

CITY OF PEKIN

ORDINANCE NO. 2559-08/09

**AN ORDINANCE AMENDING TITLE 6, CHAPTER 2, SECTION 11
OF THE CODE OF THE CITY OF PEKIN 1995
REGARDING SEIZURE AND IMPOUNDING OF VEHICLES
AMENDED ORD. 2552 AND ORD. 2556**

**PASSED BY THE CITY COUNCIL
OF THE CITY OF PEKIN
THE 23RD DAY OF JUNE 2008**

**PUBLISHED IN PAMPHLET FORM BY AUTHORITY OF THE CITY
COUNCIL OF THE CITY OF PEKIN, TAZEWELL COUNTY, ILLINOIS,
THIS 23RD DAY OF JUNE 2008**

EFFECTIVE JULY 3, 2008

ORDINANCE NO.2559-08/09

**AN ORDINANCE AMENDING TITLE 6, CHAPTER 2, SECTION 11,
OF THE CODE OF THE CITY OF PEKIN 1995 REGARDING
SEIZURE AND IMPOUNDING OF VEHICLES**

WHEREAS, the City of Pekin is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the City of Pekin, as a home rule municipality, may exercise power and perform any function pertaining to its government and affairs, including, but not limited to, the power to legislate for the protection of the public health, safety, and welfare; and

WHEREAS, the Code of the City of Pekin 1995, adopted on April 10, 1995, and duly published in book form, contains within Title 6, Chapter 2, Section 11, on Seizure and Impounding of Vehicles;

WHEREAS, the City Council has determined that it is in the best interests of the City to amend Title 6, Chapter 2, Section 11, on Seizure and Impounding of Vehicles; and

WHEREAS, the City heretofore determined that it was, and remains, in the best interest of the City to provide for a system of seizure and impoundment of motor vehicles operated by persons in connection with the commission of certain offenses; and

WHEREAS, it is in the best interests of the health, safety, and welfare of the residents of the City of Pekin, Tazewell County, Illinois to amend the procedures for the seizure and impounding of motor vehicles used by persons in connection with the commission of certain offenses and to further establish

administrative hearing procedures and administrative penalties for such violations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEKIN, ILLINOIS:

That Title 6, Chapter 2, Section 11, of the Code of the City of Pekin, Tazewell County, Illinois be, and the same hereby is, amended as follows by deleting Section 11 entitled "Seizure and Impounding of Vehicles" in its entirety and inserting in its place Exhibit A as follows:

EXHIBIT A

6-2-11 SEIZURE AND IMPOUNDING OF VEHICLES

6-2-11-1 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. The term "Controlled Substance" means any substance as defined and included in the schedule contained in Article II of the Illinois Controlled Substance Act (720 ILCS 570/201) and cannabis as defined in §1 of the Cannabis Control Act (720 ILCS 550/11 *et seq.*)

B. The term "Drug Paraphernalia" means any equipment, product, and/or materials as defined in §2 of the Drug Paraphernalia Act (720 ILCS 600/2).

C. The term "Driving Under the Influence" means any violation as defined in § 11-501 of the Illinois Vehicle Code (625 ILCS 5/11-501).

D. The term "Driving While License, Permit or Privilege to Operate a Motor Vehicle is Suspended or Revoked" means any violation as defined in §6-303 of the Illinois Vehicle Code (625 ILCS 5/6-303).

E. The term "Hearing Officer" means a licensed attorney who is not an officer or employee of the City.

F. The term "Operation of a Motor Vehicle without a Valid Driver's License" means a violation of §6-101 of the Illinois Vehicle Code, as amended from time to time (625 ILCS 5/6-101).

G. The term "Owner of Record" means

the record title holder to a motor vehicle as registered with the Secretary of State, State of Illinois.

H. The term "Unlawful Use of Weapons" means a violation of §24-1 of the Criminal Code of 1961 (720 ILCS 5124-1).

6-2-11-2 VEHICLES SUBJECT TO SEIZURE AND IMPOUNDING.

A motor vehicle shall be subject to seizure and impoundment under this Chapter where such motor vehicle is used in the any of the following:

- A. the possession or delivery of a Controlled Substance or Drug Paraphernalia;
- B. Driving Under the Influence;
- C. Driving While License, Permit or Privilege to Operate a Motor Vehicle is Suspended or Revoked;
- D. the Unlawful Use of Weapons.

6-2-11-3 SEIZURE AND IMPOUNDING 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 a facility controlled by the City or its agents. When the vehicle is towed, the police officer shall notify any person identifying himself or herself 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, if there is such a person, of the fact of the seizure and of the vehicle owner's right to request a preliminary hearing as provided in this Chapter.

6-2-11-3-1 EXCEPTIONS

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

6-2-11-4 POSTING OF BOND.

If a bond in the amount of Five Hundred Dollars (\$500.00) is posted with the City, the impounded vehicle

will be released to the owner of record, upon the payment by the owner of record of the towing and storage costs. If a penalty is imposed for a violation of this Chapter, the bond will be forfeited to the City; provided, in the event that 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 City until the hearing officer issues a decision, or, if there is a judicial review, until the court issues its final decision.

6-2-11-5 PRELIMINARY HEARING.

Where the owner of a motor vehicle seized under the provisions of this Chapter requests a preliminary hearing within twelve (12) hours after the seizure of the motor vehicle, a hearing officer of the City must conduct a preliminary hearing within seventy-two (72) business hours after the request for preliminary hearing is received by the City; not including Saturdays, Sundays, or legal holidays. For purposes of this Section, the following shall apply:

- A. All interested persons will be given a reasonable opportunity to be heard at the preliminary hearing.
- B. The formal rules of evidence will not apply at the hearing, and hearsay testimony will be allowed, and will be admissible.
- C. If, after the conclusion of the hearing, the hearing officer determines that there is probable cause to believe that the vehicle was used as hereinabove provided in 6-2-11-2, the hearing officer shall order the continued impoundment of the vehicle, unless

the owner of the vehicle posts a cash bond with the City in the amount of Five Hundred Dollars (\$500.00), plus the towing and storage costs.

D. If the hearing officer determines that there is not probable cause to believe that the vehicle was used as hereinabove provided in 6-2-11-2, the motor vehicle will be returned to the owner of record of the vehicle without any penalty or other costs, other than the towing and storage fees.

6-2-11-6 OWNER'S HEARING.

A. Notice of Hearing. Within ten (10) days of the vehicle's impoundment, the City shall notify the owner of record of the motor vehicle by certified mail, return receipt requested, and first class mail, postage prepaid, of his/her right to a full hearing before the hearing officer to determine whether the subject vehicle is eligible for impoundment; and that, in the event that the owner of record would like a hearing, he/she must file a request for such hearing in writing with the City of Pekin Police Department at 111 S. Capitol Street, Pekin IL, within fifteen (15) days of the posted date of the notice. If a written request is not received within fifteen days of mailing the notice, then the owner is defaulted and the impoundment fee will be kept by the City or if no fee posted, then the vehicle can be sold as abandoned 30 days after the default.

B. Hearing. For purposes of this Section, the following shall apply to the owner's hearing:

1. Unless continued by order of the hearing officer, the hearing shall be held within thirty (30) days after a request for hearing is received by the City of Pekin Police Department.

2. All interested persons will be given a reasonable opportunity to be heard at the preliminary hearing.

3. If, after the conclusion of the hearing, the hearing officer determines by a preponderance of the evidence that the vehicle was used as hereinabove provided in 6-2-11-2, the hearing officer shall order the continued impoundment of the vehicle until the owner of the vehicle pays to the City a penalty in the amount of Five Hundred Dollars (\$500.00), plus the towing and storage costs. The penalty shall be a debt due to the City.

4. If the owner of record fails to appear at the hearing, the hearing officer shall enter an order of default in favor of the City, which order shall require the payment to the City of an administrative penalty of Five Hundred Dollars (\$500.00).

5. If the hearing officer determines that the vehicle was not used as hereinabove provided in 6-2-11-2, the motor vehicle will be returned to the owner of record of the vehicle without any penalty or other costs, other than the cost of towing and storage; and, if a cash bond had previously been posted, the cash bond shall be returned.

6-2-11-7 UNCLAIMED VEHICLES.

If the administrative penalty and applicable towing and storage fees are not paid within thirty (30) days after the expiration of time in 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 City, 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 under the Illinois Vehicle Code.

6-2-11-8 LIABILITY FOR PENALTY AND COSTS.

A. The owner of record of a motor vehicle that is seized or impounded shall be liable to the City for a penalty of Five Hundred Dollars (\$500.00) in addition to any fees for the towing and storage of the motor vehicle.

B. Fees for towing and storage are established by the towing company, and not by the City.

C. 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 City, and all towing and storage costs are paid to the towing company; and

2. a bond in an amount equal to the liability of the Owner as herein provided in paragraph A. above is posted with the City and all applicable towing and storage costs are paid to the towing company; and

3. the vehicle is deemed abandoned, in which case the vehicle shall be disposed of in the manner provided by law for the disposition of abandoned or unclaimed vehicles.

4. 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.

5. 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 City with a Hold Harmless Letter, possession of the vehicle shall be given to that lienholder upon payment of bond and all towing and storage costs.

6-2-11-9 HEARING OFFICER

The Hearing Officer shall be appointed by the City Manager. The Hearing Officer shall be an attorney licensed to practice law in the State of Illinois for a minimum of three (3) years next preceding the date of his appointment.

6-2-11-10 DECISION REVIEW

Any party aggrieved by a final decision of the Hearing Officer may appeal that decision pursuant to the provision of the Illinois Administrative Review Act (735 ILCS 5/1-101 *et seq.*)

BE IT FURTHER ORDAINED that all other parts of the Code of the City of Pekin 1995 as amended except as modified herein are hereby reaffirmed and ratified and are in full force and effect.

BE IT FURTHER ORDAINED that this Ordinance takes precedence over and supercedes any and all Ordinances or parts of ordinances in conflict herewith.

BE IT FURTHER ORDAINED that this Ordinance shall be in full force and effect upon its passage and approval and publication as required by law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Pekin, this 23 day of June, 2008; and upon roll call the vote was as follows:

AYES: Kortkamp, Jones, Blanchard, Dunn, Abel,
and Tebben

NAYS: None

ABSENT: Strand

ABSTAINING: None

APPROVED this 23 day of June, 2008.



MAYOR

ATTEST:

Sue McMillan
City Clerk

CERTIFICATE

THE UNDERSIGNED CERTIFIES THAT SHE IS THE CITY CLERK FOR THE CITY OF PEKIN, ILLINOIS, AND THAT THE CITY COUNCIL AT A REGULARLY CONSTITUTED MEETING OF SAID CITY COUNCIL OF THE CITY OF PEKIN ON THE 23RD DAY OF JUNE, 2008 ADOPTED ORDINANCE NO. 2559-08/09 A TRUE AND CORRECT COPY OF WHICH IS CONTAINED IN THIS PAMPHLET.

GIVEN UNDER MY HAND AND SEAL THIS 23rd DAY OF June, 2008.

(SEAL)

Sue E. McMillan
SUE E. MCMILLAN
CITY CLERK