

ORDINANCE NO. 998

**AN ORDINANCE MAKING AMENDMENTS REGARDING VEHICLE  
IMPOUNDMENTS TO TITLE 7 OF THE MACKINAW VILLAGE CODE**

WHEREAS, on August 22, 2013, the State of Illinois adopted Section 5/11-208.7 of the Illinois Vehicle Code; and

WHEREAS, Section 5/11-208.7 of the Illinois Vehicle Code permits the charging of administrative fees for the release of properly impounded vehicles for certain offenses; and

WHEREAS, the Corporate authorities of the Village of Mackinaw in exercise of the power reserved to them under Section 5/11-208.7 of the Illinois Vehicle Code desire to adopt an ordinance establishing procedures for the impoundment and release of properly impounded vehicles and the charging of administrative fees that complies with the terms of Section 5/11-208.7 of the Illinois Vehicle Code.

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF  
TRUSTEES OF THE VILLAGE OF MACKINAW:**

**Section I:** Title 7 is hereby amended by adding a new Chapter 80 which shall be as follows:

**CHAPTER 80: OFFENSES SUBJECTING VEHICLES TO SEIZURE AND  
IMPOUNDMENT.**

Section

- 80.01 Definitions
- 80.02 Offenses subjecting vehicles to seizure and impoundment
- 80.03 Seizure and impoundment of vehicles
- 80.04 Administrative fee
- 80.05 Posting bond
- 80.06 Administrative hearing
- 80.07 Unclaimed vehicles
- 80.08 Liability for penalty and costs

## § 80.01 DEFINITIONS.

The following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

- (A) **ADMINISTRATIVE HEARING:** A hearing overseen by a hearing officer, as defined below, in which the owner, lessee, or lienholder of record of the vehicle seized or impounded may contest the merits of the alleged violation of subsection B of this Section, and in which a written decision shall be issued sustaining or overruling the vehicle seizure or impoundment upon a preponderance of the evidence presented.
- (B) **CONTROLLED SUBSTANCE:** Any substance as defined and included in the schedule contained in Article II of the Illinois Controlled Substances Act, as amended from time to time, and cannabis as defined in the Cannabis Control Act, as amended from time to time.
- (C) **DRIVING UNDER THE INFLUENCE:** Any violation as defined in Section 11-501 of the Illinois Vehicle Code, as amended from time to time.
- (D) **DRIVING WHILE LICENSE, PERMIT, OR PRIVILEGE TO OPERATE A MOTOR VEHICLE IS SUSPENDED OR REVOKED:** Any violation as defined in Section 6-303 of the Illinois Vehicle Code, as amended from time to time.
- (E) **OPERATION OF A MOTOR VEHICLE WITHOUT A VALID DRIVER'S LICENSE:** A violation of Section 6-101 and/or Section 6-303 of the Illinois Vehicle Code, as amended from time to time, where the driver's license or driving privileges have been suspended, revoked, cancelled, never obtained, or previously had been obtained and have been expired for not less than six months.
- (F) **OWNER OF RECORD:** The record titleholder to a motor vehicle as registered with the Secretary of State, State of Illinois.
- (G) **UNLAWFUL USE OF WEAPONS:** Any violation of Section 24-1 of the Criminal Code of 1961, as amended from time to time.
- (H) **HEARING OFFICER:** An attorney licensed with the State of Illinois to practice for a minimum of 3 years who is not an officer or employee of the Village.

## § 80.02 OFFENSES SUBJECTING VEHICLES TO SEIZURE AND IMPOUNDMENT.

The Village of Mackinaw may impound a vehicle and charge administrative fees and penalties for its release if the vehicle was used in the operation or used in the commission or

attempted commission of any of the following offenses and the person alleged to have operated or used the vehicle in the commission or attempted commission of said offense was arrested:

- (A) Any offense for which a motor vehicle may be seized and forfeited pursuant to Section 36-1 of the Criminal Code of 2012; or
- (B) 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 of the Illinois Vehicle Code; or
- (C) A felony or violation of the Cannabis Control Act; or
- (D) An offense in violation of the Illinois Controlled Substances Act; or
- (E) An offense in violation of Section 24-1, 24-1.5, or 24-3.1 of the Criminal Code of 1961 or the Criminal Code of 2012; or
- (F) Driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303 of the Illinois Vehicle Code; 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; or
- (G) Soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act or the Illinois Controlled Substances Act; or
- (H) Operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 of the Illinois Vehicle Code, if the period of expiration is greater than one year; or
- (I) 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, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or
- (J) Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated Section 6-101, 6-303, or 11-501 of the Illinois Vehicle Code; or
- (K) Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 or 16A of the Criminal Code of 1961 or the Criminal Code of 2012; or
- (L) Any other misdemeanor or felony offense in violation of the Criminal Code of 1961 or the Criminal Code of 2012, when so provided by local ordinance; or

(M) Operation or use of a motor vehicle in violation of Section 11-503 of the Illinois Vehicle Code:

- (1) While the vehicle is part of a funeral procession; or
- (2) In a manner that interferes with a funeral procession.

#### **§ 80.03 SEIZURE AND IMPOUNDMENT OF VEHICLES.**

Whenever a police officer has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to this chapter, the police officer shall cause the motor vehicle to be towed to an authorized towing facility.

(A) When the vehicle is towed, the police officer shall notify, or make a reasonable attempt to notify, the owner, lessee, or person identifying themselves as the owner or lessee of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged offense of the following:

- (1) To the fact of the seizure and of the vehicle owner's or lessee's right to an administrative hearing.
- (2) That the motor vehicle will remain impounded pending the completion of an administrative hearing as provided in this Section unless the owner or lessee posts a bond as provided in this Section, or waives their right to a hearing and pays an administrative fee.

(B) The provisions of this subsection shall not apply if, at the time of the offense, the vehicle was found to be stolen and the theft was reported to the appropriate police authority within 24 hours after the theft was, or reasonably should have been, discovered, or if the vehicle is a common carrier, i.e., a bus, or a taxi carrying paying passengers.

#### **§ 80.04 ADMINISTRATIVE FEE.**

If the owner of record waives their right to a hearing and pays a \$250.00 administrative fee and towing and storage costs, then the provisions of Sections 80.05 and 80.06 regarding posting bond and providing for an administrative hearing shall not apply.

#### **§ 80.05 POSTING BOND.**

If a bond in the amount of \$250.00 is posted with the Village of Mackinaw, the impounded vehicle will be released to the owner of record upon the payment of the towing and storage costs

by the owner of record. If after a hearing a penalty is imposed for a violation of this Chapter, the bond will be forfeited to the Village; provided, that if a violation of this Chapter is not proven, the bond will be returned to the person posting the bond. All bond money posted pursuant to this chapter will be held by the village until the hearing officer issues a decision, or, if there is a judicial review, until the Tazewell County Circuit Court issues its final decision.

#### **§ 80.06 ADMINISTRATIVE HEARING.**

When a vehicle is impounded by the Village of Mackinaw, an administrative hearing shall be held, as required by 625 ILCS 5/11-208.7(d). The administrative hearing shall be conducted by a hearing officer, who is an attorney licensed to practice law in Illinois with a minimum of 3 years' experience.

- (A) When a vehicle is impounded by the Village of Mackinaw, the owner, lessee, or lienholder of record shall be given notice of an administrative hearing. The notice shall:
  - (1) Be served upon the owner, lessee, or lienholder of record by personal service or by first class mail to the interested party's address as registered with the Secretary of State.
  - (2) Be served within 10 days after the vehicle is impounded by the Village of Mackinaw.
  - (3) Contain the date, time, and location of the administrative hearing.
- (B) The administrative hearing shall be held within 30 days of the seizure or impoundment of the vehicle, after satisfactory notice has been served.
- (C) The following procedures shall be observed in the administrative hearings held pursuant to this Chapter.
  - (1) All interested parties shall be given a reasonable opportunity to be heard at the hearing. All testimonies shall be given under oath.
  - (2) All hearings shall be recorded. The record shall be maintained until the deadline for judicial review of the hearing officer's final decision has passed. The record of the hearing shall contain:
    - (a) A record of the testimony presented at the hearing.
    - (b) All documents presented at the hearing.
    - (c) A copy of the notice of hearing.

- (d) A copy of the findings and final decision of the hearing officer.
- (3) The hearing officer has authority under 65 ILCS 5/11-208.3(b)4 to administer oaths, and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. The hearing officer shall not present the Village's case; however, documentary evidence that has been prepared by a department or agency of the Village may be presented at the hearing by the hearing officer.
- (4) The owner of record has the right to be represented by counsel at the hearing, at their own expense.
- (5) Formal and technical rules of evidence will not apply at the hearing; hearsay testimony will be allowed and will be admissible.
- (6) The hearing officer is statutorily empowered to administer oaths, and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers, as specified in 65 ILCS 5/11-208.3(b)4.
- (7) If the owner of record fails to appear at the hearing, the hearing officer shall enter a decision of default in favor of the Village of Mackinaw, which decision shall require the forfeit of posted bond, or if bond was not posted, the payment of a penalty of \$250.00 plus towing and storage costs.
- (D) At the conclusion of the administrative hearing, the hearing officer shall issue a written decision letter sustaining or overruling the vehicle impoundment.
- (E) If the basis for the vehicle impoundment is sustained by the hearing officer upon a preponderance of the evidence, any bond posted to secure the release of the vehicle shall be forfeited to the Village of Mackinaw. If bond was not posted, the hearing officer shall order the continued impoundment of the vehicle until the owner of the vehicle pays to the Village a penalty in the amount of \$250.00, plus towing and storage costs. This penalty shall be a debt owed to the Village.
- (F) If the hearing officer finds on a preponderance of the evidence that there is not reason to believe the vehicle was used as specified above in subsection B, the vehicle shall be released to the owner, lessee, or lienholder of record without any administrative fees, penalties, or towing and storage charges. The Village of Mackinaw shall be liable for the payment to the towing and storage company or for the restitution to the owner, lessee, or lienholder of record, whichever may apply, for the towing and storage charges of a vehicle improperly seized or impounded under this Section.

(G) All final decisions of the hearing officer shall be subject to review by the Tazewell County Circuit Court.

(H) Post-Hearing Notice:

- (1) A notice of the final decision of the hearing officer shall be delivered to the owner, lessee, or lienholder of record after the administrative hearing.
- (2) The post-hearing notice shall inform the owner, lessee, or lienholder of record of their right to appeal the hearing officer's final decision to the Tazewell County Circuit Court.
- (3) If the final decision was in favor of the Village and the penalty remains unpaid, the notice shall contain a warning that failure to pay the penalty due the Village may result in the Village enforcing the decisions in the same manner as a judgement entered in the Tazewell County Circuit Court to collect the unpaid penalty.

#### **§ 80.07 UNCLAIMED VEHICLES.**

If the vehicle has not been retrieved from the towing facility or storage facility within 90 days of impounding or within 60 days after the administrative hearing officer issues a written decision, whichever is less, and if there is no appeal of the final administrative decision, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles under the Illinois Vehicle Code.

#### **§ 80.08 LIABILITY FOR PENALTY AND COSTS.**

- (A) The owner or lessee of a motor vehicle that is seized or impounded shall be liable to the Village of Mackinaw for a penalty of \$250.00 dollars in addition to any fees for the towing and storage of the motor vehicle. Fees for towing and storage are establishing by the towing company, not by the Village.
- (B) A vehicle impounded pursuant to this chapter shall remain impounded until the earlier of the following to occur:
  - (1) The penalty is paid to the Village, and all towing and storage costs are paid to the towing company; or
  - (2) A bond in an amount equal to the liability of the owner as provided in subsection (E) of this Section is posted with the Village, and all applicable towing and storage costs are paid to the towing company; or

- (3) The vehicle is deemed unclaimed, in which case, the vehicle shall be disposed of in the manner provided by law for the disposition of abandoned and unclaimed vehicles.
- (C) Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed under this Section which remains unpaid in whole or in part after 35 days from the date notice of the final decision was delivered to the owner of record, which is the deadline for seeking judicial review of the hearing officer's decision under the Administrative Review law, may be enforced in the same manner as a judgement entered by a court of competent jurisdiction.
- (D) Except as otherwise specifically provided by law, no owner, lienholder, or any other person shall be legally entitled to take possession of a motor vehicle impounded under this chapter until the penalty and all towing and storage costs applicable under this chapter have been paid in full.
- (E) Whenever a person or other entity with a lien of record against an impounded vehicle has proof of commenced foreclosure or repossession proceedings, and also provides the Village with a hold harmless letter, possession of that vehicle shall be given to that lienholder upon payment of bond and all towing and storage costs.

**Section II:** If any section or part of this Ordinance is held invalid, it shall not affect the validity of the remainder of this ordinance.

**Section III:** This Ordinance shall take effect 10 days after publication thereof as provided by law.



**PASSED AND APPROVED** at a regular meeting of the President and Board of Trustees of the Village of Mackinaw this 24<sup>th</sup> day of August, 2020; and upon role call the vote was as follows:

**AYES:** 5

**NAYS:** 0

**ABSENT:** 1

**ABSTAINING:**

**APPROVED** this 24<sup>th</sup> day of August, 2020.



Attest:

President



Village Clerk