

ORDINANCE NO. 903

AN ORDINANCE TO CREATE SECTION 24-2-9 – “TOWING AND IMPOUNDING VEHICLES INVOLVED IN A CRIME” OF ORDINANCE NO. 1 ENTITLED "REVISED CODE OF ORDINANCES OF 1974", ENACTED ON THE 15TH DAY OF JULY, 1974.

BE IT ORDAINED BY THE PRESIDENT AND VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF COBDEN, UNION COUNTY, ILLINOIS, THAT:

SECTION 1. Section 24-2-9 of Ordinance No. 1 entitled "Revised Code of Ordinances of 1974" shall read as follows:

24-2-9 TOWING AND IMPOUNDING VEHICLES INVOLVED IN A CRIME.

A. Definitions: For the purpose of this section, the following words and phrases shall have the following meanings ascribed to them respectively:

ADMINISTRATIVE HEARING OFFICER: Officer who is an attorney licensed to practice law in this state for a minimum of three (3) years.

BUSINESS DAY: Any day in which the offices of the Village Hall are open to the public for a minimum of eight (8) hours.

CONTROLLED SUBSTANCES: Any substance as defined and included in the schedules of Article II of the Illinois Controlled Substances Act, 720 Illinois Compiled Statutes 570/201 et seq., and cannabis as defined in the Cannabis Control Act, 720 Illinois Compiled Statutes 550/1 et seq.

DRIVING A VEHICLE BY PERSON SUBJECT TO WARRANT: 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.

DRIVING ON A SUSPENDED OR REVOKED LICENSE, PERMIT, OR PRIVILEGE TO OPERATE A MOTOR VEHICLE: Any offenses as defined in Section 5/6-303 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/6-303; 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.

DRIVING ON AN EXPIRED LICENSE: Operation or use of a motor vehicle with an expired license, in violation of Section 5/6-101 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/6-101, if the period of expiration is greater than one year.

DRIVING UNDER THE INFLUENCE OF ALCOHOL, DRUGS AND/OR INTOXICATING COMPOUNDS: Any offense as defined in Section 5/11-501 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/11-501.

DRIVING WITHOUT A LICENSE OR PERMIT: Operation or use of a motor vehicle without ever having been issued a 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 license or permit due to a person's age.

DRUG PARAPHERNALIA: Any equipment, products and materials as defined in 720 Illinois Compiled Statutes 600/2.

FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER: Any offenses as defined in Section 5/11-204 or 11-204.1 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/11-204 and 204.1.

LEAVING THE SCENE OF A PERSONAL INJURY OR PROPERTY DAMAGE ACCIDENT: Any offenses as defined in Sections 5/11-401, 5/11-402, and 5/11-403 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/11-401, 402, and 403.

LEVEL 1 ADMINISTRATIVE FEE: Two Hundred Fifty Dollars (\$250.00).

LEVEL 2 ADMINISTRATIVE FEE: One Hundred Fifty Dollars (\$150.00).

MISDEMEANOR: Any misdemeanor offense as defined by Illinois statute.

MOTOR VEHICLE: Every vehicle which is self-propelled, including, but not limited to, automobiles, trucks, vans, motorcycles and motor scooters.

OWNER OF RECORD/INTERESTED PERSON: The recorded title holder(s) or lien holder(s) of the motor vehicle as registered with the Secretary of State, State of Illinois, or if not registered in Illinois, the particular state where the motor vehicle is registered.

PRELIMINARY HEARING OFFICER: The Chief of Police or a police captain.

THEFT OFFENSE: Any offense in violation of Article 16 of the Criminal Code, Chapter 720 of the Illinois Compiled Statutes.

WEAPONS OFFENSE: Any of the following offenses contained within Article 24 of Chapter 720 of the Illinois Compiled Statutes: 720 Illinois Compiled Statutes 5/24-1, 24-1.1, 24-1.2, 24-1.25, 24-1.5, 24-1.6, 24-2.1, 24-2.2, 24-3, 24-3.1, 24-3.2, 24-3.3, 24-3.4, 24-3.5, 24-3.6 and 24-3A.

B. Motor Vehicle Impoundment: Pursuant to Article II, Chapter 11 of the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/11-208.7, the Village of Cobden (the "Village") shall follow the procedures set forth herein when impounding vehicles (with the exception of those vehicle impounded pursuant to Section 18-12-8 of this Chapter) and imposing reasonable administrative fees, payable to and collected by the Village, 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 fees imposed herein by the Village shall be uniform for all similarly situated vehicles and are in addition to any other penalties or fees that may be assessed by a court of law for the underlying violations, or by a person, firm, or entity that tows and stores the impounded vehicle.

C. Violations Authorizing Impoundment (Excepting Impoundment under Section 18-12-8 of this Chapter):

1. Any motor vehicle, operated with the express or implied permission of the owner of record/interested person, that is used in connection with the following violations shall be subject to seizure and impoundment by the Village, and the owner of record of said motor vehicle or its agent, shall be liable to the Village for a Level 1 Administrative Fee, as provided for in this Section, in addition to any fees for the towing and storage of the vehicle and any other criminal penalties assessed by a court of law for the underlying offense as herein provided:

a. 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 Illinois; 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. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of a felony offense in the cannabis control act; or
 - d. 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 Substance Act; or
 - e. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony offense in violation of Section 24-1 (unlawful use of weapons), 24-1.5 (reckless discharge of a firearm), or 24-3.1 (unlawful possession of firearms and firearm ammunition) of the Criminal Code of Illinois; 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, fleeing or attempting to elude a police officer, or leaving the scene of a personal injury or property damage accident; or
 - g. Operation or use of a motor vehicle while soliciting, or attempting to solicit cannabis or a controlled substance, as defined by the Cannabis Control Act or the Illinois Controlled Substance Act; or
 - h. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony offense in violation of Article 16 (theft offenses) of the Criminal Code of Illinois; or
 - i. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other felony offense in violation of the criminal or vehicle codes of Illinois.
2. Any motor vehicle, operated with the express or implied permission of the owner of record/interested person that is used in connection with the following violations, including arrest warrants, but not including those violations listed in Subsection C1 of this section, shall be subject to seizure and impoundment by the Village, and the owner of record or its agent, shall be liable to the Village for a Level 2 Administrative Fee, as provided for in this Section, in addition to any fees for the towing and storage of the vehicle and any other criminal penalties assessed by a court of law for the underlying offense as hereinafter provided:
- a. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a misdemeanor violation of the Cannabis Control Act; or
 - b. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, a misdemeanor offense in violation of Article 16 (theft offenses) of the Criminal Code of Illinois; or
 - c. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other misdemeanor offense in violation of the criminal or vehicle codes of Illinois; or
 - d. 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.

D. Seizure and Impoundment:

1. Whenever a police officer has reason to believe that a motor vehicle is subject to seizure and impoundment pursuant to this Section, the police officer shall provide for the towing of the motor vehicle to a facility controlled or approved by the Village. This section shall not apply if the motor vehicle used in the violation was stolen at the time and the theft was

reported to the appropriate police authorities within twenty four (24) hours after the theft was discovered or reasonably should have been discovered.

2. The Village shall notify, or make a reasonable attempt to notify, the owner of record/interested person or any person who is found to be in control of the motor vehicle at the time of the alleged violation, if there is such a person, of the fact of the seizure and of the motor vehicle owner's right to an administrative hearing to be conducted under this section.
 3. The Village shall also provide a notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the owner of record/interested person of the vehicle posts with the Village a bond equal to the administrative fee as provided by this section and pays for all towing and storage charges. Whenever the owner of record/interested person of a vehicle seized pursuant to this section requests, in writing hand delivered to the police department, a preliminary hearing on probable cause within twelve (12) hours after the seizure, a preliminary hearing officer shall conduct such preliminary hearing within seventy two (72) hours after the seizure, excluding Saturdays, Sundays and holidays. The owner of record/interested person at the time of the alleged offense shall be given a reasonable opportunity to be heard at the preliminary hearing. The formal rules of evidence will not apply at the hearing, and hearsay evidence shall be admissible. If, after the hearing, the preliminary hearing officer determines that there is probable cause to believe that the vehicle was used in the commission of any crime described as Level 1 or Level 2 Administrative Fee offense, the preliminary hearing officer shall order the continued impoundment of the vehicle as provided in this section unless the owner of record/interested person posts with the Village a cash bond in the amount of the Level 1 or Level 2 Administrative Fee offense, plus fees for towing and storing the vehicle. If the preliminary hearing officer determines that there is no such probable cause, the vehicle will be returned without penalty or other fees.
- E. Administrative Hearing:
1. Within ten (10) days after a motor vehicle is seized and impounded pursuant to this section, the Village shall notify by personal service or by first class mail, return receipt requested, to the owner of record/interested person, the right of hearing before the administrative hearing officer, along with the date, time and location of the hearing, to challenge whether a violation of this section has occurred. The owner of record/interested person shall also be notified of the continued impoundment of the vehicle as provided in this section unless the owner of record/interested person posts with the Village a cash bond in the amount of the Level 1 or Level 2 Administrative Fee offense, plus fees for towing and storing the vehicle. The hearing date must be scheduled and convened no later than forty five (45) days after the mailing of the notice or issuance of the notice of hearing, when requested. The owner of record/interested person and any other interested person(s) shall be given a reasonable opportunity to be heard at the hearing. The formal rules of evidence shall not apply at the hearing and hearsay evidence shall be admissible.
 2. If, after the hearing, the administrative hearing officer determines by a preponderance of the evidence that the motor vehicle was used in violation of this section, then the administrative hearing officer shall issue a written decision finding the owner of record of the motor vehicle liable to the Village for the applicable administrative fee.
 3. If, after the hearing, the administrative hearing officer does not determine by a preponderance of the evidence that the motor vehicle was used in such a violation, the

administrative hearing officer shall issue a written decision finding for the owner and for the return of the motor vehicle, or the administrative fees if already paid.

4. If owner of record fails to appear at the hearing, the owner of record/interested person shall be deemed to have waived his or her right to a hearing. If the owner of record/interested person pays such administrative fee and the motor vehicle is returned to the owner of record/interested person, no written decision needs to be entered if the owner of record/interested person was informed of this or her right to a hearing, in which case liability shall be deemed to have been made when the Village receives the written waiver.
 5. If a bond in the amount equal to the applicable administrative fee is posted with the police department, the impounded motor vehicle shall be released to the owner of record/interested person. The owner of record/interested person shall still be liable to the towing agent for any applicable towing fees.
 6. If an administrative fee is imposed for a violation of this section, the bond will be forfeited to the Village; however, if a violation of this section is not proven by preponderance of the evidence, the bond will be returned to the person posting the bond. All bond money posted pursuant to this section shall be held by the Village until the administrative hearing officer issues a decision, or, if there is a judicial review, until the court of jurisdiction issues its orders.
 7. All decisions of the administrative hearing officer shall be subject to review under the provisions of the Illinois administrative review law.
- F. Disposition of Impounded Motor Vehicle:
1. An administrative fee imposed pursuant to this section shall constitute a debt due and owing the Village.
 2. A motor vehicle impounded pursuant to this section shall remain impounded until:
 - a. The administrative fee is paid to the Village and all applicable towing fees are paid to the towing agent, in which case the owner of record/interested person shall be given possession of the motor vehicle.
 - b. A bond in an amount equal to the applicable administrative fee is posted with the police department and all applicable towing fees are paid to the towing agent, at which time the motor vehicle will be released to the owner of record/interested person; or
 - c. Any motor vehicle that is not reclaimed or retrieved from the facility controlled or approved by the Village within thirty five (35) days after the administrative hearing officer issues a written decision shall be deemed abandoned and may be disposed of in accordance with the provisions of Article II of Chapter 4 of the Illinois Vehicle Code.
 - d. The administrative fee imposed by the Village for impounded vehicles shall be in addition to any fees charged for the towing and storage, or both, of an impounded vehicle. The towing or storage fees, or both, shall be collected and paid to the person, firm, or entity that tows and stores the impounded vehicle. The towing and/or storage company shall be entitled to receive a fee from the owner of record/interested person entitled to possession of any such vehicle prior to the release of the vehicle. The fee shall be to cover the cost of removing said vehicle and, in addition, any fees for the cost of storage of the vehicle for each day or fraction thereof that said vehicle remained at their storage facility in compliance with their practices. Fees for a "standard" tow shall not exceed one hundred

dollars (\$100.00). Storage fees for the first twenty four (24) hours shall not exceed twenty five dollars (\$25.00).

- e. It shall be the duty of the towing or storage company in possession of the vehicle to obtain documentation issued by the police department confirming compliance with the foregoing requirements and to retain photocopies of that documentation in their files for a period of not less than twelve (12) months following release of said vehicle. The foregoing information shall be made available to the authorities of the Village for inspection and copying, upon their request, by the towing or storage company. The towing or storage company is prohibited from releasing any vehicle they may tow within the Village until and unless they obtain the documentation as noted above.
- f. The administrative fees established by this section are to be paid by the owner of record/interested person, or the agents of the owner or record/interested person, of the vehicle involved in the incident leading to custodial arrest regardless of whether that person was operating the vehicle at the time of the incident. Vehicles towed by the police department for any reason other than those listed above shall be released to the owner of record/interested person with no administrative fee charged by the Village. The person purporting to be the owner of record/interested person, or the agents of the owner of record/interested person, must present proof of ownership, current proof of insurance and possess a valid driver's license prior to release.
- g. Upon verifiable proof that the vehicle used in the violation was stolen at the time it was impounded; or if the vehicle was operating as a common carrier including, but not limited to, taxicabs or buses and the violation occurred without the knowledge of the person in control of the vehicle, the administrative fee shall be waived by the Village.
- h. Unless stayed by a court of competent jurisdiction, any 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. This section incorporates Sections 4/201 through 4/214.1 of the Illinois Vehicle Code to the extent they are consistent. Where a provision of this section differs from Sections 4/201 through 4/214.1 of the Illinois Vehicle Code, the provisions of this section shall be controlling. Enforcement and administration of this section shall be consistent with the policies and procedures of Section 4/201 through 4/215 of the Illinois Vehicle Code to the extent that said policies and procedures do not directly conflict with the provisions of this section.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are expressly repealed.

SECTION 3. This ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law.

SECTION 4. This ordinance shall be published in pamphlet form by the Village Clerk.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF COBDEN, UNION COUNTY, ILLINOIS, ON THE 21st DAY OF JULY, 2014.

Paul Z. Tomazzoli, Village President

ATTEST:

Karen M. Winzenburger, Village Clerk

Record of vote for Ordinance No. 903: Ayes: 4 – Brumleve, Maze, Stewart, Swedlund
Nays: 0 – None
Absent: 2 – Britt, Gomez