

ORDINANCE NO. 11-4032
Date Passed: January 9th, 2012

**AN ORDINANCE AMENDING CHAPTER 94 OF THE MUNICIPAL CODE OF
THE CITY OF ROCHELLE TO AUTHORIZE THE SEIZURE AND
IMPOUNDMENT OF VEHICLES USED IN THE COMMISSION OF CERTAIN
CRIMES AND A RELATED ADMINISTRATIVE FEE**

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, Chapter 94 (“Traffic and Vehicles”) currently does not authorize the seizure or impounding of vehicles used during certain criminal offenses; and

WHEREAS, the City Council deems it appropriate and necessary to authorize the City of Rochelle Police to seize and impound vehicles used during the commission of certain crimes;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, that **Chapter 98** of the Municipal Code of the City of Rochelle be amended to read as follows:

1. By adding Article IX to read in its entirety as follows:

“ARTICLE IX. SEIZED AND IMPOUNDED VEHICLES

Sec. 94-550. Purpose.

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

Sec. 94-551. Vehicles Subject to Seizure and Impoundment.

A motor vehicle that is used in connection with any of the following violations may be subject to seizure and impoundment by the City. 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 City for an administrative fee of \$500.00 in addition to any and all applicable fines, costs, towing, and storage fees. Eligible offenses are as follows:

- (a) 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;
- (b) driving while driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked (**except where the suspension is a result of unpaid citations or failure to comply with emissions testing**) in violation of 625 ILCS 5/6-303, as amended from time to time;
- (c) aggravated fleeing or attempting to elude a police officer in violation of 625 ILCS 5/11-204.1, as amended from time to time;
- (d) operating a vehicle without a valid driver's license (expired for more than one year, or the operator has never had a valid license) in violation of 625 ILCS 5/6-101, as amended from time to time;
- (e) operation or use of a motor vehicle in connection with the commission or attempted commission of any offense in violation of the provisions of the Illinois Controlled Substances Act, 720 ILCS 570 et seq., as amended from time to time;
- (f) operation or use of a motor vehicle in connection with the commission or attempted commission of any offense in violation of the provisions of the Illinois Cannabis Control Act, 720 ILCS 550 et seq., as amended from time to time;
- (g) operation or use of a motor vehicle in connection with the commission or attempted commission of unlawful possession of drug paraphernalia in violation of 720 ILCS 600/3.5(a), as amended from time to time;
- (h) operation or use of a motor vehicle in connection with the commission or attempted commission of any offense in violation of the provisions of the unlawful use of weapons statute, 720 ILCS 5/24-1, as amended from time to time, or the commission or attempted commission of any offense in violation of the provisions of the unlawful possession or use of weapons and firearms statute, 720 ILCS 24/5-1.1, as amended from time to time;
- (i) operation or use of a motor vehicle in connection with the commission or attempted commission of possession of a firearm without requisite firearm owner's identification card in violation of the Firearm Owners Identification Card Act, 430 ILCS 65/2(a)(1), as amended from time to time, or the commission or attempted commission of possession of firearm ammunition without requisite firearm owner's identification card in violation of the Firearm Owners Identification Card Act, 430 ILCS 65/2(a)(2), as amended from time to time;
- (j) operation of a motor vehicle when registration is revoked, cancelled or suspended in violation of 625 ILCS 5/3-702 or operation of a motor vehicle when registration is suspended for non-insurance in violation of 625 ILCS 5/3-708;

(k) operation or use of a motor vehicle during the commission of any felony offense.

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. 94-552. 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. This fee shall be paid to the Rochelle Police Department and the tow operator will be reimbursed as a result. This fee shall be placed in the City's General Fund.

Sec. 94-553. 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. 94-551, the officer may provide for the towing of the motor vehicle to the City impound facility or a City-approved private lot. The registered owner of the vehicle shall receive notice of the seizure and impoundment as detailed in Sec. 94-555.

Sec. 94-554. 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 by and paid to the towing agency**, and:

(a) the registered owner or registered owner's agent appears at the Rochelle Police Department and remits the \$500.00 administrative fee; or

(b) the registered owner appears in person at the Rochelle Police Department and requests a hearing to contest the imposition of the \$500.00 administrative fee and signs the City notice acknowledging receipt of the hearing date.

The Rochelle Police Department shall have the right to hold the vehicle until the costs associated with the towing, storage and the administrative fee of \$500.00 have been paid in full or until the motor vehicle is released as a result of the administrative review process.

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 impound fee and all associated towing and impound costs.

Sec. 94-555. Notice Required.

(a) If the driver of the motor vehicle is the registered owner of the motor vehicle at the time of the incident, he/she will be personally served with written notice that the owner's impounded vehicle is subject to a \$500.00 administrative fee under this Article in addition to the costs that result from the towing and storage of the vehicle. This notice shall inform the owner of the owner's right to contest the administrative 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 the owner's impounded vehicle is subject to a \$500.00 administrative fee under this Article in addition to the costs that result from the towing and storage of the vehicle. This notice shall inform the owner of the owner's right to contest the administrative fee at an administrative hearing and will set forth the procedures for requesting such a hearing. The registered owner shall receive this notice at the scene of the incident whenever practical.

(c) If neither the driver of the vehicle at the time of the incident nor any passenger of the vehicle at the time of the incident is the registered owner, the registered owner shall be mailed notice that the owner's vehicle has been impounded pursuant to this Article and is subject to a \$500.00 administrative fee, in addition to the costs that result from the towing and storage of the vehicle. This notice shall be sent via certified mail within five business days of the impoundment of the vehicle to the last known address of the registered owner as reported to the Illinois Secretary of State and shall inform the registered owner of his/her right to request an administrative hearing to contest the administrative fee. This notice shall set forth the procedures required for requesting such a hearing.

(d) Upon receipt of a request for an administrative hearing, the City shall schedule the case for the next reasonably available administrative hearing date.

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

(a) Registered owners of vehicles seized and impounded under this Article who wish to contest the \$500.00 administrative fee may do so by appearing in person within five (5) business days of the seizure and impoundment to file a written request for an administrative hearing at City Hall at the following address:

City of Rochelle
420 N. 6th Street
Rochelle, Illinois 61068

(b) All written requests for administrative hearings must include the name of the registered owner, the make, model and license plate of the seized vehicle, the date seized, the location of the vehicle when seized, and the address and phone number of the registered owner making the request.

(c) The registered owner 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.

(d) All administrative hearings requested under this Article shall be held at City Hall **no later than 45 days after the date of the mailing of the notice of hearing.** **The hearing shall include evidence or testimony presented by a member of the Rochelle Police Department. 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.** A hearing officer shall preside over the proceedings. This 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 Sec. 94-551 of this Article. Formal rules of evidence shall not apply at this administrative hearing.

(e) 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 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.
- (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.**

(f) At the conclusion of the hearing, the hearing officer shall make his/her ruling and issue a finding, decision and order reflecting said ruling.

- (1) If the hearing officer determines the motor vehicle was used in an eligible crime as defined in Sec. 94-551 it shall order the registered owner to pay the City the administrative fee of \$500.00 and, in addition, the costs incurred by the City for the administrative hearing.

(2) If the hearing officer determines the motor vehicle was not used in violation of an eligible crime as defined in Sec. 94-551, it shall make a written finding reflecting that determination. If the administrative fee has previously been paid to the City, the hearing officer shall order the City to issue a full refund. This refund shall be remitted to the registered owner of the vehicle within 14 business days of the administrative hearing.

(g) The hearing officer does not have the authority to order the refund of the costs of the tow; these costs must be paid 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.

(h) 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. The administrative fee shall become a debt due and owing to the City after the period for judicial review has expired.

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.

If an impounded vehicle is not claimed after ten (10) days of receipt of the tow notification, it shall be deemed abandoned and will be disposed of in the manner provided by law for the disposition of abandoned vehicles provided in 625 ILCS 5/4-200 et seq.” **Vehicles not retrieved from the towing facility or storage facility within 35 days after the administrative hearing shall be deemed abandoned and disposed of as such.**

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

This ordinance shall become effective after its passage, approval and publication as provided by law and shall modify any inconsistent provisions in the municipal code prior to this date.

PASSED AND APPROVED this 9th day of January, 2012

Ayes: _____ Nays: _____ Abstain: _____

Mayor

Attested: _____
City Clerk