

ORDINANCE NO. 2013-12

ORDINANCE REGARDING TRAFFIC AND VEHICLES TO PROVIDE FOR THE SEIZURE AND IMPOUNDMENT OF VEHICLES USED DURING THE COMMISSION OF CERTAIN OFFENSES, THE IMPOSITION OF AN ADMINISTRATIVE FEE FOR RELEASE OF SUCH VEHICLES, AND THE IMPLEMENTATION OF AN ADMINISTRATIVE HEARING PROCEDURE TO CONTEST SUCH AN ADMINISTRATIVE FEE AND REVOKING, SUPERSEDING, AND REPLACING IN ITS ENTIRETY ORDINANCE NO. 2012-08 PREVIOUSLY PASSED RELATING TO THE SAME

WHEREAS, the Village of Winnebago, Illinois ("Village"), pursuant to Ordinance No. 87-1 previously adopted the Illinois Motor Vehicle Code, 625 ILCS 5/et seq.; and

WHEREAS, pursuant to 65 ILCS 5/1-2-1 and 720 ILCS 5/36-1, the Village previously passed Ordinance No. 2012-08 on December 10, 2012, providing for the seizure and impoundment of motor vehicles used during the commission of certain offenses, and determined after passage, but before implementation, that certain clarification language was needed and desirable, and could be best achieved through a new ordinance which contained the clarifications and revoked Ordinance No. 2012-08 in its entirety; and

WHEREAS, the Village desires to impose an administrative fee on the owner of all vehicles seized and impounded under this ordinance to cover the administrative costs associated with the seizure and impoundment of vehicles pursuant to 65 ILCS 5/1-2-1; and

WHEREAS, the Village further desires to implement an administrative hearing process for vehicle owners to contest such seizures and impoundments pursuant to 65 ILCS 5/1-2.2-10; and

WHEREAS, this ordinance is intended to promote the health, safety, and welfare of the community by deterring certain offenses through enhanced consequences for the use of a vehicle during those offenses; and

WHEREAS, the Village has determined it is in the best interest of the Village and its citizens to enact an ordinance providing for the foregoing.

NOW THEREFORE, be it ordained by the President and Board of Trustees of the Village of Winnebago, Illinois, as follows:

ARTICLE I--INCORPORATION OF RECITALS

1. The above recitals are incorporated herein and made a part hereof.

**ART. II--ADMINISTRATIVE FEES AND PROCEDURES FOR IMPOUNDING
VEHICLES FOR SPECIFIED VIOLATIONS.**

1. In General

This ordinance is deemed necessary for the preservation of the public peace, health, and safety, and is intended to create safer roadways within the Village by deterring drivers from committing certain offenses, while offsetting some of the Village's administrative costs associated with these offenses.

2. Definitions

Motor Vehicle: Every vehicle which is self-propelled, including, but not limited to, automobiles, trucks, vans, motorcycles, and motor scooters.

Registered Owner: The record title holder(s) of the vehicle as registered with the Illinois Secretary of State, or if not registered in Illinois, the Secretary of State of the particular state where the vehicle is registered.

Administrative Hearing Officer: For purposes of this ordinance, an attorney licensed to practice law in the State of Illinois for a minimum of 3 years, other than the Village Attorney due to procedural conflict of interest restrictions, whose duty it is to:

- (a) Preside at an administrative hearing called to determine by a preponderance of the evidence whether or not a motor vehicle was used in violation of this ordinance; and
- (b) Hear testimony and accept evidence regarding the commission of the offense; and
- (c) Preserve and authenticate the record of the hearing and all exhibits and evidence introduced at the hearing; and
- (d) Issue and sign a written finding, decision, and order stating whether he/she finds, by a preponderance of the evidence, that a violation of the offense existed such that the provisions of this ordinance shall apply.

3. Vehicles Subject to Seizure and Impoundment

A motor vehicle that is used in connection with any of the following violations listed hereinbelow may be subject to seizure and impoundment by the Village. Regardless of whether the Registered Owner was driving the vehicle at the time of seizure and impoundment, the Registered Owner of said motor vehicle shall be liable to the Village for an administrative fee of Five Hundred and 00/100 Dollars (\$500.00) related to the Village's administrative processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of a vehicle, in addition to any and all applicable fines, costs, and towing and storage fees. Eligible offenses are any Class A misdemeanor or felony listed in the following categories:

- (a) Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to Section 5/36-1 of the Criminal Code of 1961; or
- (b) Driving under the influence of alcohol, other drug(s), intoxicating compound(s), or any combination thereof, in violation of 625 ILCS 5/11-501, as amended from time to time; or
- (c) 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, 720 ILCS 550/et seq., as amended from time to time; or
- (d) 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 Substance Act, 720 ILCS 570/et seq., as amended from time to time; or
- (e) Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Section 5/24-1, 5/24-1.5 (both dealing with unlawful use of weapons), or 5/24-3.1 (unlawful possession of firearms and firearm ammunition) of the Criminal Code of 1961; or
- (f) Driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked in violation of 625 ILCS 5/6-303, as amended from time to time, except that vehicle shall not be subject to seizure or impoundment if the suspension is for an unpaid citation(s) (parking or moving), or due to failure to comply with emission testing; or
- (g) 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, 720 ILCS 550/et seq., or the Illinois Controlled Substances Act, 720 ILCS 570/et seq., as amended from time to time; or
- (h) Operation or use of a motor vehicle with an expired driver's license, or in violation of 625 ILCS 5/6-101, as amended from time to time, if the period of expiration is greater than one year; or
- (i) Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of Section 5/6-101 of the Illinois Motor 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
- (j) 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 Sections 5/6-101, 5/6-303, or 5/11-501 of the Illinois Motor Vehicle Code, 625 ILCS 5/et seq., as amended from time to time; or
- (k) Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 (Theft) or 16A (Retail Theft) of the Criminal Code of 1961; or

- (l) Aggravated fleeing or attempting to elude a police officer in violation of 625 ILCS 5/11-204.1, as amended from time to time; or
- (m) Operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other misdemeanor or felony offense in violation of the Criminal Code of 1961, when so provided by ordinance.

4. Imposition of Administrative Fee

An administrative fee of Five Hundred and 00/100 Dollars (\$500.00) shall be imposed on the Registered Owner of any Motor Vehicle(s), or the agent of that owner, that is seized and impounded under this ordinance. The fee shall be uniform for all similarly situated vehicles. This fee shall be made payable to the Village of Winnebago and paid to the Village Clerk of the Village of Winnebago at the Village office located at 108 West Main Street, Winnebago, Illinois, 61088, before the automobile is released by the private towing company. In the event that the Village office is closed at the time of payment, the fee shall be paid at the Village of Winnebago Police Department. In addition, all costs for towing and storage must be paid to the private towing company. This company may place a hold on the vehicle until its costs are paid pursuant to the company's normal practices. Said administrative fee and towing and storage costs are in addition to any other penalties assessed by a court of law for the underlying violation.

5. Seizure and Impoundment Procedures

Whenever a police officer has probable cause to believe that the driver of a Motor Vehicle has committed an offense eligible for the seizure and impoundment of a vehicle as enumerated in Paragraph 3, the officer may provide for the towing of that Motor Vehicle to a Village approved towing or impound facility. The Village shall place an administrative hold on the Motor Vehicle until its release from impound is ordered as provided in Paragraph 6. The Registered Owner of the vehicle shall receive notice of the seizure and impoundment as detailed in Paragraph 7.

6. Release from Impound

Motor Vehicles seized and impounded under this ordinance shall remain impounded until the occurrence of one (1) of the following events:

- (a) The Registered Owner, or Registered Owner's agent, appears before the Village Clerk of the Village of Winnebago, or the Chief of Police, or duly authorized officer of the Village of Winnebago Police Department, admits liability, and stipulates to the same in writing, and remits full payment of the \$500.00 administrative fee payable only by cash, cashier's check, or other certified funds; or
- (b) The Registered Owner, Registered Owner's agent, lessee, or lienholder of record appears before the Village Clerk of the Village of Winnebago or the Chief of Police or duly authorized officer of the Village of Winnebago Police Department and remits bond in the amount of \$500.00, and requests an administrative hearing to contest the validity of the impound; or

- (c) The Registered Owner: (i) does not remit bond, but requests a hearing to contest the validity of the impound; and (ii) a determination is made by the Administrative Hearing Officer that the vehicle was not used in a manner which violates any of the provisions of Paragraph 3 of this Section.

Upon receiving written proof from the Registered Owner or the Registered Owner's agent of the occurrence of either (a), (b), or (c) above, the Village Clerk shall inform the private towing company that the Village is releasing its hold on the vehicle. Regardless of whether the Village's hold on the vehicle is released pursuant to (a), (b), or (c) above, the private towing company shall have the right to hold the vehicle until the costs associated with the towing and storage have been paid in full, or other arrangements for payment have been made in a manner consistent with the company's normal practices. All bond money posted pursuant to this ordinance shall be held by the Village until the hearing officer issues a decision, or, if there is a timely judicial review, until the Court issues its final decision.

7. Notice Required

- (a) If the driver of the vehicle is the Registered Owner of the vehicle at the time of the incident, he/she will be personally served with written notice that his/her impounded vehicle is subject to a \$500.00 administrative fee under this section in addition to any costs imposed by the private towing company. This notice shall inform the Owner of the seizure and impound, that the vehicle shall remain subject to administrative hold pending administrative hearing or payment of the administrative fee or bond pursuant to Paragraph 6 (a) or (b) and payment of towing and storage fees, of his/her right to contest this fee at an administrative hearing, and will set forth the procedures for requesting such a hearing. The Registered Owner shall receive this notice before being released from police custody.
- (b) If the Registered Owner is found to be one of the passengers in the vehicle at the time of the incident, he/she will be personally served with written notice that his/her impounded vehicle is subject to a \$500.00 administrative fee under this Section, in addition to any costs imposed by the private towing company. This notice shall conform to the notice requirements of Paragraph 7(a) and the Registered Owner shall receive this notice at the scene of the incident.
- (c) If the driver of the vehicle is not the Registered Owner, or if the Registered Owner is not a passenger in the vehicle at the time of the incident, the Village shall provide notice which conforms to the notice requirements of Paragraph 7(a) to the Registered Owner, lessee, or person identifying himself/herself as the owner 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. This notice shall be sent via certified mail and regular U.S. mail, postage prepaid, within three (3) calendar days of the impoundment of the vehicle to the last known address of the Registered Owner or lessee.
- (d) Upon receipt of a request for an administrative hearing under Paragraph 6 (b) or (c) above, the Village shall schedule an administrative hearing on the matter at the Village's next regularly scheduled administrative hearing date after which Notice

of Hearing has been sent. Said administrative hearing shall be scheduled and convened no later than forty-five (45) calendar days after the date of mailing the Notice of Hearing to the Registered Owner or lessee of the vehicle, and any lienholder of record. No administrative hearing shall be required to be scheduled in any case where all parties entitled to a hearing have signed the Vehicle Impound Stipulation Form waiving the right to an administrative hearing.

8. Administrative Review of Seizure and Impoundment

- (a) Registered Owners or lessees of Motor Vehicles seized and impounded under this ordinance who wish to contest the imposition of the \$500.00 administrative fee may do so by appearing in person within five (5) calendar days of the seizure and impoundment to file a written request for an administrative hearing to the Village Clerk of the Village of Winnebago at the following address:

Village Clerk
Village of Winnebago
108 West Main Street
Winnebago, Illinois 61088

- (b) All written requests for administrative hearings must include: (1) the name of the Registered Owner or lessee of the vehicle; (2) the make, model, and license plate number of the vehicle; (3) the date seized; (4) the location of the vehicle when seized; (5) the address and telephone number of the Registered Owner or lessee making the request; (6) identification of the driver of the Motor Vehicle at the time of seizure and impoundment; and (7) the name and address of any lienholder of record.
- (c) If no request is made after five (5) calendar days of the seizure and impoundment, or all parties entitled to a hearing have not signed the Vehicle Impound Stipulation Form waiving the right to an administrative hearing, the matter will be set for administrative hearing at the first regularly scheduled hearing after Notice of Hearing is sent, but in no case shall the hearing be scheduled and convened more than fifty-five (55) calendar days after the date the vehicle is impounded.
- (d) Notice of Hearing shall be served upon the Registered Owner or lessee of the vehicle and any lienholder of record no later than ten (10) calendar days after the vehicle is impounded. Service of Notice of Hearing shall be either by personal service or first class mail, postage prepaid, to the interested party's address registered with the Illinois Secretary of State. If served by mail, Notice shall be effective upon date of mailing.

The Notice of Hearing shall contain the date, time, and location of the administrative hearing. An initial hearing shall be scheduled and convened no later than forty-five (45) days after the date of the mailing of the notice of hearing.

- (e) The Registered Owner or lessee of the vehicle and/or his/her legal counsel must appear in person at this hearing to contest the administrative fee, regardless of

whether the Registered Owner was the person operating the vehicle at the time it was seized and impounded.

- (f) All administrative hearings under this ordinance shall be conducted pursuant to 625 ILCS 5/11-208.3(b)(4) and shall be held at the Village of Winnebago Village office located at 108 West Main Street, Winnebago, Illinois, 61088. An Administrative Hearing Officer shall preside over the proceedings and shall have the power to issue Subpoenas to secure the attendance and testimony of witnesses, if necessary. The Administrative Hearing Officer will determine whether, by a preponderance of the evidence, the vehicle seized and impounded was being used in violation of one of the offenses enumerated in Paragraph 3 of this ordinance. Formal rules of evidence shall not apply at this administrative hearing and hearsay shall be admissible. The hearings shall be recorded, and the person conducting the hearing shall be empowered to administer oaths and to secure by Subpoena both the attendance and testimony of witnesses, and the production of relevant books and papers. Persons represented at a hearing under this ordinance may be represented by counsel at their expense.
- (g) The following shall not be considered valid defenses to the administrative fee at the administrative hearing; however this list of invalid defenses is not exclusive:
1. That the Registered Owner was not the driver of the vehicle;
 2. That a criminal charge against the driver of the vehicle related to the incident has been dismissed or otherwise disposed of.
- (h) At the conclusion of the hearing the Administrative Hearing Officer shall make his/her ruling either sustaining or overruling the vehicle impoundment, and the Administrative Hearing Officer shall issue a written Finding, Decision, and Order reflecting said ruling.
1. If the Administrative Hearing Officer determines the Motor Vehicle was used in violation of this ordinance he shall (i) order the forfeiture of any bond previously posted and may order the payment of an additional amount for costs incurred by the Village in conducting the hearing; or (ii) order the payment of the administrative fee in addition to costs deemed appropriate, and direct that the Village's administrative hold on the vehicle shall not be released until all administrative fees, towing, and storage charges have been paid in full.
 2. If the Administrative Hearing Officer determines the Motor Vehicle was not used in violation of one of the offenses enumerated in Paragraph 3 of this ordinance, he shall make a written finding reflecting that determination, and the Village shall notify the private towing company that the administrative hold is released.
 3. If the Administrative Hearing Officer determines that the Motor Vehicle was not used in violation of one of the offenses enumerated in Paragraph 3 of this ordinance, and the \$500.00 bond has been posted, he shall order the Village to issue a full refund. This refund shall be remitted to the

Registered Owner or lessee of the vehicle within thirty (30) calendar days of the order.

- (i) The Administrative Hearing Officer does not have the authority to order the refund of the costs assessed by a private towing company. These costs must be paid regardless of the outcome of the administrative hearing. In addition, the ruling of the Administrative Hearing Officer shall have no effect on any pending criminal charges related to the incident for which the vehicle was seized and impounded.
- (j) The order of the Administrative Hearing Officer shall be subject to appeal under the provisions of the Illinois Administrative Review Law codified at 735 ILCS 5/3-101 et seq. The amount ordered to be paid by the Village in fines, penalty, or administrative fee shall become a debt due and owing to the Village after the period for judicial review has expired, and may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

9. Stolen Vehicles

The administrative fee imposed by the Village under this ordinance shall be waived by the Village upon verifiable proof that the Motor Vehicle was stolen at the time the vehicle was impounded.

10. Abandoned or Unclaimed Vehicles

- (a) Any Motor Vehicle impounded under this ordinance which is not picked up, from the towing facility or storage facility within thirty-five (35) calendar days after the administrative hearing officer issues a written decision, or where no bond is posted and no judicial review is pending, shall be deemed abandoned, and said Motor Vehicle may be disposed of in the manner provided by law for the disposition of abandoned vehicles as provided in 625 ILCS 5/4-200 et seq., subject to the provisions of subsection (b) below.
- (b) The disposal of Motor Vehicles impounded under this ordinance shall be stayed pending judicial review of a finding of liability by the Administrative Hearing Officer at a hearing held under the provisions of this ordinance, as provided in the Administrative Review Law, codified at 735 ILCS 5-3-101 et seq. Failure of a Vehicle Owner to file a timely appeal of the Administrative Hearing Officer's finding of liability shall result in a finding of abandonment as provided in (a) above.

ARTICLE III—EFFECT OF PRIOR ORDINANCES

Ordinance No. 2012-08 previously passed on December 10, 2012, titled "Ordinance Regarding Traffic and Vehicles to Provide for the Seizure and Impoundment of Vehicles Used During the Commission of Certain Offenses, the Imposition of an Administrative Fee for the Release of Such Vehicles, and the Implementation of an Administrative Hearing Procedure to Contest Such an Administrative Fee" is revoked in its entirety and replaced by the instant ordinance. However, any other provisions and terms of Village of Winnebago ordinances and laws not in conflict with this ordinance shall remain in full force and effect as previously enacted. If any section, subsection,

sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining provisions thereof.

ARTICLE IV--EFFECTIVE DATE

This ordinance shall be in full force and effect after its approval, passage and publication in pamphlet form as required by law.

PASSED AND ADOPTED this 12th day of AUGUST, 2013.

APPROVED:

Franklin J. Eubañk, Jr., President of the Board of Trustees of the Village of Winnebago, Illinois

ATTEST:

Sally Jo Huggins, Village Clerk

AYES: 6

NAYS: 0

ABSENT: 0

Trustees Voting Aye:

KIMES
MALIGRANZA

MCKINNON
ELSEN

GAINES
KIEPER

Trustees Voting Nay:

NONE

Trustees Absent:

NONE

PASSED: 8-12-13 **APPROVED:** 8-12-13 **PUBLISHED:** _____
(in pamphlet form)

PREPARED BY:

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