



ST. CHARLES
SINCE 1834

AGENDA ITEM EXECUTIVE SUMMARY

Title:	Recommendation to Approve ordinance amending, Title 10 "Vehicles and Traffic" Section 10.04.022 Seizure and Impoundment"
Presenter:	Chief Lamkin April 2012

Please check appropriate box:

Government Operations	X	Government Services (April 23, 2012)
Planning & Development		City Council
Public Hearing		

Estimated Cost:	\$0	Budgeted:	YES		NO	X
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If NO, please explain how item will be funded:

Executive Summary:

The present ordinance providing for seizure and impoundment of motor vehicles used in connection with illegal activity was approved by City Council in 2009. It provided for charging an impound fee for several driving offenses, drug offenses, weapons offenses, alcohol offenses, and sound amplification from a motor vehicle. This has been an effective tool in limiting the ability for certain offenders to be on the road with their vehicles, unless they posted the impound fee of \$500.00. The city ordinance mirrored what the state law allowed at the time.

In 2011, effective January 2012, the Illinois legislature approved a change to the impound law. This change was reviewed with city attorney Tom Good who has revised the ordinance to be in line with the 2012 impound law. The new law removed provisions for fleeing and eluding, street racing, illegal transportation of alcohol, and illegal operation of sound system amplification as offenses where impounds are authorized.

The original ordinance has been very effective and the revised ordinance is expected to continue to be an effective enforcement measure.

Attachments: (please list)

Revised Ordinance 10.04.022

Recommendation / Suggested Action (briefly explain):

The Police Department recommends approval.

For office use only:

Agenda Item Number: 4.a

City of St. Charles, Illinois

ORDINANCE NO. 2012-M-_____

An Ordinance amending title 10 "Vehicles and Traffic", Section 10.04.022 "Seizure and Impoundment of Motor Vehicles – use in Connection with Illegal Activity" of the St. Charles Municipal Code

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES, KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:

SECTION ONE: That Title 10 "Vehicles and Traffic", Chapter 10.04 "General Provisions", Section 10.04.022, "Seizure and Impoundment of Motor Vehicles – Use in Connection with Illegal Activity", of the St. Charles Municipal Code, is hereby deleted in its entirety and in lieu thereof the following language shall be substituted:

"10.04.022. Seizure and Impoundment of Motor Vehicles – use in connection with illegal activity.

- A. Violations Authorizing Seizure. A motor vehicle, operated by or with the permission, express or implied, of the owner of record or the agents of that owner (collectively "Owner"), which is used in connection with the following violations, may be subject to seizure and impoundment by the City if the violation prevents the driver from lawfully operating the vehicle, or if a police officer determines that seizure and impoundment of the vehicle is reasonably necessary as a community caretaking function so that the vehicle does not jeopardize public safety and the efficient movement of vehicular traffic. The Owner shall be liable to the City for an administrative fee in the amount of five hundred dollars (\$500), in addition to all towing, impoundment and storage fees, as hereinafter provided, with respect to the following violations:
1. Driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of Section 11-501 the Illinois Vehicle Code.
 2. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act; or
 3. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act; or
 4. Operation or use of motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Section 24-1, 24-1.1, 24-1.2, 24-1.2-5, 24-1.5, 24-1.6 or 24-3.1 of the Criminal Code of 1961; or
 5. Driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303 of the Illinois Vehicle Code; except that vehicles shall not be subjected to seizure or impoundment if the suspension is for an unpaid citation (parking or moving) or due to failure to comply with emission testing; or

6. Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act or the Illinois Controlled Substances Act; or
7. Operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 of the Illinois Vehicle Code, if the period of expiration is greater than one year; or
8. Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of Section 6-101 of the Illinois Vehicle Code, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or
9. Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated Section 6-101, 6-303, or 11-501 of the Illinois Vehicle Code; or
10. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 or 16A of the Criminal Code of 1961.

B. General Regulations.

1. This Section shall not replace or otherwise abrogate any existing state or federal laws or City ordinances pertaining to vehicle seizure and impoundment.
2. All fees contained in this Section shall be in addition to any penalties assessed by a court for criminal charges.
3. This Section shall not apply if the vehicle was reported stolen to the appropriate police authorities within twenty-four (24) hours of discovery of such theft. In addition the administrative fee shall be waived by the City upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.
4. The amount of fees imposed for towing and storage of a vehicle impounded under this Section shall be subject to the approval of the chief of police.
5. Prior to vehicle seizure, if in the judgment of the police officer then present, if a person authorized by the Owner or operator of the vehicle is present and able to provide for the lawful immediate removal of the vehicle, the vehicle shall be released to that person and prompt removal of the vehicle effected, and no administrative fee shall be imposed.
6. All administrative fees and towing and storage charges shall be imposed on the registered Owner of the motor vehicle or the agents of that Owner.
7. The fees shall be collected by and paid to City.
8. The towing or storage fees, or both, shall be collected by and paid to the person, firm or entity that tows and stores the impounded vehicle.

C. Towing - Notice.

1. Whenever a police officer has cause to believe that a vehicle is subject to impoundment, the officer shall provide for the towing of the vehicle to a facility authorized by the City.
 2. At the time the vehicle is towed, the City shall notify or make a reasonable attempt to notify the Owner, lessee, any lienholder or person identifying himself or herself as the Owner, any lienholder, or lessee of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged offense, or the fact of the seizure, and of the vehicle Owner's, lienholders or lessee's right to an administrative preliminary hearing.
 3. The City shall also provide notice that the motor vehicle will remain impounded pending the completion of administrative hearings, unless the Owner or lessee of the vehicle or a lienholder posts with the City a bond equal to the administrative fee as herein provided and pays for all towing and storage charges.
- D. Preliminary Hearing. If the Owner, any lienholder or lessee of a vehicle seized pursuant to this Section desires to appeal the seizure, said Owner, any lienholder or lessee must make a request for a preliminary hearing within twenty-four (24) hours of the seizure. All requests shall be in writing and filed with the chief of police, or his designee, who shall conduct such preliminary hearing within twenty-four (24) hours after receipt of the request, excluding Saturdays, Sundays, or City holidays. All interested persons shall be given a reasonable opportunity to be heard. The formal rules of evidence shall not apply at the preliminary hearing and hearsay evidence shall be admissible only if it is the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. If after the preliminary hearing, the chief of police or his designee determines there is probable cause to believe that the vehicle is subject to seizure and impoundment pursuant to this Section, he shall order the continued impoundment of the vehicle, as provided in this Section, unless the Owner, any lienholder or lessee posts with the City a cash bond in the amount of five hundred dollars (\$500.00) and pays all towing, impoundment and storage charges. If the chief of police or his designee determines that there is no such probable cause, the vehicle shall be returned without penalty or additional fees.
- E. Administrative Hearing. Within ten (10) days after a vehicle is impounded by the City, the City shall serve a notice of hearing upon the Owner, lessee and any lienholder of record. Said notice shall be served by personal service or first class mail (all as are shown in Secretary of State's records.) Said notice shall contain the date, time and location of the administrative hearing. The hearing shall commence no later than 45 days after the date of the personal service or mailing of the notice of hearing. All interested persons shall be given the opportunity to be heard. At any time prior to the hearing, the hearing officer may, at the request of either party, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence shall not apply and hearsay evidence shall be admissible if it is a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. If, after the hearing the hearing officer determines by a preponderance of the evidence that the vehicle was used in connection with a violation set forth in this Section, the hearing officer shall enter a written order finding the Owner civilly liable to the City for an administrative

fee in the amount of five hundred dollars (\$500.00) and requiring the vehicle's continued impoundment until the Owner, lessee or any lienholder pays the administrative fee to the City plus towing, impoundment and storage charges, all as applicable. The Owner shall further be responsible for reasonable hearing costs as assessed by the hearing officer. If the Owner fails to appear at the hearing, the hearing officer shall enter a written default order in favor of the City. If the hearing officer finds no such violation occurred, the hearing officer shall order in writing the immediate return of the Owner's vehicle or cash bond without any additional fees.

F. Hearing Officer – Decision – Enforcement – Appeal.

1. Administrative hearings shall be conducted by a hearing officer who is an attorney licensed to practice law in this State for a minimum of 3 years.
2. At the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.
3. If the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the City.
4. All final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law.
5. Unless the administrative hearing officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the Owner, lessee, or lienholder of record until all administrative fees and towing and storage charges are paid.
6. Vehicles not retrieved from the towing facility or storage facility within 35 days after the administrative hearing officer issues a written decision shall be deemed abandoned and disposed of in accordance with the provisions of Article II of Chapter 4 of the Illinois Vehicle Code.
7. Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed under this Section which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Administrative Review Law may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.”

SECTION TWO: That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

SECTION THREE: This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2012.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2012.

APPROVED by the Mayor of the City of St. Charles, Illinois, this ____ day of _____, 2012.

Donald P. DeWitte, Mayor

ATTEST:

Nancy Garrison
City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____