

**ORDINANCE NO. 1731**

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 5 OF THE NORTON CITY CODE RELATING TO IMPOUNDMENT OF MOTOR VEHICLES**

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF NORTON, KANSAS:

**Section 1.** Chapter 14, Article 5 of the Code of the City of Norton, Kansas, is hereby amended to read as follows:

**14-501. DEFINITIONS.** For the purpose of this article, the following terms, phrases, words and their derivations shall have the following meanings:

**Highway.** 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 travel. Where the word "highway" or the word "street" is used in this article, it means street, avenue, boulevard, thoroughfare, alley, and other public way for vehicular travel by whatever name, unless the context clearly indicates otherwise.

**Motor Vehicle.** Every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively on stationary rails or tracks. This definition of motor vehicles shall also include campers, trailers, and self-propelled recreational vehicles.

**Owner or Occupant.** A party having fee simple title in the real property, or a party having a leasehold interest in the real property, or a party who is the beneficiary of a private easement for the purpose of egress or ingress to or from said real property.

**14-502. IMPOUNDING VEHICLES.** The police department may cause to be impounded:

- a. Any motor vehicle unlawfully parked on a highway in violation of any provision of a city ordinance which prohibits the parking of vehicles at the place where or time when the impounded motor vehicle is found.
- b. Any motor vehicle that has been abandoned and left on a highway or other property open to use by the public for a period in excess of 48 hours pursuant to K.S.A. 8-1102.
- c. Any motor vehicle which:
  1. Is subject to the authority of police officers to remove vehicles pursuant to K.S.A. 8-1570, or
  2. Is subject to seizure and forfeiture under the laws of the state, or
  3. Is subject to being held for use as evidence in a criminal trial.
- d. Any motor vehicle, the continued presence of which, because of the physical location or condition of the motor vehicle, poses a danger to the public safety or to the motor vehicle.
- e. Any motor vehicle which has been abandoned or parked on any real property, other than public property or property open to use by the public, may be moved and disposed of in accordance with the terms of this article by the police department upon the request of the owner or occupant of such real property. The real property referred to herein shall not be owned or leased by the person who abandons, or parks said vehicle or by the owner or lessee of such vehicle. The City, or any person, partnership, corporation or their agent conducting a business enterprise for the purpose of towing vehicles which removes such vehicle from the real property at the request of the police department shall have a possessory lien on such vehicle for

the cost incurred in removing, towing and storing such vehicle. For purposes of this article, common areas shall be construed not to mean public property or property open to the public.

**14-503. SAME.** The police department may authorize storage of such impounded motor vehicles at any location, public or private, which is zoned for the storage of motor vehicles.

**14-504. NOTICE OF IMPOUNDMENT; STORAGE OF VEHICLE.**

a. **When Owner Present.** When the police department intends to impound a motor vehicle pursuant to section 14-502 and the owner of the motor vehicle is then present, the police department shall before the motor vehicle is removed, provide the owner with a notice, in the form prescribed by the police department that the motor vehicle is being impounded, that towing and storage charges will be assessed against the impounded motor vehicle, that the owner may claim and regain possession of the impounded motor vehicle at the location to which it is being removed.

b. **When Owner not Present.** When the police department impounds and removes a motor vehicle pursuant to section 14-502, (except in the cases where the motor vehicle is subject to seizure and forfeiture under the laws of the state or is subject to being held for use as evidence in a criminal trial), and the owner of the motor vehicle is not present at the time of the impoundment, the police department shall, if such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with said division, mail a notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall be in the form prescribed by the police department containing the same information as required by section 14-504(a). If the owner cannot be served by certified mail at the address on the motor vehicle registration and there is no other known address of the owner, the owner shall be deemed to be a resident whose whereabouts are unknown and service shall be made on the Secretary of State as provided in K.S.A. 8-401.

c. An owner of a vehicle towed shall have access to personal property in such vehicle for 48 hours after such vehicle has been towed and such personal property shall be released to the owner, except when such property is subject to seizure and forfeiture under the laws of the city or state or is subject to use as evidence in a criminal trial.

d. That the wrecker or towing service used by the city shall report the location of the vehicle towed to local law enforcement, within two hours of the tow.

**14-505. TOWING AND IMPOUNDMENT FEES.** The established reasonable fees for towing and impoundment storage are established as follows:

a. From 7:00 a.m. to 5:00 p.m. Monday through Friday the towing fee is \$85.00. From 5:00 p.m. to 7:00 a.m. on weekdays and from 5:00 p.m. on Fridays to 7:00 a.m. on Mondays the tow fee is \$135.00. A variance to the towing fee is allowed if the towed vehicle is outside of the normal realm of services, such as overturned, burned, down an embankment or other established difficult removal situations. This increased cost is determined by the towing company and will modify the charge as established above.

b. An additional fee of \$65.00 will be assessed by the City as the initial impoundment fee.

c. An impoundment fee is assessed at \$3.00 per day for the first 30 days that a vehicle is impounded. After the 30-day period, the fee is \$150.00 per month regardless if said vehicle has remained one day past the 30-day period or the entire month.

**14-506. RELEASE OF MOTOR VEHICLE FROM IMPOUNDMENT.** Generally, the owner of an impounded motor vehicle may secure the release of the motor vehicle from impoundment upon requesting such release and presenting proof of ownership satisfactory to the City as the

custodian of the place where the motor vehicle is stored, and by paying to the City for the reasonable cost of impoundment and towing as set forth herein. If the City is satisfied that the person making the request is the owner or his or her authorized agent, he or she shall release the motor vehicle to the owner or his or her agent, upon verification and proof of payment. Any party providing sufficient proof of ownership or security interest in an impounded vehicle must pay any and all towing and impoundment fees incurred to the City before release of the vehicle. All or a portion of the total fees incurred for any vehicle remaining past a 30-day period may be waived or modified at the discretion of the Chief of Police or his/her designee, if sufficient written verification of the need for waiver is supplied by the owner or party of interest. Any decision made by the City concerning the modification or waiver of fees is final and may not be appealed.

**14-507. CHARGES CONSTITUTE A LIEN.** The towing and storage charges occasioned by the impoundment of a motor vehicle pursuant to section 14-502 shall be and constitute a lien upon the impounded motor vehicle. The holder of a lien created by this section may perfect such lien in any manner provided by law, but he or she may not retain possession of the motor vehicle when it has been released pursuant to section 14-506.

**14-508. SATISFACTION OF LIEN; NOTICE OF PUBLIC SALE.** The holder of a lien against a motor vehicle created by section 14-507 may enforce such lien in any manner provided by law after 30 days from the date the motor vehicle is impounded by the police department. If such motor vehicle has displayed thereon a registration plate issued by the division of vehicles and has been registered with the division, the City shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles not more than 30 days after such agency took possession of the vehicle. If the motor vehicle against which the lien is created pursuant to section 14-507 is still under impoundment 30 days from the date it is impounded by the police department and the owner has not requested release of the motor vehicle from impoundment nor paid the towing and impoundment charges, the motor vehicle shall be sold at public sale to the highest and best bidder for cash to satisfy the lien. The City shall first give notice by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder, if any, of record in the county in which the title shows the owner resides, if registered in this state. The notice shall state that if the owner or lienholder does not claim such motor vehicle and pay the towing and impoundment charges incurred by such public agency, within 15 days from the date of the mailing of the notice, that it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within 10 days after receipt of verification of the last owner and any lienholders is received by the City. That all notices shall be given in accordance with K.S.A. 8-1102 and K.S.A. 8-1103.

**14-509. REDEMPTION.** If the city is to conduct the sale:

- a. Any holder of a recorded lien or retained title on a motor vehicle to be sold by the city under the provisions of section 14-508 may claim and take possession thereof, upon payment of accrued towing and impoundment charges, and the estimated costs of publication of the notice of sale, to the police department and deposit with the police department a sufficient assurance by surety bond or otherwise, approved by the city attorney, that the motor vehicle will be forthcoming for public sale thereof or upon claim of the rightful owner prior to the sale. The police department shall, within three days, make a report to the city treasurer and deliver the charges and costs so paid to the city treasurer, taking a receipt therefore and filing it together with a duplicate copy of the report to the city treasurer, with the records in his or her office. The funds shall be held in a trust account until final disposition of the motor vehicle. Not less than five days before the date for sale of the motor vehicle, the police department shall notify

the lienholder or retained titleholder of the time and place for the sale, and the lienholder or retained titleholder shall deliver such motor vehicle to the police department at or before 12:00 noon of the day before the sale. At the sale the amount paid shall be credited on the bid of the lienholder or retained titleholder. If the lienholder or retained titleholder is the successful bidder for the motor vehicle, the police department shall report this fact to the city treasurer and then the funds previously paid by the lienholder or retained titleholder shall be relieved of the trust previously impressed and become the same as other funds received by the city for storage and costs of impounded motor vehicles. If the motor vehicle is sold for a higher bid to any person other than the lienholder or retained titleholder, the police department shall report this fact to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him out of the trust account.

b. If the rightful owner of the motor vehicle claims the same before the sale by payment of the accrued charges, the police department shall immediately notify the lienholder or retained titleholder in possession of the motor vehicle and he or she shall return the same to the police department within 12 hours. The police department shall report this redemption by the rightful owner to the city treasurer and the lienholder or retained titleholder shall be refunded the amount previously paid by him or her out of the trust account.

**14-510. SALE PROCEEDS.** The proceeds of a public sale held pursuant to section 14-508, whether such sale was conducted by the city or by any other person, after payment of the towing and impoundment charges and costs and expenses incident to the sale, shall be deposited with the city treasurer, if the owner of the motor vehicle is absent from the sale, for credit to the trust account. The funds deposited in the trust account pursuant to this section shall remain in the account subject to the order of the person legally entitled thereto, but if no claim is made for these funds within a period of one year after the sale, the funds shall become the property of the city, be released from the trust account and be paid into the general fund as miscellaneous revenues.

**Section 2.** That any ordinances in conflict herewith are hereby amended.

**Section 3.** This ordinance becomes effective upon publication in the official city newspaper.

**PASSED AND ADOPTED** by the Governing Body of the City of Norton, Kansas, this 6<sup>th</sup> day of May, 2020.

Mayor: Jerry Jones

Attest:

City Clerk: Darla R. Ellis

First Reading: 04-01-2020

Second Reading: 04-15-2020

Third Reading: 05-06-2020