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September 10, 2025

Mr. James Lewis
Police Risk Manager
Milwaukee Police Department
749 West State Street, Room 712
Milwaukee, WI 53233

Re: Legal Opinion Request Regarding Impoundment of Vehicles Involved in Street
Takeover Activity

Dear Mr. Lewis:

On June 9, 2025, you requested a Legal Opinion on the issue of the towing and impoundment of vehicles that are involved in street takeover activity. Your request indicates that the increased prevalence of this behavior has led to MPD seeking legal strategies to mitigate this problem. You requested that our office provide an opinion that accomplishes the following:

- (1) Define the boundaries of what is currently allowed by State law and City Ordinance when it comes to towing and impounding vehicles;
- (2) Identify other measures the City could enact to empower MPD to effectuate more towing and impoundment, without running afoul of state law;
- (3) Identify what the liability and/or penalty is for towing and impounding vehicles for street takeover activity under current law; and

- (4) Answer whether MPD can tow and impound a vehicle for a violation of Wis. Admin. Code Trans. 305 violations

These topics are addressed in the order they were posed.

I. Authority to Impound is Limited

Governmental actors do not have unlimited discretion to tow or impound vehicles belonging to private citizens. This authority is limited by both state and federal law. The impoundment of a vehicle is a seizure within the meaning of the Fourth Amendment. *See State v. Asboth*, 2017 WI 76, ¶¶13-14, 376 Wis. 2d 644, 898 N.W.2d 541. Generally, “seizures of personal property are unreasonable within the meaning of the Fourth Amendment, without more, unless ... accomplished pursuant to a judicial warrant.” *See Illinois v. McArthur*, 531 U.S. 326, 330, 121 S. Ct. 946, 148 L.Ed.2d 838 (2001). *See also United States v. Dugway*, 93 F.3d 346, 351 (7th Cir. 1996) (“Both the decision to take the car into custody and the concomitant inventory search must meet the strictures of the Fourth Amendment”).

The City’s authority to penalize traffic offenses is further constricted by Wisconsin Statute. “Local authority may enact and enforce any traffic regulation which is in *strict conformity* with one or more provisions of chs. 341 to 348 and 350 for which the penalty for violation thereof is a forfeiture.” *See* Wis. Stat. § 349.06 (emphasis added). Wisconsin traffic laws restrict the authority to impound vehicles to a limited and specified number of circumstances.

II. Potential Regulation Related to Towing and Impounding

Your second request asks our office to identify what other measures the City could enact to empower MPD to effectuate more towing and impoundment of vehicles used in street takeover events. As stated above, traffic regulation is regulated by Wisconsin statute and strict conformity is required.

Pursuant to Wis. Stat. § 62.11(5), the authority of the City to regulate highways may be limited by express statutory language. Wis. Stat. § 349.03(1)(a) states that the City may not enact any traffic regulation unless the regulation is not contrary to or inconsistent with chs. 341 to 348 and 350.

Section 349.03(1)(b) also permits the City to enact traffic regulation that is expressly authorized by Wis. Stats. §§ 349.06 – 349.25 or other statutory provisions.

The plain meaning of “traffic regulation” has been interpreted to mean “any regulation which directly affects or is incident to vehicle operation regardless of the purpose for which it was enacted.” *Janesville v. Garthwaite*, 83 Wis. 2d 866, 869, 266 N.W.2d 418, 420 (1978). This

discussion has been labeled as *dicta*. *State v. Beasley*, 165 Wis. 2d 97, 101, 477 N.W.2d 57, 58 (Ct. App. 1991). However, the *Garthwaite* interpretation is supported by a “traffic” definition to include “pedestrians...vehicles and other conveyances, either singly or together, while using any highway for the purpose of travel.” Wis. Stat. § 340.1(68).

A local traffic regulation is not inconsistent with a traffic regulation if there is no provision on the same subject. *Garthwaite*, 83 Wis. 2d at 871. For street takeovers, the vehicles are being used for behavior consistent with reckless driving and obstructing traffic. These behaviors are the subject of existing statutes.¹ Therefore, any City ordinance must be consistent with these statutes.

Ordinances related to reckless driving as a public nuisance have previously been advanced and reviewed by this office. A public nuisance action permits the City to file a civil lawsuit seeking an injunction and other equitable relief pursuant to Wis. Stat. ch. 823 to abate the public nuisance.

An injunction’s scope is not broader than what is equitably necessary to abate the nuisance. *City of Milwaukee v. Burnette*, 2001 WI App 258, 248 Wis. 2d 820, 836, 637 N.W.2d 447, 454 (internal citation omitted). The injunction may not burden an individual’s rights more than what is necessary to abate the nuisance. *Id.* The injunction also may not be impermissibly vague. *Id.* at

These are factually dependent situations. Whether to impose an injunction and the amount of relief issued in the injunction is at the discretion of the circuit court. Whether that relief impacts ownership of a vehicle would depend on the circumstances presented in an individual case.

In conclusion, the ability to enact an ordinance that would cause the immediate removal and impoundment of vehicles based on reckless driving is restricted due to state statutes on the subject matter and the circuit court nuisance process will also not provide an avenue for immediate removal and impoundment.

III. Legal Methods to Impound Vehicles Used in Street Takeovers

Your third request is to identify current Wisconsin law and local ordinances that authorize towing under specific enumerated circumstances. MPD may find that the following circumstances are present in street takeover events.

A. Registration Status as Opportunity for Enforcement

The City is specifically authorized to tow unregistered vehicles pursuant to Wis. Stat. § 341.65(2)(b) (adopted by City of Milwaukee Ordinance, hereinafter “MCO” § 101-24.7-3-a), which states:

¹ Wis. Stat. § 349.115 and MCO § 101-24.9 are discussed as available options in a subsequent section.

Any municipal or university police officer, sheriff's deputy, county traffic patrolman, state traffic officer, conservation warden, parking enforcer, or other person authorized under par. (c) who discovers any unregistered motor vehicle located upon any highway may cause the motor vehicle to be immobilized with an immobilization device or removed to a suitable place of impoundment.

An unregistered motor vehicle includes a vehicle that is not displaying valid registration plates or other evidence of registration. Wis. Stat. § 341.65.

MPD's Reckless Driving Vehicle Tow policy already utilizes this statute to impound unregistered vehicles driven recklessly. *See MPD SOP 610.20(I)*. Vehicles implicated by the policy can be impounded because of their *registration status*, not because of their status as having been driven recklessly. The City could legally enact a similar policy aimed at unregistered vehicles used in street takeover events. Unregistered vehicles present at such an event may legally be impounded.

B. Violations of Restrictions on Stopping, Standing, and Parking

It may be that certain vehicles involved in street takeover events are in violation of restrictions on stopping, standing, and parking. Wis. Stat. § 349.13(3) authorizes municipalities to remove vehicles that violate prohibitions on stopping, standing or parking. The statute reads as follows:

Whenever any traffic officer finds a vehicle standing upon a highway in violation of a prohibition, limitation or restriction on stopping, standing or parking imposed under ch. 346 or this section, or a disabled vehicle that obstructs the roadway of a freeway or expressway, as defined in s. 346.57 (1) (ag), the traffic officer is authorized to move the vehicle or to require the operator in charge thereof to move the vehicle to a position where parking is permitted or to either private or public parking or storage premises. The removal may be performed by, or under the direction of, the traffic officer or may be contracted for by local authorities. Any charges for removal shall be regulated by local ordinance. The operator or owner of the vehicle removed shall pay the reasonable charges for moving or towing or any storage involved based upon the ordinance.

Wis. Stat. § 349.13(3). This statute was adopted by the City in MCO §101-25. Chapter 346 of the Wisconsin Statutes was adopted by MCO § 101-3. The City therefore has the authority to tow and impound vehicles violating stopping, standing, and parking regulations found in Chapter 346. Parking, as defined in § 340.01(42m) means "the halting of a vehicle, *whether occupied or not*, except temporarily for the purpose of and

while actually engaged in loading or unloading property or passengers.” Wis. Stat. § 340.01(42m) (emphasis added).

Restrictions on stopping and parking are found in Wis. Stat. §§ 346.50—346.56. Specific violations that may be relevant to the context of a street takeover include Wis. Stat. § 346.52, which restricts stopping or leaving a vehicle standing (whether attended or unattended) in certain specified places. Drivers are prohibited from stopping or leaving standing their vehicle in the following places:

- (a) Within an intersection.
- (b) On a crosswalk.
- (c) Between a safety zone and the adjacent curb, or within 15 feet of a point on the curb immediately opposite the end of a safety zone unless a different distance is clearly indicated by an official traffic sign, pavement marking, or parking meter.
- (d) On a sidewalk or sidewalk area, except when parking on the sidewalk or sidewalk area is clearly indicated by official traffic signs, pavement markings, or parking meters.
- (e) Alongside or opposite any highway excavation or obstruction when stopping or standing at that place would obstruct traffic or when pedestrian traffic would be required to travel in the roadway.
- (f) On the roadway side of any parked vehicle unless double parking is clearly indicated by official traffic signs or pavement markings.
- (g) Within 15 feet of the driveway entrance to a fire station or directly across the highway from a fire station entrance.
- (h) Upon any portion of a highway where, and at the time when, stopping or standing is prohibited by official traffic signs indicating the prohibition of any stopping or standing.
- (i) Within 25 feet of the nearest rail at a railroad crossing.

Wis. Stat. § 346.52. MPD may find that many vehicles involved in street takeover activities are engaged in violations of this statute.

Additionally, § 346.55 restricts parking or leaving standing a vehicle (1) on the left side of the highway; and (2) on private property without the consent of the owner. Officers may find that certain vehicles taking part in street takeover events are in violation of this statute.

Note, however, that § 346.50 creates exceptions for violations of Wis. Stat. §§ 346.50—346.56. The prohibitions against stopping or leaving a vehicle standing do not apply when any of the following three exceptions are present:

- (a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving the vehicle in the prohibited place; or
- (b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations or the directions of a traffic officer or traffic control sign or signal.
- (c) The vehicle of a public utility, as defined in s. 196.01 (5), a telecommunications carrier, as defined in s. 196.01 (8m), or a rural electric cooperative is stopped or left standing and is required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to warn approaching motorists of any obstruction to the traveled portion of the highway.

Wis. Stat. § 346.50(1)(a)-(c). A defendant cited for a violation of a restriction on stopping, standing, or parking may attempt to utilize as a defense the exception carved out by § 346.50(1)(b). Officers citing a defendant for a violation of this sort would be wise to document any behavior which tends to show that the defendant was actively engaged in the street takeover—as opposed to a helpless victim caught up in a sudden gathering and unable to safely depart.

C. Reckless Driving

Street takeovers commonly involve a reckless driving component. MCO § 101-24.9 provides an additional basis to impound a vehicle used in a reckless driving offense. This ordinance, created under the authority of Wis. Stat. § 349.115—creates a new class of vehicles that may be impounded regardless of their registration status.

A vehicle used in a reckless driving offense may be towed under this ordinance if, (1) the driver is the owner of the vehicle; (2) the driver has a prior conviction for violation of the reckless driving statute, Wis. Stat. § 346.62, or a local ordinance in strict conformity with § 346.62, for which a forfeiture was imposed; and (3) the driver has not fully paid the previously imposed forfeiture.

“Reckless driving” as defined by § 346.62 is largely defined by the “negligent” mental state. In this context, negligence means ordinary negligence to a “high degree.” Wis. Stat.

§ 939.25(1). It is conduct that the actor “should realize creates a substantial and unreasonable risk of death or great bodily harm to another.” *Id.*

There may be factual situations in street takeovers that demonstrate the more egregious mental state of criminal recklessness. In this context, “recklessness” means the “actor creates an unreasonable and substantial risk of death or great bodily harm to another” and the actor is “aware of that risk.” Wis. Stat. § 939.21(1).

If the factual circumstances demonstrate the elevated mental state of recklessness, then responding officers may consider, among other things, Recklessly Endangering Safety pursuant to Wis. Stat. § 941.30. This is a felony level offense upon first instance and proportionate investigatory tools may be considered.

As an example, if officers have probable cause to “believe that the vehicle is, or contains, evidence of a crime, warrantless seizures of automobiles may be lawful, provided that they are conducted reasonably.” *State v. Brereton*, 2013 WI 17, ¶30, 345 Wis. 2d 563, 826 N.W.2d 369. Factual circumstances may warrant a probable cause seizure of a vehicle used in violation of § 941.30 for further investigation into the criminal activity including the identity of the occupants or individuals that participated in or arranged the criminal activity.

D. MCO § 105-1 Riots; Unlawful Assemblies

MCO §105-1 regulates unlawful assemblies and contemplates the use of vehicles in that regard. § 105-1-4-a states that a motor vehicle operated two or more times in an unlawful assembly is declared a public nuisance. § 105-1-4-b authorizes the City Attorney to initiate nuisance abatement proceedings seeking appropriate relief including removal and sale of the vehicle. This process would follow the Wis. Stat. ch. 823 proceedings previously discussed above.

IV. Utility of Wis. Admin. Code Trans. 305 violations

Your final question is whether violations of Wis. Admin. Code Trans. 305 violations may provide a basis to impound the violating vehicle. This chapter of the Administrative Code establishes minimum equipment requirements for vehicles and standards for equipment used on vehicles. While some portions of the code may implicate a vehicle’s ability to safely operate on city streets, the code does not authorize impoundment of non-complying vehicles.

The City is not authorized to adopt a blanket policy of impoundment of all vehicles found in violation of the terms of Wis. Admin. Code Trans. 305. However, when a vehicle is so

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unsafe that it jeopardizes the safety of others, impoundment of the vehicle may be valid under the community caretaker function.

Police seizure of a vehicle—without a warrant or a recognized Fourth Amendment justification—is an unreasonable violation of the Fourth Amendment. *Asboth*, 2017 WI 76, ¶¶ 13-14. Courts have recognized an exception to the Fourth Amendment when a vehicle seizure is conducted pursuant to the community caretaker function. *Id.* at ¶ 37.

For example, officers commonly seize vehicles in the role of community caretakers when towing vehicles following an accident. It may be that a vehicle is in such disrepair that it cannot be safely driven away from a street takeover. The constitutionality of seizing such a vehicle would depend upon the individual facts of each case. *See State v. Clark*, 2003 WI App 121, ¶14, 265 Wis. 2d 557, 666 N.W.2d 112.

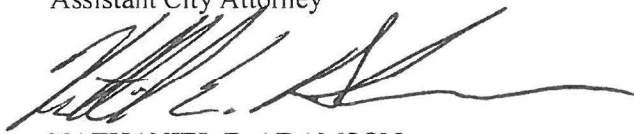
Very truly yours,



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