



## MEMORANDUM

**TO: Council members and Mayor Prussing**

**FROM: Mike Monson, chief of staff**

**DATE: July 14, 2010**

**RE: Vehicle impoundment ordinance**

We have changed the wording of the fourth “whereas” clause in the vehicle impoundment ordinance. As approved in committee, the wording read: “Whereas, the fee imposed herein is approximately equal to or less than the city’s cost in administering the system of vehicle seizure and impoundment.”

The proposed new wording: “Whereas, the fee imposed herein will help reasonably compensate the city for the damages done by persons who commit these offenses.”

The new wording is broader and meant to include all of the city costs frequently associated with these arrests, not just administrative. For example, on a driving under the influence arrest, processing an arrestee can sometimes involve two officers and take up to two or three hours, including report writing. If an officer is called to testify in court, that is an automatic two hours in overtime according to the FOP collective bargaining agreement. If the person whose car is impounded appeals the impoundment, the city’s tentative plans are to have an outside attorney or retired judge hear the case, which will likely cost in the neighborhood of \$100 to \$150 an hour.

As stated previously, most of the people who would be charged the \$250 vehicle impoundment fee would be people arrested for DUI. In 2009, 106 of the 147 cases where the impoundment fee would have applied involved DUI arrests.

Police officer time involvement would also be extensive in cases where people are arrested for felony drug possession in their vehicles.

The Finance and Police departments also will incur costs associated with collecting, processing and administering the fee.

The primary purpose of the ordinance is to serve as a civil deterrent to crime, and our ordinance singles out the most serious offenses only: DUI, felony drug offenses, fleeing and eluding a police officer, driving on a revoked driver's license and operating a vehicle when the registration is cancelled, suspended or revoked.

ORDINANCE NO. 2010-07-052

AN ORDINANCE AMENDING CHAPTER 23 OF THE URBANA CITY CODE TO  
ESTABLISH AN ADMINISTRATIVE FEE FOR TOWING OF VEHICLES USED IN THE  
COMMISSION OF CERTAIN OFFENSES

**WHEREAS**, the City of Urbana, Illinois, is a home-rule unit of local government under the Illinois Constitution, 1970, Article VII, Section 6; and

**WHEREAS**, the city has a strong interest in deterring drivers from committing serious traffic and drug offenses, such as driving under the influence of drugs or alcohol, fleeing or eluding a police officer, driving on a revoked driver's license, operating a vehicle when the registration is cancelled, suspended or revoked and driving while possessing felony amounts of cannabis, controlled substances or methamphetamine; and

**WHEREAS**, the implementation of an administrative fee for towing of vehicles used in the commission of certain offenses will deter drivers from committing these offenses; and

**WHEREAS**, the fee imposed herein will help reasonably compensate the City for the damages done by persons who commit these offenses; and

**WHEREAS**, the Mayor and City Council find that the best interests of the City are served by amending Chapter 23 of the Urbana City Code to establish an administrative fee for towing of vehicles used in the commission of certain offenses.

**NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Urbana, Champaign County, Illinois, as follows:**

**Section 1.**

Urbana City Code Chapter 23, "Local Traffic Code," Article XIX, "Towing," is hereby amended by adding Section 23-277 thereto, as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

**Section 2.**

Urbana City Code Chapter 23, "Local Traffic Code," Article XX,

"Procedures Following Towing of Vehicles Pursuant to Police Order," Section 23-284, "Disposition of impounded vehicles by public sale," is hereby amended by adding the following subsection thereto:

(d) A motor vehicle impounded under subsection 23-277(a) shall be disposed of only as provided for in subsection 23-277(e) above.

**Section 3.**

Urbana City Code Chapter 14, "Licenses and Permits," Section 14-7, "Schedule of fees," subsection (N), "Vehicle Towing and Immobilization," is hereby amended by adding the following fee thereto:

4. Vehicle used in commission of offense.....\$250

**Section 4.**

Those sections, paragraphs, and provisions of the Code of Ordinances, City of Urbana, that are not expressly amended or repealed by this Ordinance are hereby re-enacted, and it is expressly declared to be the intention of this Ordinance not to repeal or amend any portions of the Code of Ordinances, City of Urbana, other than those expressly set forth as amended or repealed in this Ordinance. The invalidity of any section or provision of this Ordinance hereby passed and approved shall not invalidate other sections or provisions thereof.

**Section 5.**

This Ordinance shall not be construed to affect any suit or proceeding pending in any court, or any rights acquired, or a liability incurred, or any cause or causes of action acquired or existing prior to the effective date of this Ordinance; nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

**Section 6.**

The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois

Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

**PASSED BY THE CITY COUNCIL** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

AYES:

NAYS:

ABSENT:

ABSTAINED:

\_\_\_\_\_  
Phyllis D. Clark, City Clerk

**APPROVED BY THE MAYOR** this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Laurel Lunt Prussing, Mayor

Exhibit A

**23-277. Vehicles used in the commission of certain offenses.**

(a) Violations authorizing impoundment; fees.

- (1) A motor vehicle used in violation of the any of the statutes hereinafter set forth, as amended, shall be declared a public nuisance and shall be subject to seizure and impoundment under this subsection:
  - A. Any felony violation of the Cannabis Control Act (720 ILCS 550/1 *et seq.*), Article IV of the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.*), or the Methamphetamine Control and Community Protection Act (720 ILCS 646/1 *et seq.*);
  - B. Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof (625 ILCS 5/11-501);
  - C. Driving while driver's license, permit or privilege to operate a motor vehicle is revoked (625 ILCS 5/6-303);
  - D. Operation of vehicle when registration cancelled, suspended or revoked (625 ILCS 5/3-702 or 625 ILCS 5/3-708); or
  - E. Fleeing or attempting to elude a peace officer (625 ILCS 5/11-204).
- (2) The above references to provisions of state law shall not be interpreted to require that prosecution of the specific charge is a necessary prerequisite to enforcement of this subsection, nor shall this subsection require proof of the violation beyond a reasonable doubt.
- (3) The owner of record of a vehicle impounded under this subsection shall be liable to the city for such administrative impoundment and police ordered tow fees as provided in the schedule of fees adopted by the city council by ordinance. Provided, however, that the

administrative impoundment fee shall not apply if: (A) the motor vehicle used in the violation was stolen at the time, and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered; or (B) the motor vehicle was operating as a common carrier, and the violation occurred without the knowledge of the person in control of the motor vehicle.

(b) Seizure and impoundment; notice

- (1) Whenever a police officer has probable cause to believe a vehicle is subject to seizure and impoundment pursuant to this section, the officer may cause the vehicle to be towed to a facility authorized by the city at the expense of the owner of record.
- (2) Whenever a vehicle is towed, the officer shall notify the owner or, if the owner is not present, the person in control of the vehicle of the owner's right to request an administrative hearing. No written notice need be mailed to the owner pursuant to Section 23-281(b) if the owner is personally served with notice and acknowledges receipt of such notice in writing.

(c) Release of impounded vehicle.

- (1) A motor vehicle seized pursuant to subsection (b) may be released to the owner or to the owner's authorized agent if he or she (A) waives the administrative hearing by paying the administrative impoundment and police ordered tow fees and all towing and storage charges; or (B) posts a bond of cash, money order, or certified check in the sum of the administrative impoundment and police ordered tow fees and pays all towing and storage charges. If an administrative penalty is imposed for any violation of this section, the cash bond will be forfeited to the city. However, if a violation of this section is not proven by a preponderance of the evidence, the cash bond will be returned to the person posting the bond. The finance department shall hold all bond money forfeited to the city pursuant to this section until 30 days after the hearing officer imposes an administrative penalty under this section, or, if there is a judicial review, until a court of competent jurisdiction renders a final judgment.

- (2) Notwithstanding the above, a lienholder asserting its right to possession of an impounded vehicle pursuant to a conditional sales agreement may obtain immediate release of such vehicle by paying the applicable towing and storage charges and by submitting to the finance department a photocopy of the conditional sales agreement and title certificate, an affidavit stating that the purchaser is in default of the agreement, and an indemnification certificate executed by an authorized agent of the lienholder.

(d) Administrative hearing. The owner of record may contest the impoundment by filing a written request for an administrative hearing with the city's finance department no later than ten (10) business days after the seizure. The hearing must be conducted not more than (ten) 10 business days after the request for a hearing has been filed or at another agreed-upon date. All interested persons shall be given a reasonable opportunity to be heard at the hearing. The formal rules of evidence shall not apply at the hearing, and hearsay evidence shall be admissible. The hearing officer may admit into evidence all relevant evidence, including incident reports, uniform traffic citations, driving record abstracts, affidavits of witnesses, and live testimony. The hearing shall be open to the public and shall be recorded.

- (1) If, after the hearing, the hearing officer determines by a preponderance of the evidence that the motor vehicle was used in violation of this section, the hearing officer shall enter an order finding the owner of record of the motor vehicle liable to the city for the amount of the administrative impoundment and police ordered tow fees plus applicable towing and storage charges payable to the relocater. The administrative impoundment and police ordered tow fees shall be a debt due and owing the city.
- (2) If, after the hearing, the hearing officer does not determine by a preponderance of the evidence that the motor vehicle was used in such a violation, the hearing officer shall enter an order finding for the owner and for the return of the vehicle or cash bond. Thereafter, the owner shall pay all storage charges for an unredeemed vehicle beginning on the third calendar day after the date of the hearing officer's decision.



(3) Failure of the owner of record to request a hearing in a timely manner shall be deemed a waiver of the right to such hearing. If the owner of record requests a hearing but thereafter fails to appear at the hearing, the hearing officer shall make a determination by default, without need of any testimony or other evidence, that the motor vehicle was used in violation of this section and shall enter an order finding the owner liable to the city for the amount of the administrative impoundment and police ordered tow fees plus applicable towing and storage charges payable to the relocater.

(4) Judicial review. The hearing officer's determination shall be subject to judicial review pursuant to the provisions of Article III of the Illinois Code of Civil Procedure, as amended (735 ILCS 5/3-101 *et seq.*). The party seeking review shall be responsible for all costs incurred by the city to prepare the record for the court, including all transcription fees, and shall pay to the city the costs of preparation and certification of the record of proceedings as provided in 735 ILCS 5/3-109.

(e) Unclaimed vehicles. Any motor vehicle that is not reclaimed within thirty (30) days after the expiration of the time during which the owner of record may seek judicial review of the city's action under this section, or, if judicial review is sought, the time at which a final judgment is rendered in favor of the city, or the time a final administrative decision is rendered against an owner of record who is in default, may be disposed of as an unclaimed vehicle as provided by law; provided, however, that where proceedings have been instituted under state or federal forfeiture laws, the vehicle may not be disposed of by the city except as consistent with those proceedings.

(f) Refund of fees. If a court of competent jurisdiction enters a judgment of "Not Guilty" of all charges for which the impoundment occurred, as evidenced by a certified copy of said judgment, the city shall refund the administrative impoundment and police ordered tow fees, plus towing and storage charges. A disposition of court supervision will not be considered a judgment of "Not Guilty."