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December 13, 2019

Alderman Michael J. Murphy
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

Re: Request for Legal Opinion on the City's Authority to Impound
Vehicles Without Registration or Insurance

Dear Alderman Murphy:

You inquired whether unregistered and/or uninsured vehicles may be impounded. It is our opinion that unregistered vehicles may be impounded, but uninsured vehicles may not.

As noted in the City Attorney Opinion dated March 22, 2016, the City is generally authorized to tow vehicles that violate prohibitions on stopping, standing or parking and to remove the vehicle to a private or public storage lot pursuant to state-enabling legislation found in Wis. Stat. § 349.13(3). This statute was adopted by the City through Milwaukee Code of Ordinances (MCO) Section 101-25.

Furthermore, effective May 5, 2019, the City is specifically authorized to tow unregistered vehicles pursuant to Wis. Stat. § 341.65(2)(b) (adopted by MCO 101-24.7), which states:

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.



Under the statute, an “unregistered motor vehicle” means any motor vehicle that is not displaying valid registration plates, a temporary operation plate, or other evidence of registration as provided under Wis. Stat. § 341.18(1) for the vehicle's current registration period or for a registration period that expired within the last 31 days. Such a vehicle cannot be legally operated or parked within the City. Therefore, if during the course of a traffic stop, a police officer determines that a vehicle is unregistered (as defined above), the vehicle may be lawfully towed.

In contrast, there is currently no statutory basis for impoundment of uninsured vehicles. As noted above, under Wis. Stat. § 349.13(3) the City has been granted general authority to tow vehicles whenever any traffic officer finds a vehicle standing upon a highway in violation of the rules of the road imposed under ch. 346 – specifically moving violations and parking restrictions. This authority, currently, does not extend to the motor vehicle liability insurance requirement imposed by Wis. Stat. § 344.62.

Additionally, we are concerned that towing a properly registered and parked vehicle because it was not insured would be procedurally problematic. Upon our information and belief, there is no way for the Milwaukee Police Department (MPD) or the Department of Public Works (DPW) to determine if an unoccupied parked vehicle is properly insured. It would seem that an “insurance tow” could only occur after a traffic stop by police and an owner admission that the vehicle was uninsured. Otherwise, a driver could claim to have insurance but not have proof in the car (proof that could be available for court if a citation is issued), or a driver could have an insurance card for a lapsed policy that no longer provides coverage.

This kind of scenario puts police officers in the difficult position of having to trust paperwork or a phone call to a private insurance company to determine compliance with the law in deciding whether to seize a valuable piece of private property. In other words, an “insurance check” through private insurance companies to confirm coverage would be substantially more complex and less reliable than checking with the Department of Transportation-Department of Motor Vehicles (a governmental entity charged with keeping public records of registration) to confirm vehicle registration.

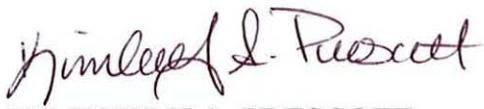
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Please contact this office if you have any further questions concerning this matter.

Very truly yours,



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/KAP

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March 22, 2016

Mr. Ghassan Korban
Commissioner of Public Works
841 N. Broadway
Milwaukee, WI 53202

Re: **Proof of Ownership Requirements for Satellite Tow Lots and
Relocation to On-Street Parking**

Dear Commissioner Korban:

By letter dated February 24, 2016, you requested an opinion regarding what proof of ownership would be required for a person to retrieve a vehicle from a satellite tow lot or from on-street parking space after a vehicle has been relocated. Furthermore, you inquired as to whether the proof of ownership requirements could be different than the current procedures at the City Tow (Impound) Lot.

The City is permitted to tow abandoned and illegally parked vehicles and remove them to a private or public storage lot pursuant to state-enabling legislation found in §§ 349.13(3) and 342.40, Wis. Stats.

Wis. Stat. § 349.13(3) states:

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.

This statute was implemented by the City through Milwaukee Code of Ordinances (MCO) Section 101-25. As currently written, MCO 101-25-1 requires that a



towed vehicle must be removed to a secure impound lot. Based on this provision, and absent an exigent circumstance, the code currently prohibits simply relocating the vehicle to a legal on-street parking space.

What proof of ownership would be required for a person to retrieve his or her vehicle from a satellite tow lot?

Wis. Stats §340.01 (42) defines an owner as “a person who holds the legal title of a vehicle, except that if legal title is held by a secured party with the immediate right of possession of the vehicle vested in the debtor, the debtor is the owner...” Milwaukee Code of Ordinances section 101-25-1 provides that the vehicle may be released to its owner after vehicle reclamation charges are paid “at the storage facility” and after “proper identification” is presented.

The City is subject to liability if a vehicle is released to the wrong individual. Therefore, anyone appearing at the lot to obtain a vehicle must have some reliable documentation of his or her right to the vehicle, either by proof of ownership, lien rights or a document that indicates the owners consent to the release. It is our understanding that the City’s current tow lot policy requires an owner present proper identification and proof of ownership in the form of a current title or registration when claiming a vehicle at the tow lot. If a vehicle owner does not have a current title or registration on their person, the tow lot can retrieve such documentation from the vehicle or verify ownership by looking up the vehicle registration through the Department of Transportation.

If the Department of Public Works (DPW) would like to set up satellite tow lots in order to have more convenient locations for owners to retrieve their towed vehicles during permitted special events or due to a snow event, there is nothing in MCO ch. 101 that prohibits DPW from establishing additional secured impound lots. However, it would seem that a policy setting the proof of ownership requirements should remain the same regardless of whether the vehicle was towed to the main City tow lot or to a satellite location. We cannot imagine a situation that could logically require different sets of ownership proof depending on where the secured lot is found. Given the potential liability concern of releasing a vehicle to someone not entitled to it, it would seem that either the City requires proof of ownership before releasing the vehicle or it does not.

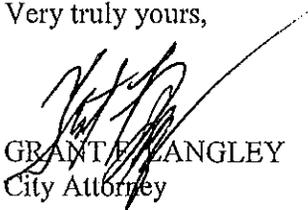
What proof of ownership would be required for a person to retrieve his or her vehicle from an on-street parking space after the vehicle has been relocated?

As addressed above, the current code provisions found in MCO 101-25-1 only allow the removal of a towed vehicle to a secure impound lot. However, in the event the code is amended to allow removal to a legal on-street location, it would seem proof of ownership would be unnecessary because the vehicle owner, or any person in possession of the vehicle keys, could simply access the vehicle and

drive it off. This situation would obviously not require any proof of ownership (but for the possession of the vehicle keys). However, the City would have to adopt a new process to secure payment of the towing fee after the vehicle is recovered by the owner or driver.

In summary, it is the opinion of our office that the proof of ownership requirements should remain the same regardless of whether a vehicle was towed to the main City tow lot or to a secured satellite location. Furthermore, the MCO 101-25-1 requires the removal of towed vehicles to a secure lot and does not make any provision for simply relocating a vehicle to a legal on-street parking space.

Very truly yours,



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