

**ORDINANCE NO. 22-58**

**AN ORDINANCE PERTAINING TO REMOVAL OF VEHICLES;  
AMENDING SECTION 10.01.084 OF THE OLATHE MUNICIPAL CODE AND  
REPEALING THE EXISTING SECTION.**

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

**SECTION ONE:** Section 10.01.084 of the Olathe Municipal Code is hereby amended to read as follows:

**“10.01.084 Removal of Vehicles.**

**(A) *Officers Authorized to Remove Vehicles.***

(1) Whenever any police officer finds a vehicle in violation of any of the provisions of Section 10.01.083, such officer is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the roadway.

(2) Any police officer is hereby authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left standing upon any highway, bridge, causeway or in any tunnel and in such position or under such circumstances as to obstruct the normal movement of traffic.

(3) Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety any vehicle found upon a highway when:

(a) Report has been made that such vehicle has been stolen or taken without the consent of its owner;

(b) The person or persons in charge of such vehicle are unable to provide for its custody or removal; or

(c) When the person driving or in control of such vehicle is arrested for an alleged offense for which the officer is

required by law to take the person arrested before the municipal judge without unnecessary delay.

(4) Any unoccupied motor vehicle left parked continuously upon any street of the City or City-owned parking lot for forty-eight (48) hours or more is declared to be a public nuisance. It shall be the duty of the Police Chief to cause such motor vehicle to be removed and impounded.

(5) Any unoccupied motor vehicle that is found parked in or upon any regularly designated parking space, or in or upon any street, sidewalk or alley in violation of any of the provisions of this chapter or any other traffic ordinance of the City, is declared to be a public nuisance and may be removed and impounded upon the order of the Police Chief.

(6) In any proceeding for a violation of this Section, the registration plate displayed upon the motor vehicle in violation shall constitute in evidence a prima facie presumption that the registered owner of such motor vehicle was the person who parked or placed such motor vehicle at the place where the violation occurred.

(B) *Notice Prior to Removal.*

(1) Vehicles which are authorized to be impounded in any of the provisions of this Section may be impounded without notice to the owner or lawful custodian of such vehicle only in the following instances:

(a) Whenever any unattended vehicle is illegally left standing upon any highway, bridge, causeway or in any tunnel and in such position or under such circumstances as to obstruct the normal movement of traffic or otherwise creates a traffic hazard;

(b) When report has been made that such vehicle has been stolen or taken without the consent of its owner and the owner/agent cannot be contacted at that time;

(c) When the driver of a vehicle is arrested, except, provided the driver is not in an impaired condition, the vehicle may be released to the custody of another person present upon the authority of the arrestee/driver;

(d) Accident cases where the driver is injured and is unable to designate to an officer disposition of the vehicle.

(2) Vehicles which are subject to being impounded under any other provision of this chapter may not be towed until the owner or person entitled to lawful custody has been notified and given an opportunity to remove said vehicle within a reasonable time; provided, however, that where the owner or person entitled to custody cannot be located after a bona fide effort has been made to do so, then such vehicle may be towed.

(a) For purposes of this Subsection, "a bona fide effort" includes, but is not limited to, a check of the license tag of the vehicle with the Department of Motor Vehicle Registration; and a vehicle identification number search through the Department of Motor Vehicle Registration.

(C) *Notice after Removal.*

(1) Any motor vehicle which has been impounded under the provisions of this Section for thirty (30) days or more shall be disposed of in the following manner:

If such motor vehicle has displayed thereon a registration plate issued by the Division of Motor Vehicles and has been registered with the Division, a notice shall be sent by certified mail to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lien holder, if any, of record in the county in which the title shows the owner resides if registered in this state, stating that if the owner or lien holder does not claim such motor vehicle and pay the removal and storage charges incurred by such public agency on it within fifteen (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 public agency shall use reasonable diligence in determining the title owner, reasonable diligence includes, but is not limited to, a check of the license tag of the vehicle with the Department of Motor Vehicle Registration and/or a vehicle identification number search through the Department of Motor Vehicle Registration.

Such notification shall include the rights of hearing set out in Subsection (D) hereof. If the owner or person entitled to custody thereof does not take action within the time period set out in Subsection (C) (1), the vehicle will be disposed of by sale at public auction pursuant to the procedures set out in K.S.A. 8-1102 and amendments thereto.

(2) Upon any motor vehicle being impounded under the provisions of this chapter, such motor vehicle shall be surrendered to the duly identified owner upon the payment of storage charges and towing fees which have been incurred in the removal and impounding of such motor vehicle. The impounding fees and costs herein provided for shall be cumulative of any and all other penalties that are provided in this chapter.

(D) *Hearing to Contest Removal.*

(1) Owners or persons entitled to lawful custody of impounded vehicles who wish to contest the payment of any fees or charges incurred in the towing or storage of any vehicle may do so and a hearing for such purpose shall be provided within four (4) working days after such hearing is requested. The request for hearing must be made within ten (10) days of the vehicle's impoundment.

(2) Such hearings shall be held by the municipal court at times to be set by the municipal court.

(3) Pending such hearing, the owner or person lawfully entitled to custody of any impounded vehicle may retrieve the impounded vehicle upon posting a cash or surety bond in the amount of towing

fees and storage charges due and if such bond is posted, the vehicle will be released immediately upon proof of entitlement thereof. If the owner or person lawfully entitled to custody of any vehicle does not post bond, then such vehicle will remain in storage until a hearing is held.

(4) If after hearing, the court determines that there was no factual basis for the impoundment of said vehicle, then the vehicle will be released to the owner or person lawfully entitled to custody thereof without costs, and any bond, if posted, will be returned. If after hearing it is determined that the vehicle was lawfully towed, then all charges shall be paid by the owner or person having lawful custody of vehicle; such charges may be paid for partly or in whole by the bond, if cash, and any surplus bond money will be returned.

(E) *Wrecker or Towing Services and Towing Procedure.*

(1) Whenever a tow truck is required for any reason, the police officer will contact the owner or his or her representative when one is available to determine preference as to which tow service will be called to tow the vehicle. If the owner or his or her representative has a preference, the dispatcher will be advised to order the preferred tow service. Where no preference is indicated, then the next tow service on the rotation list described in Subsection (E)(2) of this Section shall be contacted.

(2) The Police Chief shall approve any person, firm, partnership or corporation desiring to perform wrecker or towing service for the Olathe Police Department for removal of vehicles as authorized herein. If such vehicle or towing service meets the requirements of this Section, in which case such wrecker or towing service shall be eligible to be placed on the list of companies authorized to respond for wrecker or towing service requested by the Olathe Police Department on a rotation basis.

(a) *Requirements for Approval.* 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 Olathe Police Department:

(i) Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises of the location or area where towed vehicles are stored or kept ~~ten~~ nine (~~10~~ 9) hours per day, from 8:00 a.m. to ~~6:00~~ 5:00 p.m. Monday through Friday, and a representative shall be available when called between 5:00 p.m. and 6:00 p.m. Monday through Friday and between 8:00 a.m. and 12:00 noon on Saturdays.

(ii) Each wrecker or towing service shall allow the owner of a vehicle towed 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.

(iii) Wrecker or towing service drivers must be available twenty-four (24) hours a day, seven (7) days a week.

(iv) Each wrecker or towing service must have adequate storage facilities. The wrecker or towing service must have outside storage areas, which must be surround by a fence which is at least six (6) feet high.

(v) Each wrecker or towing service must have available storage area which is totally enclosed within a building for the protection and security of recovered stolen property to be processed and valuable property left in vehicles.

(vi) Each wrecker or towing service must have available at least one (1) sixteen (16) ton capacity wrecker or wrecker vehicle with greater capacity.

(vii) Each wrecker or towing service must handle and tow abandoned vehicles in proportion to the number of tow requests received from the Olathe Police Department for damaged or disabled vehicles.

(viii) Each wrecker or towing service must provide the City with proof of adequate insurance coverage under the following policies:

(aa) *Garage Keeper's Policy.* A garage keeper's liability policy providing the following coverages: fire, theft, wind, water, vandalism and explosion with a minimum limit of Seventy-Five Thousand Dollars (\$75,000.00) per garage.

(bb) *Liability Policies.* Liability policies covering the premises and operation of the owner's business, equipment and motor vehicles for property damage and bodily injury shall be maintained by the owner. These policies shall provide coverage limits at or equivalent to Five Hundred Thousand Dollars (\$500,000.00) per occurrence combined single limit for property damage and bodily injury; on-hook/cargo coverage for vehicles that are being towed with a minimum of Fifty Thousand Dollars (\$50,000.00).

(cc) *Endorsement.* Each policy required herein must contain an endorsement providing the City and the insured thirty (30) days' notice of any material change in coverage or cancellation of the policy.

(ix) Each towing or wrecker service shall provide the Olathe Police Department with information relating to ownership and availability of the equipment and

facilities required by the foregoing paragraphs (i) and (viii).

(x) The wrecker or towing service shall notify the Olathe Police Department of the location of the towed vehicle within two (2) hours of such tow.

(xi) The requirements set forth in paragraphs (i) through (x) shall not apply when the person whose vehicle is to be towed shall indicate a preference as to which wrecker or towing service is to be utilized or when the person whose vehicle is to be towed shall request a specific wrecker or towing service.

(b) *Fees and Charges.* All wrecker or towing services shall charge for towing services and storage fees, such fees and charges as are adopted by the Governing Body of said City by resolution. (Such fees and charges shall apply only as to vehicles towed and stored in response to a request by the Olathe Police Department). Wrecker and towing services may submit charges to the Governing Body for approval, but the charges as approved shall be uniform for all services.

(c) *Release of Towed Vehicle.* No wrecker or towing service, or owner, employee or agent thereof, shall release any towed or stored vehicle without proper authorization from the Olathe Police Department, or a designated representative, who shall be responsible for approving the owner's identification and proof of title and registration.

(d) *Enforcement Authority.* The Governing Body may establish, distribute and cause the enforcement of reasonable rules and regulations for wrecker or towing services, subject to the provisions of this Section, as from time to time it deems appropriate for the safety, well-being and protection of citizens and their property within the City of Olathe, Kansas.



(e) *Suspension or Revocation of Approval and Authorization; Grounds.* The Police Chief may order that the approval and authority of a wrecker or towing service to respond to the request of the Olathe Police Department be suspended or revoked and order such wrecker or towing service removed from the rotational call list. Any such suspension shall be effective until the deficiency is corrected or for a maximum of sixty (60) days, said period to be determined by the Police Chief.

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.

Such suspension or revocation shall be preceded by written notice to the wrecker or towing service advising such service of its failure to comply with any of the requirements of this chapter or of the violation by such wrecker or towing service of the following provisions upon which a suspension or revocation may be based:

- (i) Obtaining the approval and authority by fraudulent conduct, false statements or intentional omission;
- (ii) The wrecker or towing service violated the fee and charges schedule;
- (iii) Such wrecker or towing service consistently refuses to respond to requests for such service by the Olathe Police Department or consistent failure to answer telephone inquiries and requests for towing services;
- (iv) 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;

(v) 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; or

(vi) The wrecker or towing service fails to comply with any rule or regulation governing the City's rotational tow service agreement.

As to requirements or criteria for approval and authorization, only one written notice shall be given and the wrecker or towing service shall be allowed a reasonable time to correct any deficiency which was detailed in the written notice. Any wrecker or towing service which violates any of the provisions of this Section may be subject to a suspension or revocation of said approval and authority.

(f) *Appeal of Suspension or Revocation.* Any wrecker or towing service's approval and authority to respond to police requests which are suspended or revoked by the Police Chief may appeal such suspension or revocation to the Governing Body which shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation ordered by the Police Chief.

(F) *Wrecker or Tow Service Foreclosure of Lien.*

(1) Any person or commercial towing service that tows and impounds a motor vehicle pursuant to this chapter, or any other legal request for towing and impounding by a law enforcement officer of the City shall have a possessory lien as provided for in K.S.A. 8-1103 et seq., and amendments thereto. Wrecker or tow service operators shall comply with the notice and disposition procedures for foreclosure of the lien as set forth in K.S.A. 8-1103 through 8-1108 , and amendments thereto.

(2) Prior to any sale by a person or commercial tow service of a vehicle towed or impounded at the request of the Olathe Police Department, the person or tow service must notify the Olathe Police Department in writing that they intend to foreclose a lien they have perfected on said vehicle and they intend to sell the vehicle at public auction pursuant to the provisions of K.S.A. 8-1103 through K.S.A. 8-1108, and amendments thereto. No person will sell such vehicle until they have complied with all notices required by law.

(3) After any sale foreclosing a lien created by K.S.A. 8-1103 et seq., and amendments thereto, the person or tow service conducting the sale shall deliver a copy of the bill of sale, signed by the purchaser, indicating the date of the sale, vehicle description and vehicle identification number and amount the vehicle was purchased for and an itemized list of tow and storage charges accrued for the vehicle. This information must be submitted to the Olathe Police Department within seven days of the date of the sale. All monies derived from the sale of motor vehicles pursuant to this paragraph, which were towed and impounded at the request of the Olathe Police Department, less any amount of the lien for towing and storage and expenses of sale and shall be paid to the lien holder of record on the vehicle and if there is no lien holder of record, shall be paid to the owner of record. If no lien holder or owner can be identified, the person or tow service shall pay the funds to the City Clerk within ten (10) days, and such funds will be equitably divided among the companies on the rotation tow list at the end of each calendar year. Persons or tow services shall proportionately share in such proceeds based on how many months out of the year they were listed on the rotation tow list.”

**SECTION TWO:** Existing Section 10.01.084 is hereby repealed.

**SECTION FIVE:** This Ordinance shall take effect and be in force from and after its passage and publication as provided by law.


**PASSED** by the Governing Body this 15th day of November, 2022.

**SIGNED** by the Mayor this 16th day of November, 2022.

  
John W Bacon (Nov 16, 2022 11:56 CST)

\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ron Shaver (Nov 16, 2022 14:43 CST)

City Attorney

Publish and return the Proof of Publication to the City Clerk and City Attorney.

# The Legal Record

1701 E. Cedar St., Ste. 111  
Olathe, KS 66062-1775  
(913) 780-5790

ATTN: CITY CLERK  
CITY OF OLATHE  
100 E SANTA FE ST  
OLATHE KS 66061-3409

First published in The Legal Record, Tuesday, November 22, 2022.  
**PUBLICATION SUMMARY OF ORDINANCE NO. 22-58, PASSED BY THE  
GOVERNING BODY OF THE CITY OF OLATHE, KANSAS ON THE 15<sup>TH</sup> DAY OF  
NOVEMBER 2022.**

## SUMMARY

On November 15, 2022, the Governing Body of the City of Olathe, Kansas passed Ordinance No. 22-58 amending Section 10.01.084 of the Olathe Municipal Code pertaining to removal of vehicles, to adjust the required hours of operation for towing services authorized to respond to requests by the Olathe Police Department.

The complete text of this ordinance may be obtained or viewed free of charge at the office of the Olathe City Clerk, Olathe City Hall, 100 East Santa Fe Street, Olathe, Kansas, or on the City's official website address <http://www.olatheks.org/government/city-clerk/public-notices>, where a reproduction of the original ordinance will be available for a minimum of one week following this summary publication.

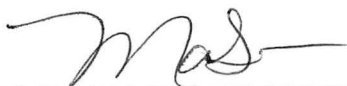
This summary is certified this 15<sup>th</sup> day of November 2022.

/s/ Robert G. Gallimore  
Robert G. Gallimore  
Assistant City Attorney  
11/22

## Proof of Publication

STATE OF KANSAS, JOHNSON COUNTY, SS;  
Maureen Gillespie, of lawful age, being first duly sworn, deposes and says that she is Legal Notices Clerk for The Legal Record which is a newspaper printed in the State of Kansas, published in and of general paid circulation on a weekly, monthly or yearly basis in Johnson County, Kansas, is not a trade, religious or fraternal publication, is published at least weekly fifty (50) times a year, has been so published continuously and uninterrupted in said County and State for a period of more than one year prior to the first publication of the notice attached, and has been entered at the post office as Periodicals Class mail matter. That a notice was published in all editions of the regular and entire issue for the following subject matter (also identified by the following case number, if any) for 1 consecutive week(s), as follows:

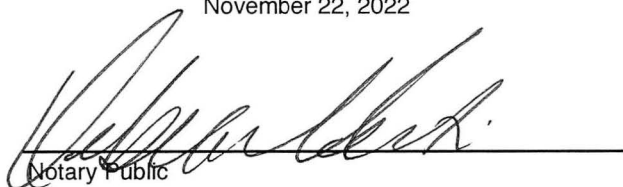
ORDINANCE NO. 22-58 SUMMARY  
11/22/22



Maureen Gillespie, Legal Notices Billing Clerk

Subscribed and sworn to before me on this date:

November 22, 2022

  
Notary Public

DEBRA VALENTI  
Notary Public-State of Kansas  
My Appt. Expires Aug. 21, 2023

L99910  
Publication Fees: \$21.58