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CITY OF TROY

ORDINANCE NO. 2011 - ~~22~~

AN ORDINANCE OF THE CITY OF TROY, ILLINOIS, AMENDING TITLE VII,
TRAFFIC CODE, CHAPTER 70 - GENERAL REGULATIONS, TO INCLUDE
AND AUTHORIZE VEHICLE SEIZURE AND IMPOUNDMENT
PURSUANT TO 625 ILCS 5/11-208.7

ADOPTED BY THE
CITY COUNCIL OF THE
CITY OF TROY, ILLINOIS
THIS 19 DAY OF DECEMBER, 2011

Published in pamphlet form by the authority of the City Council of the City of Troy,
Madison County, Illinois, this 19 day of December, 2011.

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AN ORDINANCE OF THE CITY OF TROY, ILLINOIS, AMENDING TITLE VII, TRAFFIC CODE, CHAPTER 70 - GENERAL REGULATIONS, TO INCLUDE AND AUTHORIZE VEHICLE SEIZURE AND IMPOUNDMENT PURSUANT TO 625 ILCS 5/11-208.7

WHEREAS, the Mayor and the City Council of the City of Troy, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety, and welfare of its citizens; and

WHEREAS, the corporate authorities of the City of Troy, Illinois, may define, prevent, and abate nuisances; and

WHEREAS, pursuant to 625 ILCS 5/11-208.7, effective date January 1, 2012, the City of Troy, Illinois, may provide by Ordinance procedures for the release of properly impounded vehicles and for the imposition of a reasonable administrative fee related to its administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle; and

WHEREAS, there is a public nuisance created by individuals operating motor vehicles upon the streets and highways of the City of Troy, Illinois, who are committing violations of certain laws within the City as specified herein; and

WHEREAS, it is essential to protect the safety, health and welfare of the citizens and the peace of the City of Troy, Illinois; and

WHEREAS, there is a danger to the safety of residents and property in the City of Troy, Illinois, by the use of motor vehicles to commit violations of certain laws within the City; and

WHEREAS, motor vehicle owners may be deterred from committing violations of certain laws with their motor vehicle, or induced to exercise greater care in transferring possession of their motor vehicle to another; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:

Section 1. The recitals set forth above are hereby incorporated herein as if fully set forth.

Section 2. Title VII, Traffic Code, Chapter 70 – General Regulations of the Code of Ordinances for the City of Troy, Illinois, is hereby

amended to include and authorize vehicle seizure and impoundment as follows:

TITLE VII. Traffic Code

Chapter 70 – General Regulations

Vehicle Seizure and Impoundment.

Section 70-60. Nuisance declared.

- A) Any motor vehicle used in connection with the following shall be declared a public nuisance and subject to seizure and impoundment under this article:
- 1) a violation of 625 ILCS 5/6-101, operating a motor vehicle with an expired license, permit, or a restricted driving permit if the period of expiration is greater than one (1) year, or operating a motor vehicle without ever having been issued a driver's license or permit; 625 ILCS 5/6-303, driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked, except a person whose driver's license, permit or privilege to operate a motor vehicle is suspended only for an unpaid citation (parking or moving) or a violation of 625 ILCS 5/13 et seq., the Emissions Inspection Law; a violation of 625 ILCS 5/11-204, fleeing or attempting to elude a peace officer; 625 ILCS 5/11-204.1, aggravated fleeing or attempting to elude a peace officer; 625 ILCS 5/11-401, motor vehicle accident involving death or personal injuries; 625 ILCS 5/11-402, motor vehicle accident involving damage to vehicle; 625 ILCS 5/11-403, duty to give information and render aid; 625 ILCS 5/11-404, duty upon damaging unattended vehicle or other property; 625 ILCS 5/11-501, driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof; 625 ILCS 5/11-503, reckless driving or aggravated reckless driving; 625 ILCS 5/11-506, street racing, aggravated street racing or 625 ILCS 5/11-601.5, driving forty (40) miles an hour or more in excess of the applicable limit of the Vehicle Code, or against whom a warrant has been issued by a Circuit Court for failing to appear to answer charges that the person was a) operating a motor vehicle with an expired driver's license (625 ILCS 5/6-101); b) operating a motor vehicle while that person's license was suspended or revoked (625 ILCS 5/6-303); or c) operating a motor vehicle while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof (625 ILCS 5/11-501);

- 2) a violation of 720 ILCS 5/11-6, indecent solicitation of a child; 720 ILCS 5/11-26, traveling to meet a minor; 720 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 5/12-7.3, stalking; 720 ILCS 5/16A-3, retail theft. when the value of the merchandise exceeds \$150.00; 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 5/20-1, arson; 720 ILCS 5/20-1.1, aggravated arson; 720 ILCS 5/20-2, possession of explosives or explosive or incendiary devices; 720 ILCS 5/21-1, criminal damage to property; or 720 ILCS 5/25-1(a)(1) or 5/25-1(d), mob action; of the Illinois Criminal Code;
 - 3) a violation of 720 ILCS 570/401, manufacture of controlled or counterfeit substance or controlled substance analog prohibited; 720 ILCS 570/401.1, controlled substance trafficking; or 720 ILCS 570/402(a), 570/402(b), or 570/402(c), possession of controlled or counterfeit substance, of the Controlled Substances Act;
 - 4) a violation of 720 ILCS 550/4, possession of more than ten (10) grams of any substance containing cannabis; 720 ILCS 550/5, manufacture, delivery, or possession with intent to deliver or manufacture prohibited; 720 ILCS 550/5.1, cannabis trafficking; 720 ILCS 550/5.2, delivery of cannabis on school grounds; or 720 ILCS 550/8, unauthorized production or possession of cannabis sativa plant, of the Cannabis Control Act; or
 - 5) a violation of 720 ILCS 600/3.5, possession of drug paraphernalia, of the Drug Paraphernalia Control Act.
- B) Any motor vehicle which is used in connection with the following shall also be declared a public nuisance and subject to seizure and impoundment under this article: a violation of 720 ILCS 5/24-1, unlawful use of weapons; 720 ILCS 5/24-1.5, reckless discharge of a firearm; 720 ILCS 5/24-3.1, unlawful possession of firearms and firearm ammunition; or 720 ILCS 5/24-3.3, unlawful sale or delivery of firearms on the premises of any school. This Section (B) shall not apply when the exemptions are satisfied as set forth in 720 ILCS 5/24-2.

Section 70-61. Seizure and impoundment.

Whenever a police officer has probable cause to believe that a motor vehicle is subject to seizure and impoundment pursuant to this article, the police officer shall provide for the towing of the motor vehicle according to police department procedures. When the motor vehicle is towed, the police officer shall notify or make a reasonable attempt to notify the

owner, lessee, or person identifying himself or herself as the owner or lessee of the vehicle, or the 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 a hearing. Said motor vehicle shall be impounded pending the completion of the hearing provided for in this article, unless the owner of the motor vehicle posts with the City a cash bond equal to the administrative fee as provided by this Ordinance and pays for all towing and storage charges.

Section 70-62. Administrative fee.

The owner of record of such motor vehicle subject to seizure and impoundment shall be liable to the City for an administrative fee of two hundred dollars (\$200.00) in addition to any towing and storage charges. In cases where the owner of record is indigent and presents sufficient information to ascertain assets and liabilities demonstrating an unreasonable hardship or peculiar difficulties, the amount of the administrative fee may be modified by the Chief of Police or designee. This article is in addition to and shall not replace or otherwise abrogate any existing state or federal laws or any ordinance that relates to the seizure and/or impoundment of motor vehicles, and any fee in this article shall be in addition to any and all penalties that may be assessed or imposed by a court for any criminal charges.

This article shall not apply: (1) if the motor vehicle used in the violation 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; (2) if the motor vehicle is operating as a common carrier and the violation occurs without the knowledge of the person in control of the motor vehicle; or (3) if the motor vehicle is subject to successful forfeiture proceedings under 725 ILCS 150/1 et seq., the Drug Asset Forfeiture Procedure Act, 720 ILCS 5136-1 et seq., the Seizure and Forfeiture of Vessels, Vehicles and Aircraft Act, or state or federal forfeiture laws. For purposes of this article, the "owner of record" or "owner" of a motor vehicle is the record title holder as registered with the Secretary of State, State of Illinois or a lessee who has possession, use, control and responsibility of the vehicle.

Section 70-63. Notice of hearing.

The owner shall be afforded the opportunity for a hearing, as provided in subdivision (b)(4) of Section 11-208.3 of the Code, and if said owner requests such a hearing within ten (10) days after a motor vehicle is seized and impounded pursuant to this article, the City shall notify by certified mail, return receipt requested, or by personal service, the owner of record, of the date, time and location of a hearing that will be conducted pursuant to this article. The notice shall state the fees that may be

imposed, and that a motor vehicle not released by cash bond and remaining in the City may be sold or disposed of by the City in accordance with applicable law.

Section 70-64. Hearing.

The hearing shall be conducted and held, unless affirmatively waived by the owner, or continued by the owner or by order of the hearing officer, no later than forty-five (45) days after the motor vehicle was seized, unless the motor vehicle was subject to unsuccessful forfeiture proceedings, in which case the hearing shall be conducted and held, unless affirmatively waived by the owner, or continued by the owner or by order of the hearing officer, no later than forty-five (45) days after the conclusion of the forfeiture proceedings. The hearing officer shall be an attorney licensed to practice law in the State of Illinois for a minimum of three (3) years. All interested persons shall be given a reasonable opportunity to be heard at the hearing. At any time prior to the hearing date, 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 will not apply at the hearing and hearsay evidence shall be admissible. If, after the hearing, the hearing officer determines by a preponderance of evidence that the motor 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 article, and that none of the exceptions applies, the hearing officer shall enter an order finding the owner of record of the motor vehicle civilly liable to the City for an administrative fee in the amount as set forth above which shall constitute a debt due and owing to the City. If the owner of record fails to appear at the hearing, the hearing officer shall enter a default order finding the owner of record of the motor vehicle civilly liable to the City for an administrative fee in the amount as set forth above which shall constitute a debt due and owing to the City, and a copy of which default order shall be sent to the registered owner via certified mail, return receipt requested. If a cash bond has been posted the bond shall be applied. If a motor vehicle has been impounded when such administrative fee is imposed, the City may seek to obtain a judgment on the debt and enforce such judgment against the motor vehicle as provided by law. However, if the hearing officer finds that no such violation occurred, the hearing officer shall order the return of the motor vehicle or cash bond, but the owner shall be responsible for any towing and storage charges. All final decisions of the hearing officer shall be subject to review under the provisions of 735 ILCS 5/3-101 et seq., the Administrative Review Law.

Section 3. If any section or provision of this Ordinance is declared invalid for any reason, such invalidity shall not affect or impair any of the remaining sections or provisions of this Ordinance which can be given effect without the invalid section or provision, and to this

end, the sections and provisions of this Ordinance are declared to be severable.

Section 4. That all ordinances or parts of ordinances conflicting with any of the provisions of this Ordinance shall be and the same is hereby repealed.

Section 5. This Ordinance shall be in full force and effect upon its passage, approval and publication as required by law.

PASSED by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 19 day of December, 2011.

Those voting aye: Adomite, Brannon, Evans, Hendrickson, Italiano
Lanahan, Metcalf, Partnet

Those voting nay: 0

Those absent: 0

APPROVED:

By: 

TOM CARAKER, Mayor
City of Troy, Illinois

ATTEST:

BY: 

TAMMY MITCHELL, Clerk
City of Troy, Illinois

(SEAL)