

ORDINANCE NO. 22 - 109

AN ORDINANCE AMENDING CHAPTER 8 (ADMINISTRATIVE FEES) OF TITLE 10 (POLICE REGULATIONS) OF THE NAPERVILLE MUNICIPAL CODE

RECITALS

1. **WHEREAS**, under the Illinois Criminal Code, fleeing or attempting to elude a peace officer occurs when any driver or operator of a motor vehicle who, having been given a visual or audible signal by a peace officer directing such driver or operator to bring his vehicle to a stop, willfully fails or refuses to obey such direction, increases his speed, extinguishes his lights, or otherwise flees or attempts to elude the officer. See, 625 ILCS 5/11-204.
2. **WHEREAS**, fleeing or attempting to elude a peace officer is a Class A misdemeanor and upon receiving notice of such conviction the Secretary of State shall suspend the drivers license of the person so convicted for a period of not more than 6 months for a first conviction and not more than 12 months for a second conviction. A third or subsequent violation is a Class 4 felony. Aggravated fleeing or attempting to elude a peace officer is a Class 4 felony (see, 625 ILCS 11-204.1).
3. **WHEREAS**, The Naperville Police Department's pursuit policy is similar to most agencies in the area and country and requires a forcible felony to engage in a motor vehicle pursuit. While these pursuit policies have been in place for many years, public knowledge that police are limited from engaging in motor vehicle pursuits related to minor offenses has resulted in an increase of incidents of fleeing and eluding.
4. **WHEREAS**, the City of Naperville has experienced an increase in motor vehicle fleeing and eluding incidents annually since 2019. Prior to 2020, the City experienced an average of 19 incidents per year. In 2020, 48 incidents, in 2021, 101 incidents, and in 2022 to date, 80 incidents.
5. **WHEREAS**, investigation and prosecution of motor vehicle fleeing and eluding cases require significant police resources, including, but not limited to, multiple hours spent reviewing video, preparing police reports, conducting interviews, and conducting internal administrative reviews; often without any arrests due to not being able to positively identify the driver of a fleeing vehicle.

6. **WHEREAS**, when the city averaged less than 20 of these incidents per year, absorbing the resource cost was manageable, however, with an average almost 10 incidents per month, the increased incidents put an unreasonable strain on police resources.
7. **WHEREAS**, an analysis by the Naperville Police Department has determined that it costs the police department no less than nine hundred dollars (\$900) in resources for every incident of motor vehicle fleeing and eluding.
8. **WHEREAS**, absent a positive identification of a driver of a motor vehicle, the registered owner of a motor vehicle is in the best position to know who is operating the registered owner's motor vehicle and to prevent the motor vehicle from being used in to flee or attempt to elude peace officer.
9. **WHEREAS**, for the benefit of the health, safety and welfare of the City's citizens, when drivers or operators who commit criminal violations for fleeing or attempting to elude a peace officer are not able to be apprehended, it is necessary and desirable to shift a portion of the City's costs related to said criminal activity to the registered owner of the motor vehicle that was driven or operated to commit the criminal offense. The administrative fee is not calculated as a revenue generating fee and is only enacted to recover a portion of the police resources expended in connection with this criminal activity.
10. **WHEREAS**, the City of Naperville is a home rule unit of local government under the laws and Constitution of the State of Illinois.
11. **WHEREAS**, under the Constitution of the State of Illinois, home rule units of government have broad authority to pass ordinances and promulgate rules and regulations that protect the public health, safety, and welfare of their residents.
12. **WHEREAS**, in an effort to protect the public health, safety, and welfare, the City of Naperville has a clear and compelling interest in exercising its home rule authority as set forth herein.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority that:

SECTION 1: Recitals incorporated. The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

SECTION 2: Amendment to Title 10, Chapter 8 of the Naperville Municipal Code. Title 10 (Police Regulations), Chapter 8 (Administrative Fees) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

TITLE 10 - POLICE REGULATIONS

CHAPTER 8 – ADMINISTRATIVE FEES

SECTION:

10-8-1: - ADMINISTRATIVE FEE:

1. The Police Department will charge an administrative fee of fifty dollars (\$50.00) for the processing of individuals on any bookable arrest, including any arrest on a warrant.
2. The Police Department will charge an administrative fee of nine hundred dollars (\$900.00) to the registered owner of a motor vehicle that the police department has probable cause to believe was driven or operated within the jurisdictional limits of the City of Naperville to commit the criminal offense of fleeing or attempting to elude a peace officer under 625 ILCS 11-204 or 625 ILCS 11-204.1.
 - a. The registered owner of the motor vehicle shall be established by the Police Department's vehicle registration inquiry with the Illinois Secretary of State.
 - b. Notice shall be given in writing to the registered owner. The notice shall include the following:
 - i. Statement that the driver or operator of a motor vehicle registered to said owner fled or attempted to elude a Naperville police officer after having been given a visual or audible signal by a peace officer directing such driver or operator to bring his or her vehicle to a stop.
 - ii. Date, approximate time, and approximate location of the event.
 - iii. Description of the motor vehicle as contained in the police officer's report.
 - iv. Notice of the opportunity to contest the imposition of the administrative fee by hearing with instructions on how to do so.

- v. Notice that the administrative fee constitutes a debt due and owing to the City. If the registered owner does not request a hearing to contest the administrative fee within thirty (30) days of service, the registered owner shall have thirty (30) days to pay the debt. If not paid, the City may seek to obtain a judgment on the debt and collect the judgment in any manner provided by law.
- c. Notice shall be served upon the registered owner in any of the following manners:
 - i. Personal service by handing the notice to the registered owner, or to their employees or agents, by any authorized City of Naperville official, police officer, or code enforcement officer.
 - ii. Mailing the notice by certified mail, return receipt requested, to the registered owner's last known address, according to the Illinois Secretary of State; or in the case of a business, to the address for the registered agent or the address for its principal place of business.
 - iii. Personal service of process as authorized by the Illinois Code of Civil Procedure, 735 ILCS 5/2-203.3

The date of service shall be the date in which personal service is accomplished or the date on which the written notice is mailed.

- d. The administrative fee under 10-8-1:2 above may be transferred by the Police Department from the registered owner of the motor vehicle that the police department has probable cause to believe was used in fleeing or attempting to elude a peace officer to the driver or operator of said motor vehicle at the time of the offense, if the registered owner produces to the Police Department an affidavit attesting to the same, signed, under penalties of perjury, and notarized by both the registered owner and the driver or operator. Said affidavit must be served to the Police Department within thirty (30) days of the imposition of the administrative fee.

10-8-2: - REQUEST FOR HEARING:

1. An individual entity charged with an administrative fee may request, in writing within thirty (30) days of the imposition service of the notice of the administrative fee, a hearing.

2. The Chief of Police or their designee shall conduct the hearing.
3. The hearing shall be informal, not subject to the formal rules of evidence, and may be conducted over the phone.
4. If, after the hearing, the Chief of Police or their designee determine that the imposition of the administrative fee was proper then they shall direct the collection of the administrative fee.
5. If there is a determination that imposition of the administrative fee was improper, then the arrestee entity charged with the administrative fee shall not be required to pay the administrative fee. If the administrative fee has already been paid then the same will be refunded.
6. The individual entity charged with an administrative fee may appeal the decision of the Chief of Police, or their designee, by requesting, in writing, within fourteen (14) days of the decision, an administrative hearing as set forth herein.

10-8-3: - APPEAL—ADMINISTRATIVE HEARING:

1. Upon the timely written request by the individual entity who has been charged the administrative fee, a hearing on the lawfulness of the imposition of the administrative fee shall be conducted in conjunction with the administrative hearing section of this Code, Sections 11-1-10 et seq.
2. Any sworn or affirmed report that is prepared in the performance of a law enforcement officer's duties and sufficiently describes the circumstances leading to the individual's arrest and processing or that a motor vehicle registered to the entity charged with an administrative fee was used in fleeing or attempting to elude a peace officer under 625 ILCS 11-204 or 625 ILCS 11-204.1 shall be admissible prima facie evidence of probable cause and the individual's entity's liability, unless rebutted by clear and convincing evidence.
3. If after the hearing, the hearing officer finds that the imposition of the administrative fee was proper under the terms of this Chapter, the Hearing Officer may enter a written order finding the individual entity civilly liable to the City of Naperville.
4. If the individual entity requests a hearing but fails to appear at the hearing, the hearing officer may enter a default order for the amount of the administrative fee against the individual entity.
5. If the individual entity fails to timely request a hearing, an order for the amount of the administrative fee shall be entered against the individual entity, unless said individual entity has affirmatively waived the right to an administrative hearing and agreed to pay the administrative fee.

6. If after hearing, the hearing officer finds that the imposition of the administrative fee was improper then, the individual entity will not be charged the administrative fee.

10-8-4: - ADMINISTRATIVE FEE A DEBT:

The administrative fee imposed upon an individual entity shall constitute a debt due and owing to the City. If an individual entity has not previously paid the administrative fee, the individual entity shall have thirty (30) days to pay the debt. If not paid, the City may seek to obtain a judgment on the debt and collect the judgment in any manner provided by law.

SECTION 3: Savings clause. If any provisions of this Ordinance or their application to any entity or circumstance are held invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect any of the remaining provisions or application of this Ordinance which can be given effect without the invalid or unenforceable provisions or application. To achieve this purpose, the provisions of the Ordinance are declared to be severable.

SECTION 4: Effective date. Upon passage and approval as required by law, this Ordinance shall take effect on January 1, 2023, (the "Effective Date").

PASSED this 6th day of September, 2022.

AYES: CHIRICO, GUSTIN, HINTERLONG, HOLZHAUER,
LEONG, SULLIVAN, TAYLOR, WHITE

ABSENT: KELLY

APPROVAL this 7TH day of September, 2022.

Steve Chirico

Mayor

ATTEST:

Michelle Edson
Records Clerk