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Legislation Details (With Text)

File #: SO2022-1766

Type: Ordinance **Status:** Passed

File created: 5/25/2022 **In control:** City Council

Final action: 7/20/2022

Title: Amendment of Municipal Code by adding Sections 9-12-095, 9-12-105 and modifying Sections 2-14-132, 9-12-090 and 9-12-100 regarding impoundment of vehicles involved in drag racing or drifting

Sponsors: Reilly, Brendan, Nugent, Samantha, Osterman, Harry, Curtis, Derrick G., Quinn, Marty, Waguespack, Scott, Tabares, Silvana, Hopkins, Brian, Dowell, Pat

Indexes: Ch. 12 Traffic & Speed Restrictions, Ch. 14 Dept. of Administrative Hearings

Attachments: 1. SO2022-1766.pdf, 2. O2022-1766.pdf

Date	Ver.	Action By	Action	Result
7/20/2022		City Council	Passed as Substitute	Pass
7/18/2022	1	Committee on Pedestrian and Traffic Safety	Add Co-Sponsor(s)	
7/14/2022	1	Committee on Pedestrian and Traffic Safety	Recommended to Pass	
7/14/2022	1	Committee on Committees and Rules	Substituted in Committee	
7/5/2022	1	Committee on Pedestrian and Traffic Safety	Add Co-Sponsor(s)	
6/8/2022	1	Committee on Pedestrian and Traffic Safety	Add Co-Sponsor(s)	
6/3/2022	1	Committee on Pedestrian and Traffic Safety	Add Co-Sponsor(s)	
5/25/2022	1	City Council	Referred	

SUBSTITUTE ORDINANCE

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

SECTION 1. Section 2-14-132 of the Municipal Code of the City of Chicago is hereby amended by deleting the language struck-through and by inserting the language underscored, 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, 9-80-220, 9-112-640 or 9-114-420 of this Code (fa-purposes of this section, the "status-related offense sections"), or Sections 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, 9-76-160, 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 aAdministrative ^Hearings, within 15 days after the vehicle is seized and impounded, an administrative law officer of the ^Department of aAdministrative ^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 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

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occurred or, if the impoundment is pursuant to Section 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 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 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 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.

4) 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 an administrative law officer of the Department of Administrative Hearings shall enter a default order in favor of the City in the amount of the administrative penalty prescribed for the violation, plus towing and storage fees. However, if the

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owner: (i) redeemed the vehicle by payment of the appropriate penalty and fees, and (ii) was notified of the owner's right to request a hearing, and (iii) failed to timely request a hearing, then the payment shall be deemed an acknowledgment of liability and no adjudication shall be required.

(5) For the purposes of this section and those sections referenced in subsection (a), the terms "seizure and impoundment" and "seized and impounded" shall be deemed to also refer to a vehicle that a police officer or other authorized City agent or employee determines is subject to impoundment because there is probable cause to believe it was used in violation of one or more of those sections listed in subsection (a), regardless of whether the vehicle is actually towed to and held at a City facility.

(Omitted text is not affected by this ordinance)

SECTION 2. Section 9-12-090 of the Municipal Code of the City of Chicago is hereby amended by inserting the language underscored, as follows:

9-12-090 Drag racing.

a) No person who operates a motor vehicle shall engage in drag racing, as defined in Section 9-4-010, on any street, highway or other public way within the City. In addition to any other penalty provided by law, any person who violates this section shall be subject to a fine of not less than \$5,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

b) The owner of record of the motor vehicle used in the violation of this section shall be subject an administrative penalty of \$500 plus any towing and storage fees applicable under Section 9-92-080. Any such motor vehicle shall be subject to seizure and impoundment pursuant to this section.

c) Whenever a police officer who is present at the time of the alleged violation has probable cause 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 controlled by the City or its agents. Before or at the time the vehicle is towed, the police officer shall notify any person identifying himself as the owner of the vehicle at the time of the alleged violation or the person who is found to be in control of the vehicle at the time of the alleged violation, if there is such person, of the fact of the seizure and of the vehicle owner's right to request a vehicle impoundment hearing to be conducted under Section 2-14-132 of this Code by serving such person with a copy of the vehicle impoundment seizure report.

d) Section 2-14-132 shall apply whenever a motor vehicle is seized and impounded pursuant to this section.

SECTION 3. Chapter 9-12 of the Municipal Code of the City of Chicago is hereby amended by adding a new Section 9-12-095, as follows:

9-12-095 Authority to impound vehicles previously used in a drag racing violation.

(a) A police officer may seize and impound a vehicle previously used in violation of Section 9-12-090 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.

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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 Section 9-12-090 by engaging in drag racing as defined in Section 9-4-010; (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 4. Section 9-12-100 of the Municipal Code of the City of Chicago is hereby amended by inserting the language underscored, as follows:

9-12-100 Drifting.

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a) No person who operates a motor vehicle shall engage in drifting, as defined in Section 9-4-010, on any street, highway or other public way within the City. In addition to any other penalty provided by law, any person who violates this section shall be subject to a fine of not less than \$5,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

b) The owner of record of the motor vehicle used in a violation of this section shall be subject to an administrative penalty of \$500 plus any towing and storage fees applicable under Section 9-92-080. Any such motor vehicle shall be subject to seizure and impoundment pursuant to this section.

c) Whenever a police officer who is present at the time of the alleged violation has probable cause 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 controlled by the City or its agents. Before or at the time the vehicle is towed, the police officer shall notify any person identifying themselves as the owner of the vehicle at the time of the alleged violation or the person who is found to be in control of the vehicle at the time of the alleged violation, if there is such person, of the fact of the seizure and of the vehicle owner's right to request a vehicle impoundment hearing to be conducted under Section 2-14-132 of this Code by serving such person with a copy of the vehicle impoundment seizure report.

d) Section 2-14-132 shall apply whenever a motor vehicle is seized and impounded pursuant to this section.

SECTION 5. Chapter 9-12 of the Municipal Code of the City of Chicago is hereby amended by adding a new Section 9-12-105, as follows:

9-12-105 Authority to impound vehicles previously used in a drifting violation.

a) A police officer may seize and impound a vehicle previously used in violation of Section 9-12-100 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 the an operator of the vehicle violated Section 9-12-100 by engaging in drifting as defined in Section 9-4-010; (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

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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
- 1) described vehicle was not operated within the City; or i < |<

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 section 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. This ordinance shall take effect 10 days after its passage and publication.

Brendan Reilly
Alderman, 42nd Ward

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CHICAGO, JULY 20, 2022

To the President and Members of the City Council:

Your Committee on Pedestrian and Traffic Safety, to which were referred proposed ordinance(s) and/or order (s) to establish and/or amend Amendment of Municipal Code Section 9-12-090 and 9-12-100 regarding impoundment of vehicles involved in drag racing or drifting on portions of sundry streets, begs leave to recommend that Your Honorable Body DO PASS the proposed substitute ordinance(s) and/or order(s) submitted herewith.

This recommendation was concurred in by all members of the Committee present, with no dissenting votes.

Walter Burnett, Jr. Chairman,
Committee on Pedestrian and Traffic Safety

Respectfully submitted,