

The following Ordinance shall be the subject of a public hearing with the Mayor and Council of Middletown at the regularly scheduled meeting on Monday, May 2, 2016, at 7:30 p.m., in the Council Chambers at Town Hall, 19 W. Green St., Middletown. The following Ordinance will be voted on by the Mayor and Council at the meeting.

## ORDINANCE 16-03-01

**Introduced:** March 14, 2016

**Adopted:**

### AN ACT TO AMEND CHAPTER 108 IN THE TOWN OF MIDDLETOWN CODE RELATING TO PARKING

**BE IT ENACTED BY THE MAYOR AND COUNCIL OF THE TOWN OF MIDDLETOWN**  
(a majority of the members elected thereto concurring therein):

**Section 1.** That the Town of Middletown, Delaware, Code of Ordinances is hereby amended by deleting Chapter 108 in its entirety, and replacing therein the following:

#### **Chapter 108: PARKING**

##### **108-1 Definitions:**

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

##### **BOAT**

Any vessel that may be propelled by oars, paddles, sail or power, that is designed or intended to be used on any body of water.

##### **HIGHWAY**

“Highway” means the entire width between boundary lines of every way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel, but does not include a road or driveway upon grounds owned by private persons, colleges, universities or other institutions.

##### **INTERSECTION**

Intersection means the area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two (2) or more highways which join one another at an angle, whether or not one (1) such highway crosses the other.

##### **OFF-HIGHWAY VEHICLE or OHV**

A motor-driven off-road vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multiwheel-drive or low-pressure-tire vehicle, a motorcycle or related two-wheel vehicle, an amphibious machine, a ground-effect air-cushion vehicle or other means of transportation deriving motive power from a source other than muscle or wind. “Off-highway vehicle” does not include a farm vehicle being used for farming, a vehicle used for military, fire,

emergency or law enforcement purposes, a construction or logging vehicle used in performance of its common function or a registered aircraft.

### **OWNER**

Owner means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or in the event a mortgagor of a vehicle is entitled to possession then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

### **PERSON**

Any individual, partnership, joint venture, corporation or legal entity of whatever nature.

### **PRIVATE ROADWAY OR DRIVEWAY**

“Private road or driveway” includes every road or driveway not open to the use of the public for purposes of vehicular travel.

### **RECREATIONAL VEHICLE**

Includes every motor vehicle, self-propelled or capable of being towed by a passenger vehicle, station wagon or pickup truck, of such size and weight as not to require any special highway movement permits from the Delaware Department of Motor Vehicles, which is primarily designed or constructed to provide temporary, movable human living quarters for recreational, camping or travel use, not the residence of the owner or occupant. It shall also include all trailers, as defined in this section, and every van which is used primarily for personal pleasure and not for commercial use, regardless of the equipment or furnishings contained within such van.

### **ROADWAY**

“Roadway” means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two (2) or more separate roadways, the term “roadway” as used herein shall refer to any such roadway separately but not to all such roadways collectively.

### **SAFETY ZONE**

Safety zone means the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone.

### **SERVING A PERMITTED USE**

The act of providing a service or other function, during the pendency of that function only, requested by or contracted for by a person engaged in a permitted use within a residential district, as well as the permitted use in the first instance, if applicable.

### **TRAILER**

Includes a mobile home, travel trailer, house trailer, office trailer, camping trailer or any vehicle

without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle.

**TRUCK/TRACTOR**

Includes every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

**VEHICLE & MOTOR VEHICLES**

Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks and except electric trackless trolley coaches and except OHV'S.

## §108-2 Parking Administration

### A. Authority to enforce

1. Police Officers – any sworn officer of the Town shall have the authority to enforce any provision in this chapter.
2. Public Safety Aid – any Public Safety Aid (civilian) employed by the Middletown Police Department shall have the authority to enforce any provision in this chapter.

### B. Enforcement

A summons, in appropriate form to be adopted by the Middletown Police Department, may be attached to an unattended vehicle found in violation of any of the provisions of this chapter by any person authorized by this Chapter to issue summonses for such violations.

### C. Authority to hear appeals

1. Public Safety Committee (Public Safety Committee, established through an ordinance passed by Mayor and Council on October 1, 2007)
2. The Public Safety Committee shall have the authority to hear all appeals for violations of this Chapter.

### D. Standard of Proof

If the Public Safety Committee determines by a majority that it is more likely than not the violation occurred, then an appeal shall not be granted unless otherwise excused by law.

## § 108- 2 **3** Truck parking prohibited in residential zones.

A. No person shall park in any residential district any tractor, trailer, tractor and trailer, or any combination thereof, bus, dump truck, oil truck or any other vehicle whose length is greater than 240 inches, or whose width is over 84 inches, or whose height is over 84 inches, or whose weight exceeds 5,000 pounds, except when serving a permitted use.

B. The prohibition contained in this section shall not be applicable to lot owners who own, lease or sublet a parcel of land comprising at least two acres, provided, in all cases, that this exemption shall be applicable only in instances where the prohibited vehicle is parked on the owner's, lessee's or sublessee's property, incidental to the use of the property as a residence.

§ 108- 3 4 Recreational vehicle parking prohibited.

No person shall park on any public roadway or dedicated private roadway in a residential district any recreational vehicle whose length is greater than 240 inches, or whose width is over 84 inches, or whose height is over 84 inches, or whose weight exceeds 5,000 pounds. The parking of boats or trailers on public roadways in residential districts is prohibited.

§108- 5 Method of Parking

A. Curb parking – Similar state law, 21 Del. Code Anno. §4179 (1953)

Except in an emergency, or in obedience to traffic regulations or traffic signs or signals, the driver of a vehicle shall not stop, stand or park such vehicle on any roadway, other than parallel to the curb lines of the roadway, headed in the direction of traffic on the side of the street upon which it is parked, and with the curbside wheels of the vehicle within 12 inches of the curb line

B. Parking same direction of traffic. – Similar state law, 21 Del. Code Anno. §4180 (1953)

1. Except as otherwise provided in this chapter, every vehicle stopped or parked upon a 2-way roadway shall be so stopped or parked with the right-hand wheels parallel to and within 12 inches of the right-hand curb or outside edge of the shoulder.
2. Every vehicle stopped or parked upon a one-way roadway shall be so stopped or parked parallel to the curb or edge of the roadway, in the direction of authorized traffic movement, with its right-hand wheels within 12 inches of the right-hand curb or outside edge of the shoulder, or its left wheels within 12 inches of the left-hand curb or outside edge of the shoulder.

§108- 6 Stopping, Standing or Parking Prohibited in Specific Places - Similar to Delaware law 21 Del. Code, §4179 (1953).

Stopping, Standing and parking prohibited.

A. No persons shall stop, stand, or park a vehicle, except when necessary to avoid conflict with other traffic, or in compliance with the direction of a police officer, Middletown Police Public Safety Aid, or traffic-control device, in any of the following places:

1. On a sidewalk.
2. In front of a public or private driveway.
3. Within an intersection.
4. Within 15 feet of a fire hydrant.
5. On a crosswalk.
6. Within 20 feet of a crosswalk.
7. Within 30 feet upon the approach to any flashing beacon, stop sign, or traffic control signal.

8. Between a safety zone or island and adjacent curb, or within 30 feet of points on the curb immediately opposite the ends of a safety zone or island, unless the council indicates a different length by signs or markings.
9. Within 50 feet of the nearest rail or railroad crossing, unless a different length is indicated by traffic-control devices.
10. Within 20 feet of the driveway entrance to any fire station, and on the side of a street opposite the entrance to any fire station, within 75 feet of the entrance when properly posted by sign.
11. Alongside or opposite any street excavation or obstruction when such stopping, standing or parking would obstruct traffic.
12. Upon the roadway of any highway when it is practical to stop, stand or park off the roadway;
13. On the roadway side of any vehicle stopped or parked on the shoulder or at the edge or curb of a highway;
14. Upon any bridge or other elevated structure;
15. Upon a highway or within a highway tunnel;
16. At any place where official traffic-control devices prohibit stopping, standing or parking;
17. At any place where such parking, standing or stopping obstructs the free passage of other traffic;
18. Wherever a curb is marked yellow or a yellow line is placed at the edge of a roadway or shoulder;
19. In the area between roadways of a divided highway, including crossovers;
20. In any area owned by, leased by, or under the control of the state, when such area has been designated by the secretary of administrative services as a reserved parking space for members of the general assembly, their staff, state-owned vehicles, specific state offices, or state employees. Such parking spaces will be conspicuously marked as such.
21. In any area owned by, leased by, or under the control of the Town of Middletown, when such area has been designated by the Mayor and Council or the Town Manager as a reserved parking space for town vehicles or other town purposes. Such parking spaces will be conspicuously marked as such.
22. In any area which in any manner restricts access to or ingress or egress from the areas defined in paragraphs (19) and (20) of this section.

B. No person shall move a vehicle not lawfully under his control into such prohibited area or away from a curb distance as is unlawful.

C. No person shall stop, stand, or park any vehicle in any municipal parking area unless specifically authorized to do so by the town.

**§108- 7 Unattended motor vehicle.**- Similar state law, 21 Del. Code Anno. §4182 (1953)

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway.

**§108- 8 Parking areas for vehicles being used by persons with disabilities.** - Similar state law, 21 Del. Code Anno. §4183. (1953)

A. For purposes of this section, the term “vehicle being used by a person with a disability” means a vehicle:

1. That displays a valid special license plate issued pursuant to 21 Del. Code Anno. § 2134 (1953) of this on the rear of the vehicle, or that displays a valid parking placard issued pursuant to 21 Del. Code Anno. § 2135 (1953) on the front windshield rearview mirror of the vehicle or, if there is no mirror, on the dashboard, or that displays a valid plate, placard or other item issued under a similar statute in another state or country; and
2. In which the person for whom the plate or placard is issued is either the operator or a passenger or, in the case of an organization, in which a person who is entitled to obtain a permanent or temporary placard is a passenger.

B. With the exception of a vehicle being used by a person with a disability, it is unlawful to park on public or private property, any vehicle, in any area under the control of the Delaware Department of Transportation or the Town of Middletown, or under the control of an owner or lessee of private property, that is designated as a parking space or zone for persons with disabilities which limit or impair the ability to walk, and that is conspicuously marked as such. For purposes of this section, “conspicuously marked” means that a vertical sign has been placed at an approximate height of at least five (5) feet, but no more than seven (7) feet, when measured from the surface directly below the sign to the top of the sign for each parking space or zone. The sign must substantially follow federal specifications that identify a parking zone or space as one for persons with disabilities which limit or impair the ability to walk. A sign at least 12 inches wide by 18 inches tall, that includes the internationally-recognized wheelchair symbol of access substantially follows federal specifications. These requirements may not be construed to preclude additional markings, such as the international wheelchair symbol or a striped extension area painted on the space or zone, or a tow-away warning sign.

C. Upon the discovery on private property of a vehicle, other than a vehicle being used by a person with a disability, in a designated parking space or zone for persons with disabilities, the owner or lessee of the private property may cause the illegally-parked vehicle to be removed to a private storage area maintained for the safe storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the vehicle. Upon the discovery of a vehicle illegally parked in a designated parking space or zone for persons with disabilities that is under the control of the Delaware Department of Transportation or the Town of Middletown, the Middletown Police Department may cause the illegally parked vehicle to be removed to a private storage area maintained for the safe storage of vehicles. Any costs of removal and storage must be borne by the owner or operator of the vehicle.

D. In addition to unlawful parking on public or private property in a space or zone designated for a vehicle being used by a person with a disability, the following acts are prohibited on both public and private property and may be enforced pursuant to this section:

1. Creating or using a counterfeit license plate or parking placard, as described in 21 Del. Code Anno. § 2134 (1953) or 21 Del. Code Anno § 2135 (1953);
2. Altering a license plate or parking placard issued pursuant to 21 Del. Code Anno. § 2134 (1953) or 21 Del. Code Anno § 2135 (1953);
3. Parking on a striped area within or adjacent to a space or zone designated for a vehicle being used by a person with a disability;
4. Being the person or organization to whom a license plate or parking placard has been issued pursuant to 21 Del. Code Anno. § 2134 (1953) or 21 Del. Code Anno § 2135 (1953), allowing another to use the plate or placard; or
5. Parking a vehicle with a license plate or placard issued pursuant to 21 Del. Code Anno. § 2134 (1953) or 21 Del. Code Anno § 2135 (1953) in a space or zone defined in subsection (b) of this section unless a person on whose behalf a special license plate or placard has been issued is being transported.

**§108-** 9 Stopping, standing, or parking in fire lanes. – Similar state law, 21 Del. Code Anno. § 7001. (1953)

A. No person shall stop, stand or park a vehicle in any place which has been designated and properly identified as a fire lane wherever a curb is marked yellow or a yellow line is placed at the edge of a roadway or shoulder and where official traffic control devices prohibit stopping, standing or parking or in an area designated for a fire hydrant, standpipe or sprinkler connection, except in compliance with the directions of a police officer or traffic control device.

B. Any person authorized to enforce this chapter is hereby authorized to remove or cause to be removed, and stored at the owner's expense, any unattended vehicle left standing wholly or partially within a fire lane or any unattended vehicle left standing in a location so as to cause an obstruction to the accessibility to a fire lane, fire hydrant or standpipe connection.

C. This section shall apply upon highways, roadways and elsewhere throughout the town.

D. Immunity for enforcement; exception. – Similar state law, 21 Del. Code Anno. 7001 (1953)

1. No authorized person enforcing this chapter, and no one who removes a vehicle from a prohibited area as described in this chapter or stores such a vehicle, having been directed to remove or store such vehicle by a person authorized to enforce this chapter, shall be liable for criminal prosecution for any conduct directly relating to the enforcement of this chapter or be liable to any person for negligence, resulting in the injury to or loss or destruction of any real or personal property if such negligence arises out of the enforcement of this chapter; provided, however, that such persons shall be liable for loss or destruction of any real or personal property caused by acts or omissions amounting to gross negligence or willful or wanton misconduct.

§108- 4- **10 Violations and civil penalties.**

[amended 12-3-2007, 05-02-2016]

**Any violation of this chapter shall be a civil penalty only.** For each violation of this chapter, any person, operator, lessee or owner of any vehicle, recreational vehicle, tractor, trailer, bus, dump truck, oil truck, boat or any other vehicle, or any owner, lessee or occupier of a building or premises in or on which any such violation exists, shall be ~~guilty of a misdemeanor and, upon conviction thereof,~~ fined as follows:

Fine Schedule					
Section #	Sub-section	Fine	late fee > 14 days	late fee > 21 days	late fee > 30 days
108-3	all	25	10	20	25
108-4	all	25	10	20	25
108-5	all	25	10	20	25
108-6	all	25	10	20	25
108-7	all	25	10	20	25
108-8	all	50	10	20	25
108-9	all	50	10	20	25

Any violation under appeal shall not be subject to late fees, so long as the appeal was filed within 30 days of the due date.

~~not less than \$50 and not more than \$125 for the first offense; and not less than \$75 and not more than \$225 for each subsequent offense. Each day a violation of this chapter continues shall constitute and be deemed a separate offense.~~

§ 108- 5 **11** Presumption of ownership.

There is hereby created a rebuttable presumption that the person in whose name a vehicle, recreational vehicle, tractor, trailer, bus, dump truck, oil truck, boat or any other vehicle is registered as the owner, shall be prima facie responsible for any violation of this chapter if such vehicle is unattended when the violation is discovered.

**§108- 12 Appeals**

A. A request for an appeals hearing must be made no later than the due date indicated on the summons, which shall not be sooner than 30 days from the date the summons was issued.

B. The Middletown Police Department shall provide an appeal form to any person issued a summons upon request. Upon receipt of the appeal form, the Middletown Police Department shall notify the Public Safety Committee.

C. Failure to answer summons

1. Town of Middletown shall notify the Middletown Police Department of any fine not received within fourteen (14) days after the due date.
2. The Middletown Police Department shall send a notice to the violator that the fine has not been received or appealed.
3. If after twenty-one (21) days, the Town of Middletown has not received the fine, they shall notify the Middletown Police Department, which shall send one last notice to the violator that the fine has not been paid.
4. If after thirty (30) days, the Town of Middletown has not received the fine, they shall submit the violations to an approved collections agency.”

**Section 2.** That this ordinance shall become effective immediately upon passage by the Mayor and Council of the Town of Middletown.

**ADOPTED THIS SECOND DAY OF MAY, 2016.**

**THE MAYOR AND COUNCIL OF MIDDLETOWN**

\_\_\_\_\_  
Kenneth L. Branner, Jr., MAYOR

ATTESTED TO BY:

\_\_\_\_\_ Witness, Town of Middletown