

ORDINANCE NO. 21 - _____

**AN ORDINANCE REPEALING AND REPLACING
ARTICLE A (POLICE LICENSE TOWING SYSTEM)
AND ARTICLE B (TOWING PROCEDURE) OF
CHAPTER 5 (MOTOR VEHICLE TOWS)
OF TITLE 11 (MOTOR VEHICLES AND TRAFFIC)
OF THE NAPERVILLE MUNICIPAL CODE**

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers that:

SECTION 1: Article A (Police License Towing System) and Article B (Towing Procedure) of Chapter 5 (Motor Vehicle Tows) of Title 11 (Motor Vehicles and Traffic) of the Naperville Municipal Code are hereby repealed and replaced with the following language:

CHAPTER 5 - MOTOR VEHICLE TOWS

ARTICLE A. - POLICE TOWING LICENSE SYSTEM

SECTION:

11-5A-1: - DEFINITIONS:

As used in this Article, the following words and phrases shall have the following meanings:

ABANDONED VEHICLE:	For the purposes of this Article, abandoned vehicle means any vehicle as described in 625 Illinois Compiled Statutes 5/4-201, for which the Police Department initiates abandoned vehicle procedures and does not include those vehicles defined herein as an "unclaimed vehicle".
HEAVY DUTY:	Involving vehicles, and vehicle combinations, twenty-six thousand one (26,001) pounds GVWR/GCWR or heavier.
LIGHT DUTY:	Involving vehicles up to, and including, ten thousand (10,000) pounds GVWR.

MEDIUM DUTY:	Involving vehicles from ten thousand one (10,001) pounds up to, and including, twenty-six thousand (26,000) pounds GVWR.
NORMAL BUSINESS HOURS:	Licensee towing businesses shall have normal business hours of at least Monday through Friday eight o'clock (8:00) a.m. to six o'clock (6:00) p.m., except for official City of Naperville holidays as set forth in Section 1-5-4-1 of this Code.
POLICE TOW:	A tow requested by the Naperville Police Department for:
	1. Vehicles that are disabled where the person in charge of the vehicle has no preference for any particular tow service or is unable to make such decision.
	2. City owned vehicles.
	3. Vehicles impounded by the Naperville Police Department for evidentiary, investigative or seizure purposes, or arrests.
	4. Abandoned vehicles that are towed pursuant to Naperville Police Department procedures.
	5. Illegally parked vehicles that pose a traffic hazard.
	Specifically excluded from this Article is the moving by tow truck, of vehicles within, or from one City lot to another for purposes related to auctioning or seizure.
POLICE TOWING LICENSE:	A license issued by the City of Naperville authorizing a person or firm to engage in the business of vehicle towing at the request of the Naperville Police Department.
POLICE TOWING LICENSEE:	A person or business who has been issued a police towing license by the City of Naperville authorizing them to engage in the business of vehicle towing at the request of the Naperville Police Department pursuant to a police tow as defined in this Article.
POLICE TOWING LICENSEE LIST:	A list maintained by the Naperville Police Department containing the names of those licensees approved by the Chief of Police to respond to requests by the Naperville Police Department for the towing of vehicles.
RECOVERY:	A vehicle located in a river, lake, pond, swimming pool, field, tree or other extreme situation where the vehicle is not on a paved or graded surface and requires extensive work to prepare it for the

	purpose of towing. These tow charges will be evaluated on a case by case basis.
STANDBY:	When a licensee is called out and the tow driver is asked by police or fire personnel to wait at the scene before the tow driver can start the requested service.
TOW DRIVER:	An approved agent that works for a police towing licensee, driving or operating a tow truck, or working at the scene of a police tow as defined in this Article.
TOW TRUCK:	As defined in the Illinois Vehicle Code, 625 Illinois Compiled Statutes 5/1-205.1, as amended.
UNCLAIMED VEHICLE:	Vehicles that have been towed by a licensee to their storage lot and have not been picked up or disposed of by their owner.
UPRIGHTING:	Bringing a vehicle that is either overturned or on its side to the upright position to tow.
WINCHING:	<p>Bringing a vehicle that is completely off of the roadway or graded surface, or stuck in snow, mud, or flood waters, back onto the roadway or other drivable area for the purpose of being driven away by owner/driver.</p> <p>Winching will not apply, if the vehicle is initially loaded directly onto the tow truck from a roadway or graded surface and removed.</p>

11-5A-2: - APPLICATION FOR POLICE TOWING LICENSE:

Any person/business desiring to perform police towing work at the request of the Naperville Police Department shall submit an "application for police towing license" to the Chief of Police, or his designee. Application forms may be obtained from the Naperville Police Department. The tow license application period shall be from September 15 to September 30 of each odd numbered year, with the licenses issued for a two-year period from January 1 to December 31. Each applicant must have a completed and correct application, along with all supporting and required documents, returned to the Naperville Police Department by three o'clock (3:00) p.m. September 30, or the next business day where September 30 falls on a weekend or holiday. No additional applications or application documents shall be accepted after the close of the application period. Applicants submitting incomplete applications or applications submitted without all supporting or required documents shall be considered a nonqualified applicant by the Chief of Police. The Chief of Police shall issue police towing licenses to those applicants that meet the qualifications of said licenses as set

forth in this Article. The police towing licenses shall be for a period of two (2) years. There will be a maximum of eleven (11) police tow licenses for the light duty tow list and five (5) police tow licenses for the medium and heavy tow lists issued pursuant to Section 11-5A-4 of this Article.

Each owner of the towing service and each person operating a vehicle on behalf of the towing service shall submit his or her fingerprints to the Department of State Police. These fingerprints shall be checked against the fingerprint records now and hereafter filed in the Department of State Police and Federal Bureau of Investigation criminal history records databases. Re-submission of fingerprints will be required with the start of each tow licensee application period or upon submitting of a request to add a new driver.

No person shall be approved as a licensee or a tow driver, nor shall any licensee knowingly permit such a person to be a tow driver pursuant to a police tow call who:

1. Is a sex offender, as defined in Illinois law, 730 Illinois Compiled Statutes 150/2, as amended; or
2. Has been convicted under the laws of Illinois or any other state of an offense that under the laws of the State of Illinois would be a felony theft of a vehicle or vehicle parts; or
3. Has been convicted within the last five (5) years of a criminal offense involving:
 - 3.1. bodily injury or attempt to inflict bodily injury to another person; or
 - 3.2. theft of property or attempted theft of property; or
 - 3.3. sexual assault or attempted sexual assault of any kind; or
 - 3.4. any felony conviction in any State.

11-5A-3: - INVESTIGATION, QUALIFICATIONS AND APPROVAL OF POLICE TOWING LICENSE APPLICATIONS:

By November 15 of each odd numbered year, after receiving a completed application for a police towing license, the Naperville Police Department will review the qualifications of the applicant as provided for in this Article, conduct an investigation to determine the truth and accuracy of the information contained in said application, check to determine whether the applicant's business location(s) meets applicable zoning and fire code requirements. Inspect the applicant's towing equipment and physical location of the business and any place where licensed vehicles are stored, all records associated with license calls, a check of employees for criminal and traffic records, and insurance. Upon completion of the investigation, the applicant will be notified in writing that the application is either approved or disapproved. If disapproved, the notification will state the reasons for such disapproval.

1. Reasons for disapproval include, but are not limited to, the following:

- 1.1. The applicant has furnished false or misleading information or has failed to provide relevant or complete information on the application or has failed to provide all supporting or required documents as provided for in this Article.
 - 1.2. The applicant has not obtained insurance as required by this Article.
 - 1.3. The location(s) where the applicant will conduct business fails to meet applicable zoning and/or fire codes or the requirements of Section 11-5A-11, "Storage Facility", of this Article.
 - 1.4. The applicant or any of the owners/partners have been permanently removed from the police towing licensee list for cause pursuant to Section 11-5A-9, "Removal From Police Towing Licensee List", of this Article.
 - 1.5. The applicant does not meet all of the requirements of this Article or the towing license agreement.
2. Any applicant deemed ineligible by the Chief of Police, or his designee, has the right to appeal the Chief of Police's decision to the City Manager, or his designee. Appeals must be made by filing a written notice of appeal with the City Manager within ten (10) days of the notice of the Chief of Police's decision. The City Manager will hear the appeal within fourteen (14) days after the appeal is filed, unless otherwise agreed. The hearing shall be informal and not subject to the rules of evidence. The City Manager will notify the applicant of the decision within seven (7) days after the decision is made. The City Manager may affirm or overrule the Chief of Police's decision. The City Manager's decision shall be final.
 3. After the investigation and approval process have been completed, a final police towing licensee list shall be determined by the Chief of Police. Additional police towing license applications shall not be accepted after September 30 of each police towing licensing period.

11-5A-4: - TOW LICENSE LIMIT:

1. The City of Naperville will limit the number of light, medium, and heavy duty police tow licenses that it issues to the following three (3) lists:
 - 1.1. Light duty: Eleven (11) licenses;
 - 1.1.1. The limit on Light duty tow licenses as provided for in this Section shall automatically reduce by one (1) upon the permanent removal by the Chief of Police, or his designee, of one (1) light duty tow licensee from the police towing licensee list. The automatic reduction shall terminate at the time that there are ten (10) light duty tow licenses and shall not function to reduce the number of light duty tow licenses below ten (10).
 - 1.2. Medium duty: Five (5) licenses;
 - 1.3. Heavy duty: Five (5) licenses.

2. Preference in issuing the licenses will be given to those companies that were issued a license the prior year, as long as they still meet the criteria for the issuance of a license set forth in Section 11-5A-3 of this Article. Even if issued a police towing license in the prior licensing period, all persons/businesses wishing to retain a license, must submit a new application pursuant to Section 11-5A-2 of this Article for each subsequent two-year licensing period.
3. After the deadline for submitting applications, an initial eligibility list will be created. The first names on the initial eligibility list will be those firms that held a license the previous year, as long as they have submitted a new application. The remainder of the initial eligibility list will be filled with the remaining applicants, through a drawing. These companies will be required to meet all qualifications at the time a license becomes available and prior to being offered and operating under it.
4. An eligibility list will be determined by the Chief of Police based on those applicants that pass inspections and meet the qualifications set forth in this Article. The eligibility list rotation will be used at the beginning of and throughout the term of the two-year tow license period.
5. The date, time and location of the drawing will be announced at the time the application period begins. All interested parties will be allowed to attend the drawing.

11-5A-5: - INSURANCE:

1. The licensee will obtain and maintain general liability, automobile liability, garage keeper's legal liability and workers' compensation insurance throughout the period of the agreement as determined by the City of Naperville and written in the towing license agreement.
2. The City will be named as an additional insured by the licensee on each insurance policy.
3. The licensee will provide certificates of insurance to the City which indicate coverage for the above mentioned insurance, which carries the provision that said insurance will not be canceled without giving the City at least thirty (30) days' notice of cancellation or material change.

11-5A-6: - DUTIES AND REQUIREMENTS OF LICENSEE AND TOW DRIVERS:

1. All applicants issued a license, and their agents, will enter into a towing license agreement with the City, with separate signatures for each licensee and agent. The written agreement will be in a form approved by the City Attorney.
2. Each licensee will defend, indemnify and hold harmless the City, the City Council, and City officers and employees, from any suits, claims, or actions brought, or disease or illness or damages sustained or arising out of the operation of towing services and storage of vehicles and arising out of the performance of any requirement of this Section by the licensee or in consequence thereof.

3. All tow trucks shall have working two-way communication equipment with their base station located at the point where calls are received.
4. All tow trucks (except flatbed car carriers) shall carry at least one set of wheel dollies at all times.
5. Licensees on the light duty tow list must tow both vehicles of a two (2) vehicle crash. Failure to do so will result in being skipped in rotation and placed at the bottom of the list. Non-compliance with this requirement may constitute grounds for removal from the police towing licensee list.
6. Each licensee shall provide 24-hour per day service each day of the year. There shall be an attendant or answering service on duty at all times for the purpose of receiving calls, and there shall be a person on call at all times for the purpose of releasing stored vehicles or for receiving vehicles. Prior to the release of a licensed police towed vehicle, the licensee shall obtain a copy of the written release from the Naperville Police Department for vehicles with holds.
7. All tow trucks shall be equipped with warning lights and all other equipment required by Federal, State or City laws.
8. Licensees must immediately, and in writing, inform the Naperville Police Department regarding any changes of the information on their original application for license. Failure to comply with this requirement may constitute grounds for removal from the police towing licensee list.
9. Licensees on the light duty tow list must have available at least two (2) operational tow trucks, with tow drivers at all times.
10. Every licensee or tow driver shall remove or cause to be removed all glass and debris deposited on any street or highway by the vehicle being serviced. The licensee or tow driver shall also spread oil-dry upon that portion of any street or highway where any fluids have been deposited by the vehicle being serviced, unless the Fire Department has taken charge of the cleanup, at which point the licensee will follow the instructions of Fire Department personnel regarding cleanup. No additional fees may be imposed beyond the approved accident clean up fee.
11. While at the scene of any call for a licensed police tow, every licensed tow driver shall wear safety apparel compliant with the Class 2 or 3 standard of the International Safety Equipment Association standard: ANSI/ISEA 107-2004 (as amended) standard for high visibility safety apparel, as appropriate to the task being performed and the conditions present.
12. While at the scene of any call for a licensed police tow, every licensed tow driver shall wear outer apparel that clearly identifies the company for which they work and the tow driver's first name. The name of the tow driver shall be on the front of their apparel. This identification must be able to be read by a person with normal vision at a distance of at least ten (10) feet. This identification can be incorporated into the requirement for high visibility safety apparel.
13. No licensee or tow driver shall respond to a call for service while having any alcohol, controlled substances, or both in their system. They shall also not have prescribed or

over the counter medication in their system that renders them incapable of safely driving or operating the tow truck.

14. All licensees shall comply with Section 11-5A-11, "Storage Facility", of this Article.
15. Tow drivers are not allowed to be on duty for more than one (1) tow company at any one (1) time. Tow drivers are not allowed to bring passengers to calls for service. A passenger is defined as any person not on the Naperville Police Department tow licensee approved driver list.
16. All licensees shall be able to safely transport motorcycles.
17. All licensees shall have available the necessary equipment to handle dispatch advised service calls for: lockouts, jump starting vehicles, tire changing, and empty gas can in order to obtain gas prior to arrival.
18. Tow drivers must be classified for the type of towing operation he or she shall be performing and the vehicle he or she will be operating.
19. Tow drivers must complete a Traffic Incident Management Training Program approved by the Department of Transportation and provide a copy of their certificate.
20. Tow trucks must possess a valid vehicle registration, display a valid Illinois license plate, comply with all weight requirements, hold a valid authority issued by the Illinois Commerce Commission and have permanently affixed lettering with company's name, address and phone number (No magnet signs).

11-5A-7: - OPERATION OF POLICE TOWING LICENSEE LISTS:

1. The City of Naperville Police Department will maintain three (3) police towing licensee lists, as follows:
 - 1.1. Light duty.
 - 1.2. Medium duty.
 - 1.3. Heavy duty.
2. The Naperville Police Department will ensure that licensees are called in rotation as far as is reasonable and practicable. Except upon request of the owner, operator or person legitimately in possession of the vehicle to be serviced, the Naperville Police Department will not call any tow truck not on the police towing licensee list unless all such licensees are unavailable.
3. The Naperville Police Department may deviate from the order of normal rotation if, in the Naperville Police Department's judgment, deviation is necessary to protect the public health, safety, and/or welfare or to ensure proper traffic, incident, or accident management. The Naperville Police Department may also deviate from the order of normal rotation if the licensee next on rotation is, in the Naperville Police Department's sole discretion and judgment, incapable or improperly equipped for handling a specific task.

4. If a licensee is unable to respond to a request for service within the time frames required in the towing license agreement, the licensee or their employee shall advise the Naperville Police Department that they are not available due to an extended response time. The licensee will then be placed at the bottom of the list. No substitute tow company or licensee will be allowed. The police telecommunicator will then call the next licensee on the list.
5. When a request for service is canceled after being dispatched off the police towing licensee list, the licensee will be put back at the top of the list.
6. The City reserves the right to terminate or modify its license procedure unilaterally at any time without any notice and without recourse.

11-5A-8: - LICENSE NONTRANSFERABLE:

Any license granted pursuant to this Article shall be personal to the individual or entity to whom issued and may not be transferred to any other person or entity. Such license shall not be sold, leased, transferred, assigned, or otherwise disposed of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws, or otherwise, without reapplication pursuant to Section 11-5A-2 of this Article.

11-5A-9: - REMOVAL FROM POLICE TOWING LICENSEE LIST:

Corrective Actions: The Chief of Police, or his designee may take corrective actions against Tow Companies or Tow Drivers for providing inadequate service or violations of the Tow Ordinance or Tow Licensing Agreement ranging from a verbal warning, written reprimand, temporary removal from the Police Towing Licensee list for a specific time, or permanent removal. Reinstatement after temporary removal shall be at the discretion of the Chief of Police, or his designee.

1. Removal Of Licensee: The Chief of Police, or his designee, may institute correct actions when it is determined that:
 - 1.1. The license was secured by fraud or concealment of a material fact, which if known would have caused disapproval of the application.
 - 1.2. The licensee has violated any of the provisions of this Article, or the Naperville Police Department towing license agreement.
 - 1.3. The service provided by the licensee has been substantially inadequate, which shall include, but not be limited to, failing to be available for or not accepting calls, slow response time, excessive damage claims, theft, repeated complaints from citizens, inadequate services or towing equipment.
 - 1.4. During the term of the license, any licensee or a tow driver:
 - 1.4.1. Is determined to be a sex offender, as defined in Illinois law, 730 Illinois Compiled Statutes 150/2, as amended; or

- 1.4.2. Has been convicted under the laws of Illinois or any other state of an offense that under the laws of the State of Illinois would be a felony theft of a vehicle or vehicle parts; or
 - 1.4.3. Has been convicted within the last five (5) years of a criminal offense involving:
 - a. bodily injury or attempt to inflict bodily injury to another person; or
 - b. theft of property or attempted theft of property; or
 - c. sexual assault or attempted sexual assault of any kind; or
 - d. any felony conviction in any State.
2. Temporary Removal: If the removal of the licensee from the police towing licensee list is temporary, such temporary removal shall not be for more than thirty (30) days at any one time.
3. Pending Suspension/Removal: If the Chief of Police, or his designee, determines the alleged offense does not constitute an immediate threat to the health, safety or welfare of the public, the Chief of Police shall provide the licensee with written notice at least fifteen (15) days prior to the effective date of the temporary or permanent removal by delivering said notice to the licensee's place of business and email address listed on contract. Said written notice shall include:
 - 3.1. The effective date of the removal.
 - 3.2. Whether the removal is temporary or permanent.
 - 3.3. The allegations which form the basis of the removal.
 - 3.4. The actions, if any, the licensee may take to prevent the removal from occurring.
 - 3.5. The procedure that the licensee must follow to request a hearing to appeal the removal.
4. Immediate Suspension/Removal:
 - 4.1. If the Chief of Police, or his designee, determines that a licensee presents an immediate threat to the health, safety or welfare of the public, or if the licensee has not provided proof of valid insurance in the amounts required by ordinance, the Chief of Police shall provide the licensee with written notice that the licensee is being removed from the police towing licensee list immediately. Said written notice shall be delivered to the licensee's place of business and email address listed on contract on the first day the removal is effective, and shall state:
 - 4.1.1. That the removal is effective immediately.
 - 4.1.2. Whether the removal is temporary or permanent.
 - 4.1.3. The allegations which form the basis of the removal.
 - 4.1.4. The actions, if any, the licensee may take to be reinstated.

4.1.5. The procedure that the licensee must follow to request a hearing to appeal the removal.

5. Method Of Requesting Hearing:

5.1. A licensee must request a hearing by calling the City Manager's office within ten (10) days of receiving a notice of suspension or removal and scheduling a hearing. Leaving a message with the City Manager's office will not satisfy this requirement. The City Manager's office must provide a time for the hearing that is within 5 business days of the request, provided there is one complete business day within the 5 business days period. If there is no complete City business day in the 5 business days period, the hearing shall be held on the first City business day after the 5 business days period. If the licensee is unavailable at the time provided by the City, the City shall not be bound by the 5 business days period and the removal will not be stayed. If the City is unable to provide a hearing time within the applicable time period, all action on the removal shall be stayed until the hearing.

5.2. If a hearing is requested, the City Manager, or his designee shall act as the Hearing Officer. The hearing shall be informal and provide both sides with the opportunity to present all evidence relevant to the removal. The Hearing Officer shall issue a written decision based upon a preponderance of the presented evidence within seven (7) days of the hearing. The opinion shall be sent to the licensee's business address, with a copy retained in the licensee's application file at the Naperville Police Department. If the decision favors the licensee, the Hearing Officer shall notify the Naperville Police Department so that licensed towing privileges may be reinstated as soon as possible. The City or the licensee may contest the decision of the Hearing Officer in any manner provided by law.

11-5A-10: - ALLOWABLE FEES:

The fee structure shall be adjusted biennially based on the U.S. Department of Labor, Consumer Price Index (CPI). This calculation will be done at the time the application period starts. Each fee shall be calculated and adjusted separately. The calculation will be cumulative biennially, but adjustments to the fees contained herein will only be made in increments of five dollars (\$5.00) and rounded down to the nearest five dollars (\$5.00), except for mileage and accident cleanup fees which will be rounded down to the nearest one dollar (\$1.00). The adjusted rates, subsequent to the years 2021-2022, will be contained within the Naperville Police Department towing license agreement. No licensee shall impose any fee not specifically provided for below for any tow performed pursuant to a police towing license.

1. The following schedule of maximum fees shall be effective in the years 2020-2021, for all tows performed pursuant to the police towing license:

Service Description	Price
Towing rates (conventional or flatbed tow truck):	
Accident cleanup (all accidents)	\$ 28.00
After hours release	\$ 50.00 per occasion
Cleanup of spilled cargo (per ¼ hour after first ¼ hour)	\$ 25.00
Heavy duty vehicle tow	\$ 355.00
Light duty vehicle tow	\$ 175.00
Medium duty vehicle tow	\$ 210.00
Service call (lockout, vehicle starting, tire changing, vehicle out of gas)	\$ 65.00
Winching/uprighting vehicle (in addition to applicable tow fee if towed)	\$ 65.00
Mileage:	
Within City limits or to the storage facility designated on the licensee's application	No charge
Outside City limits when not going to the storage facility designated on the licensee's application:	
Light duty vehicles	\$ 4.00 per mile
Medium duty vehicles	\$ 6.00 per mile
Heavy duty vehicles	\$ 6.00 per mile
Reimbursement of paid tolls from toll way use	Actual cost
Standby (per ¼ hour, after the first ¼ hour on scene):	

Light duty tow (per truck)	\$ 25.00
Medium duty (per truck)	\$ 50.00
Heavy duty (per truck)	\$ 80.00
Storage (per vehicle, no charge for first day):	
Light duty	\$30.00 per day
Medium duty	\$45.00 per day
Heavy duty	\$55.00 per day
Crash Wrap per window (at request of owner only)	\$20.00
An administrative fee up to \$50.00 based upon actual costs may be charged per Certificate of Purchase (COP) processed vehicle to vehicle owner for reimbursement of the actual certified mailings and title search processing costs	Up to \$50.00

2. Charges for licensed police tow services shall be on invoice forms provided by the City, which shall include the rate structure currently in effect. A copy of the completed invoice shall be provided to the Naperville Police Department and the owner of the vehicle serviced.
3. A police initiated tow commences when a request is made by the Naperville Police Department to a police towing licensee and ends with the removal of the vehicle from the tow yard. If the vehicle owner or insurance company enters into a signed contract with the towing facility's repair shop for repairs to the vehicle, the police initiated tow fee structure ends upon the date of that signed contract for the repairs to be completed at that repair facility. No additional fees may be imposed.
4. Any towing or storage charges accrued shall be payable in cash or by cashier's check, certified check, debit card, credit card, or wire transfer, at the option of the party taking possession of the vehicle.

11-5A-11: - STORAGE FACILITY:

1. Each licensee shall maintain a secure storage lot of adequate size to store all towed vehicles safely, but in no event shall the capacity be smaller than twenty (20) vehicles. For the purpose of this Section one vehicle shall equal one hundred twenty

(120) square feet (eight (8) feet x fifteen (15) feet). Said lot shall be completely enclosed by a fence not less than six (6) feet in height and shall have a lockable and securable gate. All storage facilities must meet applicable zoning and fire code requirements. A clearance of at least twenty-four (24) inches must be maintained around all vehicles in licensee's storage lot.

- 1.1. Multi-tow company shared storage facilities shall maintain storage independently within their own specifically designated areas, meeting above stated storage requirements.
 - 1.2. Tow Companies towing for multiple police agencies must independently meet the City of Naperville's above stated storage requirements.
 - 1.3. Tow Companies with a Medium-duty City issued tow licenses shall maintain a secure storage lot of adequate size to safely and securely store two (2) such-sized vehicles. This space is in addition to meeting storage lot requirements for any other City held light duty or heavy duty tow license.
 - 1.4. Tow Companies with a Heavy-duty City issued tow licenses shall maintain a secure storage lot of adequate size to safely and securely store two (2) such-sized vehicles. This space is in addition to meeting storage lot requirements for any other City held light duty or medium duty tow license.
2. The licensee shall maintain an office at said storage lot that is staffed and open to the public during normal business hours.
 3. The storage lot for light duty tows shall be located within the planning boundary of Naperville or within one and one-half (1½) miles of the City limits of Naperville.
 4. The storage lot for medium duty tows and heavy duty tows shall be located within the planning boundary of Naperville or within fifteen (15) miles of the City limits of Naperville.
 5. When instructed by the Naperville Police Department that a vehicle in storage must be secured from tampering, the operator shall store said vehicle so that it is not accessible to any person except upon specific approval of the Naperville Police Department. The licensee will not allow anyone but Naperville Police Department personnel to access the vehicle. This storage will be at the licensee's storage facility and can be within the fenced lot or within a building at the storage lot, at the discretion of the licensee.

11-5A-12: - INSPECTIONS:

A City of Naperville employee shall conduct an inspection of all licensees at least biennially. This inspection shall check to determine whether the licensees business location(s) meets applicable zoning and fire code requirements. Inspect the licensees towing equipment and physical location of the business and any place where licensed vehicles are stored, all records associated with license calls, a check of employees for

criminal and traffic records, and anything else related to the license as deemed appropriate.

11-5A-13: - VIOLATION AND PENALTY:

Any person who shall violate any of the provisions of this Article shall, upon conviction thereof, be fined not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) for each offense.

**CHAPTER 5 - MOTOR VEHICLE TOWS
ARTICLE B. - TOWING PROCEDURE**

SECTION:

11-5B-1: - DEFINITIONS:

For the purposes of this Chapter, the following terms shall have the meanings stated in this Section. Any term not defined herein shall have the meaning ascribed to it in other ordinances of this Municipality, and if not defined in any other Municipal ordinances, it shall have the meaning ascribed in the Illinois Vehicle Code, 625 Illinois Compiled Statutes:

ABANDONED VEHICLE:	1. A vehicle parked or otherwise located on the public way; and
	1.1. In such a state of disrepair that it is incapable of being driven; or
	1.2. That has been unmoved for a period of at least twenty-four (24) hours and from its condition, or some other circumstances appears to have been, and will be presumed to have been, abandoned by its owner; or
	2. Vehicles parked and unmoved on a public way or in a public parking lot for a period of at least seven (7) days.
	3. A vehicle defined as abandoned, or capable of being towed, by any other ordinances of the Municipality, and which does not fall into the categories of "hazardous" or "unlawful" vehicles, and therefore is not subject to an immediate tow.

HAZARDOUS VEHICLE:	1. A vehicle that has been involved in an accident and is disabled or cannot be immediately moved by the owner or operator of the vehicle to a nonhazardous location; or
	2. A vehicle that presents an immediate danger to the health or welfare of the members of the public; or
	3. A vehicle abandoned or disabled on a public street, way or alley that is impeding the orderly flow of traffic or poses a potential danger to pedestrians and other operators of vehicles either by its location, condition or appearance; or
	4. A vehicle parked in violation of State of Illinois Statutes or ordinances of the Municipality which prohibit parking at the location in question or for the period of time for which the vehicle has been parked, and where either the Statute or the Ordinance authorize the vehicle to be towed and the signs posted at the general location note that fact.
NONHAZARDOUS LOCATION:	An area where a vehicle may be legally parked on a public street, way or alley that does not impede the orderly flow of traffic or pose a potential danger to pedestrians and other operators of vehicles.
OWNER:	A person who holds legal title to the vehicle, or the right of possession of the vehicle.
PUBLIC PARKING LOT:	Off-street surface parking areas and off-street parking in decks, garages and other structures owned by a governmental body which are open to parking of vehicles by the public either with or without compensation.
PUBLIC WAY:	Any public road, street or highway in the City of Naperville.
UNLAWFUL VEHICLE:	1. A vehicle that has been reported stolen.
	2. A vehicle which is the subject of a search and seizure by the Police Department.
	3. A vehicle towed incident to arrest.
	4. A vehicle that is used in connection with any of the following:
	a. The commission of any criminal offense classified as a Class A misdemeanor under the Illinois Criminal Code, 720 ILCS 5/1-

	1 et. seq. or the Illinois Vehicle Code, 625 ILCS 5/1-100 et. seq. or any corresponding violation of the municipal code.
	b. The commission of any criminal offense classified as a Felony under the Illinois Criminal Code, 720 ILCS 5/1-1 et. seq. or the Illinois Vehicle Code, 625 ILCS 5/1-100 et. seq.
	c. Where an outstanding warrant has been issued for the driver, whether the warrant is for a failure to appear in court, or for initial charges, including both felony or misdemeanor charges.
VEHICLE:	Any device in, upon or by which any person or property is or may be transported or drawn upon a street, highway or any public way, except devices moved by human power, devices used exclusively upon stationary rails or tracks, and snowmobiles.

11-5B-2: - ABANDONMENT PROHIBITED:

The abandonment of a vehicle or any part thereof on any public way or public parking lot anywhere in the City is unlawful. A vehicle or any part thereof so abandoned on private property may be authorized for removal by order of the Naperville Police Department when it has been determined the vehicle is of evidentiary value. Any person who violates this Section of this Article is subject to penalties set forth in Section 11-5B-3 of this Article.

11-5B-3: - VIOLATIONS OF SECTION 11-5B-2:

Any person who violates or aids and abets in the violation of Section 11-5B-2 of this Article is guilty of a petty offense, and subject to all requirements of 625 Illinois Compiled Statutes 5/4-214, as amended.

11-5B-4: - ABANDONED, LOST, STOLEN OR UNCLAIMED VEHICLES; NOTIFY POLICE:

When an abandoned, lost, stolen or unclaimed vehicle comes into the temporary possession or custody of a person not the owner of the vehicle, such person shall immediately notify the Naperville Police Department when the vehicle is within the corporate limits of the City. Upon receipt of such notification, the Police Department shall inspect the abandoned, lost, stolen or unclaimed vehicle. If the Police Department determines that the vehicle is of evidentiary value it will order a towing of the vehicle. Otherwise, the City is not responsible for the towing of the vehicle from the private property.

11-5B-5: - AUTHORIZATION FOR TOWING:

The towing of hazardous and/or abandoned vehicles at the direction of the Municipality by a towing service from the rotation tow list shall be authorized by the Police Department under the circumstances herein provided. Towed vehicles shall be impounded at a storage facility provided by the service which towed the vehicle until lawfully claimed or disposed of pursuant to State law, 625 Illinois Compiled Statutes, as amended.

1. Towing With Prior Notice; Abandoned Vehicles: Abandoned vehicles may be towed only after the mailing or personal delivery of prior notice and the affording of an opportunity for a hearing as provided in Section 11-5B-6 and Section 11-5B-7 of this Article.
2. Towing Without Notice; Immediate Tows: Hazardous vehicles may be towed without prior notice. The opportunity for a post-tow hearing is provided in Section 11-5B-8 and Section 11-5B-9 of this Article.

11-5B-6: - PRE-TOW NOTICE FOR ABANDONED VEHICLES:

1. Notice pursuant to this Section shall be personally delivered to the owner or shall be forwarded by certified or registered mail, return receipt requested, to the address of the owner of the vehicle as indicated in the most current registration list of the Secretary of State. In the event that an out-of-state vehicle is proposed to be towed, inquiry by computer, telephone or letter shall be made of the Secretary of State or equivalent State agency of the particular jurisdiction for the furnishing of the most current registered name and address of the owner of the vehicle, and notice shall be mailed as provided herein to the address furnished, though in no case will the Municipality be required to delay towing more than seven (7) days after the date of the mailing or personal delivery of the notice if no request for a hearing has been received within that seven-day period.
2. A "notice of intent to tow" sticker with the earliest date upon which the tow may take place and the address and phone number of the Police Department shall be placed on the vehicle.

11-5B-7: - PRE-TOW HEARING PROCEDURES FOR ABANDONED VEHICLES:

1. Opportunity For Hearing: The owner or person entitled to possession of a vehicle to be towed as an abandoned vehicle shall have seven (7) days after the date of mailing or personal delivery of the notice to request, in writing, a pre-tow hearing. If the owner has not filed a written hearing request within the seven-day period, any hearing rights under the provisions of this Article will be deemed waived and the vehicle may be towed.
2. Scheduling Of Pre-Tow Hearings: The pre-tow hearing shall be scheduled for a date within fifteen (15) days of the mailing or personal delivery of the pre-tow notice. The Municipality shall not be required to delay towing longer than such a 15-day period.
3. Request For Pre-Tow Hearings: Request for a pre-tow hearing may be made in person or by mail as indicated on the notice. Forms for such requests shall be made

available at the Police Department. The owner will be provided a hearing date and time by mail or in person as the circumstances require.

4. Appointment Of Hearing Officer: The City Manager shall choose an officer or employee of the Municipality to serve as Hearing Officer. In no case shall that Hearing Officer be an individual who was involved in the initial decision to tow the vehicle. The Hearing Officer shall have the authority to require the presence of the enforcement officer who initiated the proposed tow or any other Municipal personnel.
5. Nature Of Hearing: The hearing shall be informal in nature, and the rules of evidence shall not apply. The hearing will not be determinative of, or adjudicate, any citation relative to any vehicle. After receiving all relevant evidence, the Hearing Officer shall make a written decision based upon a preponderance of the evidence as to whether towing of the vehicle is authorized by the laws of the State or the ordinances of the Municipality, with a specific statutory or ordinance section cited in the decision. The owner shall be provided a copy of such pre-tow hearing decision.
6. Decision To Tow And Rates To Be Charged: If the preponderance of the evidence supports towing and compliance with the provisions of this Article, the Hearing Officer shall direct that vehicle be towed, with any towing and storage costs to then be imposed upon the owner thereof. The fees to be charged for towing and storage services shall be no more than the rates set out in the Rotation Tow List Article, Section 11-5A-1 et seq., of this Chapter, a schedule of which is attached to the findings of the Hearing Officer. The owner of said vehicle having had such hearing may avoid the towing by immediately removing the vehicle from the improper location to a proper, lawful location and correcting any unlawful condition of the vehicle.
7. Decision Not To Tow: If the preponderance of the evidence fails to support towing of the vehicle, the Hearing Officer shall direct that the vehicle shall not be towed. The Hearing Officer shall furnish a copy of such decision to the owner, who may place it inside the vehicle in a location plainly visible from the outside, such as the dashboard or rear window. No vehicle about which such a decision has been rendered shall be towed by the Municipality unless the circumstances under which the decision was rendered have changed. If at some subsequent time the Municipality should wish to tow the vehicle from the same location, it shall follow the same procedures required for the towing of any other similarly situated vehicle.
8. Reports And Documents To Be Retained; Contesting Decisions: Originals or copies of all notices, pre-tow hearing decisions, towing reports, and any associated police reports or documents shall be retained by the Police Department for a period of at least five (5) years after each hearing, or after each tow if no hearing was requested or held. The Municipality or the owner may contest the decision of the Hearing Officer in any manner provided by law.

11-5B-8: - POST-TOW FOR HAZARDOUS VEHICLES:

1. Mailing Or Delivery Of Notice: Notice pursuant to this Section shall be forwarded by certified or registered mail, return receipt requested and tracked through USPS.COM, to the address of the owner of the vehicle as indicated in the most current registration

list of the Secretary of State, unless the notice is personally delivered to the owner, in which case, the date and time of the delivery and the name of the officer making the delivery shall be noted in the Police Department records or reports. In the event that the Police Department has towed an out-of-state hazardous vehicle, inquiry by computer, telephone or letter shall be made of the Secretary of State or equivalent State agency of the particular jurisdiction for the furnishing of the most current registered name and address of the owner of the vehicle, and notice shall be mailed as provided herein to the address furnished. Notification shall be sent no later than ten (10) business days after the date the Police Department impounds or authorizes the impounding of a vehicle, provided that if the Police Department is unable to determine the identity of the registered owner, lienholder or other person legally entitled to ownership of the impounded vehicle within a ten (10) business-day period after impoundment, then notification shall be sent no later than two (2) days after the date the identity of the registered owner, lienholder or other person legally entitled to ownership of the impounded vehicle is determined.

2. Notice Of Vehicle Release Requirements And Hearing Rights Of Towed Vehicles: Printed on the back of the invoice is information indicating the opportunity and procedures for a hearing to contest the validity of a towed vehicle.
3. Requests For Post-Tow Hearings: Requests for hearings may be made in person or by mail to the office indicated on the notice and the back of the invoice within fifteen (15) days of the mailing or personal delivery of the notification of tow, or release of the vehicle, whichever occurs first; otherwise, the right to a hearing shall be deemed waived.
4. Release Of Motor Vehicles: Before the owner or other person entitled to possession of any impounded vehicle shall be permitted to remove same, that person shall furnish evidence of his identity, proof of ownership, or his right to possession, sign a receipt for the vehicle, and pay the amount owed for towing and storage fees to the towing service operator unless the Hearing Officer finds that the vehicle should not have been towed.
5. Establishment Of Towing And Storage Rates: The vehicle owner shall be responsible for fees for towing and storage on police-ordered tows at rates set in the Rotation Tow List Article, Section 11-5A-1 et seq., of this Chapter. The towing service operator must fully itemize in writing the details of billing and supply a copy of the itemized bill to the owner and to the Police Department. The towing service operator and the Police Department shall have available a copy of the complete current rate schedule as set by Section 11-5A-1 et seq., of this Chapter and any special rate policy that may apply for vehicle owners to view upon request.

11-5B-9: - POST-TOW HEARINGS PROCEDURES:

1. Opportunity For Hearing: The owner of a vehicle towed as an immediate tow, by or pursuant to the authority of the Police Department as set forth herein, shall be provided the opportunity for a post-tow hearing to determine the validity of such tow

and any towing or storage charges. The hearing will not be determinative of, or adjudicate, any citation issued relative to any towed vehicle.

2. Appointment Of Hearing Officer And Nature Of The Hearing: The nature of the hearing and the appointment of the Hearing Officer shall be the same as set forth above in Section 11-5B-7 of this Article.
3. Conduct Of Post-Tow Hearings: The Hearing Officer shall review all evidence presented by the vehicle owner and the Police Department or other Municipal employees, and shall make a finding in writing based upon the preponderance of the evidence presented, as to the lawful authority for the towing and storage of the vehicle.
4. Post-Tow Hearing Decision: For each hearing, the Hearing Officer shall complete a post-tow hearing decision and attach such decision to the Police Department's original vehicle towing report, and supply a copy of the decision to the owner by personal delivery if the owner is present, otherwise by mail within seven (7) days of the hearing.
5. Decision To Tow Justified: If the preponderance of the evidence supports towing and compliance with the provisions of this Article, the Hearing Officer shall direct that the tow was justified and towing and storage costs be imposed upon the owner thereof. The fees to be charged for towing and storage services shall be no more than the rates set out in the Rotation Tow List Article, Section 11-5A-1 et seq., of this Chapter, a schedule of which is attached to the findings of the Hearing Officer.
6. Decision To Tow Unjustified: If the preponderance of the evidence fails to support towing of the vehicle then the Hearing Officer may find the City responsible for towing and storage fees.
7. Reports And Documents To Be Retained; Contesting Decisions: All originals or copies of the notices, post-tow hearing decisions, towing reports, and any associated police reports or documents shall be retained by the Police Department for a period of at least five (5) years after each hearing, or after each tow if no hearing was requested or held. The Municipality or the owner may contest the decision of the Hearing Officer in any manner provided by law.

11-5B-10: - TOWING SERVICE SUBJECT TO ORDINANCE:

Notwithstanding any other ordinance or statutory provisions to the contrary, any towing service operator which tows on behalf of the Municipality must perform its services subject to the provisions of this Article.

11-5B-11: - SEVERABILITY:

It is the intention of the Municipality that this Article, and every provision thereof, shall be considered separable, and that the invalidity of any section, clause, provision or part or portion of any section, clause or provision of this Article, shall not affect the validity of any other portion of this Article. If any part or provision of this Article or the application

thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect the remaining portions of this Article which can be given effect independently of any portion or provision ruled invalid, and to this end, the provisions of this Article are declared to be severable.

11-5B-12: - TOWING OF UNLAWFUL VEHICLES:

1. The Police Department is authorized to seize, tow and impound any unlawful vehicle pursuant to the terms and conditions set forth in this Chapter.
2. The owner of an unlawful vehicle that has been seized, towed and impounded shall be civilly liable to the City of Naperville for an administrative fee of five hundred dollars (\$500.00). The owner of an unlawful vehicle is also liable to the licensed tow operator for towing and storage fees. Prior to the release of the vehicle, the owner shall post bond, in accordance with the appropriate civil liability set forth above, with the City and pay tow and storage fees.
3. An administrative hearing to determine whether the seizure, tow and impoundment are appropriate will be scheduled within forty-five (45) days.
4. The owner of a vehicle that has been stolen, and is subject to seizure, tow and impoundment under this section, shall not be liable for any administrative fee.

11-5B-13: - PROCEDURES FOR SEIZURE, TOW AND IMPOUNDMENT:

1. Whenever a police officer has probable cause to believe that a vehicle is an unlawful vehicle, as defined in this Chapter, the police officer may authorize the towing of the vehicle to a licensed tow facility for impoundment. Said vehicle shall be impounded pending the completion of the hearings provided for herein, unless the owner of the vehicle posts with the City a cash bond equivalent to the applicable civil liability, as set forth above, to secure the release of the vehicle and pays the towing and storage fees.
2. The police shall provide written notice, via first class mail, within 10 days of the seizure, tow and impoundment to the owner or lessee of the unlawful vehicle as registered with the Illinois Secretary of State, or other state driver's license authority. If the unlawful vehicle is not registered with the Secretary of State, notice shall be sent to the most recent owner of record at the most recent address by first class mail. The notice shall state the following:
 - a. A description of the unlawful vehicle, the date the vehicle was seized, towed and impounded, the reason(s) therefore, and the location of the impounded vehicle.
 - b. The date, time and location of the administrative hearing.
 - c. That the hearing shall be conducted within forty-five (45) days of the date of the seizure, tow and impoundment.
 - d. That the failure to appear at a hearing shall result in a finding of liability to the City of Naperville for the applicable administrative fee.

- e. The unlawful vehicle may be released upon the owner posting the applicable bond pursuant to this section with the city.
3. An owner of an unlawful vehicle may secure the release of their vehicle by posting a cash bond with the City of Naperville and the payment of all towing and storage charges. Vehicles that are held as evidence or subject to Article 36 of the Illinois Criminal Code seizures may not be released upon posting of bond.
4. Request for a Preliminary Hearing:
 - a. The owner of the unlawful vehicle may file a written request for a preliminary hearing, prior to the administrative hearing, within forty-eight (48) hours of the seizure, excluding holidays and weekends.
 - b. The Chief of Police or his designee shall conduct the preliminary hearing within forty-eight (48) hours after receipt of the request, excluding weekends and holidays.
 - c. The preliminary hearing shall be informal, not subject to the formal rules of evidence, and may be conducted over the phone.
 - d. If, after the hearing, the Chief of Police or his designee determine that there was probable cause for the seizure, tow and impoundment of the vehicle, he shall order the continued impoundment of the vehicle as provided in this Section unless the cash bond is posted.
 - e. If there is a determination that there was no probable cause, the vehicle shall be released without fees or towing or storage costs.

11-5B-14: - ADMINISTRATIVE HEARING:

1. A hearing on the lawfulness of the impoundment shall be conducted in conjunction with the Administrative Hearing section of the Municipal Code, Section 11-1-10 et seq. and shall be recorded in compliance with statutory requirements.
2. Any sworn or affirmed report that is prepared in the performance of a law enforcement officer's duties and sufficiently describes the circumstances leading to the seizure, tow and impoundment shall be admissible prima facie evidence of probable cause and the vehicle owner's liability, unless rebutted by clear and convincing evidence.
3. If after the hearing, the hearing officer finds that the vehicle was subject to seizure, tow, and impoundment under the terms of this Chapter, the hearing officer may enter a written order finding the owner of the vehicle civilly liable to the City of Naperville.
4. If the owner fails to appear at the hearing, the hearing officer may enter a default order for the amount of the administrative fee against the owner.
5. If after hearing, the hearing officer finds that there was no probable cause to determine the vehicle was subject to seizure, tow and impoundment, the owner may secure the release of the vehicle without the payment of any tow or storage fees.
6. Any cash bond posted to secure the release of the vehicle shall be applied to the fee.

7. Any vehicle still impounded after the administrative hearing, may not be released before the payment of the appropriate administrative fee.
8. Hearing officer's decision is reviewable by appeal as allowed by law.

11-5B-15: - ADMINISTRATIVE FEE A DEBT:

1. Any administrative fee imposed upon an owner shall constitute a debt due and owing to the City. If the owner has not posted bond to pay the administrative fee, the owner has thirty (30) days to pay the debt. The City may seek to obtain a judgment on the debt and collect the judgment in any manner provided by law.

11-5B-16: - UNCLAIMED VEHICLES:

1. Any vehicle not claimed by the registered owner within thirty-five (35) days after the administrative hearing officer issues a written decision shall be considered an unclaimed vehicle and shall be disposed of in the manner provided by law for the disposition of unclaimed vehicles.

SECTION 2: This Ordinance shall be in full force and effect from and after its approval.

ADOPTED this _____ day of _____, 2021.

AYES:

NAYS:

ABSENT:

APPROVAL this _____ day of _____, 2021.

Steve Chirico

MAYOR

ATTEST:

Pam Gallahue, Ph.D.

CITY CLERK