

SUBSTITUTE **ORDINANCE**

WHEREAS, for decades, predatory tow truck operators - commonly referred to as "wreck chasers" - have operated on our City streets with impunity, endangering drivers, pedestrians, cyclists, and first responders with their dangerous and reckless activities; and

WHEREAS, in fact, courts across the country have routinely found that wreck chasers pose a genuine threat to public safety, including right here in Illinois; and

WHEREAS, for example, in a case addressing challenges to the Illinois Commercial Safety Towing Act (*Prof'l Towing & Recovery Operators of Ill. v. Box*), a federal court specifically found that wreck chasers posed a threat to safety:

- *There is no dispute that wreck chasing is a safety concern;*
- *[W]reck chasing ... is also a safety hazard - a real one, the Court does not doubt that;*
- *There is no question that the ... requirement frustrates wreck chasing. By doing so, it is responsive to concerns about safety;*
- *[The] requirements are genuinely responsive to safety concerns because they attack the way that typical wreck chasers operate;*
- *Because there is no question that wreck chasing is a safety concern, and, like the registration requirement, that the disclosure requirement makes it difficult for wreck chasers to operate, the regulation avoids federal preemption even though it smuggles-in economic regulations, and does so intentionally; and*

WHEREAS, as that federal court found, "[i]t's a simple point: Wreck chasers are unprofessional towers" and, more importantly, "the Towing Law forces wreck chasers off the road, and that makes Illinois roads safer"; now, therefore:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 2-14-132 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

2-14-132 Impoundment.

(a) (1) Whenever the owner of a vehicle seized and impounded pursuant to Sections 3-46-076, 4-68-195, 4-227-140, 4-227-150, 9-76-140, 9-80-220, 9-112-640 or 9-114-420 of this Code (for purposes of this section, the "status-related offense sections"), or Sections 4-227-080, 7-24-225, 7-24-226, 7-28-390, 7-28-440, 7-38-115(c-5), 8-8-060, 8-20-070, 9-12-090, 9-12-095, 9-12-100, 9-12-105, 9-12-110, 9-32-040, 9-48-050, 9-76-160, 9-80-225, 9-80-240, 9-92-035, 11-4-1410, 11-4-1500 or 15-20-270 of this Code (for purposes of this section, the "use-related offense sections") requests a preliminary hearing in person and in writing at the Department of Administrative Hearings, within 15 days after the vehicle is seized and impounded, an administrative law officer of the Department of Administrative Hearings shall conduct such preliminary hearing within 48 hours of request, excluding Saturdays, Sundays and legal

holidays, unless the vehicle was seized and impounded pursuant to Section 7-24-225 and the Department of Police determines that it must retain custody of the vehicle under the applicable state or federal forfeiture law. If, after the hearing, the administrative law officer determines that there is probable cause to believe that the vehicle was used in a violation of this Code for which seizure and impoundment applies, or, if the impoundment is pursuant to Section 9-92-035, 9-12-095 or 9-12-105, that the subject vehicle is eligible for impoundment under that section, the administrative law officer shall order the continued impoundment of the vehicle as provided in this section unless the owner of the vehicle pays to the City the amount of the administrative penalty prescribed for the code violation plus fees for towing and storing the vehicle.

(2) In addition to any amount due under subsection (a)(1), prior to the release of a vehicle, the owner of the vehicle shall also pay all amounts due for all outstanding final determinations for parking, standing, compliance, automated traffic law enforcement system or automated speed enforcement system violations incurred by the owner, including all related collection costs and attorney's fees authorized under Section 1-19-020.

(3) If the administrative law officer determines there is no such probable cause, or, if the impoundment is pursuant to Section 4-227-150, 9-92-035, 9-12-095 or 9-12-105, that the subject vehicle has previously been determined not to be eligible for impoundment under that section, the vehicle will be returned without penalty or other fees.

(b) (1) (A) Within ten days after a vehicle is seized and impounded the Department of Streets and Sanitation or other appropriate department shall notify by certified mail the owner of record (other than a lessee who does not hold title to the vehicle), the person who was found to be in control of the vehicle at the time of the alleged violation, and any lienholder of record, of the owner's right to request a hearing before the Department of Administrative Hearings to challenge whether a violation of this Code for which seizure and impoundment applies has occurred or, if the impoundment is pursuant to Section 4-227-150, 9-92-035, 9-12-095 or 9-12-105, whether the subject vehicle is eligible for impoundment under that section. In the case where an owner of record is a lessee who does not hold title to the vehicle, the notice shall be mailed to such lessee within ten days after the Department of Streets and Sanitation or other appropriate department receives a copy or other satisfactory evidence of the vehicle lease or rental agreement, indicating the name, address, and driver's license number of the lessee pursuant to subsection (i). However, no such notice need be sent to the owner of record if the owner is personally served with the notice within ten days after the vehicle is seized and impounded, and the owner acknowledges receipt of the notice in writing. A copy of the notice shall be forwarded to the Department of Administrative Hearings. The notice shall state the penalties that may be imposed if no hearing is requested, including that a vehicle not released by payment of the penalty and fees and remaining in the City pound may be sold or disposed of by the City in accordance with applicable law.

(B) If, after the ten-day notice period provided in subparagraph (b)(1)(A) of this section, the City learns that the impounded vehicle was owned at the time of the impoundment by a person other than those persons who were identified during the ten-day notice period, then notice shall be sent to such owner or lienholder no later than 10 days after the date the City has learned the identity of such owner or lienholder. Except as provided in this subparagraph (b)(1)(B) of this section, such notice shall be consistent with, and shall be sent in the manner as provided in, subparagraph (b)(1)(A) of this section.

(2) The owner of record seeking a hearing must file a written request for a hearing with the Department of Administrative Hearings no later than 15 days after notice was mailed or

otherwise given under this subsection. The hearing date must be no more than 30 days after a request for a hearing has been filed.

(3) (A) If, after the hearing, the administrative law officer determines by a preponderance of the evidence that the vehicle was used in the violation, or, if the impoundment is pursuant to Section 4-227-150, 9-92-035, 9-12-095 or 9-12-105, that the subject vehicle was properly impounded under that section, the administrative law officer shall enter an order finding the owner of record liable to the City for the amount of the administrative penalty prescribed for the violation, plus towing and storage fees.

(B) If, after a hearing, the administrative law officer does not determine by a preponderance of the evidence that the vehicle was used in such a violation, or, if the impoundment is pursuant to Section 4-227-150, 9-92-035, 9-12-095 or 9-12-105, that the subject vehicle was not eligible for impoundment under that section, the administrative law officer shall enter an order finding for the owner and for the return of the vehicle or previously paid penalty and fees; provided that if the vehicle was seized and impounded pursuant to Section 7-24-225, the vehicle shall not be returned unless and until the City receives notice from the appropriate state, or where applicable, federal officials that (i) forfeiture proceedings will not be instituted; or (ii) forfeiture proceedings have concluded and there is a settlement or a court order providing that the vehicle shall be returned to the owner of record.

(Omitted text is unaffected by this ordinance)

SECTION 2. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-075, as follows:

4-227-075 Post-towing services and obligations.

(a) A vehicle towed or stored by a licensee shall be returned to the owner or operator of such vehicle in substantially the same condition as before being towed or stored.

(b) After a vehicle has been towed to the applicable storage lot, such vehicle shall not be towed to another storage lot or other secondary location, unless authorized by the owner or operator of such vehicle in writing.

(c) A licensee shall release any vehicles located on a storage lot or in a building that has received a (i) closure order pursuant to Sections 4-4-015 or 14A-3-307 of this Code, (ii) a summary closure order pursuant to Section 4-4-285 of this Code, or (iii) a license revocation pursuant to Section 4-4-280 of this Code.

(d) Each licensee is encouraged to accept forms of payment other than cash, including, but not limited to, commonly recognized traveler's checks, money orders, cashier's checks, certified checks, commonly accepted credit cards and debit cards, and mobile pay. However, if a licensee accepts only cash, the licensee, in compliance with all applicable law, shall arrange for the availability of an automated teller machine within a part of the storage lot to which the public has access and shall provide change at the time of payment, if applicable.

SECTION 3. Section 4-227-080 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-080 Prohibited Acts.

(a) Generally applicable prohibitions. It shall be unlawful for any licensee, or any employee or agent of any licensee, to:

(Omitted text is unaffected by this ordinance)

(2) violate any requirement in the Illinois Commercial Safety Towing Law or any rule duly promulgated thereunder; or

(3) fail to take reasonable steps to prevent violations of this chapter, or any rule duly promulgated hereunder, by employees or agents of the licensee; or

(4) engage in any of the following practices:

(Omitted text is unaffected by this ordinance)

(iii) make any false, misleading, or threatening statement or representation, or any other false statement of material fact to the vehicle owner or operator for the purpose of, or any statement to the owner or operator which has the effect of, coercing the owner or operator to engage the licensee's towing services, including any misrepresentations that the licensee is approved by, authorized by, or otherwise affiliated with any insurance company or government agency, or that any insurance company or other third-party will pay all or any portion of the charges for the towing service transaction-;

(iv) give or offer any payment, fee, reward, or other thing of value, directly or indirectly, for supplying information concerning a damaged or disabled vehicle which may require towing services, which information may be used to solicit the vehicle owner or operator to enter into a towing service transaction in violation of Section 11-1431 of the Illinois Vehicle Code, codified at 625 ILCS 5/11-1431; or

(v) make repairs for consideration on a vehicle unless the owner or operator has signed an agreement which includes an estimate of the cost of such repairs.

(b) It shall be unlawful for any licensee ~~person engaged in the business of towing~~ to impersonate or otherwise falsely represent themselves as a member or representative of any unit of government or law enforcement agency, including through: (1) a false statement; (2) a false display of any signage, emblems, or any other distinctive signage, or any counterfeit or imitation of the foregoing; (3) any act that falsely represents that the person has a current affiliation with a unit of government or law enforcement agency; or (4) any act that falsely represents that person is a member or representative of any unit of government or law enforcement agency.

(c) Post-Towing Storage and Release of Vehicles. After a vehicle has been towed, it shall be unlawful for any licensee to:

(1) violate any applicable requirement of the Labor and Storage Lien Act (770 ILCS 40/ et seq.), the Labor and Storage Lien (Small Amount) Act (770 ILCS 50/ et seq.), or Chapter 4 of the Illinois Vehicle Code (625 ILCS 5/4 et seq.);

(2) prohibit the owner or operator of the towed vehicle, regardless of whether such owner or operator has or is able to immediately pay any applicable fees or charges, from accessing the vehicle to retrieve any personal belongings;

(3) require or otherwise condition licensee's towing services or the release of a vehicle that has been towed and is stored at a storage lot upon the owner or operator of the vehicle authorizing repairs or other services beyond the towing of the vehicle; or

(4) refuse to release any vehicle from a storage lot to any person legally entitled to custody of such vehicle during licensee's then-current days and hours of operation on file with the Commissioner, or, if no days and hours of operation are on file with the Commissioner, at any time.

(d) Release of improperly towed vehicles. Any licensee, or any employee or agent of a licensee, that solicits or tows a vehicle in violation of ~~subsection (a)~~ of this section shall release such vehicle, without payment or lien, to the owner of the vehicle upon request.

~~(d)~~ (e) Additional prohibitions. It shall be unlawful for any licensee, or any employee or agent of a licensee, to violate any requirement of Chapter 9-84 of this Code or in any rule duly promulgated thereunder or violate any requirement in the Illinois Commercial Relocation of Trespassing Vehicles Law or any rule duly promulgated thereunder, if applicable.

SECTION 4. Section 4-227-140 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, and by deleting the language struck through, as follows:

4-227-140 Violation – Penalty.

(Omitted text is unaffected by this ordinance)

(c) In addition to any other penalties required under this section, any vehicle used to solicit or tow a vehicle in violation of Sections 4-227-020, 4-227-080(a)(3), or 4-227-080(b) shall be subject to seizure and impoundment pursuant to this section. The owner of record of such vehicle shall be liable to the City for an administrative penalty of \$10,000, in addition to fees for the towing and storage of the vehicle as provided in Section 9-92-080.

(Omitted text is unaffected by this ordinance)

SECTION 5. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-150, as follows:

4-227-150 Authority to impound vehicles previously used in violation of this chapter.

(a) A police officer may seize and impound a vehicle previously used to solicit or tow a vehicle in violation of this chapter when the operator or owner of the vehicle is not present, provided that the requirements of this section are met. Before any seizure or impoundment under this section, the Department of Police shall send to the owner of record of the vehicle to be seized and impounded, either by first class mail or by messenger to the address of the owner of record as indicated in state registration records, a notice of intent to seize and impound the vehicle that includes: (i) a statement that an operator of the vehicle violated the applicable section; (ii) the

date, approximate time and approximate location of the alleged violation; (iii) a description of the vehicle, including the vehicle make and color, and the vehicle's license plate number with the issuing state; and (iv) the owner's opportunity to contest eligibility for impoundment. A copy of the notice shall be forwarded to the Department of Administrative Hearings. A notice is presumed to be delivered upon being deposited with the United States Postal Service with proper postage affixed.

(b) An owner of record who receives a notice pursuant to this section may contest eligibility for impoundment by written request delivered to the Department of Administrative Hearings, postmarked within 14 days after the delivery of the notice. The Department of Administrative Hearings shall set a date for a hearing on the eligibility of the vehicle for impoundment, and shall notify the owner of the date, time, and place of the hearing. The hearing date must be no more than 30 days after a request for a hearing has been filed. At the hearing the Department's evidence of probable cause shall be considered prima facie correct. In order to disprove the vehicle's eligibility for impoundment, the owner of record must prove that:

(1) at the time and date of the alleged violation as described in the notice, the described vehicle was not operated within the City; or

(2) the vehicle used in the violation was stolen at the 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; or

(3) the license information described in the report does not match the listed make of the described vehicle.

If the owner of record prevails, the notice of intent to impound the owner's vehicle shall be withdrawn and the vehicle shall not be eligible for impoundment under this section.

(c) If a vehicle owner receives a notice pursuant to this subsection and: (i) fails to contest eligibility; or (ii) does not prevail in the contest of eligibility, the vehicle described in the notice shall be eligible for impoundment if found on the public way within 12 months following the conclusion of the contest, if a contest was requested, or following the last date to request a contest, if none was requested. Provided, however, if the owner of the vehicle that is eligible for impoundment under this subsection pays the administrative penalty provided in subsection (d) any time before such vehicle is impounded, the vehicle shall not be eligible for impoundment.

(d) The owner of a vehicle eligible for impoundment under this section shall be subject to an administrative penalty of \$500. If such vehicle is impounded, the owner of the vehicle shall be subject to the administrative penalty plus the applicable cost of towing and storage of the vehicle under Section 9-92-080.

SECTION 6. Chapter 4-227 of the Municipal Code of Chicago is hereby amended by inserting a new Section 4-227-160, as follows:

4-227-160 Private right of action – non-exclusive remedy.

(a) Any aggrieved person may enforce the provisions of this chapter against any licensee by means of a civil action in which the court may provide injunctive relief or award treble damages,

plus the plaintiffs' court costs and reasonable attorneys' fees; provided, however, that nothing provided in this section shall be construed to prohibit the enforcement of this chapter by the City.

(b) The remedies, fines, and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties, and procedures established by law which may be pursued to address violations of this chapter.

SECTION 7. This ordinance shall take effect 10 days after passage and publication.