

ATTACHMENT A

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FINAL, ADOPTED ORDINANCE.**

ORDINANCE G-_____

**AN ORDINANCE AMENDING THE PHOENIX CITY CODE,
CHAPTER 36, VEHICLES AND TRAFFIC, ARTICLE VII,
MISCELLANEOUS TRAFFIC AND VEHICLE REGULATIONS,
DIVISION 1. MOVING REGULATIONS, BY ADDING NEW
SECTIONS 36-70.01 THROUGH 36-70.04.**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX AS
FOLLOWS:**

**SECTION 1. CHAPTER 36, PHOENIX CITY CODE, SECTION
36-70.01, IMPOUNDMENT OF VEHICLES USED FOR PURPOSES OF RACING OR
RECKLESS DRIVING, IS ADDED IN ITS ENTIRETY AS FOLLOWS:**

Sec. 36-70.01. Impoundment of vehicles used for purposes of racing or reckless driving.

A. A motor vehicle used to violate Section 28-708 or 28-693, Arizona Revised Statutes, constitutes a nuisance and is subject to impoundment for a period of thirty days.

B. A Peace Officer may cause the removal and either immobilization or impoundment of a vehicle if the Peace Officer determines that the motor vehicle was used to violate Section 28-708 or 28-693, Arizona Revised Statutes.

C. This Section shall apply if a person is arrested for using a motor vehicle to violate Section 28-708 or 28-693, Arizona Revised Statutes.

D. Except as provided in Section 36-72, the registered owner or lessee of a vehicle impounded under this Section is responsible for the towing and storage charges of the impoundment in amounts as set forth in the applicable current tow service contract between the City and the tow contractor providing the tow service and any administrative charges established pursuant to Section 36-70.04.

**SECTION 2. CHAPTER 36, PHOENIX CITY CODE, SECTION
36-70.02, IMPOUNDMENT OF VEHICLES USED FOR PURPOSES OF RACING OR
RECKLESS DRIVING, PROCEDURES, IS ADDED IN ITS ENTIRETY AS FOLLOWS:**

Sec. 36-70.02. Impoundment of vehicles used for purposes of racing or reckless driving; procedures.

A. If a Peace Officer removes and either immobilizes or impounds a vehicle pursuant to Section 36-71, the Police Department will provide the owner, the spouse of the owner identified on the Department of Transportation Motor Vehicle Division record, the operator of the vehicle, and any person who establishes a possessory interest in the vehicle with the opportunity for an immobilization or post-storage hearing to determine the validity of the immobilization or storage of the vehicle.

1. The Phoenix Police Department shall serve the operator of the vehicle at the time of immobilization or impoundment with the notice of immobilization or storage.
2. Within two business days after immobilization or impoundment, excluding weekends and holidays, the Police Department shall send a notice of immobilization or storage by first class mail to each owner identified on the Department of Transportation Motor Vehicle Division record and to any person known to the Police Department to have a possessory interest in the vehicle or who has provided the department with indicia of ownership or other interest in the vehicle that exists immediately before the immobilization or impoundment.
3. Service of notice of immobilization or storage is complete on mailing.

B. The notice of immobilization or storage shall include all of the following information:

1. A statement that the vehicle was immobilized or impounded.
2. The address and telephone number of the Phoenix Police Department location where the immobilization or post-storage hearing will be held.
3. The location of the place of storage and a description of the vehicle, including, if available, the manufacturer, model, and license plate number.
4. A statement that in order to receive an immobilization or post-storage hearing a request must be made within ten business days after the date on the notice, by contacting the Police Department and requesting a hearing.

C. The immobilization or post-storage hearing shall be conducted by the Phoenix Police Department within two business days, excluding weekends and holidays, after receipt of the request.

1. At the hearing, the City shall have the burden of establishing by a preponderance of the evidence that the vehicle is subject to impoundment under Section 36-71.
2. The hearing shall be informal, and the formal rules of evidence shall not apply. The post-storage Hearing Officer may admit any reliable relevant evidence.
3. A hearing provided under this Section shall not determine the sufficiency of the grounds for the probable cause underlying the arrest that was a predicate to the impoundment.
4. The results of a hearing under this Section shall not be admissible in any criminal proceeding.

D. Failure to request an immobilization or post-storage hearing within ten days after the date on the notice prescribed in Subsection B of this Section, or to attend a scheduled hearing, is considered a waiver of the right to a hearing.

E. The City is responsible for the costs incurred for immobilization, towing and storage if it is determined in the immobilization or post-storage hearing that grounds for the immobilization or impoundment and storage are not established.

F. A vehicle shall not be released at the conclusion of the thirty-day impoundment unless all the following are presented to the Phoenix Police Department:

1. The owner's, owner's spouse's, or possessory interest holder's current valid driver license issued by the State of the person's state of domicile.
2. Proof of current vehicle registration.
3. Proof that the vehicle is in compliance with the financial responsibility requirements of A.R.S. Title 28, Chapter 9, Article 4.
4. If the person is required by the Department of Transportation Motor Vehicle Division to install a certified ignition interlock device on the vehicle, proof of installation of a functioning certified ignition interlock device in the vehicle. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall allow access during normal business hours to the impounded vehicle for the purpose of installing a certified ignition interlock device. The impounding agency, storage yard, facility, person or agency having physical possession of the vehicle shall not charge any fee or require compensation for providing access to the vehicle or for the installation of the certified ignition interlock device.
5. Payment of an administrative fee for costs relating to the removal, immobilization, impoundment, storage or release of the vehicle pursuant to Section 36-70.04.

**SECTION 3. CHAPTER 36, PHOENIX CITY CODE, SECTION
36-70.03, EARLY RELEASE OF VEHICLE, IS ADDED IN ITS ENTIRETY AS
FOLLOWS:**

Sec. 36-70.03. Early release of vehicle.

A. The Phoenix Police Department shall release a vehicle to the registered owner, owner's spouse, or owner's agent before the end of the thirty-day immobilization or impoundment period without a hearing under any of the following circumstances:

1. If the vehicle is a stolen vehicle.

2. If the vehicle was subject to bailment and was driven by an employee of a business establishment, including a parking service or repair garage.

3. All the following apply:

- a. The owner, owner's spouse, or owner's agent was not present at the time of impoundment and was not the person arrested or cited pursuant to Section 28-708 or 28-693, Arizona Revised Statutes.
- b. The owner or the owner's agent is in the business of renting motor vehicles without drivers.
- c. The vehicle is registered pursuant to Section 28-2166, Arizona Revised Statutes.
- d. There was a rental agreement in effect at the time of the immobilization or impoundment.

4. The Owner can establish they were not the driver and the driver did not have the Owner's permission, and the Owner's name was on the title prior to the immobilization or impoundment.

B. A vehicle shall not be released pursuant to Subsection A of this Section unless all the following are presented to the Phoenix Police Department:

1. The owner's or owner's spouse's current valid driver license issued by this State of the owner's or owner's spouse's state of domicile.
2. Proof of current vehicle registration or a valid salvage or dismantle certificate of title.
3. Proof that the vehicle is in compliance with the financial responsibility requirements of Title 28, Chapter 9, Article 4, Arizona Revised Statutes.
4. If the person is required by the Department of Transportation Motor Vehicle Division to install a certified ignition interlock device on the vehicle, proof of installation of a functioning certified ignition interlock device in the vehicle. The Phoenix Police Department, storage yard, facility, person or agency having physical possession of the vehicle shall allow access during normal business hours to the impounded vehicle for the purpose of installing a certified ignition interlock device. The Phoenix Police Department, storage

yard, facility, person or agency having physical possession of the vehicle shall not charge any fee or require compensation for providing access to the vehicle or for the installation of the certified ignition interlock device.

- C. The registered owner or the owner's spouse if the vehicle is released to the owner's spouse is responsible for paying all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to Section 36-72.02, unless the vehicle is stolen and the theft was reported to the appropriate law enforcement agency or if the vehicle was subject to bailment.
- D. The Phoenix police Department shall release a vehicle to a person, other than the owner, identified on the Department of Transportation Motor Vehicle Division record as having an interest in the vehicle, before the end of the thirty day immobilization or impoundment period if all of the following conditions are met:
 - 1. The person requesting the vehicle release is either of the following:
 - a. in the business of renting motor vehicles without drivers and the vehicle is registered pursuant to Section 28-2166, Arizona Revised Statutes.
 - b. The person requesting the vehicle release is a motor vehicle dealer, bank, credit union or acceptance corporation or any other licensed financial institution legally operating in this State or is another person who is not the owner and who holds a security interest in the vehicle.
 - 2. The person must pay all immobilization, towing and storage charges related to the immobilization or impoundment of the vehicle and any administrative charges established pursuant to Section 36-70.04 unless the vehicle is stolen and the theft was reported to the appropriate law enforcement agency or if the vehicle was subject to bailment.
 - 3. The person presents foreclosure documents or an affidavit of repossession of the vehicle.
 - 4. The person requesting release of the vehicle was not present at the time of the removal and immobilization or impoundment and was not

the person arrested or cited pursuant to Section 28-708 or 28-693, Arizona Revised Statutes.

E. For the purposes of this Section, "certified ignition interlock device" has the same meaning prescribed in Section 28-1301, Arizona Revised Statutes.

**SECTION 4. CHAPTER 36, PHOENIX CITY CODE, SECTION
36-70.04, ADMINISTRATIVE CHARGES, IS ADDED IN ITS ENTIRETY AS
FOLLOWS:**

Sec. 36-70.04. Administrative charges.

- A. The Phoenix Police Department shall establish procedures consistent with Sections 36-70.01 through 36-70.03 for an immobilization or post-storage hearing, for the release of property and immobilized or impounded vehicles and for imposition of a charge for administrative costs relating to the removal, immobilization, impoundment, storage or release of a vehicle that reflects actual costs, but not to exceed one hundred fifty dollars.
- B. The Phoenix Police Department shall collect any administrative charges at the time of the release of the vehicle unless the vehicle is stolen, and the theft was reported to the appropriate law enforcement agency or if the vehicle was subject to bailment.
- C. The administrative charges established pursuant to this Section are in addition to any other immobilization, impoundment or storage charges.
- D. The storage charges relating to the impoundment of a vehicle pursuant to this Section shall be subject to a contractual agreement between the City and a towing firm for storage services, but shall not exceed fifteen dollars for each day of storage, including any time the vehicle remains in storage after the end of the thirty day impoundment period.

**PASSED by the Council of the City of Phoenix this 17 day of March,
2021.**

MAYOR

ATTEST:

Denise Archibald, City Clerk

APPROVED AS TO FORM:
Cris Meyer, City Attorney

By: _____
Julie Kriegh, Chief Assistant Chief Counsel

REVIEWED BY:

Ed Zuercher, City Manager

JK: dh:LF_____:2236060v2