



## MEMORANDUM

**TO: Council members and Mayor Prussing**

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

**DATE: June 10, 2010**

**RE:** Consideration of 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.

**Introduction:** This proposed ordinance would amend Chapter 23, Local Traffic Code, of the Urbana City Code to allow the collection of a \$250 vehicle impoundment fee when a vehicle is used in certain traffic or criminal offenses. The ordinance would also amend Section 23-284 and Chapter 14 of the city code.

**Background:** Vehicle impoundment fees are becoming increasingly common in Central Illinois, and are already collected in a number of area cities, including Champaign, Rantoul, Danville, Bloomington, Paxton and Peoria.

It is estimated the \$250 fee would generate \$31,000 annually for the city, assuming an 80 percent collection rate.

As proposed, such a fee would be imposed when police seize a vehicle after it has been used in the commission of certain traffic and criminal offenses. The vehicle would not be released to the owner until the fee, plus towing and storage costs and the \$25 city towing fee, are paid.

A vehicle impoundment fee would serve to deter drivers from committing serious offenses, such as driving under the influence.

**Narrow focus:** A vehicle impoundment fee has been studied by the city for the past several months, after it became clear that the city was facing serious budget difficulties. Police Chief Mike Bily requested that any such fee should be narrowly applied to serious traffic and criminal offenses where city police are already impounding vehicles.

As proposed, Urbana's fee would only apply to a handful of offenses: DUI, various felony drug offenses, fleeing and eluding a police officer, and driving on a revoked driver's license or cancelled, suspended or revoked license plate. Using 2008 ticket statistics, the vehicle impoundment fee would have been used an estimated 154 times in Urbana. The vast majority of cases would have involved driving under the influence, which generated 120 tickets.

**Impoundment procedures:** The ordinance proposes the following procedures:

**Vehicle owner assessed fee:** The owner of record of a vehicle would be liable to pay the vehicle impoundment fee. The city would not allow an “innocent owner” defense where the vehicle owner seeks to escape responsibility for the violation because someone else was driving it.

**Defenses:** However, the fee would not apply in the following instances:

- If the vehicle was stolen at the time of the offense and the theft was reported within 24 hours after the theft was discovered or reasonably should have been discovered.
- If vehicle was operating as a common carrier, such as a bus or taxi, and the violation occurred without the knowledge of the person in control of the vehicle. For example, if a passenger in a taxi was found by police to have drugs in his possession, but the taxi driver was unaware of that fact, the taxi company wouldn't be subject to the impoundment fee.

**Notice of right to hearing:** When a vehicle is towed, the police officer will notify the vehicle owner or, if the owner isn't present, the person in control of the vehicle, of their right to request an administrative hearing to contest the impoundment and fee. No written notice is necessary if the owner is personally served with notice by the officer and the owner acknowledges receipt in writing.

In cases where the owner isn't present, the owner will be notified of the impoundment via certified mail.

**Administrative hearing:** The owner of record of a vehicle can request an administrative hearing on the impoundment within 10 business days of the seizure. The hearing must then be held within 10 business days after the request has been filed, or at another agreed-upon date.

**Evidence rules:** Formal rules of evidence would not apply at the administrative hearing, and hearsay evidence would be admissible. The hearing would be open to the public and recorded. The hearing officer would decide whether a violation occurred based on a preponderance of the evidence.

Requests for such hearings are expected to be few. Champaign had not had a single request seven months after enacting an impoundment fee.

**Refund of fees:** The city would refund the vehicle impoundment and towing fees if a court of competent jurisdiction enters a judgment of “not guilty” to all charges for which the impoundment occurred. A disposition of court supervision would not be considered a judgment of not guilty.

**Comparison to other Central Illinois cities:** A check of other cities with vehicle impoundment fee shows that the other cities typically charge such a fee on a much wider range of offenses than is proposed for Urbana, as the following chart shows:

Violation	Urbana proposed	Peoria	Champaign	Bloomington	Rantoul	Danville
DUI	\$250	\$500	\$250	\$500	\$500	\$300
Felony drugs	\$250	\$500	\$250	\$500	\$500	\$300
Revoked license	\$250	\$500	\$250	\$500	\$500	\$300
Registration revoked, cancelled or suspended	\$250	-	\$250	\$500 revoked registration \$250 cancelled or suspended	-	-
Fleeing and eluding	\$250	\$500	\$250	\$500	\$500	\$300
Weapons	-	\$500	\$250	\$500	\$500	-
Prostitution	-	\$500	\$250	-	-	\$300
Hit and run	-	\$500	\$250	-	-	-
Noise/loud music	-	\$500	-	-	\$500	\$300
Suspended license	-	\$500	\$250	\$250	\$500	-
No valid driver's license	-	-	\$250	\$500	-	\$300
Uninsured motor vehicle	-	-	\$250	-	-	-
Illegal dumping	-	-	-	-	-	\$300
Underage drinking	-	-	-	-	-	\$300
Vandalism	-	-	-	-	-	\$300
Reckless discharge of firearm	-	-	-	-	-	\$300
Seizure felonies	-	-	\$250	\$500	-	-
Reckless driving	-	-	\$250	\$500	-	-
Leaving scene of accident	-	-	\$250	\$500	-	-
Failure to give aid or information	-	-	-	\$500	-	-
Failure to report accident to police	-	-	-	\$500	-	-
Failure to give info after striking unattended vehicle	-	-	-	\$500	-	-

**Danville fines:** The city of Danville charges \$300 for the first impoundment offense, \$500 for the second and \$750 for the third. There is no time limit and the fine applies to the registered vehicle owner, not a particular vehicle.

**Implementation date:** Police Chief Bily said he believes the ordinance can be implemented within a month or two after council passage.

**Fiscal impact:** As stated earlier, the ordinance would generate \$31,000 annually based on 2008 ticket counts and assuming an 80 percent collection rate. Some vehicles would go unclaimed and, 30 days after the expiration of the deadline for the owner of record to seek judicial review, the vehicle may be disposed of and salvaged. Towing companies storing the vehicle would pursue salvage title and would receive any proceeds from the sale of the vehicle as compensation for towing and storage.

**Recommendation:** The mayor and chief of staff recommend passage of this ordinance as a method to deter drivers from committing criminal and traffic offenses, and to help generate additional income to cover the cost of police services. Chief Bily estimates that each impoundment takes an average of 30 minutes of officer time and 15 minutes of police service representative time.

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 is approximately equal to or less than the City's cost in administering the system of vehicle seizure and impoundment; 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."