ORDINANCE NO. 2150

AN ORDINANCE ESTABLISHING A PROCEDURE FOR THE IMPOUNDMENT OF MOTOR VEHICLES IN THE CITY OF BELOIT, KANSAS, AND ESTABLISHING FEES FOR SUCH IMPOUNDMENT AND STORAGE.

WHEREAS, it is the desire of the City Council of the City of Beloit, Kansas to establish a procedure for the impoundment, storage, and disposition of vehicles towed, abandoned, or seized under the law, and to establish impoundment and storage fees for said vehicles.

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

Section 1: DEFINITIONS. For the purpose of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them in this section.

(a) Motor Vehicle. Every vehicle, other than a motorized bicycle or a motorized wheelchair, which is self-propelled.
(b) Owner. A person who holds legal title of the vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale thereof with the right of purchase upon performance of the conditions stated in the agreement and with the immediate right of possession vested in the conditional vendee or in the event a vehicle is subject to a lease of 30 days or more with an immediate right of possession vested in the lessee; or in the event a party having a security interest in a vehicle is entitled to possession, then such conditional vendee or lessee or secured party shall be deemed the owner for the purpose of this ordinance.

Section 2: TOW AND IMPOUND WITHOUT NOTICE TO OWNER.

(a) The police department is authorized to remove and/or tow away, or have removed and towed away by a towing service to an impound lot or other safe place designated by the city, without notice to the owner or lawful custodian of such vehicles, all vehicles found under the hereinafter enumerated circumstances:
   (1) When any vehicle upon a street, highway, or bridge is so disabled or unattended so as to constitute an obstruction to traffic and the person or persons in charge of the vehicle cannot safely operate the vehicle or are unable to provide for its custody or removal to a lawfully secure location; or
   (2) When any vehicle is parked illegally in such a manner as to constitute a hazard or obstruction to the safe movement of traffic; or
   (3) When the operator of any 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

(4) 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
(5) When the driver is injured in an accident and is unable to provide for its custody or removal; or
(6) When a vehicle is parked on a snow emergency route or is otherwise in violation of the Snow Route Ordinance, and amendments thereof; or
(7) When any vehicle is reported or determined to be stolen and is recovered; or
(8) When any vehicle is subject to seizure as evidence in a criminal prosecution; or
(9) When any vehicle is subject to seizure or forfeiture under the laws of this state or federal law.

(b) A vehicle is declared to be a public nuisance and any police officer may remove, or have removed by a towing service, and impound such vehicle under the following circumstances:
(1) Whenever any unoccupied vehicle is left parked continuously upon any street of the city for 48 hours or more; or
(2) When any unoccupied vehicle is found parked in violation of any of the provisions of any traffic ordinance of the city.

(c) A vehicle which is subject to being impounded under any other provision of the Beloit City Code may not be towed until the owner has been notified and given an opportunity to remove said vehicle within a reasonable time; provided, however, that where the owner cannot be located after a bona fide effort has been made to do so then such vehicle may be towed.

Section 3: NOTICE AFTER IMPOUNDMENT.

(a) Whenever any motor vehicle is towed and impounded pursuant to the provisions of this ordinance, notice, if possible, shall be given for vehicles registered in Kansas to the registered owner, 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, 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 Section 5, and that unless the owner or lienholder takes action within fifteen (15) days from the date of the mailing of the notice, proceedings may be instituted to sell the vehicle at auction or otherwise dispose of the vehicle to cover any costs accrued as a result of the towing and impounding. Said notice shall be by written notice provided to the owner of the motor vehicle at the time the motor vehicle is towed, provided the officer providing such notice has obtained written acknowledgement 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 third business day after the towing. The police department shall use reasonable diligence in determining the title or registered owner of the vehicle. If the vehicle towed is registered in another state or country or bears no registration plate, then the police department shall initiate prompt action to apprise the owner of the vehicle's location and potential disposition.

(b) Any motor vehicle which has been impounded as provided in 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 vehicles and has been registered with the division, the City shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles not more than thirty (30) days after such agency took possession of the vehicle. The City shall mail a notice by certified mail to the registered owner thereof, addressed to the address shown on the certificate of registration, and to the lienholder, if any. The notice shall state that, if the owner or lienholder does not claim such motor vehicle and pay the towing, impoundment, and storage fees incurred within fifteen (15) days from the date of the mailing of the notice, it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within ten (10) days after receipt of verification of the last owner and lienholders, if any, as provided in this subsection. After fifteen (15) days from date of mailing notice, the City shall publish a notice once a week for two (2) consecutive weeks in the official city newspaper, which notice shall describe the motor vehicle by name of maker, model, serial number, and owner, if known, and stating that it has been impounded by the City and that it will be sold at public action to the highest bidder for cash if the owner thereof does not claim it within ten (10) days of the date of the second publication of the notice and pay the towing, impoundment and storage fees, and publication costs incurred by the City.

If the motor vehicle does not display a registration plate issued by the division of vehicles and is not registered with the division, the City, after thirty (30) days from the date of impoundment, shall request verification from the division of vehicles of the last registered owner and any lienholders, if any. Such verification request shall be submitted to the division of vehicles no more than thirty (30) days after such agency 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. The notice shall state that if the owner or lienholder does not claim such motor vehicle and pay the towing, impoundment, and storage fees incurred within fifteen

(15) days from the date of the mailing of the notice, it will be sold at public auction to the highest bidder for cash. The notice shall be mailed within ten (10) days after receipt of verification of the last owner and any lienholders, if any, as provided in this subsection. After fifteen (15) days from the date of mailing notice, the City shall publish a notice in the official city newspaper, 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 said City and will be sold at public auction to the highest bidder for cash, if the owner thereof does not claim it within ten (10) days of the date of the second publication of the notice and pay the towing, impoundment, and storage fees incurred, and publication costs incurred by the City.

Section 4: RELEASE PROCEDURES.

(a) All motor vehicles towed and impounded pursuant to the provisions of this ordinance shall be surrendered to the owner, subject to the provisions of subsection (b) of this section, upon presentation of the following:
   (1) Proof of ownership of the vehicle by lawful title or other proof of lawful entitlement to the vehicle;
   (2) Proof of a driver's license or other valid photo identification;
   (3) Proof of valid registration; and
   (4) Payment of all impound fees, storage fees, and towing charges incurred in the towing and impounding of the vehicle must be made prior to the release of the vehicle unless otherwise relieved of that requirement by application of the hearing provisions set forth in this ordinance.

(b) Vehicles towed pursuant to subsection (a)(9) of Section 2 of this ordinance shall be disposed of pursuant to the Kansas Asset Seizure and Forfeiture Act, K.S.A. 60-4101 et seq. and amendments thereto.

Section 5: HEARING PROCEDURES.

(a) Owners 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 Beloit municipal court clerk of the request in writing. The request shall state the grounds upon which the person requesting the hearing believes the impoundment invalid or unjustified. Such request must be made no later than five (5) business days from impoundment of the vehicle or receipt of the notice of impoundment, whichever is later.

(b) A hearing for the purpose of determining the validity of the tow shall be held by the municipal court within seven (7) days of receipt of proper request filed pursuant to this section, except where a vehicle has not yet been released from impoundment, in which case the court will set and conduct the hearing within three (3) working days after such hearing is requested. The times of the hearing shall be set by the clerk of the municipal

court. This hearing may be conducted by telephone conference.

(c) Pending such hearing, the owner of any impounded vehicle may retrieve the impounded vehicle upon payment of an amount equal to the towing, impound, and storage charges incurred by the vehicle. If such payment is made, the vehicle will be released immediately upon proof of entitlement thereof. If the owner does not make advance payment of the charges, then such vehicle will remain in storage until a hearing is had.

(d) The owner is only entitled to one hearing for each tow of that vehicle. Any person who fails to appear at the hearing without good cause will not be entitled to have such hearing rescheduled.

(e) 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 amount previously paid by such person for towing, impoundment and storage fees will be returned to them by the City. If after hearing it is determined that the vehicle was lawfully towed, and towing, impound, and storage fees have been previously paid by the owner, then such payment may be retained by the City.

(f) If any owner or person lawfully entitled to custody of any impounded vehicle makes an advance payment of all towing, impoundment, and storage fees but does not appear at the designated time for hearing, such payment shall be forfeited to the City.

(g) Owners of vehicles which are stolen and impounded under the provisions of this title shall be responsible for payment of any charges in connection with towing, impoundment, and storage of any stolen vehicle.

(h) An appeal from an order of a municipal court judge made pursuant to this section of the code shall be directed to the Mitchell County District Court.

Section 6: FEES. The following fees are hereby established for every motor vehicle impounded under this ordinance:

(a) Impoundment Fee of $75.00.
(b) Daily Storage Fee of $10.00. This shall include the day of impound and the day of release.
(c) Towing fees are set by the towing service and will vary on a case by case basis.

Section 7: This Ordinance shall take effect and be in full force from and after its passage and one publication in the official city newspaper.

PASSED and ADOPTED by the Governing Body and signed by the Mayor this 6th day of May, 2014.

Tom Naasz

Tom Naasz, Mayor

ATTEST:

Amanda J. Lomax

Amanda J. Lomax, City Clerk