vehicle shall not be towed. The city shall furnish a copy of such decision to the owner, who may display it inside the vehicle. No vehicle about which such a decision has been rendered shall be towed by the city unless:

- (1) The circumstances under which the decision was rendered have changed; and
- (2) The procedures for towing similarly situated vehicles under this article are followed.

(k) Any finding, determination or decision of the hearing officer shall be subject to Article of III of the Illinois Code of Civil Procedure, 735 ILCS 5/3-101 et seq., which is otherwise known as the "Administrative Review Law." Either party may seek administrative review of the hearing officer's findings, determination or decision, in accordance with the provisions of the Administrative Review Law.

(l) All pre-tow hearing decisions, towing reports, and any associated police reports or documents shall be retained by the city police department for a period of at least five (5) years after each hearing, or after each tow if no hearing was requested or held.

(m) Any such hearing will not be determinative of or adjudicate any violation of any city ordinance relative to the vehicle.

**Sec. 70-570. Post-tow notice for hazardous and unlawful vehicles.**

(a) Not more than seven (7) days after towing any hazardous or unlawful vehicle pursuant to this article, the city shall forward written notice of the towing by certified or registered mail, return receipt requested, and registered mail to the address of the registered owner of the vehicle, lienholder or other person(s) legally entitled to possession of the vehicle, as indicated in the most current registration list of the secretary of state of the state in which such vehicle is registered. If the registered owner, lienholder or other person legally entitled to the possession of the vehicle cannot be identified from the registration files of the secretary of state of this State or from the registration files of a foreign state, the police department shall notify the State Police, for the purpose of identifying the vehicle owner or other person(s) legally entitled to possession of the vehicle. Additionally, prior to sending notice, the police department shall cause the stolen motor vehicle files of the State Police to be searched by a directed communication to the State Police for stolen or wanted information of the vehicle in accordance with Article II, Chapter 4 of the Illinois Vehicle Code (625 ILCS 5/4-205). The notice to the registered owner, lienholder, or other person(s) legally entitled to possession of the vehicle shall provide:

- (1) A description of the make, model, year and color of the vehicle; and
- (2) The vehicle's identification number, and the number and state of the license plate displayed on the vehicle. If there is no license plate displayed, the notice shall indicate the lack of a license plate; and
- (3) The location from and date on which the vehicle was towed, and a description of the circumstances indicating the hazardousness or unlawfulness of the vehicle; and
- (4) A statement that the city has towed and stored the vehicle at the expense of the owner or other person legally entitled to possession of the vehicle, including a statement of the location of where the vehicle is being held, and a statement that if the vehicle is not claimed by a certain date, the vehicle will be disposed of; and



- (5) A copy of this article, or a description of the owner's rights to contest the legality of the towing and a telephone number of the city through which the owner may obtain more information.

(b) All approved towing service operators shall prominently post at locations readily visible to the public transacting business at the towing facility; two (2) large signs with dimensions of at least twelve (12) inches by eighteen (18) inches, describing the owner's rights to contest the legality of the towing and providing a telephone number of the city through which the owner may obtain more information.

**Sec. 70-571. Procedures for releasing towed vehicles.**

(a) Before the owner of any towed vehicle shall be permitted to remove the vehicle from an authorized storage location, the owner shall furnish evidence of his identity and ownership or right to possession of the vehicle, shall sign a receipt for the vehicle, and shall pay the towing and storage fees in an amount not more than the rates established in Chapter 82, Section 82-189 of this Code. The chief of police is authorized to promulgate regulations as to the documents or other proof necessary to establish these facts.

(b) The owner shall take possession of the vehicle within twenty-four (24) hours of payment. The owner may pay the full amount of fees and subsequently request a hearing pursuant to section 70-572.

(c) Upon release of a towed vehicle as provided in this section, towing service personnel shall direct the owner's attention to the signs concerning notice and hearings posted pursuant to section 70-570, subsection (b).

(d) Notwithstanding any provision of this article to the contrary, an owner may remove a towed vehicle without paying the full amount of the towing or storage fees upon presentation of an order for release issued pursuant to section 70-572, subparagraph (e)(2)a.

(e) Notwithstanding any other ordinance or statutory provision to the contrary, any towing service operator authorized to perform tows on behalf of the city must perform its services subject to the provisions of this article. However, the towing company shall have the right to recover the reasonable value of its services, not paid by the vehicle owner, from the city.

**Sec. 70-572. Post-tow hearings.**

(a) The owner of a vehicle towed as a hazardous or unlawful vehicle pursuant to section 70-567, subsection (b) or the owner of a vehicle towed as an abandoned or inoperable vehicle who has not requested a pre-tow hearing shall have fifteen (15) days after the date of mailing of notice or release of the vehicle, whichever occurs first, to request in writing a post-tow hearing to determine the validity of such tow and any towing or storage charges. Said written request shall be delivered to the police department within said fifteen (15) day period, or the right to a post-tow hearing under the provisions of this article shall be deemed waived. The hearing will not be determinative of, or adjudicative of; any violation of any city ordinance.

(b) Upon any request for a post-tow hearing being made, the city shall schedule a date and time for such hearing as follows:

- (1) In those instances where the vehicle has been released upon the full payment of towing and storage charges, the hearing shall take place within fifteen (15) days after the receipt of such request for such hearing. Upon receipt of such request, but not less than forty-eight (48) hours before such hearing, the city shall notify the owner of the date and time for such hearing

- (2) In those instances where the vehicle has not been released, the hearing shall take place, unless otherwise agreed by the city and the owner, within twenty-four (24) hours after such request for such hearing, excluding weekends and holidays; except that if such request is made after 3:00 p.m., then a hearing shall be held on the second working day following the request. Upon receipt of such request, the city shall notify the owner of the date and time of such hearing by telephone, by mail, or in person as the circumstances require.

(c) Upon any request for a post-tow hearing being made, the city shall conduct the hearing in the manner provided in section 70-569 except where such procedures are not consistent with the provision of this section.

(d) After receiving all relevant evidence, the hearing officer shall issue a decision finding that:

- (1) The towing and storage of the vehicle was authorized by the laws of the state or by a city ordinance.
- (2) There was no authority in law for the towing and storage of the vehicle, or the city officer or employee causing the vehicle to be towed did not comply with the requirements of the statute or ordinance authorizing the tow.
- (3) The towing of the vehicle was authorized by law, but the owner was caused to incur additional storage charges because of late notification of towing or other reasons not the fault of the owner. The specific amount owed by the owner, and the specific amount excused, shall be stated in the decision.
- (4) The request for hearing was not properly made.
- (5) The person requesting a hearing failed to appear or obtain a continuance.

(e) The hearing officer shall advise the owner of his findings at the conclusion of the hearing, as follows:

- (1) If the towing and storage was authorized by law, and is not otherwise reimbursable, the owner shall be so informed and further advised as to the amount due.
- (2) If the towing and/or storage is found to be unauthorized or reimbursable:
  - a. If the vehicle has been released to the owner, the hearing officer shall complete and transmit to the chief of police for approval a printed voucher form for the amount to be reimbursed along with the hearing officer's decision. Upon approval by the chief of police, the hearing officer shall then transmit the voucher to the city treasurer for payment. Unless the city files a lawsuit to contest the decision of the hearing officer, the owner shall be paid the money due within twenty-eight (28) days after the decision of the hearing officer.
  - b. If the vehicle has not been released at the time of the hearing, the hearing officer shall issue an order for the release of the vehicle. Upon presentation by the owner to the towing service operator of the order for release, the vehicle shall immediately be released to the owner upon payment by the owner of such towing and storage fees, if any, owed by the owner.

(f) All decisions, towing reports, and any associated police reports or documents shall be retained by the police department for a period of at least five (5) years after such hearing, or after each tow if no hearing was requested or held.

(g) The city or the owner may contest the decision of the hearing officer in accordance with the Administrative Review Law, 735 ILCS 5/3-10 1 et seq.

#### **Sec. 70-573. Disposal of Towed Vehicles**

(a) Within ten (10) business days after the date of impoundment of a towed vehicle, the police department shall forward written notification by certified or registered mail, return receipt requested, and by regular mail to the registered owner, lienholder or other legally entitled person(s), as previously determined for providing either pre-tow or post-tow notice, advising where the vehicle is being held, requesting that a disposition be made, and setting forth any public sale information.

(b) Any vehicle seven (7) years of age or newer towed pursuant to this Article and which remains unclaimed by the registered owner, lienholder or other persons legally entitled to the vehicle, for a period of 60 days after notice has been given as provided in subparagraph (a) of this section, shall be sold by the police department at public auction to a person licensed as an automotive parts recycler, rebuilder or scrap processor under Article II, Chapter 5 of the Illinois Vehicle Code, or to the towing operator which towed the vehicle. Notice of the time and place of the sale shall be posted in a conspicuous place for at least 10 days prior to the sale on the premises where the vehicle has been impounded. At least ten (10) days prior to the public sale, the police department shall send by certified or registered mail return receipt requested and by regular mail, notice to the registered owner, lienholder, or other legally entitled person(s) stating the time and place of the sale, a complete description of the vehicle to be sold, and the steps which must be taken by any legally entitled person to reclaim the vehicle. If the vehicle displays dealer plates, notice under this section shall be sent to both the dealer and the registered owner, lienholder or other legally entitled person(s).

(c) When the identity of the registered owner, lienholder, or other person legally entitled to possession of a towed vehicle of 7 years of age or newer cannot be determined by any means provided for in this Article, the vehicle may be sold as provided in subparagraphs (a) and (b) of this section without notice to any person whose identity cannot be determined.

(d) Any vehicle of more than seven (7) years of age towed pursuant to this Article, shall be kept in storage for a minimum of ten (10) days for the purpose of determining the identity of the registered owner, lienholder, or other person legally entitled to possession of the vehicle and for the purpose of contacting such person by certified or registered mail return receipt requested, or regular mail, or by public service or personal service for a determination of disposition. During this ten (10) day period, the police department shall have the State Police examine its stolen vehicle files for theft and wanted information. At the expiration of the ten (10) day period, without the benefit of disposition information being received from the registered owner, lienholder or other person legally entitled to possession of the towed vehicle, the towed vehicle may be disposed of in either of the following ways:

- (1) The police department may authorize the disposal of the vehicle as junk or salvage; or
- (2) The towing service may sell the vehicle in the manner provided for in subparagraph (b) of this section, provided that this paragraph (2) shall not apply to vehicles towed by order or authorization of a law enforcement agency; or
- (3) If the vehicle is classified as an antique vehicle, it may be sold to a person desiring to restore it.



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(e) The proceeds from the sale of any towed and impounded vehicle, after the deduction of towing, storage and processing charges, shall be deposited with the City Treasurer.

(f) No vehicle can be disposed of until the registered owner's, lienholder's or other legally entitled person's right to pursue a claim under the Administrative Review Law, 735 ILCS 5/3-101 et seq., as allowed under sections 70-569(k) and 70-572(g) of this Article, has expired.

Section 2: That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3: This ordinance shall become effective from and after its passage, approval and publication in pamphlet form in the manner prescribed by law.

ATTEST:

Emily M. Connelley  
City Clerk

James Carr  
Mayor

Ayes:

Roll Call Vote:

Councilwoman Davenport  
Councilman Eckhoff  
Councilman Gresk  
Mayor Carr  
Councilman Johnson  
Councilwoman Johnson  
Councilman Mork

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: March 1, 1999  
Published: March 2, 1999