

City of Cincinnati

LES

EESW

An Ordinance No. 389

- 2023

ORDAINING new Section 729-31, “Impoundment of Motor Vehicles Used to Facilitate Illegal Dumping,” of Chapter 729, “Waste Disposal,” of the Cincinnati Municipal Code; **MODIFYING** the provisions of Chapter 513, “Impoundment of Motor Vehicles,” of the Cincinnati Municipal Code by **AMENDING** Section 513-1, “Impoundment of Motor Vehicles,” Section 513-5, “Notice of Impoundment,” Section 513-7, “Impounding Fees,” Section 513-9, “Appeal Procedure,” and Section 513-11, “Sales of Impounded Vehicles”; **MODIFYING** the provisions of Chapter 515, “Parking Infractions; Collections Procedure,” of the Cincinnati Municipal Code by **AMENDING** Section 515-9, “Impoundment and Immobilization”; and **MODIFYING** the provisions of Chapter 729, “Waste Disposal,” of the Cincinnati Municipal Code by **AMENDING** Section 729-30, “Dumping Prohibited,” to permit impoundment of vehicles used to facilitate illegal dumping and to conform the Cincinnati Municipal Code to the policies and procedures of the City with respect to parking violations.

WHEREAS, illegal dumping on vacant land negatively affects and contributes to blight in City neighborhoods; and

WHEREAS, the rate of illegal dumping on public and private property is a serious problem that cost the City approximately \$2,000,000 to remediate in 2021; and

WHEREAS, Council finds that current penalties are not sufficiently deterring individuals from engaging in illegal dumping and that the additional penalty of impoundment of motor vehicles involved in illegal dumping is needed to combat incidents of illegal dumping on public or private property; and

WHEREAS, appeals of the propriety of an impoundment of a motor vehicle currently are determined by the City Solicitor and appeals for parking violations are determined by the Office of Administrative Hearings; and

WHEREAS, consolidating hearings regarding infractions involving motor vehicles by having hearings on both motor vehicle impoundment and hearings regarding parking violations heard by the Office of Administrative Hearings would ensure consistent and efficient processing of appeals; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Section 729-31, “Impoundment of Motor Vehicles Used to Facilitate Illegal Dumping,” of Chapter 729, “Waste Disposal,” of the Cincinnati Municipal Code is hereby ordained to read as follows:

Sec. 729-31. Impoundment of Motor Vehicles Used to Facilitate Illegal Dumping.

- (a) A police officer may impound and cause to be towed any motor vehicle when the officer has probable cause to believe that the motor vehicle was used to facilitate a violation of subsection 729-30(b).
- (b) Upon impounding the motor vehicle for violation of subsection 729-30(b), the police officer shall provide by hand delivery to any owner or person in control of the motor vehicle present at the time of impoundment the following:
 - (1) notice that the motor vehicle is impounded;
 - (2) notice of a civil offense and civil fine in accordance with Section 1501-13;
 - (3) the location of the city impound lot: and
 - (4) the right to post a cash bond pursuant to subsection 729-31(d)(1).

If the motor vehicle owner is not present to receive such notice, the police officer or agent of the city police department shall provide notice to all owner(s) of the motor vehicle at addresses set forth in the motor vehicle registration within three business days of the date of impoundment. The notice shall include the information specified in subsections (b)(1) through (b)(4) above.

- (c) The owner of the impounded motor vehicle may admit the violation of subsection 729-30(b) by paying the civil fine for the underlying Class E Civil Offense as specified in Section 1501-99, together with all towing and storage costs in accordance with Section 513-7. The motor vehicle shall be released to the owner when all civil fines and towing and storage costs are paid.
- (d) A person served with notice of a violation of subsection 729-30(b) and/or impoundment pursuant to Section 729-31(a) may answer the charge in accordance with Section 1501-15 and may request a hearing before a hearing examiner in accordance with Section 1501-17.
 - (1) The owner may secure release of the motor vehicle prior to the hearing by posting a cash bond equal to the amount of the civil fine specified in Section 1501-99 for a Class E Civil Offense, together with all towing and storage costs in accordance with Section 513-7.
 - (2) At the hearing, the city shall have the burden to show by a preponderance of the evidence that the motor vehicle was used in the commission of a violation of Section 729-30(b). It shall be an affirmative defense to this charge if the motor vehicle owner is able to establish, by a preponderance of the evidence, that the motor vehicle was stolen at the time of the commission of the offense. For

purposes of this chapter, “stolen” shall mean the trespassory taking and carrying away of the tangible personal property of another with the intent to permanently deprive the other of the property.

- (3) The hearing examiner shall issue a written decision determining whether a violation of Section 729-30(b) occurred and whether the motor vehicle was subject to impoundment pursuant to Section 729-31. If a violation is found, then the hearing examiner shall enter an order finding the person charged liable to the city for the fine specified in Section 1501-99 for the violation of Section 729-30(b), plus any and all accumulated towing and storage costs in accordance with Section 513-7.
- (4) The motor vehicle shall be returned to the owner along with any posted cash bond, costs, or fees if the hearing examiner finds any of the following:
 - (i) That the city did not meet its burden of proof as set forth in this subsection;
 - (ii) That one of the exceptions of Section 729-31(e) applies; or
 - (iii) That the motor vehicle was stolen at the time it was impounded.
- (e) No motor vehicle shall be impounded or towed pursuant to this section under either of the following circumstances:
 - (1) The motor vehicle was operating as a common carrier at the time it was subject to impoundment; or
 - (2) The motor vehicle is a rental vehicle from an automobile rental or leasing agency for a term of no more than thirty consecutive calendar days.
- (f) The impounding of any motor vehicle authorized by Section 729-31 is in addition to any civil fines authorized by Section 729-30.

Section 2. That existing Section 513-1, “Impoundment of Motor Vehicles,” Section 513-5, “Notice of Impoundment,” Section 513-7, “Impounding Fees,” Section 513-9, “Appeal Procedure,” and Section 513-11, “Sales of Impounded Vehicles,” of Chapter 513, “Impoundment of Motor Vehicles,” existing Section 515-9, “Impoundment and Immobilization,” of Chapter 515, “Parking Infractions; Collections Procedure,” and existing Section 729-30,

“Dumping Prohibited,” of Chapter 729, “Waste Disposal,” of the Cincinnati Municipal Code are hereby amended to read as follows:

Sec. 513-1. Impoundment of Motor Vehicles.

Any police officer may impound and cause to be towed any motor vehicle:

- (a) (1) Which is stolen; or
- (2) Which is parked in violation of law; or
- (3) Which is involved in an accident; or
- (4) Which has been declared delinquent because of two or more outstanding traffic citations or two or more outstanding traffic citations which have not been paid, or a bond posted pursuant to § 513-3 of the Cincinnati Municipal Code and registered for court in accordance with the provisions of § 511-23 of the Cincinnati Municipal Code; or
- (5) Which has been declared delinquent because of two or more ~~outstanding parking judgments or two or more~~ outstanding parking infractions which have not been paid or not had a bond posted pursuant to § 515-9 of the Cincinnati Municipal Code and not been registered for hearing with the Parking Violations Bureau in accordance with the provisions of CMC §§ 515-5 and 515-6 C.M.C.; or
- (6) Which does not display currently valid license plates; or
- (7) Which is parked so as to block ingress or egress to a street, alley, roadway, driveway, parking facility or loading facility; or
- (8) Which is in the possession of a physically arrested person; or
- (9) Which is driven by a person who is under the influence of alcohol or drugs or a combination thereof; or
- (10) Which is subject to seizure and impoundment pursuant to the provisions of § ~~910-10~~ 909-5; or
- (11) When the person in possession of a motor vehicle requests it to be impounded for safekeeping; or
- (12) Which motor vehicle was used in the commission of an offense in violation of Ohio Revised Code § 2921.331, “Failure to Comply with Order or Signal of Police Officer.”; or

(13) Which motor vehicle was used in the commission of an offense in violation of § 729-30.

(b) A motor vehicle which is subject to impoundment under items (8) or (9) above shall not be impounded if title or right to possession of the motor vehicle can be readily established, at the location where the motor vehicle is initially stopped, by either the driver of the motor vehicle, or the person in possession of the motor vehicle, or the person to whom possession of the motor vehicle is to be given if:

(1)(a) The motor vehicle can be safely and legally parked at its location; or

(2)(b) The driver is able to arrange for someone to take care of the motor vehicle after being given a reasonable opportunity to do so, unless the driver requests that the motor vehicle be impounded for safekeeping after being advised of such driver's rights under (1a) and (2b) of § 513-1(b) above.

~~All motor vehicles impounded pursuant to (8) and (9) above shall be released without charge within 18 hours after impoundment where special equipment or handling is not required to accomplish the impoundment of the motor vehicle. A driver in police custody shall be given an opportunity to arrange for someone to retrieve the motor vehicle. All motor vehicles impounded pursuant to (8) or (9) above shall be released without charge where the person arrested is not charged with a crime; except the motor vehicle may be retained, when necessary, for other law enforcement purposes.~~

(c) In the event that a motor vehicle ordered to be towed pursuant to this section has been reported stolen to the Cincinnati Police Department or constitutes a stolen vehicle to the knowledge of the Cincinnati Police Department at the time that such vehicle is towed, the Cincinnati Police Department shall take appropriate action to have such vehicle towed to an impound facility owned or controlled by the City of Cincinnati. ~~Following standard issuance of notice to the owner pursuant to this chapter, any City originated fees shall be waived by the City of Cincinnati for up to seven days following the towing of the vehicle excluding any fees owed to the City of Cincinnati pursuant to Section 513-3 arising from outstanding parking infractions or delinquent traffic citations. In the event that the vehicle has not been claimed or recovered by the owner after the seventh day, Cincinnati Police Department may, after payment of any amounts due to the towing company or the City of Cincinnati, make arrangements for transfer of the vehicle to a private impound facility and may thereafter proceed to dispose of the vehicle pursuant with the provisions of this chapter.~~ For purposes of this chapter, a vehicle will be found to constitute "a stolen vehicle to the knowledge of the Cincinnati Police Department" if the Cincinnati Police Department has received written or verbal notice regarding the theft of the vehicle from a law enforcement agency at the time that the vehicle is towed

pursuant to an order issued by the Cincinnati Police Department. The Cincinnati Police Department shall be deemed to have such notice of the vehicle's stolen status, if the vehicle's owner reported the vehicle stolen in another law enforcement jurisdiction and that jurisdiction provided the report or status update to the Cincinnati Police Department in a manner reasonably calculated to have provided such information to the Cincinnati Police Department administration at the time that the vehicle in question was towed.

Sec. 513-5. Notice of Impoundment.

Within three days or as soon as practicable after the impoundment of any motor vehicle under the provisions of §§ 513-1 or 515-9 CMC notice shall be given of the impoundment to the owner of the motor vehicle: personally; or by regular mail sent to the last known address of the registered owner; or by certified mail where notice of the date of the auction of the motor vehicle as unclaimed is to be held is included. Such notice shall state:

- (1) That the motor vehicle has been taken into custody and stored;
- (2) The location where the motor vehicle is stored;
- (3) The reason for impoundment;
- (4) The procedure for obtaining release of the motor vehicle;
- (5) The basic charges for impoundment and storage;
- (6) That the person claiming the motor vehicle can challenge the validity of the impoundment at a hearing before a person designated by the chief of police;
- (7) That failure to obtain release of the motor vehicle within 20 days after notice of impoundment has been given or sent as provided in this section may cause it to be sold at public auction if unclaimed; and
- (8) That in the event that the impounded motor vehicle was reported stolen to the Cincinnati Police Department or constituted a stolen vehicle to the knowledge of the Cincinnati Police Department at the time that such vehicle is towed, any City-originated fees shall be waived by the City of Cincinnati for up to seven days following the towing of the vehicle excluding any fees owed pursuant to Section 513-3 arising from outstanding parking infractions or delinquent traffic citations.

Sec. 513-7. Impounding Fees.

- (a) Except as provided in Section 513-1, the charges for all impounded motor vehicles shall be as follows: The city manager is authorized to charge a fee to recover the cost and expense related to the tow, impound, administration, processing, maintenance, storage, release, sale, auction, or disposal of an impounded motor vehicle as well as the cost of maintaining the impound lot infrastructure, fixtures, and equipment, including pavement, fencing, security features, and facilities. The

city manager or the city manager's designee shall determine the fees on a biennial schedule as part of the budget based on the project cost of the services herein, and the amount of such fees shall be posted conspicuously where the fees are paid.

~~(1) — \$190 basic impound charge; and~~

~~(2) — \$25 per day for the time the impounded motor vehicle is in storage; and~~

~~(3) — \$75 extended storage fee for any motor vehicle which the owner has willfully failed to claim within 120 hours after the notice of impoundment has been mailed or personally given to the registered owner.~~

(b) ~~In addition to the charges in section (a), the owner may also be required to pay for towing services other than those described above, and for any service performed by the city in order to properly maintain said impounded motor vehicle. The fee for a heavy duty tow is \$250 per hour. Notwithstanding the provisions of subsection (a), for the first seven days following the impoundment of a motor vehicle that is either reported stolen to the Cincinnati Police Department or that constitutes a stolen motor vehicle to the knowledge of the Cincinnati Police Department at the time that such motor vehicle is impounded, the city shall charge only any fees owed to the city pursuant to Section 513-3 arising from outstanding parking infractions or delinquent traffic citations. A motor vehicle that is either reported stolen to the Cincinnati Police Department or that constitutes a stolen motor vehicle to the knowledge of the Cincinnati Police Department can be disposed of pursuant to this chapter if not claimed or recovered by the owner within twenty days after notice of impoundment.~~

(c) ~~An impound fee of \$100 shall be charged for vehicles impounded in accordance with an Administrative License Suspension in addition to all other applicable fees. A driver in police custody shall be given an opportunity to arrange for another person to retrieve a motor vehicle impounded solely pursuant to §§ 513-1(a)(8) or 513-1(a)(9). Notwithstanding the provisions of subsections (a) and (d), a motor vehicle shall be released without fee if it is claimed within eighteen hours of notice of its impoundment and no special equipment or handling was required to accomplish the impoundment of the motor vehicle. All motor vehicles impounded pursuant to §§ 513-1(a)(8) or 513-1(a)(9) shall be released without charge where the person arrested is not charged with a crime.~~

(d) An impounded motor vehicle shall be released to the owner or other person authorized by the owner to claim the motor vehicle only upon the payment of all impound and towing charges.

(e) Impounded motor vehicles ~~which are stolen and abandoned by the thief or which were disabled at the time of impoundment~~ may be released without charge or at a reduced charge ~~at the discretion of the police chief~~ upon evidence establishing that the motor vehicle was ~~stolen or disabled at the time of its impoundment~~ and in accordance with a policy established by the ~~police chief~~ of police and contained in the rules and regulations required by section 869-7.

- (f) The owner or person entitled to possession of an impounded motor vehicle which is retained in police custody for law enforcement purposes not related to the original impoundment shall not be responsible for any impounding fees related solely to the continuing possession of the motor vehicle by the city of Cincinnati for law enforcement purposes.
- (g) The impound fees provided in this section authorized by the city manager pursuant to this section shall be included in the fee list authorized by CMC section 869-7 or its successor.

Sec. 513-9. Appeal Procedure.

- (a) At the time that the owner or other person authorized by the owner to claim the motor vehicle attempts to claim an impounded motor vehicle, such person shall be advised that he or she may have the propriety of the impoundment of the motor vehicle reviewed immediately by a person designated by the chief of police ~~and that this decision can be appealed to the city solicitor. The person challenging the impoundment shall be entitled to present witnesses and documentary evidence in support of his or her position. The person designated by the chief of police to hear the case shall immediately investigate the matter if further investigation is necessary and make a prompt and issue a written decision within 48 hours following the conclusion of the hearing stating the basis for the decision. Such decision shall be rendered within 48 hours of the hearing.~~
- (b) The owner or other person authorized by the owner to claim the motor vehicle may appeal the decision of the designee of the chief of police by submitting a written notice of appeal to the Office of Administrative Hearings and paying a bond equal to the amount of any fees and/or fines due to the city within 48 hours of receiving notice of the decision. The Office of Administrative Hearings shall conduct a hearing after notifying the parties of the date and time of the hearing and promptly issue a written decision following the conclusion of the hearing.
- (c) If the motor vehicle is found to be improperly impounded, the motor vehicle shall be released and any fees or fines due as a result of the impoundment shall be waived.

~~All impounding charges must be paid prior to the release of an impounded motor vehicle except in those instances where the hearing officer is unable to reach an immediate decision. Impounded motor vehicles shall be released without charge pending a decision of the hearing officer where the hearing officer must conduct a further investigation or is otherwise unable to make an immediate decision in the hearing. The owner of the motor vehicle shall have 72 hours after notice by certified mail of the decision to pay any assessed impounding fees. If assessed impounding fees are not paid within 72 hours, the motor vehicle shall become subject to immediate impoundment, and the assessment of additional impounding charges without further notice. An adverse decision may be appealed by filing a written statement with the city solicitor within 10 days of such adverse decision. The city solicitor shall render a decision within 30 days of receipt of the claim. The only issue to be considered at the hearing or on appeal shall be the correctness of the impoundment of the motor vehicle. Any question of the merits of any traffic citation or of a parking infraction~~

~~issued concurrently with or underlying the impoundment of the motor vehicle shall not be considered.~~

Sec. 513-11. Sales of Impounded Vehicles.

Whenever any vehicle which has been impounded by a police officer remains in the possession of the city, unclaimed by any person having the right to possession of such vehicle, for a period of 20 days after notice of impoundment, such vehicle shall be sold under the direction of the chief of police at public auction to the highest bidder, after a notice of such auction has been given by advertisement published three times in the City Bulletin or in a newspaper of ~~given~~ general circulation within the city of Cincinnati, or otherwise disposed of to a junk yard or other appropriate facility in accordance with the provisions of Section 4513.~~6462~~ of the Ohio Revised Code.

At least 15 days prior to such sale, a notice shall be mailed by Certified Mail, Return Receipt Requested, to the owner of such motor vehicle, if ascertainable, and to all mortgage and lien holders of record, advising them of their rights to claim the vehicle upon payment of all towing, storage and impounding fees, and in addition thereto, the costs of any services performed by the city in order to properly maintain the impounded vehicle.

In addition to junk yards, scrap metal processors who can guarantee that a junk motor vehicle will never again appear back upon the city streets are hereby determined to be a proper facility relating to the disposition of junk motor vehicles as required by Section 4513.~~6462~~ of the Ohio Revised Code.

Sec. 515-9. Impoundment and immobilization.

- (a) A vehicle involved in three or more parking infractions in which judgments or default judgments have been entered into the records of the Parking Violations Bureau, have been filed with the Clerk of the Municipal Court pursuant to Section 515-7 of this Chapter is subject to impoundment by law enforcement officers of the City of Cincinnati or their agents. Impoundment pursuant to this section is permitted without regard to whether the vehicle, at the time of impoundment, is legally parked. The owner of a vehicle impounded pursuant to this Chapter shall be liable for impoundment fees and storage charges as provided by Section 513-7 of this Code.
- (b) A vehicle impounded under paragraphs (a) or (c) of this section shall be released to the owner, or person lawfully authorized by the owner to claim the vehicle, if the owner or person lawfully authorized by the owner does both of the following:
 - (1) ~~upon the owner presenting~~ presents a valid certificate of title to the vehicle to the Cincinnati Police Department Clerk of the Parking Violations Bureau; and
 - (2) ~~upon the owner~~ either
 - (A) paying all outstanding judgments or default judgments issued by the Parking Violations Bureau; the fines, penalties, fees and costs

~~due on the parking infractions issued or outstanding or payment of the judgments or default judgments which led to the impoundment, or~~

- (B) ~~postings~~ a bond equal to the amount of ~~said~~ fines, penalties, fees, and costs. In no case, however, shall the owner of a vehicle impounded pursuant to this Chapter be required to post a bond in excess of one thousand dollars (\$1,000) to obtain release of the vehicle.
- (c) Notwithstanding paragraphs (a) and (b) of this section, a vehicle parked, stopped, or standing on a public street or highway in commission of a parking infraction is subject to impoundment.
- (d) A vehicle involved in three or more parking infractions in which judgments or default judgments have been entered into the records of the Parking Violations Bureau filed with the Clerk of the Municipal Court pursuant to Section 515-7 of this Chapter is subject to immobilization. A vehicle may be immobilized by law enforcement officers or parking enforcement officers of the City of Cincinnati or parking enforcement officers acting pursuant to any ~~parking modernization agreement~~ contract with the city or vehicle immobilization services agreement with the City. Immobilization pursuant to this section is permitted without regard to whether the vehicle, at the time of immobilization, is legally parked.
- (e) A vehicle immobilized under paragraph (d) of this section shall be released to the owner or the person lawfully authorized to ~~be in control of~~ claim the vehicle upon the owner or person lawfully authorized to ~~be in control of~~ claim the vehicle paying ~~the fines, penalties, fees and costs due on the parking infractions issued or outstanding or payment of~~ the judgments or default judgments, which led to the ~~immobilization,~~ or posting a bond equal to the amount of ~~said~~ fines, penalties, fees and costs. In no case, however, shall the owner of a vehicle immobilized pursuant to this Chapter be required to post a bond in excess of one thousand dollars (\$1,000) to obtain release of the vehicle.

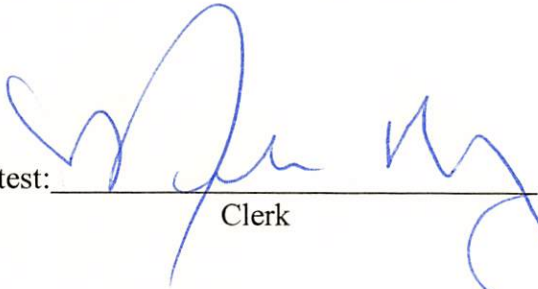
Sec. 729-30. Dumping Prohibited.

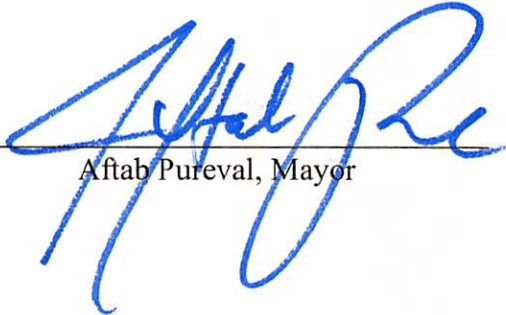
- (a) As used in this section, "vehicle" shall include but not be limited to a car, truck, trailer, semitrailer, or pole trailer.
- (b) No person shall dump or otherwise dispose of waste, including acceptable waste, unacceptable waste, commercial waste or yard waste materials, by use of any vehicle on any public or private property. Any owner of a vehicle who permits or employs another person to use the vehicle and who knows or should have known through due diligence that the vehicle will be used for the purpose described in this division violates this subsection. Each individual act of dumping or disposal of waste by use of a vehicle on any public or private property constitutes a separate violation under this subsection regardless of whether the acts occur on the same day and at the same or multiple locations.

- (c) ~~Whoever violates~~ A violation of subsection 729-30(b) shall be guilty of a misdemeanor of the first degree or commits a is a Class E Civil Offense as defined by CMC subsection 1501-11(b) or a misdemeanor of the first degree. A person who violates subsection 729-30(b) may be liable for the civil fine specified in § 1501-99 for a Class E Civil Offense.
- (d) Notwithstanding any other penalty authorized by this section, if the city manager ~~or~~ the city manager's designee ~~or the director of public services~~ ascertains that a person has violated this section, ~~the director of public services~~ the city manager or the city manager's designee ~~may remove~~ may direct the removal of the waste and the city solicitor may take any legal action necessary to collect the cost of the removal from the violator.
- (e) This section shall not apply to land being used under a City of Cincinnati building or construction permit or license, a City of Cincinnati permit or license or a conditional zoning permit or variance to operate a junk yard, scrap metal processing facility or similar business, or a permit or license issued pursuant to Chapter 3734, Section 4737.05 to 4737.12, or Chapter 6111 of the Ohio Revised Code.

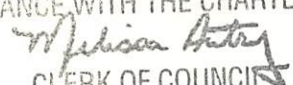
Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: November 15, 2023

Attest: 
 Clerk


 Aftab Pureval, Mayor

New language underscored. Deleted language indicated by strikethrough.

I HEREBY CERTIFY THAT ORDINANCE NO 389-2023
 WAS PUBLISHED IN THE CITY BULLETIN
 IN ACCORDANCE WITH THE CHARTER ON 11/28/2023

 CLERK OF COUNCIL