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April 21, 2023

Christopher H. Hillard  
Legislative Fiscal Analyst-Lead  
Legislative Reference Bureau

Dear Mr. Hillard,

On April 19, 2023, the City Attorney's Office received a request for input on the legality of proposed Milwaukee Code of Ordinances ("MCO") Section 101-24.9, relating to the impounding of vehicles involved in reckless driving offenses.

The proposed ordinance is, in large part, in compliance with the requirements set forth in the authorizing statute, Wis. Stat. § 349.115. There are, however, minor discrepancies which should be corrected. Those discrepancies are as follows:

**I. The Ordinance Should Include Language on Violation of Local Traffic Ordinance**

The second sentence of the *Analysis* section reads as follows:

The ordinance authorizes a law enforcement officer to impound a vehicle used in commission of a violation of the state's reckless driving statute under s. 346.62, Wis. Stats., provided the person cited for the violation:

In order to avoid any issues with regard to enforceability, this sentence should be modified to include reference to local ordinance under which MPD officers will technically cite reckless drivers. The language should be modified as follows:

The ordinance authorizes a law enforcement officer to impound a vehicle used in commission of a violation of the state's reckless driving statute under s. 346.62, Wis. Stats., or a local ordinance in strict conformity with s. 346.62, Wis. Stats., provided the person cited for the violation:

Next, the *Analysis* section lists the three prerequisites for impounding a vehicle. The second requirement reads as follows:

2. Has a prior conviction for violation of s. 346.62, Wis. Stats.

For the same reason as the above-recommended edit, this should be modified as follows:

2. Has a prior conviction for violation of s. 346.62, Wis. Stats., or a local ordinance in strict conformity with s. 346.62.

The same language (“Violation of s. 346.62”) appears three times in the body of the proposed ordinance. *See Proposed Ordinance 101-24.9-1; 101-24.9-2; and 101-24.9-2b.* The same modification should be made for the same reason.

## **II. The Ordinance Should Not Require Payment of Deposit on the Forfeiture For the Citation For Which the Vehicle Was Impounded**

The *Analysis* section proceeds to state that the ordinance “provides for the recovery of the impounded vehicle by the owner” when certain fees and forfeitures have been paid in full. Included in that list is the requirement that “a deposit has been made on the forfeiture for the citation for which the vehicle was impounded.” This appears to be outside of what is authorized by Wis. Stat. § 349.115.

Wis. Stat. § 349.115 details when a political subdivision must return a vehicle to its owner. Specifically, the ordinance may provide for the impoundment of the vehicle until the person fully pays: (1) The prior forfeiture amount; (2) The reasonable costs of impounding the vehicle, including towing or other transportation costs and storage costs. The statute does not appear to grant the municipality power to *also* require that the person pay the deposit on the forfeiture for the citation for which the vehicle was impounded. This conclusion is supported by an examination of the legislative history of Wis. Stat. § 349.115. The original version of the law—Senate Bill 92—read, in relevant part, as follows:

A political subdivision shall return to its owner a vehicle impounded under sub. (1) upon payment of the prior forfeiture amount described in sub. (1) and the making of a deposit under s. 345.26 for the citation for which the vehicle was impounded.

Notably, the portion requiring the payment of a deposit for the citation for which the vehicle was impounded was stricken from the language. *See Wisconsin Senate Amendment Memo, 2023 Reg. Sess. S.B. 92.* I would recommend striking the same language from the ordinance. The same language appears again in the body of the proposed ordinance. *See Proposed Ordinance 101-24.9-3-c.* I would recommend removing this language for the same reason as stated above.

## **III. Additional Minor Discrepancy**

The last sentence in the final full paragraph in the *Analysis* section states:

Finally, the ordinance authorizes the city to dispose of any unclaimed, impounded vehicle provided it has been more than 90 days since issuance of the reckless driving citation for which the vehicle was impounded.

In order to avoid any issues with regard to enforceability, this sentence should more accurately reflect the language of the statute. Specifically, the sentence should be modified as follows:

Finally, the ordinance authorizes the city to dispose of any unclaimed, impounded vehicle provided it has been more than 90 days after the disposition of the reckless driving citation for which the vehicle was impounded.

#### **IV. Conclusion**

Please do not hesitate to reach out to me with questions or concerns regarding the above analysis.  
Thank you.

Very truly yours,

Alex Mueller  
Assistant City Attorney