ORDINANCE NO. 2018-14

AN ORDINANCE AMENDING CHAPTER 70 OF THE CODE OF ORDINANCES OF THE VILLAGE OF CHERRY VALLEY RELATING TO THE ESTABLISHMENT OF ADMINISTRATIVE FEES AND PROCEDURES FOR THE IMPOUNDMENT OF VEHICLES FOR CERTAIN OFFENSES WITHIN THE VILLAGE AND PROVIDING FOR THE SALE OF UNCLAIMED VEHICLES

WHEREAS, Chapter 70 Traffic and Vehicles of the Village of Cherry Valley’s Code of Ordinances sets forth General Provisions concerning the operation of motor vehicles upon the roadways of the Village of Cherry Valley; and

WHEREAS, the Village of Cherry Valley incurs certain administrative and processing expenses in relation to the towing, impounding, and storage of vehicles involved in certain offenses committed within the Village of Cherry Valley; and

WHEREAS, the Village of Cherry Valley, in an effort to recoup some of these expenses, wishes to impose an administrative fee upon vehicles towed pursuant to the authority of the Village Police Department, for certain offenses or attempted offenses taking place within the Village of Cherry Valley, and that such fee shall be in addition to any other fines, fees, or costs imposed as part of the towing of said vehicles; and

WHEREAS, the President and Board of Trustees find that an administrative fee in the amount of $500.00, is a reasonable fee related to the Village’s administrative and processing costs associated with the investigation, arrest and detention of offenders, inventory of property, the removal of vehicle, impoundment storage, administrative hearings and release of vehicles, involved with certain offenses set forth below; and

WHEREAS, the Village of Cherry Valley, in an effort to recoup some expenses due to unclaimed vehicles, wishes to dispose of vehicles that go unclaimed 35 days after an Administrative Hearing; and

WHEREAS, the President and Board of Trustees find that the disposal of unclaimed vehicles is reasonable and needed; and

WHEREAS, the President and Board of Trustees of the Village of Cherry Valley wish to amend the Code of Ordinances of the Village of Cherry Valley to reflect the recitals written herein; and

WHEREAS, the Village of Cherry Valley is authorized to impose said administrative fees pursuant to Section 625 ILCS 5/11-208.7 of the Illinois Vehicle Code; and

WHEREAS, the Village of Cherry Valley is authorized and empowered by statute to adopt and enforce the provisions of this ordinance; and
WHEREAS, the President and Board of Trustees of the Village of Cherry Valley find that it is in the best interests of the Citizens of the Village of Cherry Valley to make such amendments to the Village Code of Ordinances; and

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF CHERRY VALLEY, ILLINOIS, AS FOLLOWS:

Section 1. The foregoing recitals shall hereby be incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

Section 2. That Chapter 70 of the Code of Ordinances of the Village is hereby amended to create a new Section 70-121, to read as follows:

“Sec. 70-121 - ADMINISTRATIVE FEES AND PROCEDURES FOR IMPOUNDING VEHICLES FOR SPECIFIED VIOLATIONS.”

A. Imposition of Administrative Fee for Certain Offenses: An administrative fee in the amount of five-hundred dollars ($500.00) shall be imposed upon the registered owner, or the agent of that owner, of any motor vehicle that has been properly impounded at the direction and by the authority of the Village Police Department, pursuant to the Statutes of the State of Illinois or the Ordinances of the Village of Cherry Valley, in connection with any of the following violations:

(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 the Illinois Vehicle 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 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 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; 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 the Illinois Vehicle 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 the Illinois Vehicle 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 the Illinois Vehicle 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 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 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.

B. Payment and Release from Impound:

(1) Whenever a police officer has cause to believe that a motor vehicle is subject to impoundment under this Section, the officer shall provide for the towing of the vehicle to a facility authorized by the Village.

(2) Motor vehicles impounded under this Section shall remain impounded until all costs associated with the towing and storage of the vehicle have been paid to the private company towing and storing the vehicle; AND

i. The registered owner or registered owner’s agent appears at the Village Police Department and remits the $500.00, OR
ii. The registered owner appears in person at the Village Police Department and requests a hearing to contest the imposition of the $500.00 administrative fee, posts a $500.00 bond with the Village and signs the Village’s notice acknowledging receipt of the hearing date.

(3) Upon payment of the administrative fee or the registered owner’s request for a hearing and posting of bond, the Village Police Department shall inform the private towing company that the Village is releasing its hold on the vehicle. However, the private towing company shall have the right to hold the vehicle until the costs associated with the towing and storage have been paid in full or other arrangements for payment have been made in a manner consistent with the company’s normal practices.

(4) Administrative fees imposed by this Section shall be in addition to (i) any other penalties that may be assessed by a court of law for the underlying violations; and (ii) any towing or storage fees, or both, charged by the towing company.

C. Required Notice and Scheduling of Hearing.

(1) At the time the vehicle is towed, the Village will 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, the fact of the seizure, the vehicle owner’s or lessee’s right to an administrative hearing, and that the motor vehicle will remain impounded pending the completion of the administrative hearing, unless $500.00 bond is posted to the Village, and all towing and storage charges are paid to the private towing company.

(2) Within 10 days after the vehicle is impounded, the Village shall cause to 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, a notice containing at minimum, the date, time, and location of the administrative hearing. The initial hearing shall be scheduled and convened no later than 45 days after the date of the mailing of the notice of hearing.

D. Administrative Review of Impoundment.

(1) Any owner, lessee, or lienholder of record is entitled to a hearing on the basis for the vehicle impoundment, as set forth in this Section. The interested party, or their legal representative, may appear at the administrative hearing and present evidence and testimony as to whether or not there was a proper basis for impoundment as set forth in Section “A” above, or to present evidence and testimony that the vehicle was stolen at the time the vehicle was impounded.
(2) The administrative hearing shall be conducted in the manner, and under the procedures not conflicting with this Section, as set forth in Article III, Division 13 ("Administrative Enforcement") of this Code of Ordinances.

   i. The Village's Administrative Hearing Officer shall preside over the proceedings.

   ii. The Hearing officer will determine whether, by a preponderance of the evidence, the vehicle seized and impounded was being used in violation of one of the offenses set forth in Section "A" above.

   iii. Formal rules of evidence shall not apply at the administrative hearing.

   iv. At the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment.

(3) 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. Any administrative fee posted to secure the release of the vehicle shall be forfeited to the municipality and shall be applied towards any unpaid portion of the administrative fee.

(4) All final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law.

E. Retrieval of Impounded Vehicles After Hearing. 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 the Illinois Vehicle Code as well as Section 70-122 of this Chapter.

F. 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 Illinois Administrative Review Law may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

G. Any administrative fee collected by the Village pursuant to this Section shall primarily be utilized for the purchase and/or repair of Police Department vehicles but may also be utilized for other necessary Police Department expenditures.
"Sec. 70-122 - ADMINISTRATIVE PROCEDURES FOR SELLING OF UNCLAIMED VEHICLES THAT HAVE BEEN IMPOUNDED BY THE POLICE DEPARTMENT."

A. Disposal of Unclaimed Vehicles After Hearing. If a car is seven (7) years of age or newer, and the registered owner or person legally entitled to possession of the car does not retrieve the car prior to 35 days after decision, the Police Department must:

(1) send notice to the registered owner notifying them of the circumstances surrounding the tow of the vehicle to include when the vehicle was towed and the reason for the tow. The notice will also contain information on where the vehicle is stored, information on when the hearing was conducted and the outcome, including instructions regarding how the owner may reclaim the vehicle.

(2) Notice will be sent by registered mail and will contain the date on which the vehicle will be disposed of, a complete description of the vehicle to be sold, where the sale will take place and what steps must be taken by the owner to reclaim the vehicle.

(3) Notice of the sale shall be posted in a visible place for at least ten (10) days prior to the sale on the premises where the vehicle is impounded.

(4) In instances where the certified notification has been returned by the postal service due to the addressee having moved or being unknown, the sending of a second certified notice is not required.

(5) If the vehicle is still unclaimed after 30 days, the vehicle will be sold at auction.

(6) When the identity of the registered owner or person legally entitled to possession of the vehicle cannot be determined by a search through State records or any other means, the vehicle may be sold or disposed of without notice.

(7) If the registered owner or person legally entitled to possession of the vehicle cannot be determined, the Police Department will keep records on what databases were searched, when and how many times, prior to the sale of the vehicle.

(8) Prior to any sale of any impounded vehicle, the Police Department will verify that the car is not being held due to impending criminal cases. If a criminal case or investigation is still pending, the Police Department will hold on to the vehicle until they are resolved. In the case of a murder conviction, the car will be held indefinitely.

B. Disposal of Vehicles After Hearing That are Seven (7) Years or Older. If the Police Department tows a vehicle that is older than seven (7) years old, it must be kept for a minimum of ten (10) days for the purpose of determining ownership. The Police Department will attempt to contact the registered owner by U.S. Mail, via public service or in person for a determination of disposition and the examination of the State of Illinois
stolen motor vehicle files for theft and wanted information. At the expiration of ten (10) day period, the Police Department may authorize the disposal of the vehicle as junk or salvage. However, if a vehicle is classified as an antique vehicle, it may be sold to a person desiring to restore it.

Section 3. All other provisions of Chapter 70 of the Code of Ordinances shall remain in effect as previously enacted except that those ordinances or parts thereof in conflict are hereby repealed.

Section 4. This Ordinance shall be in full force and effect after its passage, approval, and publication in pamphlet form as provided by law.

PASSED UPON MOTION BY: NANCY BELT
SECONDED BY: SALLY HOLLEMBEAK

BY ROLL CALL VOTE THIS 27TH DAY OF AUGUST, 2018 AS FOLLOWS:

VOTING “AYE”: STEPHEN APPELL, NANCY BELT, JEFF FUSTIN, SALLY HOLLEMBEAK, JEFF O’HARA, DAVID SCHROEDER

VOTING “NAY”: NONE

ABSENT, ABSTAIN, OTHER: NONE

APPROVED: AUGUST 27, 2018

ATTEST:

KATHY TRIMBLE, VILLAGE CLERK

JIM E. CLAEYSSEN, VILLAGE PRESIDENT