

CHAPTER 5

ADMINISTRATIVE IMPOUND

SECTION:

- 7-5-1 Motor Vehicles used in Connection with Illegal Activities
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- 7-5-5: Vehicle Possession; Owner or Lienholder

7-5-1: **MOTOR VEHICLES USED IN CONNECTION WITH
ILLEGAL ACTIVITY:**

- A. Impoundment: A motor vehicle, operated with the permission, express or implied, of the owner of record that is used in connection with any of the following violations shall be subject to tow from any public street, public place, or private property, or impoundment by the Village.
1. Any Felony: Operation or use of a motor vehicle in connection with the commission or attempted commission of any felony offense;
 2. Section 5/36-1: Operation or use of a motor vehicle in connection or attempted commission of any offense for which a motor vehicle may be seized and forfeited pursuant to 720 Illinois Compiled Statutes 5/36-1 et seq.;
 3. Section 5/11-501(DUI): Driving under the influence of alcohol or other drug or drugs, or intoxicating compounds, in violation of 625 Illinois Compiled Statutes 5/11-501;
 4. Section 5/24-1 (UW): Unlawful use of a weapon in violation of 720 Illinois Compiled Statutes 5/24-1, or aggravated discharge of a firearm in violation of 720 Illinois Compiled Statutes 5/24-1.5;
 5. Section 5/24-3.1 (Unlawful Possession): Unlawful possession of a firearm and fire ammunition in violation of 720 Illinois Compiled Statutes 5/24-3.1;

6. Section 5/6-303 (DWLS; DWLR): Driving while driver license, permit, or privilege to operate a motor vehicle is suspended or revoked, 625 Illinois Compiled Statutes 5/6-303, including issuance of any warrant by any Clerk of the Circuit Clerk in the State of Illinois for failure to appear to answer such charge; and 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;
 7. Section 550/1 or 550/2 (Cannabis): 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 Illinois Cannabis Control Act, 720 Illinois Statutes 550/2;
 8. Section 570/100 (Controlled Substances): Operation or use of a motor vehicle in connection with the commission or attempted commission of any offense in violation of the Illinois Controlled Substances Act, Illinois Compiled Statutes 570/100;
 9. Section 5/6-101 (Expired DL): Operation or use of a motor vehicle with an expired driver's license in violation of Section 6-101 of the Illinois Compiled Statutes 5/6-101, where the period of expiration is greater than one year;
 10. Section 5/6-101 (No DL): 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 the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/6-101, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; and specifically excepting a person who is less than seventeen (17) years of age and operating a motor vehicle on any street or highway in violation of the Child Curfew Act, 720 Illinois Compiled Statutes 555/0.01 et seq.
- B. Administrative Processing Fee: The owner of record of such vehicle shall be liable to the Village for an administrative processing fee of five hundred dollars (\$500.00), in addition to any towing and storage fees which result from the tow and impoundment of the vehicle.
- C. General Regulations:
1. The provisions of this Chapter shall not apply to a vehicle which was stolen at the time of towing and impoundment, provided that the theft of the vehicle had been reported to appropriate police authorities within twenty four (24) hours of discovery of the theft.

2. The owner of the vehicle shall be subject to all fees set forth in this Chapter in addition to any penalties that may be assessed by a Court of law for the underlying violations.
3. The provisions of this Chapter shall not replace or otherwise abrogate any existing State or Federal laws or Village ordinances pertaining to seizure, towing, and impoundment.
4. Fees for towing and storage of a vehicle under this Chapter shall be those approved from time to time by the Chief of Police.

D. Probable Cause and Notice:

1. Whenever a police officer has a probable cause to believe that a vehicle is subject to tow and impoundment pursuant to this Chapter the officer shall, after issuing applicable citations to the driver or operator of the motor vehicle, order the towing of the vehicle to a facility authorized by the Chief of Police, and its impoundment there subject to the provisions in this Chapter. Provided, in cases where the vehicle has been involved in the commission of a felony, under subsection A(1) of this section, the tow may take place prior to the preparation and service of appropriate felony complaints.
2. At the time of the tow, the police officer shall give written notice that the vehicle will be towed and impounded, and of the right to a hearing pursuant to this Chapter, to the operator or person found to be in control of the vehicle at the time of the alleged violation.
3. If the owner of the motor vehicle is not present at the time of the tow, the Village Police Department shall within three (3) business days of the towing and impoundment deliver notice of the tow and impoundment of said vehicle, and of the right to a hearing pursuant to this Chapter, to the owner of record of the vehicle, by personal service or certified mail, at the address listed on the owner's vehicle registration.
4. An owner may secure release of an impounded vehicle pending completion of the preliminary hearing provided for in Section II of the Chapter or the hearing provided in Section III of the Chapter by posting a bond of cash, money order, or certified check with the police department in the amount of five hundred dollars (\$500.00) plus all applicable towing charges plus any accrued impounded charges.

5. The Village Police Department shall hold the cash bond, and accrued towing and storage charges, until such time as the hearing is completed in conformance with this Chapter.

7-5-2: **PRELIMINARY REVIEW:** Whenever the Village tows and impounds a motor vehicle; the owner thereof may request a preliminary hearing within one day of the day of the tow.

- A. Such request shall be made to the Village Attorney (or his designee), who shall conduct a preliminary review within twenty four (24) hours of the request.
- B. The hearing may be conducted by telephone or in person, and all interested parties will be given an opportunity to be heard. The formal rules of evidence shall not apply.
- C. If after the preliminary review, the Village Attorney (or his designee) believes that there is probable cause for towing the vehicle, he shall order the continued impounded of the vehicle, subject to payment of the amounts due, or in the alternative, posting of the bond described in this Chapter.
- D. If the Village Attorney (or his designee) determines that there is no such probable cause, the motor vehicle shall be returned to the owner without payment of the administrative processing fee, the tow charges, or any storage or other fees.
- E. For purpose of this section, Saturdays, Sundays and holidays shall not be included when computing time.

7-5-3: **HEARING:**

- A. Within ten (10) days after the vehicle is towed and impounded pursuant to this Chapter, the owner of record may file at the office of the Village Clerk his/her written request for a hearing to contest the basis for the tow.
- B. The hearing shall be conducted by a trained hearing officer appointed from time to time by the Village Board of Trustees.
- C. The hearing shall be conducted within seven (7) days of filing such written request, unless the parties mutually agree to another date. The Village shall notify the owner of the date and time for hearing not less than two (2) days before said date.

D. The hearing shall be subject to the following rules:

1. At any time prior to the hearing the hearing officer may, at the request of the Village or the owner, issue a subpoena to any witness to appear and give testimony at the hearing.
2. The formal rules of evidence shall not apply at the hearing.
3. Hearsay testimony shall be admissible if such testimony is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
4. The signed report of the arresting officer, and the reports of any other officers involved in the incident which resulted in towing the vehicle, shall be admissible.
5. The hearing officer shall record the proceedings.

E. Outcome of hearing:

1. If, after the hearing officer determines by a preponderance of the evidence that the vehicle was used in connection with a violation set forth in this Chapter the hearing officer shall enter an order finding the owner of the vehicle civilly liable to the Village for an administrative fee of five hundred dollars (\$500.00), plus the towing and impoundment charges. If bond has been posted in accordance with the requirements of the Chapter, the order shall be final. The Village shall apply the bond to the administrative fee and all towing and impoundment charges due.
2. If after the hearing, the hearing officer enters an order finding the owner of record liable to the Village for the administrative fee and the towing and impoundment charges, any vehicle then remaining impounded shall continue to be impounded until the owner pays the administrative fee to the Village, plus all applicable towing and impoundment charges to the tow operator.
3. If the owner of records fails to appear at the hearing, the hearing officer shall enter a default order in favor of the Village.

4. If the hearing officer finds by a preponderance of the evidence that the vehicle was not used in connection with an offense set forth in Section III of this Chapter, the hearing officer shall order the immediate return of the vehicle to the owner, without payment of the administrative processing fee and the towing or impoundment fees. Any cash bond on deposit shall also be ordered to be returned to the owner.
5. The order of the hearing officer shall be final, and is subject to review in accordance with the provisions of the Illinois Administrative Review law.

7-5-4: **DEBT TO VILLAGE:**

- A. The administrative processing fee due from the owner of any such vehicle shall constitute a debt and owing to the Village. The debt may be satisfied by the bond posted pursuant to this Chapter, or where no bond is posted, by cash, money order, or certified check.
 1. If the administrative processing fee, and the applicable towing and impoundment fees, are not paid within thirty (30) days after the administrative fee is imposed against the owner of record who defaults by failing to appear at the hearing, the vehicle shall be deemed unclaimed and maybe disposed of in the manner provided by law for the deposition of any unclaimed vehicle under the Illinois Vehicle Code.
 2. If all other cases, if the administrative processing and applicable towing and impoundment fees are not paid within thirty (30) day after the expiration of time for the administrative review of the hearing officer's determination, or within thirty (30) days after an action seeking administrative review has been fully resolved in favor of the Village, whichever is applicable, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the deposition of any unclaimed vehicle under the Illinois Vehicle Code.

7-5-5: **VEHICLE POSSESSION; OWNER OR LIENHOLDER:**

- A. Except as otherwise provide by law, no owner, lienholder, or other person shall be legally entitled to take possession of a vehicle impounded under this section until the administrative fee, and the towing and impoundment fees, have been paid in full, or in the alternative, bond has been posted for same.

- B. Whenever a person with a lien of records against an impounded vehicle has commenced foreclosure proceedings, possession of the vehicle shall be delivered to such person if she or he agrees, in writing, to pay over to the Village from the amount of proceeds resulting from foreclosure sale, the applicable administrative fee, towing and impoundment charges, and any amounts required to be paid to any other lienholders of record.