

**CITY OF O’FALLON, ILLINOIS  
ORDINANCE NUMBER\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF  
O’FALLON REQUIRING THAT AN  
ADMINISTRATIVE TOW FEE BE  
PAID TO THE O’FALLON POLICE  
DEPARTMENT FOR ANY VEHICLE  
TOWED AND IMPOUNDED AS A  
RESULT OF THE COMMISSION OF  
A CRIME OR OTHER VIOLATIONS  
THAT RESULT IN A CUSTODIAL  
ARREST**

**WHEREAS**, the O’Fallon Police Department expends resources to process arrested persons and the vehicles that they were operating at the time of arrest; and,

**WHEREAS**, the O’Fallon Police Department has determined that it is in the best interest of the community that an administrative fee be charged the owner’s of vehicles impounded as a result of certain arrests; and,

**WHEREAS**, the administrative fees are based upon the amount of resources expended by the members of the O’Fallon Police Department and designed to help the police department recoup cost associated with processing certain arrests; and,

**WHEREAS**, the O’Fallon Police Department will charge an administrative fee of \$500.00 for certain serious offenses and \$250.00 for certain lesser offenses, all to be paid in addition to tow or impound fees.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF O’FALLON, ILLINOIS, AS FOLLOWS:**

**CHAPTER  
ARTICLE**

**IMPOUNDMENT OF MOTOR VEHICLE; ADMINISTRATIVE TOW FEES**

- 00.00.01      Definitions**
- 00.00.02      Violations Authorizing Impound**
- 00.00.03      Seizure and Impoundment**
- 00.00.04      Administrative Hearing**
- 00.00.05      Disposition of Impounded Motor Vehicles**

- 00.00.06 Motor Vehicle Possessions**
- 00.00.07 Redemption of Motor Vehicles**
- 00.00.08 Refund of Administrative Fee**

**00.00.01 DEFINITIONS:**

- A. “Business Day” means any day in which the offices of City Hall are open to the public for a minimum of seven hours.
- B. “Level 1 Administrative Fee” means and shall be \$500.00.
- C. “Level 2 Administrative Fee” means and shall be \$250.00.
- D. Motor Vehicle. Every vehicle which is self-propelled, including but not limited to automobiles, trucks, vans, motorcycle, and motor scooters.
- E. Owner of Record. The record title holder(s) of the motor vehicle as registered with the Secretary of State, State of Illinois; or if not registered in Illinois, the particular state where the motor vehicle is registered.

**00.00.02 VIOLATIONS AUTHORIZING IMPOUNDMENT:**

- A. Any motor vehicle, operated with the express or implied permission of the owner of record, that is used in connection with the following violations, shall be subject to seizure and impoundment by the City, and the owner or record of said motor vehicle shall be liable to the City for a Level 1 administrative fee, as provided for in this Chapter, in addition to any towing and storage fees as hereinafter provided.

<u>State Statute</u>	<u>Violations</u>
625 ILCS 5/6-303	Driving while license revoked
625 ILCS 5/11-20	Fleeing or attempting to elude a peace officer
625 ILCS 5/11-501	Driving under the influence of alcohol/drugs
625 ILCS 5/11-503	Reckless driving or aggravated reckless driving
625 ILCS 5/11-504	Drag racing
625 ILCS 5/11-601.5	Speeding in excess of 40 mph Class A misdemeanor
625 ILCS 5/11-6	Indecent solicitation of a child
625 ILCS 5/12-2	Aggravated assault
720 ILCS 5/12-4	Aggravated battery
720 ILCS 5/12-4.2	Aggravated battery with a firearm
720 ILCS 5/12-4.3	Aggravated battery of a child
720 ILCS 5/12-4.6	Aggravated battery of a senior citizen
720 ILCS 5/16A-3	Retail theft of merchandise exceeding \$150 value
720 ILCS 5/18-1	Robbery

720 ILCS 5/18-2	Armed Robbery
720 ILCS 5/19-1	Burglary
720 ILCS 5/19-3	Residential burglary
720 ILCS 5/230-1	Arson
720 ILCS 5/20-1.1	Aggravated arson
720 ILCS 5/20-2	Possession of explosives or incendiary devices
720 ILCS 5/21-1	Criminal damage to property
720 ILCS 5/25-1	Mob action
720 ILCS 570/401	Manufacture or delivery unauthorized
720 ILCS 570/401.1	Controlled substance trafficking
720 ILCS 570/402	Unauthorized possession under the Controlled
Substances Act	
720 ILCS 550/4	Possession of more than 10 grams or any substances containing cannabis
720 ILCS 550/5	Manufacture or delivery of cannabis
720 ILCS 55/5.1	Cannabis trafficking
720 ILCS 550/5.2	Delivery of cannabis on school grounds
720 ILCS 550/8	Unauthorized production or possession of cannabis sativa plant
720 ILCS 5/24-1	Unlawful use of weapons
720 ILCS 5/24-3.1	Unlawful possession of firearms and firearm ammunition
720 ILCS 5/24-3.3	Unlawful sale or delivery of firearms on the premises of a school

- B. For any motor vehicle, operated with the express or implied permission of the owner of record, that is used in connection with any violations not listed in sub-Section A , to include arrest warrants, but still results in seizure and impoundment by the City, the owner or record of said motor vehicle shall be liable to the City for a Level 2 administrative fee, as provided for in this Chapter, in addition to any towing and storage fees as hereinafter provided.

**00.00.03 SEIZURE AND IMPOUNDMENT:**

- A. Whenever a police officer has reason to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Chapter, the police officer shall provide for the towing of the motor vehicle to a facility approved by the City. This Chapter shall not apply if the motor vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered.
- B. The police officer shall notify any person identifying himself as the owner of the motor vehicle or any person who is found to be in control of the motor vehicle at the

time of the alleged violation, if there is such a person, of the fact of the seizure and of the motor vehicle owner's right to request an administrative hearing to be conducted under this section.

#### **00.00.04 ADMINISTRATIVE HEARING**

- A. Within 5 business days after a motor vehicle is seized and impounded pursuant to this Chapter, the City shall notify by personal service or by certified mail to the owner of record of the owner's right to request a hearing to challenge whether a violation of this Chapter has occurred. The owner of record seeking a hearing must file a written request for a hearing with the Chief of Police, or his designee, no later than 10 business days after notice was mailed. The hearing date must be scheduled no more than 20 business days after the request for a hearing has been filed. All interested persons shall be given a reasonable opportunity to be heard at the hearing. The formal rules of evidence shall not apply at the hearing and hearsay evidence shall be admissible.
- B. If, after the hearing, the hearing officer determines by a preponderance of the evidence that the motor vehicle was used in violation of this Chapter, then the hearing officer shall enter an order finding the owner of record of the motor vehicle liable to the City for the applicable administrative fee.
- C. If, after a hearing, the hearing officer does not determine by a preponderance of the evidence that the motor vehicle was used in such a violation, the hearing officer shall enter an order finding for the owner and for the return of the motor vehicle.
- D. If owner of record requests a hearing but fails to appear at the hearing or fails to request a hearing in a timely manner, the owner of record shall be deemed to have waived his or her right to a hearing and the hearing officer shall enter a default order in favor of the City in the amount of the administrative fee. However, if the owner of record pays such administrative fee and the motor vehicle is returned to the owner, no default order need be entered if the owner is informed of his or her right to a hearing and signs a written waiver, in which case an order of liability shall be deemed to have been made when the City receives the written waiver.
- E. If a bond in the amount equal to the applicable administrative fee is posted with the Police Department, the impounded motor vehicle shall be released to the owner of records. The owner of the motor vehicle shall still be liable to the towing agent for any applicable towing fees.

- F. If an administrative fee is imposed for a violation of this Chapter, the bond will be forfeited to the City; however if a violation of this Chapter is not proven by preponderance of the evidence, the bond will be returned to the person posting the bond. All bond money posted pursuant to this Chapter shall be held by the City until the hearing officer issues a decision, or, if there is a judicial review, until the court of jurisdiction issues its orders.

#### **00.00.05 DISPOSITION OF IMPOUNDED MOTOR VEHICLE**

- A. An administrative fee imposed pursuant to this Chapter shall constitute a debt due and owing the City. A motor vehicle impounded pursuant to this Chapter shall remain impounded until:
- i. The administrative fee is paid to the City and all applicable towing fees are paid to the towing agent, in which case the owner of record shall be given possession of the motor vehicle; or
  - ii. A bond in an amount equal to the applicable administrative fee is posted with the Police Department and all applicable towing fees are paid to the towing agent, at which time the motor vehicle will be released to the owner of record; or
  - iii. The motor vehicle is deemed abandoned in which case the motor vehicle shall be disposed of in the manner provided by law for the disposition of abandoned motor vehicles.

#### **00.00.06 MOTOR VEHICLE POSSESSION**

Any motor vehicle that is not reclaimed within 30 days after the expiration of the time during which the owner of record may seek judicial review of the City's action under this Chapter, or the time at which a final judgment is rendered against an owner of record who is in default, may be disposed of as an unclaimed motor vehicle as provided by law, provided, however, that where proceedings have been instituted under state or federal drug asset forfeiture laws, the subject motor vehicle may not be disposed of by the City except as consistent with those proceedings.

#### **00.00.07 TOWING AGENCY**

- A. It shall be the duty of the towing or storage company in possession of the motor vehicle to obtain documentation issued by the Police Department confirming compliance with foregoing requirements, and retain photocopies of that documentation in their files for a period of not less than six (6) months following

release of the motor vehicle. The foregoing information shall be made available to the authorities of the City of O'Fallon for inspection and copying, upon their request, by the towing or storage company. The towing or storage company is prohibited from releasing any motor vehicle they may tow within the City until and unless they obtain documentation as aforesaid.

- B. The towing or storage company shall be entitled to receive a reasonable fee from the owner or person entitled to possession of any such motor vehicle prior to the release of the motor vehicle. The fee shall be to cover the cost of removing said motor vehicle and, in addition thereto, the cost of storage of said motor vehicle for each day or fraction thereof that said motor vehicle shall have remained stored.
- C. The fees in this section shall be in addition to any fee levied or assessed against the owner or operator of said motor vehicle by reason of violation of any ordinance or statute and any arrest which may have resulted from such violation.

#### **00.00.08 REFUND OF ADMINISTRATIVE FEE**

In the event a judgment of Not Guilty is entered by a court of competent jurisdiction on all underlying charges that could have resulted in the impoundment of a motor vehicle, then upon within 30 days of presentation of a certified copy of said judgment to the City Police Department, any administrative fees or posted bonds obtained by the City shall be refunded to the paying party.

**Section 2** All ordinances or parts of other ordinances in conflict herewith shall be and hereby are repealed to the extent of any such conflict, provided that nothing herein shall in any way excuse or prevent prosecution of any previous or existing violation of any ordinance or part of any ordinance repealed or superseded hereby. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court, any rights acquired, or any liability incurred, any cause of action acquired or existing by reason of any Ordinance, or any part thereof repealed by this Ordinance. No accrued legal right or remedy of any kind or character shall be lost, impaired or affected by this Ordinance.

**Section 3** If any part of this Ordinance is found to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or effectiveness of the remaining provisions of this Ordinance or any part thereof and said Ordinance shall be read as if said invalid provision was struck there from and the context thereof changed accordingly with the remainder of the Ordinance to be and remain in full force and effect.

**Section 4** All ordinances, resolutions or orders, or part thereof, which conflict with provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

