

ORDINANCE NO. F-0477

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

WHEREAS, the City of Wheaton, Illinois ("City"), is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and, as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the subject matter of this ordinance pertains to the government and affairs of the City and its residents; and

WHEREAS, the City has determined it to be in the best interests of the City and its residents to amend certain sections of the City Code pertaining to abandoned, hazardous, inoperable and unlawful vehicles.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

Section 1: Section 70-566 of the Wheaton City Code is amended by repealing and rescinding Section 70-566 in its entirety and replacing it with a new Section 70-566 which shall read as follows:

" 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 any vehicle in a state of disrepair rendering the vehicle incapable of being driven in its condition or any vehicle that has not been moved or used for 7 consecutive days or more and is apparently deserted.

Hazardous vehicle means:

- (1) Any vehicle with a substantial number of essential parts, as defined by Section 1-118 of The Illinois Vehicle Code, 625 ILCS 5/1-118, either damaged, removed or altered or otherwise so treated that the vehicle is incapable of being driven under its own motor power or, which by its general state of deterioration, poses a threat to the public's health, safety and welfare; or
- (2) Any abandoned, unattended, wrecked, burned or partially

dismantled vehicle which creates a traffic hazard because of its position in relation to the highway or which causes the impeding of traffic because of its physical appearance.

"Hazardous vehicle" does not include: (1) vehicles that are 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.

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 seven (7) 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 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 70-1 of this Code."

Section 2: Subparagraph (a) of Section 70-567 of the Wheaton City Code is amended by repealing and rescinding the reference to the phrase: "and 70-572."

Section 3: Subparagraph (b) of Section 70-567 of the Wheaton City Code is amended by repealing and rescinding subparagraph (b) in its entirety and replacing it with a new subparagraph (b) of Section 70-567 which shall read as follows:

"(b) Hazardous and unlawful vehicles may be towed without notice. Within seven (7) days 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 70-570 and 70-572."

Section 4: Subparagraph (a) of Section 70-568 of the Wheaton City Code is amended by repealing and rescinding the first sentence in subparagraph (a) in its entirety and replacing it with a new first sentence of subparagraph (a) of Section 70-568, which shall read as follows:

"(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 (1) personal service, or (2) 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."

Section 5: Subparagraph (a) of Section 70-569 of the Wheaton City Code is amended by repealing and rescinding the first sentence in subparagraph (a) in its entirety and replacing it with a new first sentence of subparagraph (a) of Section 70-569, which shall state as follows:

"(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 or personal service of the notice described in section 70-568 to request, in writing, a pre-tow hearing."

Section 6: Subparagraph (i) of Section 70-569 of the Wheaton City Code is amended by repealing and rescinding the first sentence in subparagraph (i) in its entirety and replacing it with a new first sentence of subparagraph (i) of Section 70-569, which shall state as follows:

"(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 on the owner thereof, and with any outstanding fines to be paid by the owner thereof."

Section 7: Subparagraph (k) of Section 70-569 of the Wheaton City Code is amended by repealing and rescinding the subparagraph (k) in its entirety and replacing it with a new subparagraph (k) of Section 70-569, which shall state as follows:

"(k) Any finding, determination or decision of the hearing officer shall be subject to review under Illinois State Law."

Section 8: Subparagraph (a) of Section 70-570 of the Wheaton City Code is amended by repealing and rescinding the first sentence in subparagraph (a) in its entirety and replacing it with a new first sentence of subparagraph (a) of Section 70-570, which shall state as follows:

"(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 (1) personal service, or (2) 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."

Section 9: Subparagraph (a) of Section 70-571 of the Wheaton City Code is amended by

repealing and rescinding subparagraph (a) of Section 70-571 in its entirety and replacing it with a new subparagraph (a) of Section 70-571, which shall state as follows:

"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. Additionally, unless the police department has notified the towing service operator in writing that no fine was assessed against the owner, lienholder or other person legally entitled to the vehicle, and/or that no fine is to be collected, the owner, lienholder or other person legally entitled to the vehicle shall present a voucher from the Wheaton Police Department to the towing service operator evidencing payment of the fine assessed against the owner pursuant to section 70-574, before the owner, lienholder or other person legally entitled to the vehicle shall be permitted to remove the vehicle from the authorized storage location."

Section 10: Subparagraph (d) of Section 70-571 of the Wheaton City Code is amended by deleting the reference to "subparagraph (e)(2)(a)" and replacing it in lieu thereof with the phrase "subparagraph (e)(2)(b)."

Section 11: Subparagraph (a) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding the first sentence in subparagraph (a) in its entirety and replacing it with a new first sentence of Subparagraph (a) of Section 70-572, which shall state as follows:

"(a) The owner of a vehicle towed as a hazardous or unlawful vehicle pursuant to section 70-567, subparagraph (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 or personal service of notice, or fifteen (15) days after release of the vehicle, whichever occurs first, to request in writing a post-tow hearing to determine the validity of such tow, any towing or storage charges, and any fine assessed against the owner."

Section 12: Subparagraph (b)(1) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding subparagraph (b)(1) of Section 70-572 in its entirety and replacing it with a new subparagraph (b)(1) of Section 70-572, which shall state as follows:

"(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 and any fine(s) assessed against the owner, lienholder or other person legally entitled to the

vehicle, 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 48 hours before such hearing, the city shall notify the owner of the date and time for such hearing."

Section 13: Subparagraph (b)(2) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding the first sentence in Subparagraph (b)(2) of Section 70-572 in its entirety and replacing it with a new first sentence of Subparagraph (b)(2) of Section 70-572, which shall read as follows:

"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 48 hours after such request for such hearing, excluding weekends and holidays."

Section 14: Subparagraph (e) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding Subparagraph (e) of Section 70-572 in its entirety and replacing it with a new Subparagraph (e) of Section 70-572, which shall read as follows:

"All fines, towing and storage fees shall be paid by the owner if the hearing officer makes a finding consistent with subparagraph (d)(1), (d)(4) or (d)(5) of this Section. All fines, towing and storage fees shall be refunded or excused if the hearing officer makes a finding consistent with subparagraph (d)(2) of this Section. All fines, towing and storage fees shall be prorated by the hearing officer if the hearing officer makes a finding consistent with subparagraph (d)(3) of this Section."

Section 15: Subparagraph (f) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding Subparagraph (f) of Section 70-572 in its entirety and replacing it with a new Subparagraph (f) of Section 70-572, which shall read as follows:

" 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, including the amount of any fines 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."

Section 16: Subparagraph (g) of Section 70-572 of the Wheaton City Code is amended by repealing and rescinding subparagraph (g) in its entirety and replacing it with a new subparagraph (g) of Section 70-572, which shall read as follows:

"(g) 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."

Section 17: Section 70-572 of the Wheaton City Code is amended by the addition a new subparagraph (h), which shall read as follows:

"(h) The city or the owner may contest the decision of the hearing officer in accordance with Illinois State Law."

Section 18: Subparagraph (a) of Section 70-573 of the Wheaton City Code is amended by repealing and rescinding subparagraph (a) in its entirety and replacing it with a new subparagraph (a) of Section 70-573, which shall read as follows:

"(a) Within seven (7) business days after the date of impoundment of a vehicle towed pursuant to the provisions of this Article, the police department shall forward written notification by (1) personal service or (2) 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."

Section 19: Subparagraph (b) of Section 70-573 of the Wheaton City Code is amended by deleting the reference to "60" and replacing it, in lieu thereof, with the term "30."

Section 20: Subparagraph (b) of Section 70-573 of the Wheaton City Code is amended by repealing and rescinding the second to last sentence of subparagraph (b) in its entirety and replacing it with a new second to last sentence of subparagraph (b) of Section 70-573, which shall read as follows:

“At least ten days prior to the public sale, the police department shall forward notice by (1) personal service, or (2) certified or registered mail return receipt requested and regular mail, 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.”

Section 21: Subparagraph (d) of Section 70-573 of the Wheaton City Code is amended by repealing and rescinding subparagraph (d) in its entirety and replacing it with a new subparagraph (d), which shall read as follows:

“(a) Any vehicle of more than seven (7) years of age towed pursuant to this Article, shall be kept in custody or storage for a minimum of 30 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 30 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 30 day period, without 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 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 (d)(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.”

Section 22: Subparagraph (f) of Section 70-573 of the Wheaton City Code is amended by repealing and rescinding subparagraph (f) of Section 70-573 in its entirety.

Section 23: Chapter 70, "TRAFFIC AND VEHICLES," "ARTICLE IX. ABANDONED AND INOPERABLE VEHICLES", of the Wheaton City Code is amended by the addition of a new section 70-574 which shall read as follows:

"Sec. 70-574. Citations.

It shall be unlawful for any person to keep any abandoned, hazardous, inoperable or unlawful vehicle, as defined in section 70-566 of this Article, on any real property in the City. Any person notified of a violation of this Section by the Police Department or its duly authorized agent, is subject to being cited and towed for a violation of this Section, if the violation exists on the 7th day after a notice of violation was served. Notice may be given by placing a notice of violation sticker on the vehicle. Any person who is issued a citation for a violation of this Section shall remove the vehicle in compliance with this ordinance within 7 days from the date of the citation.

- (a) Any person who has received a citation for a violation of this Section, but who has removed the vehicle before a tow could be made, shall pay a \$100.00 fine to the City within 10 days of the date of the citation. Failure to pay the fine within 10 days of the date of the citation shall result in a mandatory court appearance. Upon conviction, the violator shall be subject to a fine not less than \$150.00 nor more than \$500.00, plus court costs.
- (b) Any person who has received a citation for a violation of this Section and whose vehicle has been towed, shall pay a \$100.00 fine to the City directly, in addition to any towing and storage fees that the owner, lienholder, or other person legally entitled to the vehicle is obligated to pay, prior to the release of the vehicle, in accordance with the other provisions of this article. Such persons may contest the fine as a part of the review process set forth in the other provisions of this article. Those persons who do not pay the \$100.00 fine and who do not seek the release of the vehicle shall be subject to a mandatory court appearance. Upon conviction, the violator shall be subject to a fine not less than \$150.00 nor more than \$500.00, plus court costs."

Section 24: In all other respects, the terms and provisions of the Wheaton City Code, as amended, are ratified and remain in full force and effect.

Section 25: All ordinance or parts of ordinances in conflict with these provisions are repealed.

Section 26: This ordinance shall become effective from and after its passage, approval, and publication in pamphlet form in the manner prescribed by law.

Mayor

ATTEST:

City Clerk

Ayes:

Roll Call Vote:

Councilwoman Davenport

Councilman Eckhoff

Mayor Carr

Councilman Johnson

Councilwoman Johnson

Councilman Mork

Nays:

None

Absent:

Councilman Gresk

Motion Carried Unanimously

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