

SUBSTITUTE NO. 1 TO ORDINANCE NO. 21-055

**AN ORDINANCE TO AMEND CHAPTER 37 RELATING TO THE
REMOVAL OF ABANDONED VEHICLES WITHIN THE CITY**

**Rev. # 1
#0111**

Sponsor:

**Council
Member
Gray**

Co-Sponsors:

**Council
Members
Spadola
Johnson
McCoy**

WHEREAS, abandoned vehicles throughout the City tend to impede traffic in the streets or interfere with the enjoyment of, and reduce the value of, private property, to invite plundering, to create fire hazards and other safety and health hazards to children as well as to adults, to interfere with the comfort and well-being of the public and to create, extend and aggravate urban blight; and

WHEREAS, Chapter 44 of Title 21 of the Delaware Code appears to exclude City of Wilmington police from enforcing state law provisions related to abandoned vehicles on private property.

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON
HEREBY ORDAINS:**

SECTION 1. Chapter 37 of the City Code is hereby amended by deleting the stricken language and adding the underlined language to read as follows:

**Sec. 37-121. General authority; inspection of buildings, dwellings, etc. generally;
right of entry of enforcement officer.**

(d) For purposes of this section and the enforcement of the provisions of this Code, "code official" shall mean and include the officer or other designated authority charged with the administration and enforcement of this Code and chapter, and a duly authorized representative, with the exception of Sec. 37-126 (Towing of motor vehicles from private property; notice.) which may only be enforced by the City of Wilmington Police the State Police or the State

Department of Safety and Homeland Security . Any person who opposes or impedes a code official of the city in the execution of his duty hereunder shall be deemed guilty of a violation of this chapter. In addition, if a code official of the city is denied entrance to a building, dwelling, land or premises for purposes of inspection, he may, upon a showing of probable cause, obtain a warrant for purposes of entering and inspecting the building, dwelling, land or premises.

Sec. 37-123. Same—Wrecked, abandoned vehicles.

(a) This article shall apply to wrecked or abandoned vehicles wherever the same may be found and notwithstanding the provisions of section 37-124. The term "abandoned vehicles," as used in this section, shall have the following meanings:

(1) Any vehicle which obstructs the flow of traffic on a street or highway or in alleys, or in front of, from, or in driveways; provided, however, that where the obstruction of traffic flow is in or from a private driveway into a street or highway, the police department must receive a complaint as to the alleged abandoned vehicle and have the same on file before initiating any action to tow away such offending vehicle;

(2) Any vehicle parked in an area designated as a "No Parking" area, when the offending vehicle has been so parked for a period of 24 hours or more, or in a limited parking area for a period of 36 hours or more, or any place else on a street, highway or alley for a continuous period of at least seven consecutive days;

(3) Any commercial vehicle and the rear portion of which is unenclosed or open, and such unenclosed portion contains trash, garbage, refuse, rubbish, or other objects, material or junk, when the offending vehicle has been parked in the same place on any street, highway or alley for a period of 24 hours or more;

- (4) Any vehicle within the provisions of section 37-234;
 - (5) Any vehicle towed under authority of sections 13-37 and 13-38;
 - (6) ~~Any vehicle towed by the city under authority of 21 Del. C. ch. 44 (21 Del. C. § 4401 et seq.);~~ Any vehicle that is either: (1) inoperable, dismantled, wrecked, or which displays expired registration plates which are at least 30 days expired, or which displays no registration plates, or from which major components have been removed, is in such a state of disrepair as to be incapable of being operated in the manner for which it is designed and is situated on private property appearing to have been abandoned; or (2) which is inoperable, dismantled, wrecked, or which displays expired registration plates which are at least 30 days expired, or which displays no registration plates, or from which the major components have been removed and which shall have been placed upon any road or the property of the City for a period in excess of 12 hours without being removed
 - (7) Any vehicle towed under authority of 21 Del. C. ch. 70 (21 Del. C. § 7001 et seq.);
 - (8) Any vehicle seized by the police department pursuant to 11 Del. C. § 2309; or
 - (9) Any vehicle within the provisions of section 37-223(a)(13) regarding unlawful parking of a motor vehicle in alleys.
- (b) The term “vehicle” as used in this section means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting electric trackless trolley coaches, and electric personal assistive mobility devices.
- (c) The provisions of this section shall apply to any vehicle parked in violation of the provisions of 21 Del. C. § 4183 regarding unlawful parking in spaces reserved for vehicles of the handicapped on private land or on public property.

Sec. 37-126. Towing of motor vehicles from private property; notice.

- (a) This section shall be enforced by the Wilmington Police Department.
- (b) Upon the discovery of a vehicle on public property within the City concerning which vehicle there are reasonable grounds to believe to be an abandoned vehicle, the Police, shall post a notice at some conspicuous place on the vehicle, which shall direct that such vehicle be removed by a stated time and date (such time and date to be not less than 12 hours following the posting of such notice). If the vehicle is not removed within the time period designated by such notice, the abandoned vehicle shall be removed to a storage area designated by the Police.
- (c) In the event that a vehicle is abandoned on private property without the consent of the owner or occupant thereof, at the complaint of the property owner or occupant, such vehicle may be caused to be removed by the Police, in the manner provided in this chapter, except that the posting required in subsection (b) of this section may be omitted. Any towing company or vendor requested to remove an abandoned vehicle under these circumstances shall be provided by the Police Department the best available information regarding ownership of the vehicle and last known address of the owner.
- (d) If an abandoned vehicle is on private property with the consent of the owner or occupant thereof, or if an abandoned vehicle is owned by the owner or occupant of the private property where the vehicle is located, representatives of the Police may enter upon the property where such vehicle is located to ascertain its ownership. The Police shall notify the owner of the abandoned vehicle by certified mail sent to the owner's

last known address to remove such vehicle within 10 days from the date of the mailing. If the vehicle is not removed within 10 days or if the owner cannot be located for the purpose of sending the written notice, then representatives of the Police may enter upon the property where the vehicle is located and conspicuously affix thereto a sticker or tag showing the time and date of its affixing, advising the owner that if the vehicle is not removed within 24 hours from the time of the affixing of the sticker, the vehicle shall be removed to a storage area designated by the Police. This subsection shall not apply to automobile graveyards as defined in 17 Del. C. § 1202(b)(2) nor to any vehicle on private property which is not visible from the street or road or alley and is not otherwise a nuisance or a health or fire hazard.

- (e) The notice required by subsections (b) and (d) of this section shall state that, if such vehicle is not so removed, it will be removed and stored at a storage area designated by the Police at the owner's expense, and thereafter will be subject to disposal in accordance with law. Such notice shall also set forth verbatim § 4414 of Title 21 of the Delaware Code. If the vehicle shall not have been removed by the time and date specified in the notice, the police officer shall take such vehicle into custody and shall cause it to be removed and stored for safekeeping in the storage area designated by the Police department. The officer shall promptly notify the Chief of Police or their designee, upon a form to be supplied by the Police Department for that purpose, of the action which has been taken with respect to such vehicle.
- (f) This chapter shall not apply to any removal of a vehicle unless the removal is directed by the appropriate police authority or its successor.
- (g) In the event that a vehicle is abandoned or parked within a private right-of-way,

alleyway or easement in such a manner as to impede the flow of traffic, at the complaint of any property owner or occupant or other person with a right-of-passage across the private right-of-way, alleyway or easement, such vehicle may be caused to be removed by the Police, in the manner provided in this section, except that the posting required in subsection (b) of this section may be omitted and that the provisions of this chapter shall be applied to said parked vehicle as if it were an abandoned vehicle.

~~Notwithstanding any other provision of this chapter, whenever a motor vehicle is towed by any authorized motor vehicle towing company from private property at the request of any person who owns the private property upon which the motor vehicle is located, the towing company, at the earliest possible time within ten days following the date of such towing, shall notify the owner of the motor vehicle that the motor vehicle has been towed and shall advise the owner of the location and time at which the motor vehicle can be released to the owner. The provisions of this section shall not be applicable to any motor vehicle constituting an abandoned vehicle as regulated in this article.~~

Sec. 37-129. Reports; notice to owner of vehicle.

(a) The person directing the removal or immobilization of any vehicle under the provisions of this article shall as soon as possible thereafter make a report thereof to the police department and department of finance ~~public works~~ giving the registration number, year and name of state on the license plate thereof, together with the location of the point at which the vehicle has been immobilized or to which the vehicle has been removed and the reason for its removal.

(b) The public authority causing the removal of an abandoned vehicle shall immediately ascertain the identity of any person holding a lien against such vehicle. Within five days from the removal of any vehicle, provided that the vehicle has not been released from the pound, the

police ~~or transportation departments, or both,~~ shall notify the chief of police who shall send the owner and any lien holder of such vehicle, by registered mail, a notice stating: ~~that the same has been impounded, designating the place from which such vehicle was removed, the reason for its removal and impounding, and the location of the pound in which it is impounded.~~

(1) That the vehicle has been removed pursuant to law;

(2) The place to which it has been removed; and

(3) That the vehicle may be sold to satisfy the costs of removal and storage of the vehicle as provided in § 4404 of Title 21 and §3903 of Title 25 of the Delaware Code unless those costs have been paid in full on or before 45 days from the date of the removal of the vehicle.

If the address of the owner of the vehicle cannot be ascertained by the exercise of reasonable diligence, then the notice provided by this section shall not be required to be given.

Sec. 37-130. Police record of vehicles.

The police department and the department of finance ~~public works~~ shall keep records of all vehicles impounded or immobilized under the provisions of this article.

SECTION 2. This Ordinance shall be effective upon its passage by City Council and approval by the Mayor.

First ReadingNovember 18, 2021
Second ReadingNovember 18, 2021
Third Reading

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2022.

Mayor

SYNOPSIS: This Ordinance updates the City Code to more closely match State law provisions relating to abandoned vehicles. Updates to the code include provisions for removing vehicles from private property when a vehicle has been abandoned with or without the property owner’s consent and the notice requirements that must be observed before a vehicle is removed. This Ordinance also rectifies an ambiguity created under 21 Del. C. §4402 (d) by empowering the Wilmington Police officers to call for the removal of abandoned vehicles from private property.

FISCAL IMPACT STATEMENT: There is no anticipated fiscal impact associated with this legislation.