

penalty and waive their right to an Administrative Hearing or at the time the \$500.00 is posted, request an Administrative Hearing.

In addition, the ordinance also addresses the hiring of an Administrative Hearing Officer as well as the establishment of an Administrative Hearing System. The ordinance addresses the Hearing officer's appointment, their employment as an independent contractor, qualifications, compensation, and their authority and powers.

DISCUSSION OF ALTERNATIVES :

There are similar ordinances in place in several noted communities. The ordinances typically provide for similar administrative procedures, but they differ in the offenses that the procedure applies to. For example, Bolingbrook has more than two-dozen offenses where vehicles are towed and impounded. We are proposing that we only tow for three offenses: DUI, DWLS, and DWLR.

SURVEY OF OTHER COMMUNITIES

Although the practice of administrative impoundment is relatively new, it appears to be gaining popularity among home rule communities. Similar ordinances are in place in Chicago, Cicero, Aurora, Bolingbrook, Park Forest, Chicago Heights, Joliet, Arlington Heights, Buffalo Grove, and Hanover Park. Some of the communities vary as far as the dollar amount of the administrative penalty/fee; however, Hanover Park, Cicero, Chicago, Arlington Heights, and Buffalo Grove have the \$500.00 administrative penalty/fee for some of the same offenses that we seek to use the towing procedure for. Hanover Park has had their ordinance in place approximately one year and has brought in about \$261,000 in revenue to the Village during that time. We are projecting that the Police Department will receive approximately \$250,000 in revenue this fiscal year.

BUDGET IMPLICATIONS:

BID AMOUNT: \$ _____	ACCOUNT: 001.624.0000.5315
BUDGET AMOUNT: \$ 7,000.00	

The dollars budgeted are for the costs associated with hiring an Administrative Hearing Officer and the services of an outside prosecutor if needed.

STAFF RECOMMENDATION:

Staff recommends the Village adopt a Vehicle Seizure/Impoundment ordinance which authorizes the Police Department to charge an Administrative penalty/fee in the amount of \$500.00 to arrestees charged with DUI, DWLS, and DWLR. In addition, the ordinance also addresses the hiring of an Administrative Hearing Officer and provides for the establishment of an Administrative Hearing System

REQUESTED COURSE OF ACTION:

Place on the Village Council Active Agenda on _____ for approval.

Vehicle Impoundment

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING PROCEDURES FOR VEHICLE IMPOUNDMENT

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by ~~shading~~/underline; deletions by ~~strikeout~~):

Section 1. That Section 14.10. is hereby amended to read as follows:

14.10. Vehicle Seizure and Impoundment-Use of Motor Vehicles for Unlawful Purposes.

A. Definitions.

Business day. Any day in which the office of the Village Clerk of the Village of Downers Grove is open to the public for a minimum of seven (7) hours.

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

Owner of record. The record title holder(s) of the vehicle as registered with the Secretary of State, State of Illinois or if not registered in Illinois, the particular state where the vehicle is registered.

B. Conduct Prohibited.

A motor vehicle that is used in connection with any of the following violations may be subject to seizure and impoundment by the Village, and the owner of record of said vehicle shall be liable to the Village for an administrative penalty of \$500.00 plus any applicable towing fees.

1. Driving under the influence of alcohol, other drug or drugs, intoxicating compound(s) or any combination thereof, as provided in Section 14-3 of the Downers Grove Municipal Code or section 5/11-501(a) of the Illinois Vehicle Code (625 ILCS 5/11-501(a)), or

2. Driving while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked, as provided in Section 14-3 of the Downers Grove Municipal Code or section 5/6-303 of the Illinois Vehicle Code (625 ILCS 5/6-303).

C. Seizure and Impoundment.

1. Whenever a police officer has reason to believe that a vehicle is subject to seizure and impoundment pursuant to this Section, the police officer shall provide for the towing of the vehicle to a facility approved by the Chief of Police. This Section shall not apply if the vehicle used in the violation was stolen at that time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered.

2. The police 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, if there is such a person, of the fact of the seizure and of the vehicle owner's right to request an administrative hearing to be conducted under this Section.

D. Administrative Hearing.

Within five (5) business days after a vehicle is seized and impounded pursuant to this Section, the Village shall notify by certified mail the owner of record of the owner's right to request a hearing to challenge whether a violation of this Section has occurred. The owner of record seeking a hearing must file a written request for a hearing with the Chief of Police or his designee no later than ten (10) business days after notice was mailed. The hearing date must be no more than ten (10) business days after a request for a hearing has been filed. All interested persons 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. If, after the hearing, the hearing officer determines by a preponderance of evidence that the vehicle was used in violation of this Section, then the hearing officer shall enter an order finding the owner of record of the vehicle civilly liable to the Village for the administrative penalty of \$500.00.

Vehicle Impoundment

If, after a hearing, the hearing officer does not determine by a preponderance of the evidence that the vehicle was used in such a violation, the hearing officer shall enter an order finding for the owner and for the return of the vehicle. If the owner of record requests a hearing but fails to appear at the hearing or fails to request a hearing in a timely manner, the owner of record shall be deemed to have waived his or her right to a hearing and the hearing officer shall enter a default order in favor of the Village in the amount of the administrative penalty. However, if the owner of record pays such penalty and the vehicle is returned to the owner, no default order need be entered if the owner is informed of his or her right to a hearing and signs a written waiver, in which case an order of liability shall be deemed to have been made when the Village receives the written waiver.

E. Disposition of impounded vehicle.

A penalty imposed pursuant to this Section shall constitute a debt due and owing the Village. A vehicle impounded pursuant to this Section shall remain impounded until:

1. the penalty of \$500.00 is paid to the Village and all applicable towing fees are paid to the towing agent, in which case the owner of record shall be given possession of the vehicle, or
2. a bond in the amount of \$500.00 is posted with the Police Department and all applicable towing fees are paid to the towing agent, at which time the vehicle will be released to the owner of record, or
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 vehicles.

F. Posting of bond.

If a bond in the amount of \$500.00 is posted with the Police Department, the impounded vehicle shall be released to the owner of record; the owner of the vehicle shall still be liable to the towing agent for any applicable towing fees. If a \$500.00 penalty is imposed for violation of this Section, the \$500.00 bond will be forfeited to the Village; however if a violation of this Section is not proven by a preponderance of the evidence, the \$500.00 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 hearing officer issues a decision, or, if there is a judicial review, until the court issues its decision.

G. Vehicle Possession.

Any motor vehicle that is not reclaimed within 30 days after the expiration of the time during which the owner of record may seek judicial review of the Village's action under this Section, or the time at which a final judgment is rendered in favor of the Village, or the time a final administrative decision is rendered against an owner of record who is in default, may be disposed of as an unclaimed vehicle as provided by law, provided, however, that where proceedings have been instituted under state or federal drug asset forfeiture laws, the subject vehicle may not be disposed of by the Village except as consistent with those proceedings.

Section 2. That Section 14.11. is hereby added to read as follows:

14.11. Village Administrative Hearing System-Established.

A. There is hereby established and created within the Village an Administrative Hearing System to enforce and adjudicate violations ("Violations") of the following Chapters of the Municipal Code of the Village of Downers Grove (the "Code"), as the same have been, and may from time to time hereafter be, amended:

1. Chapter 14.10 Vehicle Seizure and Impoundment: Use of Motor Vehicles for Unlawful Purposes.
2. Such other Village ordinances and Code provisions as the Mayor and Council may from time-to-time designate.

B. The provisions of 65 ILCS 5/1-2.1 of the Illinois Municipal Code are hereby adopted and incorporated into this Chapter as if fully set forth herein.

C. The provisions of this Chapter shall apply to administrative adjudication proceedings to the extent that

Vehicle Impoundment

they are not inconsistent with the provisions of the Code which set forth specific procedures for the administrative adjudication of particular Code provisions.

Section 3. That Section 14.11.1. is hereby added to read as follows:

14.11.1. Hearing Procedures Non-Exclusive.

The provisions of this Chapter shall not preclude the Village from using other methods or proceedings to enforce and adjudicate the Code or other ordinances of the Village, including, without limitation, the institution of an action in the DuPage County Circuit Court or the United States District Court, or any administrative proceeding.

Section 4. That Section 14.11.2. is hereby added to read as follows:

14.11.2. Administrative Composition.

The Administrative Hearing System shall provide for one or more Hearing Officers, all with the power, authority and limitations as set forth in this Chapter.

Section 5. That Section 14.11.3. is hereby added to read as follows:

14.11.3. Hearing Officer.

A. *Appointment.* The Village Manager shall appoint one or more qualified Hearing Officers to perform the functions set forth in this Section.

B. *Independent Contractor.* A Hearing Officer shall be employed as an independent contractor of the Village and shall not be considered an employee of the Village. A Hearing Officer may be removed, with or without cause, by the Village Manager.

C. *Qualifications.* To qualify as a Hearing Officer, an individual must:

1. Be an attorney licensed to practice law in the State of Illinois for at least three years;

2. Be in good standing with the Illinois Supreme Court Attorney Registration and Disciplinary

Commission;

3. Complete a formal training program approved by the Village Manager and the Village

Attorney consisting of:

a. Instruction on the rules of procedure for administrative hearings;

b. Orientation to each subject area of the Code that will be adjudicated;

c. Observation of hearings conducted by Illinois municipalities that have adopted the administrative hearing system; and

d. Participation in hypothetical hearings, including ruling on evidence and issuance of final orders.

D. *Compensation.* Authorization for compensation for a Hearing Officer shall be made by the Mayor & Village Council through the Village's annual budget process. Compensation shall be determined by the Village Manager within approved budget limitations.

E. *Authority and Powers.* Hearing Officers shall have all powers necessary to conduct fair and impartial hearings including, but limited to, the power to:

1. Hold conferences for the settlement or simplification of the issues;

2. Administer oaths and affirmations;

3. Hear testimony and accept evidence that is relevant to the allegation of a violation;

4. Issue subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;

5. Preserve and authenticate the record of the hearing, including all exhibits and evidence introduced at the Hearing;

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6. Issue a determination, based on the evidence presented at the hearing, on whether a violation occurred or exists. The Hearing Officer's determination shall be in writing and shall include a written finding of fact, decision, and order, including the fine, penalty, or other action with which the defendant must comply; and

7. Impose penalties consistent with applicable Code provisions and assess costs upon finding a defendant liable for the charged violation, except as expressly provided in this Chapter.

Section 6. That Section 14.11.4. is hereby added to read as follows:

14.11.4. Violation Notice.

A. A notice of any violation ("Violation Notice") shall be issued by the persons authorized under this Chapter, shall contain information as to the nature of the Violation, shall be certified, and shall constitute prima facie evidence of the Violation cited.

B. All officers, as well as other specifically authorized individuals of any department of the Village, shall have the authority to issue Violation Notices.

C. Any individual authorized to issue Violation Notices who detects a Violation, is authorized to issue a Violation Notice thereof and shall serve the Violation Notice in the manner set forth in the Code.

D. The correctness of facts contained in any Violation Notice shall be certified by the person issuing the notice through signing his or her name to the Violation Notice at the time of issuance.

E. The records department of the Downers Grove Police Department shall retain the original or a facsimile of the Violation Notice and keep it as a record in the ordinary course of business.

F. The Violation Notice or a copy thereof shall be admissible in any subsequent administrative or judicial proceeding to the extent permitted by law.

Section 7. That Section 14.11.5. is hereby added to read as follows:

14.11.5. Service.

A. Service of any Violation Notice shall be made as follows:

1. Handing the notice to the registered owner, operator or lessee of the vehicle, if present; or

2. Mailing the notice by certified mail to the registered owner, operator or lessee of the vehicle;

or

B. If service of notice is provided by mail for any Violation Notice or for any Hearing notice, said service shall be deemed sent and shall be complete on the date the notice is deposited, postage prepaid, in the United States mail. The counting of any time period as set forth in the Code shall begin to run on the date the notice is deposited, postage prepaid, in the United States mail.

Section 8. That Section 14.11.6. is hereby added to read as follows:

14.11.6. Hearings.

All Hearings conducted under the Administrative Hearing System shall be conducted by a Hearing Officer and shall be in accordance with the following rules and procedures:

a. A record of the Hearing shall be made by tape recording or other appropriate means.

b. The parties may be represented by counsel, present witnesses, and cross-examine opposing witnesses.

c. The Hearing Officer may grant continuances only upon a finding of good cause.

d. All testimony shall be given under oath or affirmation.

e. Parties may request the Hearing Officer to issue, and the Hearing Officer shall have the authority to issue, subpoenas to direct the attendance and testimony of relevant witnesses and produce relevant documents.

Vehicle Impoundment

f. The formal and technical rules of evidence shall not apply. Evidence, including hearsay, may be admitted only if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

g. In a hearing on the propriety of impoundment of a vehicle any sworn or affirmed report that (i) is prepared in the performance of a law enforcement officer's duties and (ii) sufficiently describes the circumstances leading to the impoundment, shall be admissible evidence of the vehicle owner's liability, unless rebutted by clear and convincing evidence.

h. Each hearing shall culminate in a determination of liability or non-liability by the Hearing Officer or a determination of liability based upon the failure of the defendant to appear at the hearing.

i. The Hearing Officer shall, upon a determination of liability, assess fines and penalties in accordance with the Code. In addition, the Hearing Officer shall have the discretion to assess costs upon finding a defendant liable for the charged violation. In no event shall the Hearing Officer have authority to: (a) impose a penalty of incarceration; or (b) impose a fine in excess of \$1,000.00 for a violation.

j. The maximum monetary fine imposed under the Code shall be exclusive of costs of enforcement or costs incurred by the Village to secure compliance with the Village's Code and ordinances, and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the Village.

Section 9. That Section 14.11.7. is hereby added to read as follows:

14.11.7. Judicial Review.

Any final decision by a Hearing Officer that a violation does or does not exist shall constitute a final determination for purposes of judicial review and shall be subject to review under the Illinois Administrative Review Law (735 ILCS 5/3-101 *et seq.*).

Section 10. That Section 14.11.8. is hereby added to read as follows:

14.11.8. Debt to the Village.

Any fine, penalty or part of any fine or penalty assessed in accordance with the provisions of the Code and remaining unpaid after the exhaustion of, or the failure to exhaust, administrative procedures under this Chapter and the conclusion of any judicial review procedures, shall be a debt due and owing the Village, and, as such, may be collected in accordance with applicable law.

Section 11. That Section 14.11.9. is hereby added to read as follows:

14.11.9. Enforcement of Judgments.

A. After expiration of the period that judicial review under the Illinois Administrative Review Law may be sought for a final determination of any violation, unless stayed by a court of competent jurisdiction, the findings, decision, and order of the Hearing Officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

B. Prior to any expenses being fixed by the Hearing Officer pursuant to this subsection (B), the Village shall provide a notice to the defendant that states that the defendant shall appear at a hearing before the Hearing Officer to determine whether the defendant has failed to comply with the judgment. The notice shall set the date for such hearing that shall not be less than seven (7) days from the date that notice is served. If notice is served by mail, the seven (7) day period shall begin to run on the date that the notice is deposited in the mail.

Section 12. That Section 14.11.10. is hereby added to read as follows:

Vehicle Impoundment

14.11.10. Schedule of Fines/Penalties.

For a violation of any Village ordinance, fines and penalties shall be as established from time to time by the Mayor and Council.

Section 13. That **Section 14.12.** is hereby added to read as follows:

14.12. through 14-33. Reserved.

Section 14. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 15. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk



MANAGER'S MEMO ITEM

ITEM: Administrative Booking Fees
WORKSHOP DATE: May 24, 2005
PREPARED BY: Deputy Chief Pamela Church, Police Department
BID AMOUNT: \$DNA **ACCOUNT:** DNA
BUDGET AMOUNT: \$DNA

PURPOSE: To authorize the Police Department to charge an administrative fee to arrestees on any criminal, Village Ordinance, or any bookable arrest including warrants.

BACKGROUND:

The Police Department has researched the ability to charge a \$30.00 administrative fee to arrestees when processing bond. This administrative fee would help offset the officer's time spent on arrestee processing which includes; complaint drafting, fingerprinting and photographing procedures, bond collection, release procedures, and prisoner transport (if applicable), evidence processing (if applicable), Records processing, and Crime Analysis. In addition, the fee would help offset the cost of the annual maintenance fees associated with the Livescan/Digital Booking equipment which are approximately \$19,500. In 2004, the Police Department accepted bond from approximately 140 arrestees each month.

DISCUSSION OF ALTERNATIVES :

While processing arrestees, there is a negative impact on the officer's responsibilities to other duties in our community. The community pays for this lack of coverage by the officer who is tied up on the booking process.

Since the trend is for other agencies to collect this fee, if the Downers Grove Police Department does not adopt an ordinance to collect an Administrative Booking fee, it is conceivable that those offenders who have outstanding warrants would find it less expensive to post bond on their warrants in Downers Grove. This would therefore tie up an officer on a warrant arrest that in most cases did not originate from criminal charges in Downers Grove.

SURVEY OF OTHER COMMUNITIES :

Currently the DuPage County Sheriff's Department, the Wheaton Police Department and the Addison Police Department charge an Administrative Booking fee of \$30.00. The Woodridge Police Department is in the process of adopting an ordinance to charge a \$25.00 Administrative Booking fee.

BUDGET IMPLICATIONS:

BID AMOUNT: \$ DNA	ACCOUNT: DNA
BUDGET AMOUNT: \$ DNA	

The Police Department estimates that the Administrative Booking fee could generate approximately \$45,000 in revenue.

ATTACHMENTS:

See attached cost center analysis.

STAFF RECOMMENDATION:

Staff recommends that the Village authorize the Police Department to charge a \$30.00 Administrative Fee to arrestees on any criminal, Village Ordinance, or any bookable arrest including warrants.

REQUESTED COURSE OF ACTION:

Place on the Village Council Active Agenda on _____ for approval.

Booking Fees

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING ADMINISTRATIVE BOOKING FEES

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by **shading**/underline; deletions by ~~strikeout~~):

Section 1. That Section 17.3.2. is hereby added to read as follows:

17.3.2. Administrative Booking Fee.

An administrative fee of thirty dollars (\$30.00) shall be imposed upon an arrestee when posting bail or bond for any criminal, Village ordinance or bookable arrest, including, but not limited to warrants.

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk