

ORDINANCE NO. 8209

AN ORDINANCE REGARDING THE TOWING AND IMPOUNDMENT OF VEHICLES, AMENDING SECTIONS 44-85, 44-86, 44-98, 44-99, AND 44-127 AND AMENDING ARTICLE VI (ABANDONED VEHICLES) OF CHAPTER 44 (TRAFFIC AND VEHICLES), OF THE LEAVENWORTH CODE OF ORDINANCES, AND ESTABLISHING NEW AND REPLACEMENT SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LEAVENWORTH, KANSAS:

Section 1. Section 44-85 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-85. Penalty for violation of article; prima facie evidence of violation.

Any operator of a vehicle permitting such vehicle to be parked or standing in violation of this article, upon conviction, shall be guilty of a misdemeanor. If any vehicle is found to be in violation of the provisions of this article and the identity of the operator cannot be determined, the owner or person in whose name such vehicle is registered shall be held prima facie responsible for such violation.

Section 2. Section 44-86 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-86. Parking restricted to 24-hour period.

It is unlawful for any person to park or to permit the parking, storing or standing of any vehicle, as defined in the standard traffic ordinance incorporated by section 44-1, upon any street or alley or in any public park or public off-street parking facility in the city, for a continuous period of more than twenty-four (24) hours, without special permission of the police chief.

Section 3. Section 44-98 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-98. Removal of vehicles for city services.

The police shall have the power to remove or have removed, in accordance with article VI of this chapter 44, any vehicle on any street in the city after posting or giving notice two (2) hours in advance of such removal that the vehicle must be removed as ordered for removal of snow, painting of traffic signs or cleaning of the streets, which authority shall apply to any hour, day or night.

Section 4. Section 44-99 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-99. Removal of parked vehicles during emergencies.

If, by reason of fire, flood, windstorm, snowstorm or other catastrophe, any emergency arises which, in the opinion of the fire chief, police chief, city engineer

or other officer of the city, requires the removal of any vehicles parked or standing in the streets, alleys, public parks, public off-street parking facilities, or in any other public place in the city, such vehicles may be removed and towed by the city officers or employees to some other safe place in the city, in accordance with article VI of this chapter 44.

Section 5. Section 44-127 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

Sec. 44-127. Violation notices; towing of vehicles.

When a police officer or other officer designated by the police chief finds a vehicle parked in violation of this division, or is otherwise authorized to remove a vehicle, he or she may order the vehicle removed and towed by a towing service in the city, in accordance with article VI of this chapter 44. The city official ordering such removal shall cause a record to be kept listing the description of any and all vehicles so removed and the place from which and to which such vehicles are removed. Before such vehicle may be reclaimed or redeemed, the owner thereof shall pay all costs for the towing and storing of such vehicle.

Section 6. Article VI of Chapter 44 of the Leavenworth Code of Ordinances is hereby deleted in its entirety and amended to read as follows:

ARTICLE VI. TOWING AND IMPOUNDMENT REGULATIONS¹

Sec. 44-217. Authority to Tow or Impound.

The police department, and all members thereof, are authorized to remove or tow away, or have removed and towed away by a commercial towing service to an impound lot or other safe place designated by the city, all motor vehicles found under the hereinafter enumerated circumstances:

- A. When any motor vehicle upon a street is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle cannot safely operate the motor vehicle or are unable to provide for its custody or removal to a lawfully secure location; or
- B. When any motor vehicle is parked illegally in such a manner as to constitute a hazard or obstruction to the safe movement of traffic, or is parked in violation of chapter 44, article IV of this code or other applicable code or ordinance, or where the removal of such vehicle is otherwise authorized by chapter 44, article IV of this code or other applicable code or ordinance; or
- C. When the operator of any motor vehicle is arrested and taken into custody by the police department and such vehicle would thereby be left unattended and create a hazard or obstruction to the safe movement of traffic; or

¹ *State Law Reference—Abandoned and disabled vehicles, K.S.A. 8-1101 et seq.*

- D. When any motor vehicle is abandoned or left unattended on a highway, public road or city-owned property for a period of time in excess of forty-eight (48) consecutive hours (except as otherwise provided or further time-limited under other city code, in which event such other time limitation shall apply); or
- E. When any vehicle is found being driven on the streets and is not in proper or safe condition to be driven and cannot be removed safely to a lawfully secured location by the owner or operator; or
- F. When any motor vehicle determined to be stolen or taken without the consent of its owner is found upon the public street; or
- G. When any motor vehicle is subject to seizure as evidence in a criminal prosecution; or
- H. When any motor vehicle is subject to seizure or forfeiture under the laws of this state or federal law.

If a court orders any vehicle to be held for the purpose of a criminal investigation or for use as evidence at a trial, then such order shall be in writing, and the court shall assess as costs the actual and reasonable charges for the protection, storage or safekeeping accrued while the vehicle was held pursuant to such written order.

Sec. 44-218. Police chief designated as enforcing officer.

The police chief is designated as the enforcing officer charged with the administration of this article. The chief of police shall establish, distribute, and cause the enforcement of reasonable policies, rules and regulations for wrecker or towing services, subject to the provisions of this article, as from time to time he or she deems appropriate for the safety, well-being and protection of citizens and their property within the city.

Sec. 44-219. Notice to Owner of Towed and Impounded Vehicle.

- A. Vehicles which are subject to being towed and impounded under conditions that do not constitute an immediate obstruction to the normal and safe movement of traffic, or do not prevent the City from removing snow, painting traffic signs, or cleaning streets, and are determined to be abandoned shall not be towed or impounded until the motor vehicle has placed on its windshield or in another prominent location a sticker or placard indicating the vehicle is in violation of city code and shall be removed by the police department after forty-eight (48) hours from the time the sticker or placard was attached to the vehicle (except as otherwise provided or further time-limited under other city code, in which event such other time limitation shall apply). The sticker or placard shall include such other information as the police chief determines is necessary. Subsequent to the towing of an abandoned vehicle the police department shall comply with the notice requirements of section 44.219.B below.

- B. Whenever any motor vehicle is towed and impounded pursuant to the provisions of this article, notice, if possible, shall be given to the owner or person entitled to custody thereof that such vehicle has been towed and impounded, the reasons for the tow, how the vehicle may be recovered to include the right of hearing set out in section 44.222, and that unless the owner takes action within thirty (30) days from the date of receipt of the notice, proceedings may be instituted to dispose of the motor vehicle as provided by Kansas law to cover any costs accrued as a result of the towing and impounding. Said notice shall be by written notice provided to the owner or person entitled to custody of the motor vehicle at the time the motor vehicle is towed, provided the officer providing such notice has obtained written acknowledgment of receipt of the notice. In addition, said notice shall be made by certified mail. Notice by certified mail shall be mailed to the owner of vehicles displaying state-issued registration plates no later than close of business of the third business day after the towing. The police department shall use reasonable diligence in determining the title or registered owner of the vehicle.

Sec. 44-220. Disposal of Towed or Impounded Vehicles.

Any motor vehicle which has been towed or impounded by or at the direction of the city, as provided in this article, may be disposed of as provided by applicable Kansas statutes and procedures.

Sec. 44-221. Recovery Procedures.

- A. All motor vehicles towed or impounded by or at the direction of the city pursuant to the provisions of this article shall be surrendered to the owner or person entitled to custody of the vehicle subject to the provisions of subparagraph B herein, upon presentation of the following to the commercial tow service where the vehicle is impounded:
1. Proof of ownership of the vehicle by lawful title or other proof of lawful entitlement to the vehicle;
 2. Proof of liability insurance on the vehicle as required by the laws of the state of Kansas;
 3. Proof of current registration of the vehicle as required by the laws of the state of Kansas; and
 4. Payment of all storage charges and towing fees incurred in the towing and impounding of the vehicle must be made prior to release of the vehicle unless otherwise relieved of that requirement by the city or by the hearing provisions set forth in section 44.222 below.
- B. Should a person seeking release of a motor vehicle impounded under the provisions of this article not present proof of current registration and proof of insurance, the vehicle will not be released to be driven away from the impound lot, but the vehicle may be released to be towed from the tow lot if proof of ownership is shown and all storage and towing charges are paid.

Sec. 44-222. Hearing Procedures.

- A. Owners or persons entitled to the lawful custody of motor vehicles impounded by or at the direction of the city who wish to contest the validity of the motor vehicle tow may request a hearing for such purpose by notifying the police department of the request in writing.
- B. A hearing for the purpose of determining the validity of the tow shall be held by the municipal court on the next regularly-scheduled court date that is at least five (5) days after such hearing is requested, unless all parties agree to an earlier date. The time of the hearing shall be set by the clerk of the municipal court.
- C. Pending such hearing, the owner or person lawfully entitled to custody of any impounded vehicle may retrieve the impounded vehicle upon either (1) paying applicable towing charge and storage fees, or (2) posting bond with the clerk of the court or the police department in the amount of the towing charge and storage fees. Upon payment or upon showing to the commercial tow service proof of the posting of the bond, the motor vehicle shall be released immediately. If payment is not made, or a bond is not posted, the vehicle shall remain in storage until the requested hearing is held.
- D. If the municipal court judge determines the vehicle was lawfully towed pursuant to the provisions of this article or other applicable law, then to the extent not previously paid, all charges shall be paid by the owner or person lawfully entitled to custody of the vehicle. Such charges may be paid for partly or in whole by the bond, if posted, and any surplus bond money shall be returned.
- E. If the municipal court judge determines the vehicle was not permissibly towed pursuant to the provisions of this article or other applicable law, the court shall order the immediate release of the vehicle to its lawful owner without costs, any towing charge and storage fees shall be paid or reimbursed by the city, and any bond posted shall be returned.
- F. Should any owner or person lawfully entitled to custody of an impounded vehicle post bond but fail to appear after being notified of the time for the hearing, such bond shall be forfeited to the party owed any towing charges or storage fees.

Sec. 44-223. Tow Service Police Rotation.

- A. Any person, firm, partnership or corporation desiring to perform wrecker or towing service for the city police department shall make written application to the chief of police providing proof that the applicant meets the requirements of this section. Any such wrecker or towing service which meets the requirements of this section all other provisions of this article and applicable towing resolutions shall be eligible to be placed on such list and be called on such rotation basis.

- B. The following requirements and criteria shall be met by any wrecker or towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service by the police department.
1. Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises, or be available to respond within 30 minutes, of the location or area where towed vehicles are stored or kept 9½ hours per day, from 8 a.m. to 5:30 p.m. Monday through Friday. In addition, each wrecker or towing service shall conspicuously post a sign at the front of their business stating the business name and a telephone number where information can be obtained about any vehicle towed or stored by the business.
 2. Towing and wrecker services and drivers must be available on a 24-hour, seven-days-a-week basis.
 3. Each towing and wrecker service must have properly zoned adequate storage facilities within the city. All automobiles towed pursuant to this article shall be stored within the city. The outside storage areas shall be fenced and otherwise properly secured.
 4. Each towing and wrecker service must have available a storage area which is totally enclosed within a building, or alternative approved by the Chief of Police, for the protection and security of recovered stolen property to be processed and valuable property left in vehicles.
 5. Each wrecker or towing service must have available at least two (2) fully functional wreckers.
 6. Each towing and wrecker service must handle and tow abandoned vehicles in proportion to the number of tow requests received from said police department for damaged or disabled vehicles.
 7. Each towing and wrecker service must provide the City with proof of adequate insurance protection, including but not limited to garage liability, commercial general liability, business automobile liability, and workers' compensation. The city is to be named as an additional insured on all required insuring agreements with the exception of workers' compensation.
 8. Each towing and wrecker service must be certified and designated as an agent and authorized representative for the city for the limited purposes of towing, removing, storing and selling of abandoned motor vehicles. In addition thereto, each towing and wrecker service must enter into and sign a hold harmless agreement with the city.
- C. The criteria and requirements set forth in subsection B shall not apply when the person whose vehicle is to be towed shall indicate a preference as to which towing and wrecker service is to be utilized or when the person whose vehicle is to be towed shall request a specific towing or wrecker service.

- D. The chief of police shall provide to appropriate department personnel a list of eligible and qualified tow companies to be used in providing tow services for the city. The chief of police will use his or her reasonable efforts to ensure the police department implements a rotational procedure that fairly utilizes the services of the qualified tow services on the police rotation tow list.

Sec. 44-224. Suspension or Revocation of Approval and Authorization.

- A. The chief of police may order that the approval and authority of a wrecker or towing service to respond to requests of said police department be suspended or revoked and order such wrecker or tow service be struck from the rotational call list. Any such suspension shall be effective until the deficiency is corrected. If such approval and authority is revoked, such wrecker or towing service shall not be eligible for reinstatement for at least one (1) year from the date of revocation.
- B. Such suspension or revocation shall be by written notice to the wrecker or towing service advising such service of its failure to comply with any of the requirements of this article or of the violation by such wrecker or towing service of the following provisions upon which a suspension or revocation may be based:
 - 1. Obtaining the approval and authority by fraudulent conduct or false statements;
 - 2. The wrecker or towing service has applied abusive or excessive charges for the services provided;
 - 3. Such wrecker or towing service consistently refuses to respond to requests for such service by the police department or consistently fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;
 - 4. The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;
 - 5. Failure to comply with any rules or regulations governing towing services established by the chief of police; or
 - 6. The city is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause.

Sec. 44.225. Fees and Charges.

At the time of providing wrecker or towing service, any person providing such wrecker or towing service shall give written notice to the driver, if available, of the vehicle being towed that a fee will be charged for storage of such vehicle. Failure

to give such written notice shall invalidate any lien established for such storage fee.

Sec. 44.226. Other Regulations.

- A. Subject to subsections B and C below, any personal property within the vehicle need not be released to the owner thereof until the reasonable or agreed charges for such recovery, transportation or safekeeping have been paid, or satisfactory arrangements for payment have been made. The person in possession of such vehicle and personal property shall be responsible only for the reasonable care of such property. Any personal property within the vehicle not returned to the owner shall be sold at the auction authorized by this article.
- B. No wrecker or towing service, or owner, employee or agent thereof, shall prohibit or refuse to allow the owner, operator, person in charge or possession of the towed and stored vehicle, who has proof of title or registration, to retrieve any medicine or medical supplies from such towed and stored vehicle. No wrecker or towing service shall require the payment of any fees or charges before permitting access to a person retrieving medicine or medical supplies permitted to be retrieved under this section.
- C. As to vehicles towed from private property, and to the extent required by law (e.g., where personal property has not been impounded, constitutes evidence, or the like), an owner of a vehicle towed shall have access to personal property in such vehicle for forty-eight (48) hours after such vehicle has been towed and such personal property shall be released to the owner.
- D. Each wrecker and towing service shall report the location of a vehicle towed from private property to the police department within two (2) hours of such tow.

Section 7. Sections 44-85, 44-86, 44-98, 44-99, and 44-127, and Article VI of Chapter 44 of the Leavenworth Code of Ordinances (including Sections 44-217 through 44-219, inclusive), in existence as of and prior to the adoption of this ordinance, are hereby repealed.

Section 8. This ordinance shall take effect and be in force from and after its publication in the official city newspaper as provided by law.

PASSED and APPROVED by the Governing Body on the 14th day of February 2023.

/s/ Jermaine Wilson
Jermaine Wilson, Mayor

{SEAL}
ATTEST:

/s/ Sarah Bodensteiner
Sarah Bodensteiner, City Clerk