

ORDINANCE NO. 4577

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA AMENDING SECTIONS 17-108 AND 17-129 OF THE SCOTTSDALE REVISED CODE AND ADDING SECTION 17-130 TO THE SCOTTSDALE REVISED CODE

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Scottsdale as follows:

Section 1. Section 17-108 of the Scottsdale Revised Code is hereby amended as follows with deleted language shown with strikethroughs and new language shown with grey shading:

Sec. 17-108. - Abandoning vehicles on public property.

(a) In this section, unless the context otherwise requires:

Abandoned vehicle means any vehicle, trailer or semi-trailer of a type subject to registration under title 28 of Arizona Revised Statutes, sections 28-101 et seq., which has been left within the right-of-way of a highway, road, street or public thoroughfare, or upon public property, without being moved, for an extended period of time. Evidence that a vehicle was left unattended or unmoved for a period of seventy-two (72) hours within the right-of-way of a highway, road, street or other public thoroughfare, or upon public property, shall be prima facie evidence that the vehicle was abandoned.

(b) No person shall abandon a vehicle upon any street, highway, road, other public thoroughfare or other public property. ~~This subsection shall not apply to vehicles owned by the city which are parked or stored on public property.~~ Any police officer, or other duly authorized agent ~~police aide~~ who has reasonable grounds to believe that a vehicle has been abandoned in violation of this subsection may remove or cause the removal of such vehicle from any street, highway, road, or other public property. ~~Except for an abandoned vehicle at the airport, as defined in this Code, section 5-101, the~~ procedures in subsection (c) shall be used prior to citation or removal of an abandoned vehicle pursuant to this subsection. ~~The abandonment of any vehicle in a manner provided in this subsection shall constitute a presumption that the last registered owner of record is responsible for such abandonment and shall be subject to the provisions of this section, unless an affidavit has been filed pursuant to Arizona Revised Statutes, section 28-4844, reporting the vehicle as being stolen, or a stolen report has been accepted by a local law enforcement agency, or written notification of the transfer of title has been filed pursuant to Arizona Revised Statutes, section 28-2058. The registered owner of the abandoned vehicle shall be responsible for the payment of any and all charges incurred in the removal and subsequent storage of the vehicle, unless it is shown that the registered owner was not the legal owner at the time of the offense. A violation of this subsection constitutes a civil traffic offense. The last registered owner of the vehicle shall be presumed to be responsible for the unlawful abandonment and this presumption shall apply in any adjudication of the issue which may occur. The provisions of Arizona Revised Statutes, sections 28-4801 through 28-4843, shall apply in all respects to the removal, towing, storage and sale of abandoned vehicles impounded under this subsection.~~

~~(c) Except for an abandoned vehicle at the airport, W~~hen an officer or ~~other duly authorized agent~~ **police aide** has reason to believe that a vehicle has been abandoned in violation of subsection (b), a written notice shall be placed upon the vehicle in a conspicuous place. The notice shall state:

(1) That if the vehicle is not moved from its location within three (3) days from the date and time recorded by the officer or ~~other duly authorized agent~~ **police aide** at the time of preparation of the notice, it will be in violation of this section.

(2) That if the vehicle is not moved from its location within six (6) days from the date and time recorded by the officer or ~~other duly authorized agent~~ **police aide** at the time of preparation of the notice, it will be removed from its location and stored pursuant to this section.

~~(d) Within forty-eight (48) hours of the removal of an abandoned vehicle pursuant to this subsection, the police department shall send written notice of removal to the registered owner of the vehicle at the owner's last known address. The notice shall be sent by certified regular mail, return receipt requested, and shall state the reason for removal, the location of the vehicle and how it may be recovered. It shall also include a telephone number at the police department that can be called for additional information. The notice shall also inform the registered owner of the vehicle or the registered owner's agent of the opportunity for a hearing to determine the validity of the removal. Any hearing request shall be made, in writing, to the police department within ten (10) business days of the date of the notice. This hearing shall be conducted within forty-eight (48) hours after a request, excluding weekends and holidays. The police department may authorize one (1) of its own officers or employees to conduct the hearing as long as the hearing officer is not the same person who removed or caused the removal of the vehicle. The city shall be responsible for the costs incurred for towing and storage if it is determined at the hearing that reasonable grounds for the removal cannot be established.~~

~~(d) The aviation director, as defined in this Code, section 5-101, may request the police department to remove an abandoned vehicle parked at the airport for more than seventy-two (72) consecutive hours. Within forty-eight (48) hours of the removal of an abandoned vehicle under this subsection, the police department shall send written notice of removal to the registered owner of the vehicle at the owner's last known address. The notice shall be sent by certified mail, return receipt requested, and shall state the reason for removal, the location of the vehicle and how it may be recovered. It shall also include a telephone number at the police department that can be called for additional information.~~

~~For abandoned vehicles removed from the airport, the notice shall also inform the registered owner of the vehicle or the registered owner's agent of the opportunity for a hearing to determine the validity of the removal. Any hearing request shall be made, in writing, to the police department within 10 business days of the date of the notice. This hearing shall be conducted within forty-eight (48) hours after a request, excluding weekends and holidays. The police department may authorize one (1) of its own officers or employees to conduct the hearing if the hearing officer is not the same person who removed or caused the removal of the vehicle. The city shall be responsible for the costs incurred for towing and storage if it is determined at the hearing that probable cause for the removal cannot be established.~~

~~(e) The abandonment of any vehicle in a manner provided in this section shall constitute a rebuttable presumption that the last registered owner of record is responsible for such abandonment and shall be subject to the provisions of this section, unless an affidavit has been~~

filed pursuant to Arizona Revised Statutes, section 28-4844, reporting the vehicle as being stolen, or a stolen report has been accepted by a local law enforcement agency, or written notification of the transfer of title has been filed pursuant to Arizona Revised Statutes, section 28-2058. The registered owner of the abandoned vehicle shall be responsible for the payment of any and all charges incurred in the removal and subsequent storage of the vehicle, unless it is shown that the registered owner was not the legal owner at the time of the offense. The last registered owner of the vehicle shall be presumed to be responsible for the unlawful abandonment and this presumption, which shall be rebuttable, shall apply in any adjudication of the issue which may occur. The provisions of Arizona Revised Statutes, sections 28-4801 through 28-4843, shall apply in all respects to the removal, towing, storage and sale of abandoned vehicles impounded under this section.

(f) This section shall not apply to vehicles owned by the city which are parked or stored on public property.

(g) Nothing in this section requires the city and its police department, its officers, police aides or other duly authorized agents, to give written notice of towing, removal or storage of any vehicle other than as provided in this section. This section does not limit the power and authority of the city and its police department, its officers, police aides or other duly authorized agents to take such action when they may otherwise be required or permitted to do so under the laws of the state or the city.

(h) It shall be a civil traffic offense for any person to abandon a vehicle upon any street, highway, road, other public thoroughfare or other public property within the city.

Section 2. Section 17-129 of the Scottsdale Revised Code is hereby amended as follows with deleted language shown with strikethroughs and new language shown with grey shading:

Sec. 17-129. - Use of streets or public property for vehicle and trailer storage prohibited.

(a) In this section, unless the context otherwise requires:

(1) *Store* means to park a vehicle for more than seventy-two (72) consecutive hours.

(2) *Vehicle* means any device in, upon or by which a person or property is or may be transported or drawn, including, but not limited to, a motor vehicle, trailer or semi-trailer of a type subject to registration under title 28 of Arizona Revised Statutes, sections 28-101 et seq.; an off-road vehicle; an all-terrain vehicle; an off-road motorcycle; and watercraft of any kind.

(b) No person shall store a vehicle upon any street, highway, road, other public thoroughfare or other public property. This subsection shall not apply to vehicles owned by the city that are parked or stored on public property.

(c) Any police officer or ~~other duly authorized agent~~ police aide who has reasonable grounds to believe that a vehicle has been stored in violation of subsection (b) may remove or cause the removal of such vehicle from any street, highway, road, public thoroughfare or other public property. ~~Except for a vehicle stored at the airport, as defined in this Code, section 5-101, the~~ procedures in subsection (d) shall be used prior to citation or removal pursuant to this subsection.

~~(d) Except for a vehicle stored at the airport, w~~When an officer or ~~other duly authorized agent~~ police aide has reason to believe that a vehicle has been stored in violation of subsection (b), a written notice shall be placed upon the vehicle in a conspicuous place. The notice shall state:

(1) That if the vehicle is not moved from its location within three (3) days from the date and time recorded by the officer or ~~other duly authorized agent~~ police aide at the time of preparation of the notice, it will be in violation of this section.

(2) That if the vehicle is not moved from its location within six (6) days from the date and time recorded by the officer or ~~other duly authorized agent~~ police aide at the time of preparation of the notice, it will be removed from its location and impounded pursuant to this section.

(e) Storing any vehicle in violation of subsection (b) shall constitute a **rebuttable** presumption that the last registered owner of record is responsible for such unlawful storage and shall be subject to the provisions of this section, unless an affidavit has been filed pursuant to Arizona Revised Statutes, section 28-4844, reporting the vehicle as being stolen, or a stolen report has been accepted by a local law enforcement agency, or written notification of the transfer of title has been filed pursuant to Arizona Revised Statutes, section 28-2058; this presumption shall apply in any adjudication of the issue that may occur. The registered owner of the stored vehicle shall be responsible for the payment of any and all charges incurred in the removal and subsequent storage of the vehicle, ~~unless it is shown that the registered owner was not the legal owner at the time of the offense, or if the registered owner proves by a preponderance of the evidence that the city lacked probable cause to remove the vehicle.~~ The provisions of Arizona Revised Statutes, sections 28-4801 et seq., shall apply in all respects to the removal, towing, storage, transfer of title, and sale of vehicles impounded under this section.

~~(f) The aviation director, as defined in this Code, section 5-101, may request the police department to remove a vehicle stored at the airport in violation of Airport Rules and Regulations for more than seventy-two (72) consecutive hours. Within forty-eight (48) hours of the removal of a vehicle under this subsection, the police department shall send written notice of removal to the registered owner of the vehicle at the owner's last known address. The notice shall be sent by certified mail, return receipt requested, and shall state the reason for removal, the location of the vehicle and how it may be recovered. It shall also include a telephone number at the police department that can be called for additional information.~~

~~(g)~~ (f) Within forty-eight (48) hours after the removal of a vehicle pursuant to this section, the police department shall send written notice of removal to the registered owner of the vehicle at the owner's last known address. The notice shall be sent by **certified regular** mail, ~~return receipt requested~~, and shall state the reason for removal, the location of the vehicle and how it may be recovered. It shall also include a telephone number at the police department that can be called for additional information. The notice shall also inform the registered owner of the vehicle or the registered owner's agent of the opportunity for a hearing to determine the validity of the removal. Any hearing request shall be made, in writing, to the police department within 10 business days of the date of the notice. This hearing shall be conducted within forty-eight (48) hours after a request, excluding weekends and holidays. The police department may authorize one (1) of its own officers or employees to conduct the hearing ~~if~~ **as long as** the hearing officer is not the same person who removed or caused the removal of the vehicle. The city shall be responsible for the costs incurred for towing and storage if it is determined at the hearing that ~~probable cause~~ **reasonable grounds** for the removal cannot be established.

~~(h)~~ (g) A violation of subsection (b) constitutes a civil traffic offense and is subject to a civil sanction imposed pursuant to section 17-103.

~~(h)~~ (h) Nothing in this section requires the city and its police department, its officers, police aides or other duly authorized agents, to give written notice of towing, removal or storage of any vehicle other than as provided in this section. This section does not limit the power and authority of the city and its police department, its officers, police aides or other duly authorized agents to take such action when they may otherwise be required or permitted to do so under the laws of the state or the city.

Section 3. Section 17-130 is hereby added to the Scottsdale Revised Code as follows with new language shown with grey shading:

Sec. 17-130. Removal of vehicles for certain parking or standing violations; notice; release of vehicle; opportunity for hearing.

A. In addition to any reason authorized by state law or this code, a police officer or police aide who has reasonable grounds to believe that a vehicle on public property is parked or standing in violation of sections 17-106(1) through 17-106(4), sections 17-106(7) through 17-106(10), sections 17-106(13) and 17-106(14), section 17-106(16), sections 17-106(18), 17-106(19) and 17-124, may remove or cause the removal of such vehicle.

B. The aviation director or designee who has reasonable grounds to believe that a vehicle within the confines of the Scottsdale Airport that is parked or standing in violation of section 17-106(1), parked without authorization in a reserved parking space or obstructing airport operations, may remove or cause the removal of such vehicle. Any vehicle obstructing airport operations is deemed to be a threat to the public health, safety and welfare. Prior to removing a vehicle pursuant to this section, the aviation director or designee shall notify the police department before towing the vehicle and provide the following information:

(1) The name and address of the vehicle owner, if known;

(2) The motor vehicle license number, vehicle identification number (VIN) and description;

(3) The reason the motor vehicle will be towed;

(4) The street address of the impound lot where the motor vehicle will be taken;

(5) The name, phone number and driver's license number of the person that will tow the motor vehicle; and

(6) The towing carrier's name, address, and phone numbers, including a phone answered twenty-four (24) hours a day, seven (7) days a week.

C. For tows ordered pursuant to this section, within forty-eight (48) hours after the removal of a vehicle pursuant to this section, the police department or aviation department shall send written notice of removal to the registered owner of the vehicle at the owner's last known address. The notice shall be sent by regular mail and shall state the reason for removal, the location of the vehicle and how it may be recovered. The aviation department shall also send a copy of any such written notice to the police department. It shall also include a telephone number at the police department or aviation department that can be called for additional information. The

notice shall also inform the registered owner of the vehicle or the registered owner's agent of the opportunity for a hearing to determine the validity of the removal. Any hearing request shall be made, in writing, to the police department within 10 business days of the date of the notice. This hearing shall be conducted within forty-eight (48) hours after a request, excluding weekends and holidays. The police department may authorize one (1) of its own officers or employees to conduct the hearing as long as the hearing officer is not the same person who removed or caused the removal of the vehicle. The city shall be responsible for the costs incurred for towing and storage if it is determined at the hearing that reasonable grounds for the removal cannot be established.

D. Prior to a hearing on the validity of a removal and impoundment by the police department or the aviation department as authorized by this section, the registered owner of the impounded vehicle, or other person authorized to represent the registered owner or entitled to possession of the vehicle, shall be permitted to secure release of the vehicle by furnishing evidence of his or her identity and ownership or right to possession and paying the applicable towing and storage fees referenced in subsection F.

E. A lienholder asserting its right to possession of an impounded vehicle pursuant to its conditional sales agreement may obtain immediate release of such vehicle by paying the towing and storage fees referenced in subsection F and submitting a photocopy of the conditional sales agreement and title certificate, an affidavit stating that the purchaser is in default of the agreement and an indemnification certificate executed by an authorized agent of the lienholder. Except for the payments of fees, the requirements of subsection D of this section shall not apply to a lienholder.

F. The towing and storage fees shall be those fees set forth in the applicable current tow service contract between the city and the tow contractor providing the tow service.

F. Nothing in this section requires the city and its police department, its officers, police aides or other duly authorized agents, to give written notice of towing, removal or storage of any vehicle other than as provided in this section. This section does not limit the power and authority of the city and its police department, its officers, police aides or other duly authorized agents to take such action when they may otherwise be required or permitted to do so under the laws of the state or the city.

PASSED AND ADOPTED by the Council of the City of Scottsdale this ___ day of _____ 2022.

ATTEST:

CITY OF SCOTTSDALE, an
Arizona municipal corporation

Ben Lane
City Clerk

David D. Ortega
Mayor

APPROVED AS TO FORM:

Sherry R. Scott, City Attorney
By: Luis E. Santaella
Deputy City Attorney