

**ORDINANCE NO. 2021- 4187**

**ORDINANCE AMENDING CHAPTER 10, ARTICLE XXII -  
IMPOUNDMENT OF MOTOR VEHICLES BY REPEALING AND REPLACING  
SECTIONS 10-22-101 THROUGH 10-22-104.**

**WHEREAS**, the Corporate Authorities for the Village of Roselle adopted Sections 10-22-101 through 10-22-104 of Article XXII of Chapter 10 of the Roselle's Village Code to provide for the regulation of impoundment of motor vehicles; and

**WHEREAS**, the Cannabis Act and other related legislation has recently been amended and signed into law by Governor Pritzker; and

**WHEREAS**, the Cannabis Act legalizes the adult possession and use cannabis subject certain restrictions; and

**WHEREAS**, Certain violations of the Illinois Vehicle Code under section 625 ILCS 5/6-303 are no longer subject to seizure impoundment;

**NOW THEREFORE, BE IT ORDAINED**, the Mayor and Board of Trustees for the Village of Roselle, for Cook and DuPage Counties, Illinois, that Section 10-22-101; Section 10-22-102; Section 10-22-103 and Section 10-22-104, of Chapter 10, Article XXII the Roselle Village Code are hereby repealed and rescinded and replaced in their entirety with new Sections 10-22-101 through 10-22-105 of Chapter 10 Article 22 "Impoundment of Motor Vehicles" which shall read:

**SECTION ONE:**

**ARTICLE XXII - IMPOUNDMENT OF MOTOR VEHICLES**

**Sec. 10-22-101. - Impoundment of motor vehicles used in connection with illegal activities.**

- (a) *Impoundment.* A motor vehicle, operated with the express or implied permission of the owner of record, that is used in connection with any of the following violations, or which may jeopardize the public's safety and safe vehicular movement and in furtherance of public safety or in the exercise by the police department of its community caretaker functions, may be subject to tow and impoundment by the Village for the following violations:

(b) *Violations.*

- (1) Operation or use of a motor vehicle in the commission or attempted commission of any offense for which a motor vehicle may be seized and forfeited pursuant to 720 ILCS 5/36-1 et seq.; or
- (2) Driving under the influence of alcohol, other drug or drugs, or intoxicating compounds, in violation of 625 ILCS 5/11-501, or a similar provision of the Village Code; or
- (3) Operation or use of a motor vehicle in connection with the commission or attempted commission of any offense in violation of the provisions of the Illinois Cannabis Control Act, 720 ILCS 550/1 et seq., provided, however, that no vehicle shall be subject to impound or forfeiture solely for the possession of cannabis flower or leaf in an amount of thirty (30) grams or less or concentrate in an amount of five (5) grams or less, or cannabis paraphernalia, by persons twenty-one (21) years of age or older and otherwise in compliance with the Cannabis Regulation and Tax Act. Further, no vehicle shall be subject to impound or forfeiture for the possession of medical cannabis or cannabis paraphernalia by a registered qualifying patient or registered designated caregiver, as those terms are defined in the Compassionate Use of Medical Cannabis Program Act (410 ILCS 130/1 et seq.), where such possession is in compliance with the provisions of that Act; or
- (4) 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, 720 ILCS 570/100 et seq.; or
- (5) Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess a controlled substance, as defined by the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq.; or
- (6) Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis in violation of the Cannabis Control Act, 720 ILCS 550/1 et seq.; or
- (7) Unlawful use of a weapon in violation of 720 ILCS 5/24-1; aggravated discharge of a firearm in violation of 720 ILCS 5/24-1.5; and unlawful possession of a firearm and firearm ammunition in violation of 720 ILCS 5/24-3.1; or
- (8) Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked, the violation of 625 ILCS 5/6-303; except that vehicles shall not be subject to seizure impoundment if the suspension is for an unpaid citation (parking or moving), or due to failure to comply with emission testing; or
- (9) Operation or use of a motor vehicle with an expired driver's license in violation of Section 6-101 of the Illinois Vehicle Code, 625 ILCS 5/6-101, where the period of expiration is greater than one (1) year; or

- (10) 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 ILCS 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; or
- (11) Operation or use 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 the offenses of: driving while license is revoked or suspended, 625 ILCS 5/6-303; operating a motor vehicle without a valid driver's license, 625 ILCS 5/6-101; and/or driving under the influence of alcohol, other drugs, intoxicating compound(s), or a combination thereof, 625 ILCS 5/11-501; or
- (12) Operation or use of a motor vehicle in connection with the commission or attempted commission of any other misdemeanor or felony offense in violation of the Criminal Code of 2012, 720 ILCS 5/1-1 et seq.; or
- (13) Operation or use of a motor vehicle in violation of Section 11-503 of the Illinois Vehicle Code, 625 ILCS 5/11-503:
  - a. While the vehicle is part of a funeral procession; or
  - b. In a manner that interferes with a funeral procession.

(c) *Impoundment Fees*: A motor vehicle which is towed under this article pursuant to subsections (1-11) of section (a) "*Impoundment*" of [10-22-101](#) or 625 ILCS Section 11-208.7, as may be amended from time to time, shall be subject to a five hundred dollar (\$500.00) *impound* fee. This *impound* fee is related to the administrative and processing costs associated with the investigation, arrest and detention of an offender, or the removal, *impoundment*, storage, and release of an *impounded* vehicle. The administrative fee is in addition to any fees charged for the towing and storage of an *impounded* vehicle. The administrative fees shall be waived by the village upon verifiable proof that the vehicle was stolen at the time the vehicle was *impounded*.

- 1) The following shall apply to any fees imposed for administrative and processing costs pursuant to subsection (b):
  - a. All administrative fees and towing and storage charges shall be imposed on the registered owner of the motor vehicle or the agents of that owner.
  - b. The fees shall be in addition to:
    - i. Any other penalties that may be assessed by a court of law for the underlying violations; and
    - ii. Any towing or storage fees, or both, charged by the towing company.
  - c. The fees shall be uniformly similar for all similarly situated vehicles.
  - d. The fees shall be collected by and paid to the Village of Roselle.

- e. The towing or storage fees, or both, shall be collected by and paid to the person, firm or entity that tows and stores the *impounded* vehicle.

(d) *General regulations.*

- 1) This chapter shall not replace or otherwise abrogate any existing state or federal laws or Village ordinances.
- 2) The owner 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) This chapter shall not apply to a vehicle which was stolen at the time of impoundment so long as the theft was reported to appropriate police authorities within twenty-four (24) hours of its discovery.
- 4) Fees for towing and storage of a vehicle under this chapter shall be those approved by the chief of police and shall be uniform for all similarly situated vehicles.
- 5) Vehicles shall not be impounded where applicable law does not specifically provide for the forfeiture and towing of the vehicle and an authorized, lawful, and unimpaired driver is available to promptly remove

(e) *Probable cause and notice.*

Whenever a police officer has probable cause to believe that a vehicle is subject to tow and impoundment pursuant to this chapter, the officer shall provide for the towing of the vehicle by a wrecker licensed as authorized by the Village Code. Prior to towing, the officer shall notify any person identifying himself 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 and who is physically present at the scene of the alleged violation that the vehicle will be towed and impounded. The officer shall inform any present owner and/or person in control of the vehicle of that person's right to request a hearing to be conducted under section 10-22-102 of this chapter. An owner may secure release of an impounded vehicle pending completion of the hearings provided for in section 10-22-102 of this chapter by posting a bond of cash, money order, certified check, or approved credit card payment service with the police department in the amount of five hundred dollars (\$500.00) and accrued towing and storage charges. The police department shall hold the cash bond, and accrued towing and storage charges in escrow until such time as a request for hearing would be untimely, or if a hearing has been timely requested, until the hearing is completed in conformance with section 10-22-102 this chapter.

**Sec. 10-22-102 - Hearing.**

Within forty-eight (48) hours after a vehicle is towed/impounded pursuant to this chapter, a representative of the Village shall provide a written notice to the owner of record of such vehicle either by personal delivery or by certified mail, return receipt requested at the address of the owner as it appears in the records of the

Secretary of State. Delivery of the notice to one (1) joint owner of the vehicle shall constitute notice to all joint owners of the vehicle. The notice shall advise the owner of his or her right to request a hearing before a hearing officer to determine whether the subject vehicle is eligible for impoundment pursuant to this section. The notice shall state the penalties that may be imposed if no hearing is requested, including that a vehicle that is not released by payment of the penalty and fees may be sold or disposed of by the Village in accordance with applicable law. The owner of record seeking a hearing must file a written request for a hearing with the police department no later than fifteen (15) days after the notice was personally delivered or mailed. The hearing shall be conducted by a hearing officer designated by the village administrator. The hearing shall be scheduled and held, unless continued by order of the hearing officer, no later than forty-five (45) days after the request for a hearing has been filed. Not less than ten (10) days prior to the hearing, the hearing officer will notify the owner of record, by mail, of the date, time, and location of the hearing. All interested persons shall be given an opportunity to be heard at the reconvened hearing. At any time prior to the hearing, the hearing officer may, at the request of the Village or the owner, direct witnesses to appear and give testimony at the hearing. The formal rules of evidence will not apply during the hearing, but hearsay evidence shall be admissible only if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. If, after considering evidence received during the hearing, the hearing officer determines by a preponderance of the evidence that the vehicle was used in connection with the commission of an offense set forth in section 10-22-101 of this chapter, the hearing officer shall enter an order finding the owner of the vehicle civilly liable to the Village of an administrative and processing fee of five hundred dollars (\$500.00). If bond has been posted in accordance with section 10-22-101 of this chapter, all sums due the Village and the tow operator for towing and impoundment fees shall be distributed to the Village and tow operator as the case may be. If the hearing officer enters an order finding the owner of record liable to the Village for the administrative fee, any vehicle still impounded shall continue to be impounded until the owner pays the administrative fee to the Village plus all applicable towing and storage charges to the tow operator or until disposal of the vehicle pursuant to section 10-22-103 of this chapter. If the hearing officer finds by a preponderance of the evidence that the vehicle was not used in connection with the commission of an offense set forth in section 10-22-101 of this chapter, the hearing officer shall order the immediate return of the owner's vehicle and of any cash bond and may order a return of towing and impoundment fees.

**Sec. 10-22-103 - Administrative fee; disposal of vehicles.**

The administrative fee as imposed pursuant to this chapter, such fee shall constitute a debt due and owing 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, certified check, or approved credit card payment service. If the administrative penalty and applicable towing and impoundment fees are not paid within thirty (30) days after the expiration of time for administrative review of the

hearing officer's determination or within thirty (30) days after an action seeking administrative review has been resolved and in favor of the Village, whichever is applicable, the vehicle shall be deemed unclaimed and shall be disposed of in the manner provided for the disposition of unclaimed vehicles under the Illinois Vehicle Code.

**Sec. 10-22-104 - Vehicle possession.**

Except as otherwise provided by law, no owner, lien holder or other person shall be legally entitled to take possession of a vehicle impounded under this chapter until the bond and towing and impoundment fees are paid or the administrative penalty and fees applicable under this chapter have been paid. Whenever a person with a lien of record against an impounded vehicle has commenced proceedings to repossess the vehicle, possession of the vehicle shall be given to that person if she or he agrees in writing to pay to the Village from proceeds of the sale of the vehicle the administrative fee, plus applicable towing, and storage charges.

**Sec. 10-22-105 - Administrative review.**

A final order entered by a hearing officer under section 10-22-102 of this chapter is subject to review under the Administrative Review Act found at 735 ILCS 5/3-101 et seq.

**SECTION TWO:** If a court of competent jurisdiction sets aside any portion of the Ordinance as unconstitutional or unlawful, it shall not affect the validity of the remainder of the Ordinance.

**SECTION THREE:** Any ordinance which is inconsistent with this Ordinance is repealed to the extent of such inconsistency.

**SECTION FOUR:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as is hereby authorized and directed to be done by the Mayor and Board of Trustees.

PASSED AND APPROVED THIS 8<sup>th</sup> DAY of November, 2021.

PUBLISHED in pamphlet form this 9<sup>th</sup> DAY of November, 2021.

AYES: Della Penna, Domke, Lenisa, Berkshire, Piorkowski.

NAYES: None.

ABSTAIN: None.

ABSENT: Trejo.

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David Pileski, Mayor, Village of Roselle

ATTEST:

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Village Clerk