

City of St. Charles, Illinois

Ordinance No. 2008-M-69

**An Ordinance Amending Title 10 "Vehicles and Traffic",
Section 10.04.022 "Vehicle Seizure and Impoundment –
Use of Motor Vehicles for Unlawful Purposes" of the St.
Charles Municipal Code**

**Adopted by the
City Council
of the
City of St. Charles
October 6, 2008**

**Published in pamphlet form by
authority of the City Council
of the City of St. Charles,
Kane and Du Page Counties,
Illinois, October 10, 2008**

Nancy Garrison

City Clerk



(SEAL)

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DATE 10/10/08
PAGE

ORDINANCE NO. 2008-M-69

AN ORDINANCE AMENDING TITLE 10 "VEHICLES AND TRAFFIC", SECTION 10.04.022 "VEHICLE SEIZURE AND IMPOUNDMENT –USE OF MOTOR VEHICLES FOR UNLAWFUL PURPOSES" 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, "Vehicle Seizure and Impoundment – use of motor vehicles for unlawful purposes", 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 with the permission, express or implied, of the owner of record, 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 an authorized 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 of record of said vehicle shall be liable to the City for an administrative penalty, in addition to all towing, impoundment and storage fees, as hereinafter provided:

1. Driving with a suspended or revoked license in violation of 625 ILCS 5/6-303; five hundred dollars (\$500.00).
2. Driving under the influence of drugs or alcohol in violation of 625 ILCS 5/11-501(a); five hundred dollars (\$500.00).
3. Driving without a valid driver's license in violation of 625 ILCS 5/6-101(a); five hundred dollars (\$500.00).
 - a. Except a person that had a valid drivers license that is expired for less than twelve (12) months.
 - b. Except a person who is less than seventeen (17) years of age operating a motor vehicle on any street or highway when in violation of the Child Curfew Act (720 ILCS 555/0.01 *et seq.*).
4. Fleeing or attempting to elude a peace officer in violation of 625 ILCS 5/11-204; five hundred dollars (\$500.00).
5. Illegal street racing in violation of 625 ILCS 5/11-506; five hundred dollars (\$500.00).

6. Illegal transportation or possession of alcoholic liquor in violation of 625 ILCS 5/11-502(a); five hundred dollars (\$500.00).
7. Firearms offenses, five hundred dollars (\$500.00):
 - a. Unlawful use of weapons in violation of 720 ILCS 5/24-1.
 - b. Unlawful use or possession of weapons by felons or persons in the custody of the department of corrections facilities in violation of 720 ILCS 5/24-1.1.
 - c. Aggravated discharge of a firearm in violation of 702 ILCS 5/24-1.2.
 - d. Aggravated discharged of a machine gun or a firearm equipped with a device designed or used for silencing the report of a firearm in violation of 702 ILCS 5/11-1.2-5.
 - e. Reckless discharge of a firearm in violation of 720 ILCS 5/24-1.5.
 - f. Aggravated unlawful use of a weapon in violation of 702 ILCS 5/24-1.6.
8. Drug offenses: Possession of cannabis, more than thirty (30) grams, in violation of 720 ILCS 550/4(d), (e), (f), and (g); five hundred dollars (\$500.00).
9. Drug offenses: Unauthorized possession of controlled substances in violation of 720 ILCS 570/402; five hundred dollars (\$500.00).
10. Illegal operation of a sound amplification system in violation of 625 ILCS 5/12-611; five hundred dollars (\$500.00).

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 penalties 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.
4. Fees for towing and storage of a vehicle impounded under this Section shall be as approved by the City 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 penalty shall be imposed.

- C. Notice. Whenever a police officer has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to this Section, the police officer shall provide for the towing of the vehicle to a facility authorized by the City except as otherwise provided in this Section. Before or at the time the vehicle is towed, the police officer shall make reasonable attempts to notify any person identifying himself as the owner of the vehicle or any person who is found to be in control of the vehicle at the time of the alleged violation, of the fact of the seizure and impoundment of the vehicle and of the owner's right to request a preliminary vehicle impoundment

hearing to be conducted pursuant to this Section. Said vehicle shall be impounded pending the completion of such hearing(s) provided for in Subsection (D) herein, unless the owner of the vehicle posts with the City a cash bond in the amount of five hundred dollars (\$500.00) and pays all seizure, towing, impoundment and storage charges.

- D. Preliminary Hearing. If the owner of record of a vehicle seized pursuant to this Section desires to appeal the seizure, said owner 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 herein this Section, unless the owner of the vehicle posts with the City a cash bond in the amount of five hundred dollars (\$500.00) and pays seizure, 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. Plea and Hearing. Within ten (10) days of the vehicle seizure and impoundment the City shall mail the owner of record, at his last known address, a plea form notifying the owner of record of his right to a hearing. The owner of record shall complete the plea form and either plead guilty and pay all fines, fees and penalties associated therewith, as provided for in the plea form, in lieu of a hearing or he may request a hearing. If a hearing is requested a final hearing date shall be scheduled and held no later than forty-five (45) days after the vehicle's seizure and impoundment. All interested parties shall be given an 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 an order finding the owner of record of the vehicle civilly liable to the City for an administrative penalty in the amount of five hundred dollars (\$500.00) and requiring the vehicle's continued impoundment until the owner pays the administrative penalty to the City plus seizure, towing, impoundment and storage charges, all as applicable. The owner of record shall further be responsible for reasonable hearing costs as assessed by the hearing officer. If the owner of record fails to appear at the hearing, the hearing officer shall enter a default order in favor of the City. If the hearing officer finds no such violation occurred, the hearing officer

shall order the immediate return of the owner's vehicle or cash bond without any additional fees.

F. **Administrative Penalty.** If an administrative penalty is imposed pursuant to this Section, such penalty shall constitute a debt due and owing the City. If a cash bond has been posted pursuant to this Section the bond shall be applied to the penalty. If a vehicle has been impounded when such a penalty is imposed, the City may seek to obtain a judgment on the debt and enforce such judgment against the vehicle as provided by law. Except as provided otherwise in this Section, a vehicle shall continue to be impounded until the penalty is paid to the City and all applicable seizure, towing, impoundment and storage charges, in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle or the vehicle is sold or otherwise disposed of to satisfy a judgment to enforce a lien as provided by law. If the administrative penalty and applicable fees are not paid within thirty (30) days after an administrative penalty is imposed against an owner of record who defaults by failing to appear at the hearing, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles. In all other cases, if the administrative penalty and any applicable fees are not paid within thirty (30) days after the expiration of the time at which administrative review of the hearing officer's determination may be sought, or within thirty (30) days after an action seeking administrative review has been resolved in favor of the City, whichever is applicable, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provide by law for the disposition of unclaimed vehicles under the Illinois Vehicle Code.

G. **Vehicle Possession.**

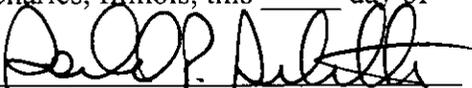
1. Except as otherwise specifically provided by law, no owner, lien holder, or other person shall be legally entitled to take possession of a vehicle impounded under this Section until the administrative penalty and all applicable fees applicable under this Section have been paid. However, whenever a person with a lien of record against an impounded vehicle has commenced foreclosure proceedings, possession of the vehicle shall be given to that person if he or she agrees in writing to refund the City the amount of the net proceeds of any foreclosure sale, less any amounts required to pay all lien holders of record, not to exceed the administrative penalty, plus the applicable fees.
2. For purposes of this Section, the "owner of record" of a vehicle is the record title holder as registered with the Secretary of State of the State of Illinois."

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.

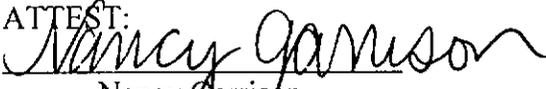
PRESENTED to the City Council of the City of St. Charles, Illinois, this 6th day of
October _____, 2008.

PASSED by the City Council of the City of St. Charles, Illinois this 6th day of
October _____, 2008.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 6th day of
October _____, 2008.



Donald P. DeWitte, Mayor

ATTEST:


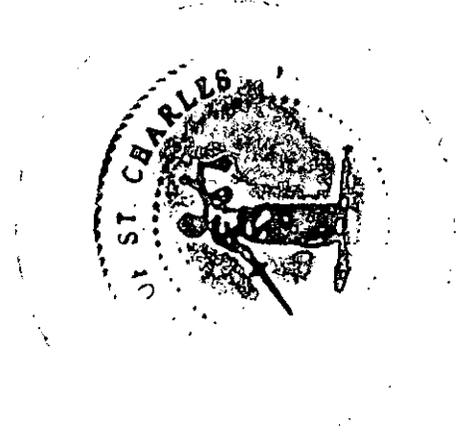
Nancy Garrison
City Clerk

COUNCIL VOTE:

Ayes : 10

Nays : 0

Absent : -



APPROVED AS TO FORM:

City Attorney

DATE: _____

State of Illinois)
)
) ss.
Counties of Kane and DuPage)

Certificate

I, NANCY GARRISON, certify that I am the duly elected and acting Municipal City Clerk of the City of St. Charles, Kane and DuPage Counties, Illinois.

I further certify that on October 6, 2008, the Corporate Authorities of such municipality passed and approved Ordinance No. 2008-M-69, entitled

"An Ordinance Amending Title 10 "Vehicles and Traffic", Section 10.04.022 "Vehicle Seizure and Impoundment – Use of Motor Vehicles for Unlawful Purposes" of the St. Charles Municipal Code,"

which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. 2008-M-69, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the municipal building, commencing on October 10, 2008, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the office of the municipal clerk.

DATED at St. Charles, Illinois, this 6th day of October 2008.

(S E A L)



Nancy Garrison
Municipal Clerk