



REQUEST FOR COUNCIL ACTION

To: Honorable Mayor and Members of the City Council

From: Charles Randy Oliver
City Manager

AGENDA DATE REQUESTED: April 11, 2006

ACTION REQUESTED: UNFINISHED BUSINESS ITEM NO. 06-161 – ADOPT THE ATTACHED ORDINANCE AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF PEORIA RELATING TO NOISE AND IMPOUNDMENT OF VEHICLES

BACKGROUND: Since this item came to Council on March 28, 2006, we have changed the Ordinance in the following respects:

- We have taken language from the City of Chicago Ordinance and combined it with our proposed Ordinance regarding Section 15-75.
- We have provided that on the first offense, the person whose vehicle is impounded need pay only the towing and storage fee and not the penalty. On a second or subsequent offense, the person would pay the \$250 penalty plus towing and storage.
- The effective date of the Ordinance is June 1, 2006, to give the Police a period to issue warnings.

FINANCIAL IMPACT: N/A

NEIGHBORHOOD CONCERNS: N/A

IMPACT IF APPROVED: N/A

IMPACT IF DENIED: N/A

ALTERNATIVES: N/A

EEO CERTIFICATION NUMBER: N/A

REQUIRED SIGNATURES

Department Director

Randall Bey
Legal Department

Finance Director

James R. Scroggini
(Certification of Availability of Funds)

Corporation Counsel

Randall Bey

City Manager

Charles R. Oliver 4/6/06

**AN ORDINANCE AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF PEORIA
RELATING TO NOISE AND IMPOUNDMENT OF VEHICLES**

WHEREAS, the City of Peoria is a home rule municipality pursuant to Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, citizens of Peoria have frequently voiced complaints concerning noise from motor vehicles; and

WHEREAS, the City Council finds that said noise from vehicles affects the quality of life in the City's neighborhoods;

WHEREAS, the City Council finds that the penalty imposed herein is approximately equal to or less than the City's cost in administering the system of vehicle seizure and impoundment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS AS FOLLOWS:

Section 1. Section 15-75 of the Code of the City of Peoria is hereby amended by deleting the following stricken words and adding the following underlined words:

Sec. 15-75. Radios, phonographs, etc. on the public way.

No person shall play, use, operate or permit to be played, used or operated any radio, tape recorder, cassette player, device for receiving broadcast sound or reproducing recorded sound, or any other sound amplification system if the device is located:

(1) on the public way; or

(2) in any motor vehicle on the public way;

and the sound can be heard from seventy-five (75) feet or more. This section does not apply to authorized emergency vehicles. This section does not apply when such sound amplification system is being operated to request assistance or warn of a hazardous condition.

~~No driver of any motor vehicle shall operate or permit operation of any sound amplification system which can be heard outside the vehicle from 50 75 or more feet when the vehicle is being operated upon a street or highway, unless such system is being operated to request assistance or warn of a hazardous condition.~~

~~This section does not apply to authorized emergency vehicles.~~

~~No person shall operate any sound amplification system which can be heard from 50 75 or more feet when the person is on the public way, unless such system is being operated to request assistance or warn of a hazardous condition.~~

* * *

Section 2. Section 15-77 of the Code of the City of Peoria is hereby added to this Code with the following underlined words:

Sec. 15-77. Vehicle seizure and impoundment.

(a) A motor vehicle, operated with the permission, express or implied, of the owner of record, that is used in violation of section 15-75 of this code shall be subject to seizure and impoundment under this section. A motor vehicle used in violation of section 15-75 of this Code shall be declared a public nuisance. The owner of record of such vehicle shall be liable for the towing and storage of the vehicle. For a second or subsequent offense involving the same vehicle, the owner of record of such vehicle shall be liable to the City for a penalty of \$250.00 in addition to fees for the towing and storage of the vehicle.

(b) Whenever a police officer 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 a tow company from the rotation tow list set forth in Chapter 30 of this Code. When the vehicle is towed, the police officer shall notify the person who is found to be in control of the vehicle at the time of the alleged violation, if there is such a person, of the fact of the seizure and of the vehicle owner's right to request a preliminary hearing to be conducted under this section. Said vehicle shall be impounded pending the completion of hearings provided for in subsections (c) and (d) herein, unless the owner of the vehicle pays for the towing and storage of the vehicle. For a second or subsequent offense, said vehicle shall be impounded pending the completion of hearings provided for in subsections (c) and (d) herein, unless the owner of the vehicle posts with the city a cash bond in the amount of \$250.00 plus fees for the towing and storage of the vehicle.

(c) Whenever the owner of a vehicle seized pursuant to this section requests a preliminary hearing within twenty-four (24) hours after the seizure, a hearing officer of the city shall conduct such preliminary hearing within seventy-two (72) hours after said seizure. All interested persons shall be given a reasonable opportunity to be heard at the preliminary hearing. The formal rules of evidence will not apply at the hearing and hearsay evidence shall be admissible. If, after the hearing, the hearing officer determines that there is probable cause to believe that the vehicle, operated with the permission, express or implied, of the owner, was used in the commission of any crime set forth in this section, the hearing officer shall order the continued impoundment of the vehicle as provided in this section unless the owner of the vehicle posts with the city a cash bond in the amount of \$250.00 plus fees for the towing and storage of the vehicle. If the hearing officer determines that there is no such probable cause, the vehicle will be returned without penalty or other fees.

(d) Within ten (10) days after a vehicle is seized and impounded pursuant to this section, the city shall notify by certified mail, return receipt requested, the owner of record at his/her last know address as indicated by the vehicle's registration of his/her right to request a hearing before the hearing officer that will be conducted to determine whether the subject vehicle is eligible for impoundment pursuant to this section. However, no such notice need be sent to the owner of record if the owner is personally served with the notice within ten (10) days after the vehicle is impounded, and the owner acknowledges receipt of the notice in writing. 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 towing/storage facility may be sold or disposed of by the city or the tow operator in accordance with applicable law. The owner of record seeking a hearing must file a written request for a hearing with the city legal department no later than fifteen (15) days after the notice was mailed or otherwise given under this subsection. The hearing shall be scheduled and held unless continued by order of the hearing officer, no later than forty-five (45) days after the request for a hearing has been filed. All interested persons shall be given a reasonable opportunity to be heard at the hearing. The formal rules of evidence will not apply at the hearing, and hearsay evidence shall be admissible. If, after the hearing, the hearing officer determines by a preponderance of evidence that the vehicle was used in the commission of a violation of Section 15-75, the hearing officer shall enter an order requiring the vehicle to continue to be impounded until the owner pays towing and storage of the vehicle, or for a second or subsequent offense, a penalty of \$250.00 plus fees for towing and storage of the vehicle. The penalty and fees shall be a debt due and owing the city. However, if a cash bond has been posted, the bond shall be applied to the penalty. If the hearing officer determines that the vehicle was not used in commission of such a violation, he/she shall order the return of the vehicle or cash bond and the city shall be liable for towing and storage fees.

(e) Any motor vehicle that is not reclaimed within thirty (30) days after the expiration of the time during which the owner of record may seek judicial review of the city's action under this section, or the time at which a final judgment is rendered in favor of the city, may be disposed of as an unclaimed vehicle as provided by law. As used in this section, the "owner of record" of a vehicle means the record title holder.

(f) Fees for towing and storage of a vehicle under this section shall be the same as those charged pursuant to section 30-298 of this Code.

(g) This section shall not replace or otherwise abrogate any existing state or federal laws or local ordinances pertaining to vehicle seizure and impoundment. Nothing herein precludes prosecution for violation of Section 15-75 in addition to or in lieu of the procedures set forth in this section.

(h) Notwithstanding any other provision of this section, whenever a person with a lien of record against a vehicle impounded under this section has commenced foreclosure proceedings, possession of the vehicle shall be given to that person if he/she agrees in writing to refund to the city the net proceeds of any foreclosure sale, less any amounts necessary to pay all lien holders of record, up to the total amount of penalties and fees imposed under this subsection (a).

Section 3. This ordinance shall be in full force and effect June 1, 2006 after passage and publication in pamphlet form.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this _____
day of _____, 2006.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:



Corporation Counsel