

Chapter 12.20
TOWING REGULATIONS

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12.20.001 Authority to tow or impound.

The police department, and all members thereof are authorized to remove and/or tow away, or have removed and towed away by 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
- 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
- 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 48 consecutive hours; 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

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- F. When any motor vehicle determined to be stolen 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; or
- I. When any motor vehicle is parked in violation of notice indicating that the area used as the Farmer's Market is unavailable for parking during the hours posted and vehicles parked in that area during posted hours will be towed at the owner or operator's expense. The notice must be posted at the two main points of entry to the Farmer's Market and must meet the following additional requirements:
 - 1. The notice must clearly indicate, in not less than two inch high, light reflective letters on a contrasting background, that vehicles will be towed at the owner's expense.
 - 2. The words "tow away zone" must be included on the sign in not less than four inch high letters.
 - 3. The notice must contain the following language:
"If you believe your vehicle may have been towed from this property, please contact the Overland Park Police Department."
 - 4. The sign must be permanently installed, with the bottom of the sign not less than seven feet above ground level and must be continuously maintained on the property for not less than 24 hours prior to the towing or removal of vehicles.

(History: Ord. TS-2457 §1, 2004; TS-1981 §1, 96; TS-1674 §1, 91; TS-1433 §1, 87)

12.20.001.5 Notice to owner of vehicle to be towed or impounded in non-emergency situation.

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 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 O.P.M.C. 12.04.093.1 and shall be removed by the Overland Park Police Department after 48 hours from the time the sticker or placard was attached to the vehicle. The sticker or placard shall include such other information as the Chief of Police determines is necessary.

Subsequent to the towing of an abandoned vehicle the police department shall comply with the notice requirements of O.P.M.C. 12.20.002.

(History: Ord. TS-1674 §2,91)

12.20.002 Notice to owner of towed and impounded vehicle.

Whenever any motor vehicle is towed and impounded pursuant to the provision of 12.20.001 or 12.20.001.5, 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 12.20.004, and that unless the owner takes action within 30 days from the date of receipt of the notice, proceedings may be instituted to sell the motor vehicle at auction 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 may be made by certified mail with return receipt requested. Notice by certified mail shall be mailed to the owner of vehicles displaying Kansas registration plates no later than close of business of the second business day after the towing. The notice shall be mailed to the owner of vehicles not displaying Kansas registration plates no later than close of business of the second business day after ownership is determined. The police department shall use reasonable diligence in determining the title or registered owner of the vehicle.

(History: Ord. TS-1981 §2, 96; TS-1674 §3, 91; TS-1493 §1, 88; TS-1433 §2, 87)

12.20.003 Recovery Procedures.

- A. All motor vehicles towed and impounded pursuant to the provisions of this chapter 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
- B. 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 application of the hearing provisions set forth in O.P.M.C. 12.20.004.

Should a person seeking release of a motor vehicle impounded under the provisions of this chapter 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.
(History: Ord. TS-1851 §1, 94; TS-1804 §1, 93; TS-1674 §4, 91; TS-1433 §3, 87)

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12.20.004 Hearing procedure.

- A. Owners or persons entitled to the lawful custody of impounded motor vehicles who wish to contest the validity of the motor vehicle tow may request a hearing for such purpose by notifying the Overland Park 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 within three working days after such hearing is requested. 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 posting bond with the Clerk of the Court or the police department in the amount of the towing charge and storage fees. Upon showing to the commercial tow service proof of the posting of the bond, the motor vehicle shall be released immediately. If 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 12.20.001 herein, then 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 towed pursuant to the provisions of 12.20.001 herein, the Court shall order the immediate release of the vehicle to its lawful owner without costs, 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.

(History: Ord. TS-1433 §4, 87)

12.20.005 Sale of impounded vehicles by City.

Any motor vehicle towed and impounded by the City pursuant to the provisions of this chapter for a period of 30 days or more may be disposed of by the City by sale at public auction in the following manner:

1. If such motor vehicle at the time of towing displayed thereon a registration plate issued by the state of Kansas and has been registered with the state of Kansas, the City shall request verification from the division of vehicles of the last registered owner and lienholders, if any. Such verification request shall be submitted to the division of vehicles not more than 30 days after the City took possession of the vehicle. The City shall mail a notice by certified mail, return receipt requested, to the registered owner thereof, addressed to the address as shown on the certificate of registration, and to the lienholder of record, if any, in the county in which the title shows the owner resides, if

- registered in this state, stating that if the owner or lienholder does not claim such motor vehicle and pay the towing and storage costs 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 lienholders, if any, as provided in this subsection. The notice shall also include the right of hearing set forth in 12.20.004.
2. After 15 days from the date of mailing notice, the City shall publish a notice once a week for two consecutive weeks in a newspaper of general circulation in Johnson County, Kansas, which notice shall describe the motor vehicle by name of maker, model, serial number, and owner, if known, stating that it has been impounded by the City of Overland Park and will be sold at public auction to the highest bidder for cash if the owner does not claim it within 10 days of the date of the second publication of the notice and pay the removal and storage charges, and publication costs incurred by the City. The notice shall also include the right of hearing set forth in 12.20.004.
 3. If the vehicle, when towed, did not display a registration plate issued by the state of Kansas and is not registered with the state of Kansas and the owner remains unknown after diligent efforts have been made by the commercial tow service to determine ownership, the City after 30 days from the date of impoundment shall request verification from the division of vehicles of the last registered owner and lienholders, if any. Such verifications request shall be submitted to the division of vehicles no more than 30 days after the City took possession of the vehicle. The City shall 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 state that if the owner or lienholder does not claim such motor vehicle and pay the removal and storage charges incurred by City on it within 15 days from the date of mailing of the notice, 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 lienholders, if any, as provided in this subsection. After 15 days from the date of mailing notice, the City shall publish a notice in a newspaper of general circulation in Johnson County, Kansas, which notice shall describe the motor vehicle by name of maker, model, color and serial number and shall state that it has been impounded by the City and will be sold at public auction to the highest bidder for cash, if the owner does not claim it within 10 days of the second publication of the notice and pay the removal and storage charges incurred by the City. The notice shall also include the right of hearing set forth in 12.20.004.
 4. When the City has complied with this section and the owner thereof does not claim it within the time stated in the notice and pay the removal and storage charges and publication costs incurred by the City, the City may sell the motor vehicle at public auction to the highest bidder. All monies derived from the sale of motor vehicles pursuant to this section, after payment of the expenses of the impoundment and sale, shall be paid into the fund of the City which is used by it for the construction and maintenance of highways.

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5. After any sale pursuant to this section, the City shall file proof thereof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of the motor vehicle.

(History: Ord. TC-1260, BBB §7, 2004; TS-1804 §2, 93; TS-1674 §5, 91; TS-1433 §5, 87)

12.20.006 Wrecker or tow service foreclosure of lien.

- A. Any person or commercial towing service that tows and impounds a motor vehicle pursuant to this Chapter, Chapter 12.21 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.
- B. Prior to any sale by a person or commercial tow service of a vehicle towed or impounded at the request of the Overland Park Police Department, the person or tow service must notify the Overland Park 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.
- C. 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 Overland Park 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 Overland Park Police Department, less any amount of the lien for towing and storage and expenses of sale and shall be paid to the lienholder of record on the vehicle and if there is no lienholder of record, shall be paid to the owner of record. If no lienholder or owner can be identified, the person or tow service shall pay the funds to the City Clerk within 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.

(History: Ord. TS-2819 §1, 2009; TS-1804 §3, 93; TS-1794 §1, 94; TS-1674 §6, 91; TS-1452 §1, 87; TS-1433 §6, 87)

12.20.010 Tow service police rotation.

Any person, firm, partnership or corporation desiring to perform wrecker or towing service for the Overland Park Police Department shall make written application to the Chief of Police providing proof that the applicant meets the requirements of O.P.M.C. 12.20.020. Any such

wrecker or towing service which meets the requirements of 12.20.020 and all other provisions of this chapter and applicable towing resolutions shall be eligible to be placed on such list and be called on such rotation basis.

(History: Ord. TS-1981 §3, 96; TS-1433 §7, 87; TS- 980 §1, 78)

12.20.020 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 Overland Park Police Department.

- A. 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 9½ hours per day, from 8 a.m. to 5:30 p.m. Monday through Friday. In addition thereto, 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.
- B. Towing and wrecker services and drivers must be available on a 24-hour, seven-days-a-week basis.
- C. Each towing and wrecker service must have properly zoned adequate storage facilities within the City of Overland Park. All automobiles towed pursuant to this chapter shall be stored within the City. The outside storage areas shall be fenced, with at least six foot high chain link fence.
- D. Each towing and wrecker service must have available a 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.
- E. Each wrecker or towing service must have available at least one 16-ton capacity wrecker (a Holmes 600 or its equivalent) or wrecker vehicle with greater capacity.
- F. 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.
- G. Each towing and wrecker service must provide the City with proof of the following insurance protection:
 - 1. GARAGE LIABILITY
Protection limits of at least \$500,000 Combined Single Limits, bodily injury and property damage. Policy must include the following:
Premises & Operations Liability
Products & Completed Operations
All Owned, Hired and Non-Owned Autos
Garage keeper's Legal Liability including:

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- a. Comprehensive
- b. Collision
- c. Towing
- d. \$75,000 Limit, per garage location

OR

2. COMMERCIAL GENERAL LIABILITY

Protection limits of at least \$500,000 Combined Single Limits, bodily injury and property damage. Policy must include the following:

Premises & Operations Liability

Products & Completed Operations

AND

3. BUSINESS AUTOMOBILE LIABILITY

Protection limits of at least \$500,000 Combined Single Limits, bodily injury and property damage. Policy must include the following:

All Owned, Hired and Non-Owned Autos

Garage keeper's Legal Liability including:

- a. Comprehensive
- b. Collision
- c. Towing
- d. \$75,000 Limit, per garage location

Proof of insurance must be furnished on the City's standard certificate of insurance form.

4. WORKERS' COMPENSATION

Protection against all claims under applicable state worker's compensation laws. Each towing or wrecker service shall also be protected against claims for injury, disease or death of employees for which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation Statutory

Employers Liability-

Bodily Injury by Accident: \$100,000 Each Accident

Bodily Injury by Disease: \$500,000 Policy Limit

Bodily Injury by Disease: \$100,000 Each Employee

Proof of insurance must be furnished on the City's standard certificate of insurance forms. The City is to be named as an additional insured on all required insuring agreements with the exception of Workers' Compensation.

5. The City will only accept coverage from an insurance carrier who offers proof that it:
 - (1) Is licensed to do business in the State of Kansas;
 - (2) Carries a Best's policy holder rating of "A-" or better; and
 - (3) Carries at least a Class VII financial rating.OR

Is a company approved by the City.

- H. Each towing and wrecker service must be certified and designated as an agent and authorized representative for the City of Overland Park for the 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.
- I. The criteria and requirements set forth in paragraphs A through H 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.

(History: Ord. TS-2593 §1, 2006; TS-1981 §4, 96; TS-1674 §7, 91; TS-1433 §8, 87; TS-1171 §1, 72; TS-1052 §1, 79)

12.20.025 Rotation tow list.

The Chief of Police shall provide to the police communications division a list of eligible and qualified tow companies to be used in providing tow services for the City. The Chief of Police will ensure the police communications division implements a rotational procedure that fairly utilizes the services of the qualified tow services on the police rotation tow list. In addition, the Chief of Police will request the City Auditor conduct an audit of the rotation procedure at least once each calendar year to ensure the proper and fair application of the rotation procedure.

(History: Ord. TS-1981 §5, 96)

12.20.030 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. The City shall not be responsible for unpaid towing charges except as provided by Resolution of the governing body or agreed to in writing by the Chief of Police.

(History: Ord. TS-1981 §6, 96; TS-1674 §8, 91; TS-980 §3, 78)

12.20.040 Medicine or medical supplies in towed vehicle.

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.

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(History: Ord. TS-1794 §2, 94; TS-980 §4, 78)

12.20.050 Enforcement authority.

The Chief of Police shall establish, distribute and cause the enforcement of reasonable rules and regulations for wrecker or towing services, subject to the provisions of this chapter, as from time to time he deems appropriate for the safety, well-being and protection of citizens and their property within the city of Overland Park, Kansas.

(History: Ord. TS-980 §5,78)

12.20.060 Suspension or revocation of approval and authorization; Grounds.

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 or for a maximum of 60 days, said period to be determined by the Chief of Police. If such approval and authority is revoked, such wrecker or towing service shall not be eligible for reinstatement for at least one year from the date of revocation.

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 chapter or of the violation by such wrecker or towing service of the following provisions upon which a suspension or revocation may be based:

- A. Obtaining the approval and authority by fraudulent conduct or false statements;
- B. The wrecker or towing service violated the fee and charge schedule by overcharge;
- C. Such wrecker or towing service consistently refuses to respond to requests for such service by said police department or consistently fails to answer telephone calls from said police department at the telephone number supplied by the business for towing services; and
- D. 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.
- E. Failure to comply with any rules or regulations governing towing services established by the Chief of Police.
- F. The City of Overland Park 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.

(History: Ord. TS-1493 §2, 88; TS-1090 §1, 80; TS-980 §6, 78)

12.20.070 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 Chief of Police may appeal such suspension or revocation to the Public Safety Committee of said city by filing a written notice of appeal with the Chief of Police

within five days of receipt of the notice of suspension or revocation. The filing of such notice of appeal shall stay the effect of such suspension or revocation until a hearing is held before said committee at its next regular meeting; provided, however, that if the committee renders a decision upholding the suspension or revocation, the wrecker or towing service may appeal such decision to the entire governing body of said city at its next regular meeting.

The Public Safety Committee shall have the power to reverse, alter, modify, uphold or increase any suspension or revocation ordered by the Chief of Police. The Governing Body shall have the power to reverse, alter, modify, uphold, or increase any suspension or revocation ordered by the Chief of Police or said committee.

(History: Ord. TS-980 §7, 78)

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