

ORDINANCE NUMBER 1359

AN ORDINANCE REPEALING EXISTING ORDINANCE 614 AS AMENDED BY ORDINANCE 1069, AND PROVIDING FOR THE IMPOUNDING AND DISPOSITION OF ABANDONED AND IMPOUNDED VEHICLES.

THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, unless the context requires otherwise:

- (1) "Abandoned" means left unoccupied and unclaimed, or in a damaged or dismantled condition upon the streets or alleys of a city.
- (2) "Alley" means a narrow passageway through the interior of a block or from the interior to the street.
- (3) "Ambulance" means any privately or publicly owned motor vehicle that is regularly provided or offered to be provided for the emergency transportation of person suffering from illness, injury or disability. Police, fire, funeral home and other vehicles which serve a dual purpose, one of which meets the definition of "ambulance", when actually used for ambulance purposes, are ambulances.
- (4) "Bicycle" means every device propelled by human power upon which any person may ride, having two tandem wheels either of which is more than 14 inches in diameter, or having three wheels all of which are more than 14 inches in diameter.
- (5) "Bus loading zone" means the space adjacent to the curb reserved for the exclusive use of motor busses, trolley busses and taxicabs in the loading and unloading of passengers and merchandise and designated by official signs or markings.
- (6) "Business district" means the territory contiguous to a street or highway where fifty percent or more of the frontage thereon for a distance of six hundred feet or more on one side, or three hundred feet or more on both sides is occupied by buildings in use for business.
- (7) "City" means the City of Milwaukie.
- (8) "Commercial vehicle" means:
 - (a) A vehicle of over 8,000 pounds gross weight that is designed and being used to transport merchandise, or a vehicle of less than 8,000 pounds gross weight with the business name of the user permanently exhibited on one or both of its sides that is designed and being used to transport merchandise;
 - (b) A station wagon with the business name of the user permanently exhibited on one or both of its sides, when used for transporting merchandise.
- (9) "Construction zone" means the space adjacent to the curb and in immediate proximity to the premises where construction, alteration, remodeling,

repairing, or similar work is in progress, and designated by official signs or markings.

- (10) "Controlled access highway" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.
- (11) "Crosswalk" means that portion of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street or highway measured from the curbs or, in the absence of curbs, from the edges of the traveled roadway to the property lines, or the prolongation of the lateral lines of a sidewalk, to the sidewalk on the opposite side of the street except when such prolongation would not meet such sidewalk on the opposite side of the street, or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface of such roadway conforming in design to standards prescribed by the State Highway Commission; provided, however, that whenever marked crosswalks have been indicated, such crosswalks and no other shall be deemed lawful across such roadway at that intersection.
- (12) "Curb" means any raised margin along lines established by ordinance as curb lines, defining the space in the street devoted to vehicular traffic; or if there are no raised margins, the extreme edge or shoulder of the roadway.
- (13) "Driver" means any person in actual control of a vehicle.
- (14) "Emergency vehicles" mean vehicles of the fire department, fire patrol, police vehicles, emergency vehicles of municipal departments of public service corporations and ambulances while being used for emergency purposes and displaying the required lights and sounding a siren or other audible warning.
- (15) "Emergency zones" mean places designated with official signs, barricades or other markings by the department of public works or bureau of police where during emergencies or because of contingent emergencies no parking shall be allowed.
- (16) "Highway", "road" or "street" means every public way, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this municipality, used or intended for the use of the general public for vehicles except that:
 - (a) The terms do not include any way, thoroughfare or place owned by a district formed under ORS chapters 545, 547 and 551 or a corporation formed under ORS chapter 554; and
 - (b) As used in those provisions relating to size and weight restrictions vehicles, the terms do not include any road or thoroughfare or property in private ownership or any road or thoroughfare, other than

a state highway or county road, used pursuant to any agreement with any agency of the United States or with a licensee of such agency, or both.

- (17) "Holiday" as used in this ordinance or on signs or other devices erected in accordance with this ordinance, the term shall include Sundays, New Years, either Independence Day, either Labor Day, Thanksgiving, Christmas and all other legal holidays.
- (18) "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines or, if none, then of the lateral boundary lines of two or more streets or highways which join another at an angle, whether or not one street or highway crosses the other.
- (19) "Loading zone" means the space adjacent to the curb reserved for the exclusive use of vehicles actually engaged in the loading or unloading of passengers, goods, wares, merchandise or materials, and designated by official signs or markings.
- (20) "Motor vehicle" means any vehicle which is self-propelled, including but not limited to tractors, fork-lift trucks, motorcycles, road building equipment, street cleaning equipment, and any other vehicle capable of moving under its own power, notwithstanding that the vehicle may be exempt from licensing under the motor vehicle laws of Oregon.
- (21) "Motorcycle" means every motor vehicle, except tractors, designed to travel on not more than three wheels in contact with the ground.
- (22) "Official car zone" means the space adjacent to the curb reserved for the exclusive use of official cars and designated by official signs or markings.
- (23) "Operator" means any person who is in actual physical control of a motor vehicle upon the highways or streets of this city.
- (24) "Owner" means the person having all the incidents of ownership in a vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to possession of a vehicle under a security agreement, or a lease for a term of ten or more successive days.
- (25) "Park, parking or parked" means the stopping or standing of any vehicle upon any street or highway within the city, whether such vehicle is occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading passengers or freight, or in obedience to traffic regulations or traffic signs or signals.
- (26) "Parkway" means that portion of the street not used as a roadway or sidewalk.
- (27) "Pedestrian" means a person afoot; a person operating a pushcart, a person riding on, or pulling a coaster wagon, sled, scooter, tricycle, sidewalk bicycle, or a similar conveyance, or on roller skates; a baby in a carriage, or a person confined to a wheelchair or similar apparatus.

- (28) "Playground zone" means the space adjacent to or in the immediate proximity of any public playground and designated by official signs or markings.
- (29) "Person" means any natural person, firm, partnership, association or corporation.
- (30) "Private road or driveway" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.
- (31) "Right of way" means the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.
- (32) "School bus" means every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school, or privately owned and operated for compensation for the transportation of children to or from school. The term "school bus" does not include vehicles commonly known and used as private passenger vehicles and not operated for compensation except in the transportation of children to or from school.
- (33) "School zone" means the space adjacent to or in the proximity of a school building or the grounds thereof, or a school crossing and designated by official signs or markings.
- (34) "Shoulder" means that portion of the highway, whether paved or unpaved, contiguous to the roadway primarily for use by pedestrians, for the accommodation of stopped vehicles, for emergency use and for lateral support of base and surface courses.
- (35) "Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property line intended for the use of pedestrians.
- (36) "Street or highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.
- (37) "Stop" when required means a complete cessation of movement. When prohibited, means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.
- (38) "Taxicab" means every motor vehicle equipped with a taximeter which is used as a basis for determining rates.
- (39) "Taxicab zone" means the space adjacent to the curb reserved for the exclusive use of taxicabs, and designated by official signs or markings.

- (40) "Tow away zone" means the space adjacent to the curb on any street or avenue, or portion thereof, on which stopping or parking has been prohibited for specific hours of the day, or otherwise, and which is designated as a tow away zone by official signs or markings.
- (41) "Traffic control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is directed.
- (42) "Traffic lane" means that area of the roadway used for the movement of a single line of traffic.
- (43) "Truck" as used in this ordinance shall mean and apply to any vehicle licensed as a motor truck, or any vehicle 72" or more in width, or any vehicle, including but not limited to a motor truck trailer, designed or operated for the transportation of property, or any piece of movable equipment operable on the city streets of Milwaukie, and whose body weight or whose combined body and load weight exceeds 6,000 pounds. The term "truck" shall not, for the purpose of this ordinance, be applied to automobile passenger vehicles nor to that form of truck commonly referred to as recreation vehicles.
- (44) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon any public street or highway, except devices moved by human power, or used exclusively upon stationary rails or tracks.

Section 2. Abandoning Vehicles Prohibited

- (1) No vehicle shall be abandoned upon any street within the city limits of Milwaukie, nor upon any public or private property without the express or implied consent of the owner or person in lawful possession or control of the property. Consent shall not be implied by a mere failure to object if the owner or person in lawful possession or control of the property lodges a complaint with the proper law enforcement agency.
- (2) The owner of the vehicle as shown on the records of the State Motor Vehicle Division shall be presumed responsible for the abandonment of the vehicle and is liable for the cost of removal, disposition, and any other incidental fees resulting from lawful execution of Milwaukie City Ordinances. Nothing in this ordinance shall bar the owner of record from joining a later unrecorded purchaser of the vehicle.

Section 3. Procedure for Determining Abandonment

- (1) When a police officer has probable cause to believe a vehicle has been left unoccupied and unclaimed or in a damaged or dismantled condition upon any street or alley within the city in the same position for a period of 48 hours or at any time by request of the owner or lawful controller of the private property upon which such a vehicle has been parked the officer shall:

- (a) Make a routine investigation to discover the owner and request removal of the vehicle;
 - (b) Failing to discover the owner by such a process, the officer shall make a diligent inquiry as to the name and address of the owner of the vehicle by examining such vehicle for license number, I.D. number, make, style, and any other information which will aid in the identification of the ownership of the vehicle, and transmitting all available information pertaining to such vehicle to the Department of Motor Vehicles of this or any other state as indicated by licensing with an inquiry for the name and address of the owner, whenever such vehicle is required by law to be registered with that office;
 - (c) If the owner is not identified, place a notice upon the windshield, or some other part of the vehicle easily seen by the passing public.
- (2) An abandoned vehicle which remains in the same position for a period of 48 hours after notice to remove has been posted upon such vehicle, and no person has appeared to show cause why such vehicle should not be removed, shall constitute a nuisance. Any vehicle determined to be a nuisance under the provisions of this ordinance shall be impounded by the city.

Section 4. Owner Identified

- (1) Prior to impoundment, when said investigation reveals the owner of record, the officer shall request removal of the vehicle. The request may be in person or by certified mail, return receipt requested. The request shall state that the vehicle will be impounded by the city 48 hours after the written or oral notification unless:
- (a) The owner removes the vehicle; or
 - (b) Good cause is shown, satisfactory to the chief of police or his designated appointee why such vehicle should not be removed by the owner or removed and impounded by the city.
- (2) After impoundment, if the owner is identified, notice shall be by personal service or be sent by certified mail, return receipt requested that the vehicle has been impounded by the city. The notice to the owner shall also state:
- (a) The ordinance and section authorizing impoundment;
 - (b) The reason for impoundment;
 - (c) A statement of the place where the vehicle is being held and that the owner will be responsible for any impoundment, storage, recovery and administrative costs incurred for recovery or sale of vehicle;
 - (d) That unless the owner redeems the vehicle within 30 days from the

date of mailing the notice, if the address of the owner is within the state of Oregon, and within 40 days of the day of mailing the notice if the address of the owner is without the state of Oregon, and pays all the costs, or makes arrangements with the Chief of Police or his designated appointee to make payment of all costs within a reasonable amount of time, the vehicle will be sold or junked and dismantled in accordance with this Milwaukie Ordinance;

- (e) The proper procedure for redeeming the vehicle before sale;
 - (f) The address and telephone number of the person, bureau, facility, or any combination thereof that may be contacted for information as to the charges that must be paid or deposited before the vehicle will be released.
- (3) If the vehicle is held in joint ownership or ownership in common, all owners shall be supplied the above information, except that if all owners reside at the same address, notice to one shall constitute notice to all.

Section 5. Owner not Identified

- (1) Where the owner of the vehicle has not been determined, notice shall be posted upon the windshield of the vehicle or some other part of the vehicle easily seen by the passing public.
- (2) The notice required by (1) shall state that the vehicle will be removed and impounded under the provisions of this ordinance, 48 hours after the time of the posting, unless:
 - (a) The owner removes the vehicle; or
 - (b) Good cause is shown, satisfactory to the Chief of Police, or his designated appointee, why such vehicle should not be removed by the owner or removed and impounded by the city.
- (3) After impoundment pursuant to the above provisions, and where the owner of the vehicle or the owner's address cannot be ascertained, the information required under Section 3 shall be published in a newspaper of general circulation within the city. The notice of sale shall be published two times. The first publication shall be made not less than 15 days prior to the date of the proposed sale, and the second shall be made not more than 7 days prior to the date of the proposed sale.

Section 6. Redemption

- (1) An owner may redeem a vehicle impounded under the provisions of this ordinance, before a sale or disposition has taken place, by applying to the police department, whereupon he shall:
 - (a) Submit evidence of his ownership or interest in the vehicle, satisfactory to the Chief of Police or his appointee, that such claim is rightful, and

- (b) Pay the costs due and owing including towing storage and administrative liens at the time the application to redeem is made or make satisfactory arrangements to do so with the Chief of Police or his appointee.

Upon completion of this procedure, a receipt shall be issued to the owner and the vehicle shall be returned.

- (2) The former legal owner or person entitled to possession has no further right, title, claim or interest in the vehicle itself. However at any time within two years after sale or disposition, the owner of any property sold as herein provided shall be entitled to have the balance of the proceeds of such sale paid to him out of the special fund upon making application therefore to the Chief of Police or appointee and presenting satisfactory proof of ownership less costs incurred.

Section 7. Lien for Towing and Storage

- (1) Any person authorized by the Chief of Police or his designated appointee to impound vehicles, who does at the request of such authorized person tow a vehicle from public or private property shall have a lien on the vehicle for the just and reasonable charges for the towing performed, and may retain possession of the vehicle until such charges are paid. In addition, any storage fees incurred by the authorized person shall be added to the towing charges and included in the lien against the vehicle.
- (2) Where a private garage is utilized, the council shall also establish reasonable fees for such services by resolution, with the following conditions:
 - (a) The city shall not be liable for services rendered by a private garage from any source other than such amounts as may be collected from the owner on redemption, or from a purchaser upon sale, after the city shall have deducted its expenses, unless the city shall be the purchaser of the vehicle.
 - (b) No lien shall be created by this ordinance in favor of the private garage upon the vehicle for such services.
 - (c) The vehicle shall not be released from the private garage except upon a receipt, signed by the Chief of Police or his designated appointee, proffered by the purchaser.

Section 8. Impounding of Certain Vehicles Authorized

- (1) Any vehicle found on a street, alley, lane, sidewalk, parking strip, city owned or city operated property, or in a public park or other public place may be towed to the police garage or other garage or storage area designated by the Chief of Police or his designated appointee, when:
 - (a) The vehicle constitutes a nuisance as herein defined;

- (b) The vehicle is placed in a manner or location that constitutes an obstruction to traffic or a hazard to public safety. A police officer shall order the owner or operator of the vehicle to remove it. If the vehicle is unattended, the officer may cause the vehicle to be towed and stored at the owner's expense. The owner may be liable for the costs of towing and storing, notwithstanding that the vehicle was parked by another or that the vehicle was initially parked in a safe manner but subsequently became an obstruction or hazard;
 - (c) The vehicle is parked on city owned or property without express city permission or the vehicle is parked in violation of a temporary or permanent parking restriction;
 - (d) The vehicle was used in committing traffic or parking violations for which an unserved warrant is on file with the clerk of the municipal court;
 - (e) The vehicle has been reported stolen;
 - (f) The vehicle or its contents is to be used as evidence in traffic or criminal prosecutions or in the prosecution for violations of the city's ordinance;
 - (g) The vehicle was in the possession of a person taken into custody by a law enforcement agency;
 - (h) The vehicle has four or more unpaid parking violations outstanding;
 - (i) The owner or lawful controller of the private property upon which said vehicle has been parked requests removal and the procedures for determining abandonment as outlined in Section 2 have been followed.
- (2) The impounding of a vehicle authorized by this ordinance shall not preclude issuance of a citation for violation of this or any other city ordinance.
- (3) The Chief of Police or his designee may hire other personnel, equipment and facilities to enforce this ordinance.

Section 9. Disposal of Impounded Vehicles Authorized

- (1) Whenever a vehicle has been lawfully impounded under city ordinances, the same shall be held at the expense and risk of the owner or person lawfully entitled to possession. The vehicle shall be held 30 days after the mailing of the notice required by this ordinance, if the owner resides within the state of Oregon and 40 days if the owner's address is outside the state of Oregon. If not reclaimed within this period, the vehicle shall be sold at public auction in the manner herein provided, except that when in the judgment of the Chief of Police or his designated appointee the vehicle should be junked or dismantled, an appraisal shall be sought. Where the appraised value of the vehicle

is \$300 or less, the vehicle may be junked or dismantled. Notice of intention to junk or dismantle a vehicle shall be given in the same manner as provided in Section 3.

- (2) After any vehicle has been junked, dismantled or sold under this section, the former legal owner, owner or person entitled to possession has no further right, title, claim or interest in or to the vehicle itself. Except that at any time within 2 years after the vehicle is junked, dismantled or sold under this ordinance, the former owner may recover the balance of the proceeds left after deduction of towing and storage fees and less a reasonable fee for processing the claim, upon making application therefore to the city council and presenting satisfactory proof of ownership.
- (3) Appraisal for the purposes of section (1) shall be made only by individuals possessing valid permits to perform such appraisal. Permits shall be issued by the Motor Vehicle Division pursuant to ORS 483.396 or issued by the Chief of Police or his designated appointee. The Chief of Police or his appointee shall ascertain the qualifications and competence of individuals to conduct vehicle appraisals in accordance with generally accepted methods of appraisal. Permits shall be issued without charge to qualified persons. Permits shall be subject to termination or revocation at the discretion of the Chief of Police or his designated appointee.

Section 10. Procedures for disposition of Impounded Vehicles

(1) Junked or dismantled vehicles:

- (a) If the vehicle is to be junked or dismantled and if neither the owner nor the person entitled to possession has reclaimed the vehicle within the specified time limits, the Chief of Police or his designated appointee shall file with the Motor Vehicles Division an affidavit describing the vehicle, including the license plates, if any, stating the location and appraised value of the vehicle, that the vehicle will be junked or dismantled, and that:
 - 1) Notice of intent to junk or dismantle the vehicle has been sent with notification of the location of the vehicle to the legal owner and owner or person entitled to possession as provided by Municipal ordinance or
 - 2) The owner has signed a release, under oath, disclaiming any future interest in the vehicle, which release shall be forwarded to the division with the affidavit.
- (b) Upon completion and forwarding of the affidavit the Chief of Police or his designated appointee may, without further notice or public auction dispose of the vehicle:
 - 1) by sale to a wrecker licensed under ORS 481.355 and execute a certificate of sale as provided by this ordinance.

- 2) by sale to any other person after requiring that such person first comply with provisions of, and execute the forms required by ORS 481.430. Upon such disposition the vehicle shall cease to be a vehicle for the purposes of this ordinance.
- 3) When a vehicle to be junked or dismantled is sold to a wrecker as provided above in 1), the Chief of Police or his designated appointee, shall execute a certificate of sale in duplicate. The original certificate of sale shall be delivered to the recorder. The certificate of sale shall be substantially as follows:

CERTIFICATE OF DISPOSAL

This is to certify that under the provisions of Milwaukie City Ordinance _____, section _____ dealing with the impounding and disposition of abandoned vehicles, pursuant to due notice of the intention to impound the vehicle, and on behalf of the City of Milwaukie, I did on the _____ day of _____, 19____, dismantle or junk the following described personal property, to wit: _____.

Upon completion of dismantling or junking this vehicle, the above-described property ceases to be a vehicle and cannot be licensed as such under ORS 483.390. Dated this _____ day of _____, 19____.

City of Milwaukie

by

(Chief of Police or the title of his
designated appointee.)

- (c) It shall be unlawful for any person to operate or restore to operation for use as a motor vehicle a vehicle previously junked or dismantled pursuant to this section. Violation of this provision is punishable by 30 days in prison, a fine of not more than \$100, or both.
- (2) Public sale of vehicles
- (a) If no claim shall have been made to redeem an impounded vehicle before the time set for the sale of such vehicle, the Chief of Police or his designated appointee shall hold a sale at the time and place appointed within the view of the vehicle to be sold.
 - (b) The vehicle shall be sold to the highest and best bidder, providing that, if no bids are entered, or those which are entered are less than the costs incurred by the city, the Chief of Police or his designated appointee may enter a bid on behalf of the city in an amount equal to such costs, but not to exceed the actual value of the vehicle. The proceeds of such sale shall be applied:

- 1) To the payment of the costs incurred by the city, and
- 2) The balance, if any, shall be transferred to the city treasurer to be held in a special account for funds from sales of vehicles until such a time as the former owner is barred by the statute of limitations from collecting the balance of said proceeds as authorized by this ordinance.

(c) The certificate of sale shall be substantially as follows:

CERTIFICATE OF SALE

This is to certify that under the provisions of the Traffic Regulations of the City, I, on the _____ day of _____, 19____, on behalf of the City of Milwaukie, did sell to _____ for the sum of _____ dollars (\$ _____) the following described personal property: _____ . And in consideration of the payment of the said sum of \$ _____, the receipt of which is hereby acknowledged, I have this date delivered to said purchaser the foregoing property.

Dated this _____ day of _____, 19____

City of Milwaukie

(signature of Chief of Police or his
designated appointee)

(Notice: The City of Milwaukie assumes no responsibility as to the condition of the said property or the title thereto. In event that this sale shall for any reason be invalid, the liability of the city is limited to the return of the purchaser. The acknowledgment shall be substantially as follows:)

I hereby acknowledge receipt of the above described personal property.

(date)

(signature)

If receipt is taken by an agent of the purchaser, such should be noted upon the receipt, along with a brief description of the agency, as for example:

_____ Company, by _____, President.

Section 11. This ordinance shall apply to all abandoned vehicles now in possession of the city as well as all such vehicles as may hereby be impounded.

Ordinance Number 1359

Section 12. All ordinances or parts thereof conflicting or inconsistent with the provisions herein are repealed; specifically Milwaukie Ordinance 614 as amended by 1069 and the conflicting part of 1021 Section 12.

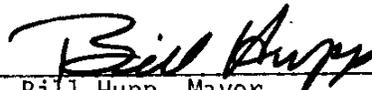
Section 13. If any portion of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 14. The repealer of any ordinance by Section 12 shall not preclude action against any person who violated the ordinance prior to the effective date of this ordinance.

Read the first time this 7th day of March, 1977.

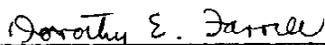
Read the second time and passed by ^{unanimous} vote of the Council this 7th day of March, 1977.

Signed by the Mayor this 7th day of March, 1977.



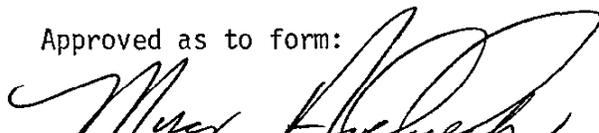
Bill Hupp, Mayor

ATTEST:



Dorothy Farrell, Recorder

Approved as to form:



Myer Avedovech, City Attorney