

## ORDINANCE

### **AN ORDINANCE AMENDING CHAPTER 15 ("MOTOR VEHICLES AND TRAFFIC"), ARTICLE 10 ("TOWING, IMMOBILIZATION AND IMPOUNDMENT OF MOTOR VEHICLES OR MOTOR VEHICLES CONTAINING UNLAWFUL FIREARMS") OF THE OAK PARK VILLAGE CODE TO ADD A NEW SECTION 15-10-20 ("VEHICLE SEIZURE AND IMPOUNDMENT")**

**WHEREAS**, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

**WHEREAS**, as a home rule unit, the Village of Oak Park's powers shall be construed liberally as held by the Illinois Supreme Court in the case of *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

**WHEREAS**, pursuant to the Village's home rule authority, the Village Board has determined to authorize the impoundment of motor vehicles for certain offenses and the payment of a penalty for the release of an impounded vehicle as set forth herein.

**NOW THEREFORE, BE IT ORDAINED** by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

**Section 1. Recitals Incorporated.** The above recitals are incorporated herein as though fully set forth.

**Section 2. Village Code Amended.** Chapter 15 ("Motor Vehicles and Traffic"), Article 10 ("Towing, Immobilization and Impoundment of Motor Vehicles or Motor Vehicles Containing Unlawful Firearms") is amended to add a new Section 15-10-20 ("Vehicle Seizure and Impoundment") to read as follows:

#### **15-20-120: VEHICLE SEIZURE AND IMPOUNDMENT:**

A. For purposes of this section and in accordance with Section 11-208.7 of the Illinois Vehicle Code (625 Illinois Compiled Statutes 5/11-208.7), the following terms shall be defined as follows:

**HEARING OFFICER:** A licensed attorney who meets the qualifications set forth in section 29-1-8 of this Code.

**LESSEE:** A person operating a motor vehicle pursuant to a lease or any other such written document vesting exclusive possession, use, control and responsibility of the motor vehicle during the specified time period.

LIENHOLDER OF RECORD: A person holding a security interest in a vehicle.

OWNER OF RECORD: The registered owner or record titleholder of a motor vehicle as registered with the Secretary of State of the State of Illinois.

B. Police officers shall have the right to seize and impound a motor vehicle, operated used or in the physical control of any person with the permission, express or implied, of the owner of record, on any public street within the Village that is used in the commission or furtherance of violation of the following offenses, including any subsequent amendments to such provisions:

1. Operation or use of a motor vehicle in 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 (Seizure), 720 Illinois Compiled Statutes 5/36-1, of the Illinois Criminal Code of 2012;

2. Driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of Section 11-501 (Driving While Under the Influence), 625 Illinois Compiled Statutes 5/11-501, of the Illinois Vehicle Code of 2017;

3. Operation or use of a motor vehicle in the commission of, or in the attempt to commit an offense in violation of Section 550/1, et seq., 720 Illinois Compiled Statutes 550/1, et seq., of the Cannabis Control Act;

4. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Section 570/100, et seq., 720 Illinois Compiled Statutes 570/100, et seq. of the Illinois Controlled Substances Act;

5. Operation or use of a motor vehicle in the commission of, or in the attempt to commit an offense in violation of Section 24-1 (Unlawful Use of Weapons), 720 Illinois Compiled Statutes 5/24-1, Section 24-1.5 (Reckless Discharge of a Firearm), 720 Illinois Compiled Statutes 5/24-1.5, or Section 24-3.1 (Unlawful Possession of Firearms and Firearm Ammunition), 720 Illinois Compiled Statutes 5/24-3.1, and Section 24-3.3 (Unlawful Sale or Delivery of Firearms on the Premises of any School), 720 Illinois Compiled Statutes 5/24-3.3, of the Illinois Criminal Code of 2012;

6. Operation or use of a motor vehicle while possessing, carrying or firing an unlawful weapon in violation of Section 27-2-1 (Unlawful to Possess or Carry; Exceptions), and 27-3-1 (Firing of Weapons Prohibited; Exceptions) of this Code;

7. Driving while a driver's license, permit or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303, 625 Illinois Compiled Statutes 5/6-303, of the Illinois Vehicle Code of 2017 except that vehicles shall not be subjected to seizure or impoundment if the suspension is for unpaid citations (parking or moving) or due to a failure to comply with emission testing;
8. 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 Compiled Statutes 550/1 *et seq.*, or the Illinois Controlled Substances Act, 720 Illinois Compiled Statutes 570/100 *et seq.*;
9. Operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 (Drivers Must Have Licenses or Permits), 625 Illinois Compiled Statutes 5/6-101, of the Illinois Vehicle Code of 2017 if the driver's license has been expired for more than one year;
10. Operation or use of a motor vehicle without ever having been issued a driver's license or permit or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age, in violation of Section 6-101 (Drivers Must Have Licenses or Permits), 625 Illinois Compiled Statutes 5/6-101, of the Illinois Vehicle Code of 2017;
11. Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit court clerk in Illinois for failing to answer charges that the driver violated Section 6-101 (No Valid Driver's License), 625 Illinois Compiled Statutes 5/6-101, 6-303 (Suspended or Revoked License), 625 Illinois Compiled Statutes 5/6-303, or 11-501 (Driving Under the Influence), 625 Illinois Compiled Statutes 5/11-501, of the Illinois Vehicle Code of 2017;
12. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a theft or a related offense as set forth Article 16 (Theft and Other Related Offenses) of the Illinois Criminal Code of 2012, 720 Illinois Compiled Statutes 5/16-0.1 *et seq.*;
13. Sections 9-3.3 (Drug-induced Homicide), 11-14 (Prostitution), 11-14.1 (Solicitation of a Sex Act), 11-14.3 (Promoting Prostitution); 11-14.4 (Promoting Juvenile Prostitution), 11-18 (Patronizing a Prostitute), 11-18.1 (Patronizing a Minor Engaged in Prostitution), 12-2 (Aggravated Assault), 12-4 (Aggravated Battery), 20-1.1 (Aggravated Arson), 24-2.1 (Unlawful Use of Firearm Projectiles), 24-3.3 (Unlawful Sale/Delivery of Firearms on Premises of any School), or 33A-2 (Armed Violence) of the Illinois Criminal Code of 2012 (720

Illinois Compiled Statutes 5/9-3.3, 5/11-14, 5/11-14.1, 5/11-14.3, 5/11-14.4, 5/11-18, 5/11-18.1, 5/12-2, 5/12-4, 5/20-1.1, 5/24-2.1, 5/24-3.3 or 5/33A-2);

14. Section 3.5 (Possession of Drug Paraphernalia), 720 Illinois Compiled Statutes 600/3.5, of the Drug Paraphernalia Control Act;

15. Section 6-101(d) through (e) (No Valid Driver's License), 625 Illinois Compiled Statutes 5/6-101 (d)-(e) of the Illinois Vehicle Code of 2017 in conjunction with a violation of Section 3-707 (Operation of Uninsured Vehicle) and Section 7-601 (Required Liability Insurance), 625 Illinois Compiled Statutes 5/3-707 and 5/7-601 of the Illinois Vehicle Code of 2017 or a similar provision of this Code;

16. Operation of a motor vehicle when registration is cancelled, suspended or revoked in violation of Section 3-702 (Registration Cancelled, Suspended or Revoked), 625 Illinois Compiled Statutes 5/3-702 of the Illinois Vehicle Code of 2017;

17. Operation or use of a motor vehicle resulting in the personal injury or death of person in violation of Section 11-401, 625 Illinois Compiled Statutes 5/11-401, of the Illinois Vehicle Code of 2017;

18. Operation or use of a motor vehicle in a reckless manner in violation of Section 11-503 (Reckless Driving), 625 Illinois Compiled Statutes 5/11-503 of a 625 Illinois Compiled Statutes 5/11-503, including without limitation: (i) while the vehicle is part of a funeral procession; or (ii) in a manner that interferes with a funeral procession;

19. Operation of a motor vehicle while street racing in violation of Section 11-506 (Street Racing), 625 Illinois Compiled Statutes 5/11-506, of the Illinois Vehicle Code 2017;

20. The use of a motor vehicle as part of the commission of a felony not otherwise expressly listed herein shall be subject to seizure and impoundment under this section; and

21. Operation or use of a motor vehicle in the commission of, or in an attempt to commit any violation set forth in Section 11-208.7 (Administrative Fees), 625 Illinois Compiled Statutes 5/11-208.7 of the Illinois Vehicle Code of 2017 and/or any misdemeanor or felony offense in Section 36-1 (Seizure), 720 Illinois Compiled Statutes 5/36.1 of the Illinois Criminal Code of 2012 which may not otherwise referenced herein or may be subsequently added via amendment.

C. The owner of record of a vehicle that has been seized and impounded pursuant to this section shall be liable to the Village for an administrative penalty of five hundred fifty dollars (\$550.00) plus towing and storage fees. The administrative penalty of five hundred fifty dollars (\$550.00) shall be paid to the Village of Oak Park. Towing and/or storage fees shall be collected by and paid to the person, firm, or entity that tows and stores the impounded vehicle.

D. 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 by a towing company licensed under Section 15-10-1 of this Code. When the vehicle is towed, the police officer shall notify, or make a reasonable attempt to notify, the owner of record, lessee, or person identifying himself or herself as the owner of record or lessee of vehicle, or any the person who is found to be in control of the vehicle at the time of the alleged violation, if there is such a person, of the fact of the seizure and of the vehicle owner of record's or lessee's right to request an administrative hearing to be conducted under this section. Said vehicle shall be impounded pending the completion of the hearing provided for in subsection (e) herein, unless the owner of record or lessee of the vehicle posts, with the Village a cash bond in the amount of five hundred fifty dollars (\$550.00) plus towing and storage fees.

E. Within ten (10) days after a vehicle is seized and impounded pursuant to this section, the Village shall notify, by mailing a notice via first class mail or certified mail, return receipt requested, to the owner of record or lessee and any lienholder of record of the date, time and location of a hearing that will be conducted pursuant to this section. Notice served under this section is effective upon mailing of the written notice to address of the owner of record, lessee and any lienholder of record, as contained in registration records of the Illinois Secretary of State. The hearing shall be conducted no later than forty-five (45) days after the vehicle was seized pursuant to the applicable procedures set forth in section 29-1-11 of this Code. All interested persons shall be given a reasonable opportunity to be heard at the hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence shall be admissible.

At the conclusion of the hearing, the hearing officer shall issue a written decision either sustaining or overruling the seizure and impoundment of the vehicle. If, after the hearing, the hearing officer determines by a preponderance of evidence that the vehicle, operated with the permission, express or implied, of the owner, was used in the commission of any of the violations set forth in this section, the hearing officer shall enter an order requiring the vehicle to continue to be impounded until the owner of record, lessee, or lienholder of record pays the administrative penalty of five hundred

fifty dollars (\$550.00) plus payment towing and storage fees. If an administrative penalty is imposed pursuant to this section, such penalty shall constitute a debt due and owing to the village. If a cash bond was posted, the bond shall be forfeited to the Village. If the hearing officer overturns the basis for the impoundment of the vehicle, he or she shall order the return of the vehicle and any cash bond that may have been posted.

F. Unless the hearing officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the owner, lessee or lienholder of record until all penalties and fines and towing and storage charges are paid.

G. Pursuant to Chapter 4, Article II of the Illinois Vehicle Code, entitled "Abandoned, Lost, Stolen or Unclaimed Vehicles, 625 Illinois Compiled Statutes 5/4-201 *et seq.*," which is adopted and incorporated herein, any motor vehicle that is not reclaimed within thirty-five (35) days after the entry of a final order following a hearing under this section shall be deemed abandoned and may be disposed of as an unclaimed vehicle as provided by law.

H. This section shall not replace or otherwise abrogate any existing state or federal laws or local ordinances pertaining to vehicle seizure and impoundment.

I. The statutory provisions of the Illinois Administrative Review Act ("Review Act"), 735 Illinois Compiled Statutes 5/3-101 *et seq.*, and Section 11-208.7 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/11-208.7, are hereby adopted and incorporated into this section. The Administrative Review Act shall apply to the review of all final decisions issued by the administrative hearing officer in administrative proceedings under this section.

J. Unless stayed by a court of competent jurisdiction, any fine or penalty, imposed under this section which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Review Act may be enforced in the same manner as any judgment entered by a court of competent jurisdiction.

**Section 3. Village Code Amended.** Chapter 27 ("Weapons"), Article 4 ("Penalties") Section 27-4-4 ("Impoundment of Motor Vehicle Containing Unlawful Weapons") is deleted in its entirety as follows:

**27-4-4: RESERVED**

**~~IMPOUNDMENT OF MOTOR VEHICLE CONTAINING UNLAWFUL WEAPONS:~~**

~~Any motor vehicle which a police officer has probable cause to believe contains~~

~~any weapon in violation of Section 27-2-1 shall be subject to seizure and impoundment, and the owner of record, as established by the title records of the Illinois Secretary of State, of said motor vehicle may avoid prosecution and obtain possession of such motor vehicle by paying the minimum penalty amount of five hundred dollars (\$500.00) within fifteen (15) days of the violation, plus all related towing and storage fees. If the vehicle owner, however, requests a court date on the violation within fifteen (15) days of the violation or the fifteen (15) day time period from the date of the violation has elapsed without a request for a hearing from the owner and the Village, at its option, seeks to prosecute the violation in court rather than enforce the minimum penalty administratively, then any fine for said violation shall be determined by the court in accordance with Section 27-4-1 above. A motor vehicle shall not be subject to seizure and impoundment if the motor vehicle was stolen at that time and the theft was reported to the appropriate police authorities within twenty four (24) hours after the theft was discovered or reasonably should have been discovered, or the motor vehicle is operating as a common carrier and the weapon is brought upon the vehicle without the knowledge of the person in control of the motor vehicle.~~

~~A. 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. Before or at the time the vehicle is towed, the police officer shall notify the owner of record in accordance with notification provisions set forth in chapter 15, article 10 of this code, and shall notify any person identifying him or herself, if any, 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 seizure and impoundment of the vehicle and of the vehicle owner's right to request a hearing pursuant to section 15-10-10 of this code.~~

~~B. Owners of motor vehicles towed and impounded pursuant to this section shall be provided with notice and an opportunity for a hearing in accordance with the procedures set forth in chapter 15, article 10 of this code relating to the immobilization or towing and impoundment of motor vehicles, except that the following provisions shall be in addition to and shall take precedence over conflicting provisions in chapter 15, article 10 of this code in all instances in which a motor vehicle is towed and/or impounded pursuant to this section, based upon a police officer having probable cause to believe that a motor vehicle contains an unlawful weapon in violation of section 27-2-1 of this chapter:~~

~~1. At any time within the fifteen (15) day time period following the violation, the owner may request a court date in the circuit court of Cook County to obtain a judicial determination on the sole issue of whether or not the owner transported or permitted to be transported unlawful weapons in his or her vehicle in violation of section 27-2-1 of this chapter.~~

~~2. If fifteen (15) days has elapsed from the date of the violation and the owner has failed to request a hearing, the Village may, at its option, administratively enforce the minimum penalty of five hundred dollars (\$500.00) against the owner in the manner set forth hereinbelow or it may choose to prosecute the violation in the circuit court and seek to enforce any judgment in the manner specified herein.~~

~~3. If, after the hearing, the hearing officer determines by a preponderance of evidence that the vehicle contained an unregistered firearm or a firearm not broken down in a nonfunctioning state and/or easily accessible and that none of the exceptions described in subsections 27-2-1A through L of this chapter applies, the hearing officer shall enter an order finding the owner of record of the vehicle civilly liable to the Village for an administrative penalty in the amount of five hundred dollars (\$500.00). If the owner of record fails to appear at the hearing, the hearing officer shall enter a default order in favor of the Village, requiring the payment to the Village of an administrative penalty in the amount of five hundred dollars (\$500.00). If the hearing officer finds at the conclusion of the hearing that no such violation occurred or that there is a court order which has determined that no violation occurred, then the hearing officer shall order the immediate return of the owner's vehicle or cash deposit. For purposes of this section, it shall constitute permission of the owner to transport illegal weapons in the owner's vehicle if the vehicle in which the weapon was being transported was in the possession and control of the person permitted to be in possession and control of the vehicle by the owner at the time of the violation.~~

~~4. If an administrative penalty is imposed pursuant to this section, such penalty shall constitute a debt due and owing to the Village. If a cash deposit has been posted pursuant to this section, the deposit shall be applied to the penalty. If a vehicle has been impounded when such a penalty is imposed, the Village may seek to obtain a judgment on the debt and enforce such judgment against the vehicle as provided by law. Except as otherwise provided in this section, a vehicle which has been properly impounded in accordance with this section shall remain impounded until: 1) the penalty, plus any applicable towing and storage fees, are paid to the Village, in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle or 2) the vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law. If the penalty and applicable fees are not paid within thirty (30) days after a penalty is imposed hereunder 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 penalty and applicable fees are not paid within thirty (30) days after the expiration of 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 Village,~~



~~whichever is applicable, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles.~~

~~5. Except as otherwise provided by law, no owner, lienholder or other person shall be legally entitled to take possession of a vehicle impounded under this Section until the civil penalty and 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 to the Village the amount of the net proceeds of any foreclosure sale, less any amounts required to pay all lienholders of record, up to five hundred dollars (\$500.00), plus the applicable fees.~~

~~6. Any final decisions rendered by the hearing officer under this Section shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, 735 Illinois Compiled Statutes, 5/3-101 et seq., as amended, and rules adopted pursuant thereto.~~

**Section 4. Severability and Repeal of Inconsistent Ordinances.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

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**Section 5. Effective Date.** This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 201\_, pursuant to a roll call vote at follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Andrews				
Trustee Boutet				
Trustee Button				
Trustee Moroney				
Trustee Taglia				
Trustee Tucker				

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Anan Abu-Taleb, Village President

**ATTEST**

\_\_\_\_\_  
Vicki Scaman, Village Clerk

Published in pamphlet form this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Vicki Scaman, Village Clerk