

ORDINANCE NO. _____
Date Passed: September 10, 2012

**AN ORDINANCE AMENDING ARTICLE IX (SEIZED AND IMPOUNDED VEHICLES)
OF CHAPTER 94 (TRAFFIC AND VEHICLES) OF THE ROCHELLE MUNICIPAL
CODE**

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, the Illinois Municipal Code, 65 ILCS 5/11-1-1, provides “the corporate authorities of each municipality may pass and enforce all necessary police ordinances”; and

WHEREAS, on March 28, 2011, the City Council adopted a new Article IX (Seized and Impounded Vehicles) of Chapter 94 (Traffic and Vehicles), of the Rochelle Municipal Code, which authorized the seizure or impounding of vehicles used during certain criminal offenses, and procedures related thereto, including the imposition of an administrative fee; and

WHEREAS, effective January 1, 2012, the Illinois Vehicle Code was amended by the addition of a new statute authorizing the imposition of administrative fees and procedures for impounding vehicles for specified violations, 625 ILCS 5/11-208.7; and

WHEREAS, the City Council has heretofore found that the imposition of an administrative fee of \$500.00 in connection with such seizures, including the administrative and processing costs associated with the investigation, arrest and detention of an offender, and the removal, impoundment, storage and release of the vehicle, is reasonable, and hereby confirms that finding; and

WHEREAS, the City Council deems it appropriate to amend Article IX to more closely reflect the provisions of the Illinois Vehicle Code, and in particular Section 5/11-208.7 thereof, relating to the criminal offenses for which a seizure is authorized, the administrative fee to be imposed, procedures for release of a vehicle from impoundment pending an administrative hearing, notice to owners and others, and determination of the validity of the seizure;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS**, as follows:

1. That Article IX of Chapter 94 of the Municipal Code of the City of Rochelle be amended in its entirety to read as follows:

"ARTICLE IX. SEIZED AND IMPOUNDED VEHICLES

Sec. 94-550. Vehicles Subject to Seizure and Impoundment.

A motor vehicle that is used in connection with any of the following violations ("eligible offenses") may be subject to seizure and impoundment by the City, in accordance with the provisions of this Article:

- (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 36-1 of the Criminal Code of 1961; or
- (b) 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 of this Code; 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; 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 Substances Act; 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 24-1, 24-1.5, or 24-3.1 of the Criminal Code of 1961; or
- (f) driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303 of this 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
- (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 or the Illinois Controlled Substances Act; or
- (h) operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 of this Code, 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 6-101 of this 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 Section 6-101, 6-303, or 11-501 of this Code; 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 or 16A of the Criminal Code of 1961; or

(l) 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.

In the event that a vehicle is impounded under this Article and it later becomes the subject of asset forfeiture pursuant to 720 ILCS 570/505, or a similar law, that statute shall control.

Sec. 94-551. Seizure and Impoundment Procedures.

Whenever a police officer has reason to believe that the driver of a motor vehicle has committed an eligible offense as enumerated in Sec. 94-550, or that any passenger has committed an eligible offense and the driver had knowledge that the passenger was committing the eligible offense, the officer may provide for the towing of the motor vehicle to the City impound facility or a City-approved private lot.

Sec. 94-552. Imposition of Administrative Fee.

An administrative fee of \$500.00 shall be imposed on the registered owner of any motor vehicle that is seized and impounded under this Article, regardless of whether the registered owner was driving the vehicle at the time of the seizure and impoundment. The administrative fee shall be in addition to any towing and storage charges payable to the towing company.

Sec. 94-553. Release from Impound.

Motor vehicles seized and impounded under this Article shall remain impounded until all costs associated with the towing and storage of the motor vehicle are collected and paid to the towing agency and the registered owner or registered owner's agent appears at the Rochelle Police Department and posts the \$500.00 administrative fee in cash to be held by the City pending administrative review. Upon proof of payment of all towing and storage fees and posting of the administrative fee, the vehicle shall be released to the registered owner.

Lien holders with a perfected lien upon an impounded vehicle may take possession of the vehicle if the lien holder has obtained a judgment for possession of the vehicle either under the appropriate replevin or foreclosure laws, provides a certified copy of such judgment to the City and pays the administrative fee and all towing and storage costs.

Sec. 94-554. Administrative Hearing.

The City shall set an administrative hearing to determine the validity of any impoundment made pursuant to this Article. The administrative hearing shall be set no later than forty-five (45) days after the date of mailing or personal service of the notice or notices required by Sec. 94-555.

Sec. 94-555. Notice Required.

The City shall, at the time the vehicle is towed, notify, or make a reasonable attempt to notify, the owner, lessee, or person identifying himself or 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, of the fact of the seizure, and of the vehicle owner's or lessee's right to an administrative hearing, and that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the administrative fee is posted with the municipality and all towing and storage charges are paid.

Within ten (10) days of the date of impoundment, the City shall serve upon the owner, lessee, if any, and any lienholders of the vehicle, either by personal service or by first class mail to the last registered address of said party, a notice containing the date, time, and location of the initial administrative hearing; provided, however, that if notice given at the time the vehicle is towed complies with the foregoing, no further notice need be given.

Sec. 94-556. Administrative Review of Seizure and Impoundment.

(a) Administrative hearings held under this Article shall be held at the Rochelle Municipal Building. Administrative hearings shall be conducted by a hearing officer who is an attorney licensed to practice law in this state for a minimum of three (3) years, who will determine whether, by a preponderance of the evidence, the City has proven that the vehicle seized and impounded was being used in violation of one of the offenses enumerated in Sec. 94-550 of this Article. Administrative hearings shall be recorded. Formal rules of evidence shall not apply.

(b) The following shall not be considered valid defenses at the administrative hearing:

- (1) that the registered owner was not the driver of the vehicle;
- (2) that the driver of the vehicle has been adjudicated not guilty of a criminal charge related to the incident;
- (3) that a criminal charge against the driver of the vehicle related to the incident has been dismissed or otherwise disposed of; or
- (4) That the registered owner had no knowledge of the vehicle being used in connection with the listed offenses, except where the vehicle was proved stolen.

(c) At the conclusion of the hearing, the hearing officer shall make his or her ruling and issue a written finding, decision and order reflecting said ruling, which shall have the following effect:

- (1) If the hearing officer sustains the validity of the impoundment, the registered owner shall be required pay the City the administrative fee of \$500.00, or, if the

registered owner has posted \$500.00 with the City, the \$500.00 shall be distributed to the City.

(2) If the hearing officer overrules the validity of the impoundment, the registered owner shall not be required to pay the \$500.00 administrative fee, and if the administrative fee has previously been posted with the City, the City shall return the \$500.00 to the registered owner within 14 business days following the written decision of the hearing officer.

(d) The hearing officer does not have the authority to order the refund of the costs of the towing and storage, which must be paid by the registered owner regardless of the outcome of the administrative hearing. In addition, the ruling of the hearing officer shall have no effect on any pending criminal charges related to the incident for which the vehicle was seized and impounded.

(e) The order of the hearing officer shall be subject to the provisions of the Illinois Administrative Review Law, 735 ILCS 5/3-101 et seq. If the impoundment is sustained, the administrative fee shall become a judgment in favor of the City after the period for judicial review has expired, and shall be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

Sec. 94-557. Stolen Vehicles.

The administrative fee imposed by the City under this Article shall not be charged to the vehicle owner if there is verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

Sec. 94-558. Abandoned or Unclaimed Vehicles.

Vehicles not retrieved from the towing facility or storage facility within 35 days after the date of the written decision of the hearing officer shall be deemed abandoned and disposed of as such in the manner provided by law for the disposition of abandoned vehicles provided in 625 ILCS 5/4-200 et seq."

2. That any and all other ordinances or resolutions, or parts thereof, that are in conflict with this ordinance are hereby repealed.

3. That this ordinance shall become effective immediately after its adoption, approval and publication as provided by law and shall modify any inconsistent provisions in the municipal code prior to this date. This ordinance shall apply to all seizures of vehicles impounded after the date of passage of this ordinance.

PASSED AND APPROVED this 10th day of September, 2012.

Ayes: _____ Nays: _____ Abstain: _____

Mayor

Attested:

City Clerk

E:\MyFiles\citypoliceandfire\citypoliceandfire.ordinanceamendingtowingprovisions13Aug2012AHCrevisions.docx