

ORDINANCE

2019 - 01

**AN ORDINANCE CONCERNING ADMINISTRATIVE FEES AND PROCEDURES FOR
IMPOUNDING VEHICLES BY THE FRANKLIN COUNTY SHERIFF'S
DEPARTMENT**

WHEREAS, the Illinois Vehicle Code and Illinois Criminal Code provide for certain instances where motor vehicles are subject to either mandatory or discretionary impoundment by law enforcement agencies; and

WHEREAS, the Franklin County Sheriff's Department is a law enforcement agency that desires to continue to follow Illinois law concerning the impoundment of vehicles to protect the citizens from vehicles being driven by persons who are a danger to other motorists, unlicensed, uninsured, under the influence, are used vehicles to commit felony offenses or otherwise interfere with the safe operation of vehicles of other motorists as detailed in the Illinois Criminal and Traffic Codes; and

WHEREAS, 625 ILCS 5/11-208.7 provides, in part, that any county may provide by ordinance procedures for the release of properly impounded vehicle 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. The administrative imposed by the county may be in addition to any fees charged for the towing and storage of an impounded vehicle. The administrative fee shall be waived by the county upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded; and

WHEREAS, The Franklin County Board desires to establish due process consistent with the procedures outlined in 625 ILCS 5/11-208.7 that will ensure that owners and interested parties of any vehicle subject to impound have a fair opportunity to contest any impound or fees; and

WHEREAS, the imposition of procedures detailed in 625 5/11-208.7 will increase the costs of impoundment of vehicles as hearing officers will need to employed by the county and additional paperwork and tracking procedures will need to implemented by the Sheriff.; and

WHEREAS, The Franklin County Board desires to offset the current and increased costs of the impoundment of vehicles by implementing an Administrative Impound Fee; and

WHEREAS, after consultation with the Franklin County Sheriff, the County Board determines that an Administrative Impound Fee of **One Hundred Twenty-Five Dollars (\$125)**, in addition to any towing or storage fees, should be levied upon the owner of every vehicle that is impounded by the Franklin County Sheriff's Department in accordance with 625 ILCS 5/11-208.7;

NOW, THEREFORE, BE IT ORDAINED, ADOPTED AND DECREED, pursuant to the authority provided in 625 ILCS 5/11-208.7, the Illinois Vehicle Code, 625 ILCS et seq., Illinois Criminal Code 720 ILCS et seq., and the Illinois Code of Criminal Procedure, 725 ILCS et seq., as follows:

I. Administrative Impound Fee:

That an Administrative Impound Fee of **One Hundred Twenty-Five Dollars (\$125.00)**, in addition to any other towing or storage fees, shall be levied against the owner of any vehicle impounded by the Franklin County Sheriff's Department for any of the following circumstances:

- (1) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to Section 36-1 of the Criminal Code of 2012; or
- (2) 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 this Code; or
- (3) operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act; or
- (4) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act; or
- (5) operation or use of a motor vehicle in the commission of, or in the attempt to commit, 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
- (6) driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303 of this 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
- (7) operation or use of a motor vehicle while 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
- (8) operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 of this Code, if the period of expiration is greater than one year; or
- (9) 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 this Code, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or
- (10) 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 this Code; or
- (11) 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

(12) operation or use of a motor vehicle in the commission of, or in the attempt to commit, 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

(13) operation or use of a motor vehicle in violation of Section 11-503 of this Code:

(A) while the vehicle is part of a funeral procession; or

(B) in a manner that interferes with a funeral procession

II. Definitions: For the purpose of this Ordinance, the following definitions shall apply:

a. **Vehicle.** Every device, in, upon or by which any person or property is or may be transported or drawn upon a highway or requiring a certificate of title under Section 3-101(d) of this Code, except devices moved by human power, devices used exclusively upon stationary rails or tracks and snowmobiles as defined in the Snowmobile Registration and Safety Act.

b. **Owner.** A person who holds legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of such vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this Ordinance.

c. **Lienholder:** A person holding a security interest in a vehicle.

d. **Security Interest:** An interest in a vehicle reserved or created by written agreement and which secures payment or performance of an obligation. The term includes the interest of a lessor under a lease intended as security. A security interest is perfected when it is valid against third parties generally, subject only to specific statutory exceptions.

e. **Lease:** A written document vesting exclusive possession, use, control and responsibility of the lessee during the periods the vehicle is operated by or for the lessee for a specified period of time.

f. **Lessee:** A person holding a written lease for a vehicle.

III. Authority to Impound:

That the Franklin County Sheriff's Department is hereby granted authority to impound a vehicle in accordance with this Ordinance and to levy an Administrative Fee against the owner of said vehicle in accordance with this Ordinance, provided said authority is authorized by the Illinois Vehicle Code, 625 ILCS et seq., the Illinois Criminal Code, 720 ILCS et seq. or the Illinois Code of Criminal Procedure, 725 ILCS et seq.

IV. General Regulations:

1. The provision of this Ordinance shall not apply to a vehicle which was stolen at the time of the towing and impoundment, provided that the theft of said vehicle had been reported to appropriate police authorities within twenty-four (24) hours of discovery of the theft.
2. The owner of the vehicle shall be subject to all fees set forth in this Ordinance in addition to any penalties that may be assessed by a Court of law for the underlying violations.
3. The provisions of this Ordinances shall not replace or otherwise abrogate any existing State or Federal laws pertaining to seizure, towing, and impoundment.

V. Procedure:

A. Seizure/Impoundment:

1. Whenever a Police Officer has cause to believe that a motor vehicle is subject to impoundment, the officer shall provide for the towing of the vehicle to a facility authorized by the county.
2. At the time the vehicle is towed, the county 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 any person who is found to be in control of the vehicle at the time of the alleged offense, of the fact of the seizure, and of the vehicle owner's or lessee's right to an administrative hearing.
3. The county shall also provide notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the owner or lessee of the vehicle or a lienholder posts with the county a bond equal to the administrative fee as provided by ordinance, makes a written request for administrative hearing, and pays for all towing and storage charges.

- B. That the vehicle subject to impound may be released to the owner of record, lessee, or a lienholder of record upon payment of all administrative impound fees, towing fees, and storage fees. A person waives any right to a hearing or any right to contest the impound or validity of fees by paying said fees and accepting return of the impounded vehicle without making a written request for hearing.

C. Preliminary Review (Agency):

Whenever the County tows and impounds a vehicle, the owner thereof may request a preliminary review within one day of the tow. Such request shall be made by the owner in writing to the Franklin County Sheriff. A preliminary review will be conducted by the Sheriff or his designee within 24 hours, exclusive of all weekends and holidays, of the request and if the Sheriff or his designee believes that there was not probable cause to tow or impound said vehicle, the vehicles shall be released to its owner without incurring towing, storage, or administrative impound fees.

D. Notice and Administrative Hearing:

That after impoundment of a vehicle, the registered owner or lessee of the vehicle and any lienholder of record shall be provided with a notice of hearing. The notice shall:

1. be served upon the owner, lessee, and any lienholder of record either by personal service or by first class mail to the interested party's address as registered with the Secretary of State;
2. be served upon interested parties within 10 days after a vehicle is impounded by the county; and
3. contain the date, time, and location of the administrative hearing. An initial hearing shall be scheduled and convened no later than 45 days after the date of the mailing of the notice of hearing.
4. at the hearing, the registered owner, lessee, or lienholder of record of the impounded vehicle may contest the merits of the impound, and during which formal or technical rules of evidence shall not apply. The hearings shall be recorded, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this Section may be represented by counsel at their expense.
5. administrative hearings shall be conducted by a hearing officer who is an attorney licensed to practice law in this State for a minimum of 3 years; The rules of evidence shall not apply at the hearing and hearsay is admissible and the reports of officers may be admitted at the hearing. The standard of review at the Administrative Hearing shall be as follows: Based on the preponderance of the evidence presented, did the County have probable cause to impound the subject vehicle?
6. Failure to Appear: Any owner or interested party who fails to appear at said Administrative Hearing after having received actual or constructive notice shall be in default and deemed to have waived any right to a hearing on the issue as to whether there was probable cause to impound the subject vehicle or contest any towing, storage, or administrative impound fees. The Hearing Officer is authorized to enter a decision based on the default of the interested party without further evidence.
7. at the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment;
8. if the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the county;

9. all final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law, 735 ILCS 5/3-100 et seq.
10. unless the administrative hearing officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the owner, lessee, or lienholder of record until all administrative fees and towing and storage charges are paid; and
11. if the administrative hearing officer finds that the county exceeded its authority under this Code by impounding a vehicle, the county shall be liable to the registered owner or lessee of the vehicle for the cost of storage fees and reasonable attorney's fee actually incurred.
12. Vehicles not retrieved from the towing facility or storage facility within 35 days after the administrative hearing officer issues a written decision shall be deemed abandoned and disposed of in accordance with the provisions of Article II of Chapter 4 of this Code.
13. 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 the expiration of the deadline for seeking judicial review under the Administrative Review Law may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

VI. Records/Cost Review:

The Franklin County Sheriff shall maintain records of the impoundment of vehicles, fees, and costs associated with the impoundment of vehicles and the Sheriff and Franklin County Board shall review the costs of the administration of the impound procedures from time to time and may amend fees and procedures as is deemed appropriate by enacting amendments to this ordinance or by new ordinance.

VII. Appointment of Hearing Officers:

The Chairman of the Franklin County Board shall appoint hearing officers to conduct hearings as detailed in this ordinance.

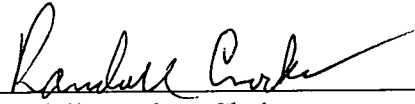
VIII. Severability/Savings:

That in the event that any portion of this Ordinance is declared to be invalid, the remaining portions of this Ordinance shall survive.

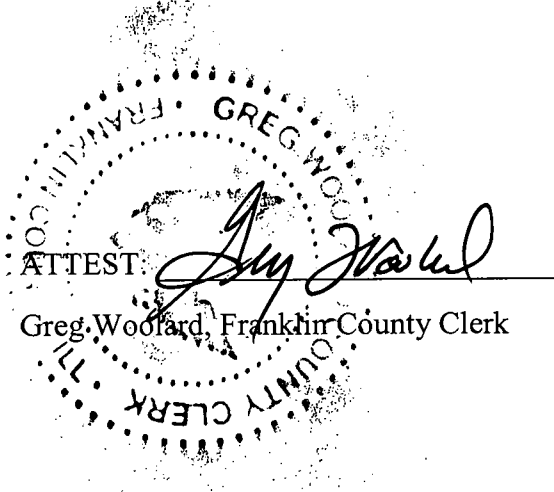
IX. Repeal:


Any County Ordinances or Resolutions that are in conflict with this Ordinance are hereby repealed.

This Ordinance enacted by the Franklin County Board on the 22nd day of JAN., 2018 by a vote of 9 Ayes and 0 Nays and shall become effective immediately.



Randall Crocker, Chairman
Franklin County Board



ATTEST  _____
Greg Woolfard, Franklin County Clerk