ORDINANCE 2011-1008

AN ORDINANCE AMENDING CHAPTER 12 OF THE CODE OF ORDINANCES OF OGLE COUNTY, ILLINOIS, TO INCORPORATE A DIVISION 4, PROVIDING FOR THE SEIZURE AND IMPOUNDMENT OF VEHICLES USED IN CONNECTION WITH CERTAIN OFFENSES, THE IMPOSITION OF AN ADMINISTRATIVE FEE FOR THE RELEASE OF SUCH VEHICLES, AND IMPLENTATION OF ADMINISTRATIVE REVIEW OF SUCH ADMINISTRATIVE FEES

WHEREAS, Illinois law directs or allows law enforcement agencies to seize and impound certain motor vehicles used in the commission of certain criminal or traffic offenses within their boundaries, subject to certain legal restrictions; and

WHEREAS, the County of Ogle incurs financial costs associated with investigation of criminal offenses involving motor vehicles, and the towing, impounding, or seizing of motor vehicles used during the commission of criminal, traffic, or related offenses within the County; and

WHEREAS, the County Board of Ogle County has determined that it is in the best interest of the citizens of the County to create an Administrative Fee to offset the costs associated with the towing, impounding, or seizing of motor vehicles used during the commission of criminal, traffic, or related offenses within the County.

NOW THEREFORE, it is hereby ordained by the Ogle County Board as follows:

Chapter 12, Traffic and Vehicle Regulations, shall be amended to add ***DIVISION 4, SEIZED AND IMPOUNDED VEHICLES,*** to read in its entirety as follows:

DIVISION 4

SEIZED AND IMPOUNDED VEHICLES

SECTION:

12-4-1: Title
12-4-2: Purpose
12-4-3: Construction
12-4-4: Definitions
12-4-5: Vehicles Subject to Impoundment
12-4-6: Administrative Fee
12-4-7: Commencement of Impoundment
12-4-8: Notice of Seizure and Impoundment
12-4-9: Cash Bond
12-4-10: Admission of Liability
12-4-11: Administrative Hearing
12-4-12: Defenses
12-4-13: Hearing Officer Fee
12-4-14: Administrative Review Law
12-4-15: Enforcement
12-4-16: Abandoned Vehicles
12-4-17: Severability
12-4-18: Repeal of Inconsistent Ordinances

12-4-1: TITLE: This Division shall be known, cited and referred to as the "Vehicle Impound Ordinance of Ogle County."

12-4-2: PURPOSE: The purpose of this article is to offset the costs incurred in the preparing, prosecuting, hearing, and disposing of criminal and traffic cases, and recover the costs associated with the towing, impounding, or seizing of motor vehicles used during the commission of criminal, traffic, or other offenses within the County of Ogle, outside the corporate limits of any municipality.

12-4-3: CONSTRUCTION: In the construction of this article, the definitions hereunder shall be observed and applied, except when the context clearly indicates otherwise:
(a) Words used in the present tense shall include the future tense; words used in the singular number shall include the plural number; words used in the masculine gender shall include the female gender; and such inclusive words shall be reciprocal.
(b) The word "may" is permissive or discretionary.
(c) The word "shall" is mandatory and not discretionary.

12-4-4: DEFINITIONS: For the purposes of this article, the words and phrases listed hereunder have the meanings designated herein, except when a particular context clearly requires a different meaning:
County is the County of Ogle, Illinois.
Law enforcement officer means every officer authorized make arrests and issue citations for criminal and traffic offenses occurring within the County.
Person means an individual, firm, organization, public or private corporation, government, partnership or unincorporated association.
Registered Owner means the record title holder(s) of the vehicle as properly registered with the Illinois Secretary of State, or if registered in a state other than Illinois, record title holder as properly registered with the administrative agency responsible for registration in that state.
Lessee means the person authorized by a written lease agreement to possess the vehicle and as properly registered with the Illinois Secretary of State, or if registered in a state other than Illinois, as properly registered with the administrative agency responsible for registration in that state.

12-4-5: VEHICLES SUBJECT TO IMPOUNDMENT: Any motor vehicle, regardless of whether the Registered Owner or Lessee is operating said vehicle, within the County of Ogle, State of Illinois, and outside the corporate limits of any municipality, shall be subject to seizure and impoundment under this section, any time said vehicle is used in connection with of one or more of the following offenses:

A. Operation or use of a motor vehicle in connection with 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, as now enacted and as amended from time to time; or

B. Driving Under the Influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of 625 ILCS 11-501, as now enacted and as amended from time to time; or

C. Operation or use of a motor vehicle in connection with 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 now enacted and as amended from time to time; or

D. Operation or use of a motor vehicle in connection with the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act 720 ILCS 570 et seq., as now enacted and as amended from time to time; or

E. Operation or use of a motor vehicle in connection with 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, as now enacted and as amended from time to time; or

F. Driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to 625 ILCS 5/6-303, as now enacted and as amended from time to time; 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 in connection with 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, as now enacted and as amended from time to time; or

H. Operation or use of a motor vehicle with an expired driver's license, in violation of 625 ILCS 5/6-101, as now enacted and 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 625 ILCS 5/6-101, as now enacted and as amended from time to time, 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 625 ILCS 5/6-101, 625 ILCS 5/6-303, or 625 ILCS 5/11-501, as now enacted and as amended from time to time; or

K. Operation or use of a motor vehicle in connection with the commission of, or in the attempt to commit, an offense in violation of Article 16 or 16A of the Criminal Code of 1961, as now enacted and as amended from time to time; or

L Operation or use of a motor vehicle in the commission of, or in the attempt to commit, the offense of Fleeing to Elude a Police Officer, in violation of 625 ILCS 5/11-204.1, as now enacted and as amended from time to time; or

M. Any other offense now codified or subsequently enacted, that directs or authorizes a law enforcement officer to seize, impound, or tow the motor vehicle in question.

12-4-6: ADMINISTRATIVE FEE: An Administrative Fee in the amount of Three Hundred Fifty Dollars ($350.00) shall be imposed on the Registered Owner or Lessee of any Motor Vehicle impounded under this Division.

A. Said fee is to serve as a proxy for the actual administrative costs incurred by the County and County agencies as the result of towing and impounding of vehicles, and the

preparing, prosecuting, hearing, and disposing of criminal or traffic cases involving the use of motor vehicles.

B. The Administrative Fee shall be in addition to (1) any other penalties that may be assessed by a court of law for the underlying violations; (2) any towing or storage fees, or both, charged by the towing company; and (3) any Hearing Officer Fee imposed under Section 13.

C. If there exists more than one Registered Owner or Lessee of the vehicle in question, each Registered Owner or Lessee shall be jointly and severally liable to the County for the Administrative Fee.

D. Any funds collected under this Division as an Administrative Fee shall be used at the discretion of the Sheriff, and may be used for law enforcement related activities including the purchase or maintenance of police vehicles, equipment, or training.

12-4-7: COMMENCEMENT OF IMPOUNDMENT: Whenever a law enforcement officer has probable cause to believe that a motor vehicle is subject to impoundment, under Section 5, the officer shall provide for the towing of the vehicle to a facility authorized by the County. Said vehicle shall be impounded and held until such time the Administrative Fee is paid or the vehicle is subject to release under the provisions of this Division.

12-4-8: NOTICE OF SEIZURE AND IMPOUNDMENT: Upon seizure and impoundment, the law enforcement officer shall provide notice as directed under this Section.

A. *Initial Notice.* At the time the vehicle is towed, the officer shall notify, or make a reasonable attempt to notify, the Registered 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 Registered Owner's or Lessee's right to an Administrative Hearing.

(1) Any notice under this Section shall be in writing, and said notice shall indicate that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the Registered Owner, Lessee, or a lienholder of record posts, with the Sheriff, a bond equal to the Administrative Fee and Hearing Officer Fee, as provided by ordinance, and pays for all towing and storage charges.

(2) Said notice shall inform the recipient of the right to an Administrative Hearing, and shall provide instructions on the exercise of that right.

B. If a Registered Owner or Lessee is found to be a passenger or driver of any vehicle seized under this Division, then he/or she shall be personally served with written notice under this section.

C. If no Registered Owner or Lessee is found to be a passenger or driver of any vehicle seized under this Division, then the written notice shall be served on the Registered Owner or Lessee, either by personal service or by first class mail, to the address as registered with the Secretary of State;

(1) All notices shall be served upon the Registered Owner or Lessee within 5 days after a vehicle is seized and impounded; and

(2) Said notice shall indicate that the motor vehicle will remain impounded pending the completion of an Administrative Hearing, unless the Registered Owner, Lessee, or a lienholder of record posts, with the Sheriff, a bond equal to the Administrative Fee and Hearing Officer Fee as provided by ordinance, and pays for all towing and storage charges.

12-4-9: CASH BOND: The Registered Owner, lessee, or a lienholder of record of any vehicle seized pursuant to this subsection may retrieve the vehicle seized prior to the evidentiary hearing by posting a cash bond at the Ogle County Sheriff's Office, in addition to the payment of applicable towing and storage fees.

A. The bond shall be an amount totaling the Administrative Fee and Hearing Officer Fee established in Section 6 and Section 13 of this Division.

B. Upon posting of bond, the vehicle shall be released to the Registered Owner, Lessee, or the lienholder of record who posted said bond.

C. Any bond posted under this section shall be retained by Ogle County Sheriff, until the disposition of the Administrative Hearing held under Section 11 of this Division.

12-4-10: ADMISSION OF LIABILITY: The Registered Owner or Lessee of any vehicle seized pursuant to this Division may retrieve the vehicle seized prior to the evidentiary hearing by admitting liability to the County for the Administrative Fee, and, in addition to the payment of applicable towing and storage fees, remits the full amount of the Administrative Fee established in Section 6 of this Division. Said Admission of Liability shall be deemed a waiver of the Administrative Hearing, and upon the entry of an Admission of Liability, any Administrative Hearing scheduled shall be waived and cancelled.

12-4-11: ADMINISTRATIVE HEARING: Subject to the provisions of *625 ILCS 5/11-208.3*, and in a manner consistent with other statutes or ordinances regulating administrative hearings, a Registered Owner or Lessee may request an Administrative Hearing to review the imposition of the Administrative Fee under this Division.

A. *Request for Hearing*. A Registered Owner or Lessee of any vehicle seized pursuant to this Division may request a hearing within ten (10) business days of the date of seizure and impoundment.

(1) All Requests for Hearing shall be in writing and must include the following:

a. The name of the Registered Owner or Lessee making the Request for Hearing;

b. The name of any Registered Owner or Lessee having an interest in the seized vehicle;

c. The make, model, and registration number of the vehicle seized;

d. The date and location of the seizure; and

e. The identity of the driver who was operating or in control of the vehicle at the time of seizure.

B. *Waiver of Hearing*. Unless the Registered Owner or Lessee properly delivers a Request for Hearing within the time allowed under this Section, said hearing shall be deemed waived, and any right to an Administrative Hearing shall be forfeited.

C. *Notice of Administrative Hearing.* Upon receiving a Request for Hearing, the Sheriff shall provide written notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the Registered Owner, Lessee, or a lienholder of record posts, with the Sheriff, a bond equal to the Administrative Fee and Hearing Officer Fee, as provided by ordinance, and pays for all towing and storage charges.

(1) This written notice shall be served upon the Registered Owner, Lessee, and any lienholder of record,

(2) The written notice shall be served either by personal service or by first class mail to the address as registered with the Secretary of State;

(3) All notices shall be served upon the Registered Owner, Lessee, and any lienholder of record within five (5) business days after the Request for Hearing is received; and

(4) The written notice shall contain the date, time, and location of the Administrative Hearing. An initial hearing shall be scheduled not less than seven (7) days and no more than 45 days after the date of the mailing of the notice of hearing.

C. ADMINISTRATIVE HEARING OFFICER. The Administrative Hearing shall be conducted by a hearing officer designated by the County, who is an attorney licensed to practice law in this State for a minimum of 3 years.

D: The party challenging the imposition of the Administrative Fee shall be responsible for the costs associated with use of the Administrative Hearing Officer, as described in section 13 of this Division.

E. The party challenging the hearing must appear personally or through a licensed attorney. A failure of the challenging party to appear shall result in a default ruling sustaining the vehicle impoundment.

F. All interested persons shall be given a reasonable opportunity to be heard at the hearing.

G. The formal rules of evidence shall not apply and hearsay evidence shall be admissible.

H. The burden shall be on the party challenging the Administrative Fee to prove one of the available defenses by preponderance of the evidence.

I. At the conclusion of the Administrative Hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.

I. If the basis for the vehicle impoundment is sustained by the Administrative Hearing Officer, any Administrative Fee, Hearing Officer Fee, or bond posted to secure the release of the vehicle shall be forfeited to the County.

K. Unless the Administrative Hearing Officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the Registered Owner, Lessee, or lienholder of record until all Administrative Fees, Hearing Officer Fees, and towing and storage charges are paid.

L. If the Administrative Hearing Officer overturns the basis for the vehicle impound, the vehicle shall be released to the Registered Owner, Lessee, or lienholder of record challenging such fee, provided all towing and storage charges are paid. The Administrative Hearing Officer does not have the authority to waive towing and storage charges.

12-4-12: DEFENSES: At any hearing reviewing the imposition of the Administrative Fee, the Administrative Hearing Officer shall only consider defenses recognized by this Section.

A. There shall only be three recognized defenses to the imposition of the Administrative Fee:

1. The vehicle was stolen at the time the illegal item was found in the vehicle, and the theft was reported within 24 hours after the theft was discovered or reasonably should have been discovered;

2. The vehicle was operating as a common carrier and the violation occurred without the knowledge of the person in control of the vehicle; or

3. The vehicle was not used in connection with an offense described in Section 5 of this Division.

B. Notwithstanding the limitations set forth in paragraph A of this Section, the following circumstances shall ***NOT*** constitute a defense to the imposition of the Administrative Fee:

1. The Registered Owner, Lessee, or lienholder of record was not the driver of the vehicle during the commission of the offense in question;

2. Any criminal charge related to the incident giving rise to the impoundment has been adjudicated not guilty;

3. Any criminal charge related to the incident giving rise to the impoundment has been dismissed or otherwise disposed of; or

4. Any other circumstance not specified in paragraph A of this Section.

12-4-13: HEARING OFFICER FEE: The party challenging the imposition of the Administrative Fee shall be responsible for the costs associated with use of the Administrative Hearing Officer. Said fee shall be $150.00, and shall be used to pay for the costs associated with the use of the Administrative Hearing Officer, subject to the following:

A. If the party challenging the imposition of the Administrative Fee posts bond under Section 9, the Hearing Officer Fee must be included in said bond.

B. If the Registered Owner or Lessee of any vehicle seized pursuant to this Division admits liability under Section 10, provided said admission occurs more than 48 hours prior to the scheduled Administrative Hearing, no Hearing Officer Fee shall be assessed. A failure to admit liability and waive the Administrative Hearing in a timely manner will result in the imposition of the Hearing Officer Fee on the Registered Owner of the Motor Vehicle in question.

C. If no Admission of Liability or waiver of Administrative Hearing is received prior to the deadline described in paragraph B of this section, the Hearing Officer Fee shall be imposed on the Registered Owner of the Motor Vehicle in question.

D. If the Administrative Hearing Officer overturns the basis for the vehicle impound, no Hearing Officer Fee shall be assessed, and any previously posted Hearing Officer Fee shall be refunded.

E. Every Registered Owner of the subject vehicle shall be jointly and severally liable to the County for any Hearing Officer Fee imposed under this Division.

12-4-14: ADMINISTRATIVE REVIEW LAW: All Administrative Hearing rulings shall be subject to review under the provisions of the Administrative Review Law, as codified at *735 ILCS 5/3-101 et seq.*

12-4-15: ENFORCEMENT: Unless stayed by a court of competent jurisdiction, any administrative fee imposed under this Division 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.

12-4-16: ABANDONED VEHICLES: 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.

12-4-17: SEVERABILITY: If any provisions in this section or the application thereof is held to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect any other provisions of this Division not specifically included in such ruling or which can be given effect without the unconstitutional or invalid provision or application; and to this end, the provisions of this Division are declared severable.

12-4-18: REPEAL OF INCONSISTENT ORDINANCES: All ordinances or parts of ordinances in conflict with this ordinance are herby repealed. All other portions and provisions of the Code of Ordinances, and any and all subsequent amendments hereto not in conflict herewith, shall remain in full force and effect.

Presented and Adopted at the October 19, 2011 Ogle County Board Meeting.

_____

James L. Barnes, Chairman

ATTEST:

_____

Rebecca Huntley, Ogle County Clerk