

A LOCAL LAW to amend Russell Gardens Code Chapter 55 entitled “Vehicles and Traffic.” Regulations.”

Section One. Russell Gardens Code Chapter 55 entitled “Vehicles and Traffic” subsection 55-4 entitled “Notice of Removal” is hereby amended with the addition of a new subparagraph C to read as follows:

- C. The Village may tow, impound, immobilize, or otherwise remove from the public street or any public area, a vehicle whose owner has accrued greater than three hundred fifty dollars, inclusive of penalties and interest, of outstanding judgement or judgments for parking violations against the vehicle’s owner. The provisions of this section shall not be construed to limit the Village’s removal of a motor vehicle which is illegally parked, stopped, standing, abandoned, inoperable, or unregistered.

Section Two. Russell Gardens Code Chapter 55 entitled “Vehicles and Traffic” subsection 55-7 entitled “Notice of Removal” is hereby amended as follows:

~~The Clerk, without delay, shall report the removal and disposition of any vehicle removed, as in this Article provided, to the Mayor and the Village Board and also shall notify the owner or operator of any such vehicle so removed, if the name of such owner or operator can be ascertained, of the removal and disposition of any such vehicle and of the amount required to be paid before the same may be removed from storage. The Village shall not be required to investigate ownership of any vehicle beyond information furnished to the Village by the Bureau of Motor Vehicles or police authorities.~~

- A. Upon seizure of a vehicle as provided in this article, the Village shall, as soon as practicable, ascertain the identity of the parties with property interests in the seized vehicle (the “Interested Parties”). The Interested Parties to be ascertained shall include the following four categories of persons (to the extent they exist for a given vehicle):

(1) The person in possession of the vehicle at the time of seizure;

(2) The registrant of the vehicle;

(3) The titled owner of the vehicle;

(4) Any lessor of the vehicle; and/or

(5) Any lienholder of the vehicle.

- B. Within ten (10) days of the seizure of a vehicle as provided in this article, the Village shall notify all Interested parties of the seizure by certified mail, return receipt requested, with a notice of seizure sent to the Interested Parties as follows:
- (1) The address used for an individual Interested Party shall be that listed on the individual's driver's license, registration documents, or such other address as reasonably calculated to give the lessor and/or lienholder notice of the seizure.
 - (2) The address used for the lessor and/or lienholder (as applicable) of the vehicle shall be the address identified on the vehicle's title document, the vehicle's lease contract, and/or the vehicle's retail installment contract, and/or such other address as reasonably calculated to give the lessor and/or lienholder notice of the seizure.
- C. The notice of seizure shall state that Interested Parties shall have the right to a hearing, which must be commenced within 21 days from the time the notice of seizure is sent to all Interested Parties. The hearing shall be held under the exclusive jurisdiction of the Village Justice Court. In the event that the Village Justice Court does not convene within 21 days from the time the notice of seizure is sent, or if an Interested Party of the seized vehicle elects to have an earlier hearing, the Mayor of the Village of Russell Gardens shall appoint a neutral decision maker. The purpose of the hearing herein is to determine the respective rights of the Village and the Interested Parties as set forth in this section. The notice of seizure shall also include the following information:
- (1) The make, model, and vehicle identification number ("VIN") of the seized vehicle;
 - (2) A statement that the purpose of the proceeding is to determine the legality of the seizure, the appropriateness of any fees and expenses to be charged in relation to the seizure and storage of the vehicle, and determine the rights of possession in the vehicle at issue.
- D. The hearing shall be conducted before the Village Justice Court. If the Village Justice Court does not convene within 21 days of the seizure and an Interested Party of the seized vehicle makes a request to hold the proceeding prior to the Court convening, a neutral decision maker appointed by the Mayor shall review the legality of the seizure, the appropriateness of any fees and expenses to be charged in relation to the seizure and storage of the vehicle, and determine the rights of possession to the vehicle at issue.

E. Upon request of the Interested Party, the Village shall promptly arrange for and conduct the hearing. If no Interested Party requests a hearing or appears at the hearing, all Interested Parties will be deemed to be in default. In the event of a default, the Village Prosecutor shall conduct a post-default review of the seizure to determine the legality of the seizure, the appropriateness of any fees and expenses charged in relation to the seizure and storage of the vehicle. Following post-default review, the Village may take such further actions as are called for by its laws or other policies and procedures, including the imposition of fees, seeking forfeiture, or otherwise disposing of the vehicle.

F. In the event it is determined at a hearing that a lessor or lienholder is entitled to take possession of a seized vehicle, the lessor or lienholder shall, prior to a lessor or lienholder retrieving a vehicle pursuant to disposition, send a notice to the driver and registrant of the vehicle informing them that their failure to retrieve the vehicle within 10 days will result in turnover of the vehicle to the lessor or lienholder, as applicable. Such a vehicle will not be turned over to a lessor or lienholder until the lessor or lienholder provides satisfactory proof of a lessor or lienholder's right to take possession of a vehicle. Such proof shall be in the form of an affidavit from an appropriate custodian of records of the lessor or lienholder stating the reasons(s) the lessor lienholder has a current right to take possession of the vehicle and attaching the lease document or retail installment contract.

(1) Notwithstanding anything in this section to the contrary, the Village may reasonably request the affidavit of right described in Subsection (F) of this article to include the following:

(a) An agreement by the lessor or lienholder to reasonably cooperate with the Village should a driver or registrant later make claims against the Village related to the Village's turnover of the vehicle to the lessor; and/or

(b) An agreement to release, defend, and indemnify the Village for its conduct in towing the vehicle and turning the vehicle over to the lessor and/or lienholder.

(2) Satisfactory proof of a lessor's or lienholder's right to take possession of the vehicle shall not include any of the following

(a) A requirement that the lessor or lienholder pay the Village any fees, except those that may be imposed by a disposition as a result of the post-deprivation proceeding outlined in this Article;

(b) An agreement not to return the vehicle to the driver, registrant, lessee, or debtor, as applicable.

Section Two. This local law shall become effective upon filing with the Secretary of State.