

LOCAL LAW NO.18-2023

BY COUNCIL PRESIDENT COLLINS-BELLAMY, MAJORITY LEADER DIAZ, MAJORITY WHIP RUBBO, MINORITY LEADER BREEN, COUNCILMEMBERS, WILLIAMS, PINEDA –ISAAC AND MERANTE:

A LOCAL LAW AMENDING CHAPTER 109 OF THE CODE OF THE CITY OF YONKERS, ENTITLED “VEHICLES AND TRAFFIC” IN REGARDS TO DUE PROCESS PROCEDURES FOR TOWING AND IMPOUNDED VEHICLES

The City of Yonkers, in City Council convened, does hereby ordain and enact:

Section 1. Chapter 109 of the Code of the City of Yonkers entitled “Vehicles and Traffic” is hereby amended in part by amending Section 109-37, entitled “Notice of violation” to read as follows:

Chapter 109. VEHICLES AND TRAFFIC

Article V. Parking Violations Office

§ 109-37 Notice of violation.

- A. Whenever a parking violation occurs, a notice of violation or ticket shall be issued and served per this section.
- B. The notice of violation shall contain information advising the person or entity charged of the manner and the time in which there may be a plea of either guilty or not guilty to the violation alleged in the notice and shall also contain a warning to advise the person or entity charged that failure to plead in the manner and time provided shall be deemed an admission of liability, and that a default judgment may be entered thereon by failing to timely proceed as set forth herein, and that any judgment or judgments could result in the suspension, impoundment, removal, seizure, immobilization, storage and sale of the subject vehicle in accordance with § 109-132. The notice of violation shall direct that all payments accompanying a plea of guilty shall be made to the Parking Violations Office of the City of Yonkers. The form and wording of the notice of violation shall be prescribed by the Director from time to time.

LOCAL LAW NO.18-2023 (CONTINUED)

A Upon a documented request to the Yonkers Police Department Traffic Unit or the Office, duplicate copy of the notice of violation shall also be provided by said entity to the Interested Person as defined herein of the motor vehicle which is the subject of said notice of violation.

- C. A duplicate of each notice of violation shall be served on the person charged in the manner hereinafter provided. The original or a facsimile thereof shall be filed with and retained by the Office, shall be deemed a record kept in the ordinary course of business and shall be prima facie evidence of the facts contained therein.
- D. Except as otherwise expressly provided by local law of the City of Yonkers, notices of violation for parking violations shall be issued by:
- (1) Police officers of the City of Yonkers anywhere in the City.
  - (2) Parking and Code Enforcement Officers.
  - (3) Employees of the Yonkers Parking Authority at garages and lots operated by the Authority.
  - (4) Any other authorized law enforcement agency.
- E. A notice of violation shall state the date, time and location of the violation; the type of violation; the make and, body type; the license plate number, type of license plate and registration expiration date; the meter number, if any; and the section number of the violation. A notice of violation shall be served personally upon the operator of a motor vehicle who is present at the time of service; and if the operator is not present, then the notice of violation shall be served by affixing the notice to the vehicle in a conspicuous place. Whenever a notice is so affixed, in lieu of inserting the name of the person charged with the violation in the space provided for the identification of the person, the words "owner of the vehicle bearing license" may be inserted, to be followed by the plate designation and plate type as shown by the registration plates of the vehicle, together with the expiration date, the make or model and the body type of the vehicle. Service of the notice of violation or a duplicate thereof by affixing to the vehicle, as herein provided, shall have the same force and effect and shall be subject to the same penalties for disregard thereof as though the same was personally served with the name of the person charged with the violation inserted therein.

LOCAL LAW NO.18-2023 (CONTINUED)

- F. For purposes of this article, an operator of a vehicle who is not the owner thereof but who uses or operates such vehicle with the permission of the owner, express or implied or otherwise, shall be deemed to be the agent of such owner to receive notices of violation, whether personally served on such operator or served by affixation in the manner aforesaid, and service made in either manner as herein provided shall also be deemed to be lawful service upon such owner. There shall be a rebuttable presumption that the operator of said vehicle has the express or implied consent of the owner unless the owner can demonstrate by clear and convincing evidence otherwise.

Section 2. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by amending Section 109-38, entitled "Liability" to read as follows:

§ 109-38 Liability.

- A. The operator, owner and lessor of a vehicle shall be liable for the fines or penalties for parking violations and other violations, including but not limited to Red Light Camera violations or other violations of the Laws, Rules or Regulation of the City or the New York State Vehicle and Traffic Law or regulations or requirements of the New York State Department of Motor Vehicles. Except as otherwise provided in Subsections B through and E of this section, the owner and lessor of the vehicle, even if not the operator thereof, shall be jointly and severally liable with the operator thereof if such vehicle was used or operated with the permission of the owner or lessor, express or implied, but in such case the owner or lessor may recover any fine or penalties paid by either from the operator. There shall be a rebuttable presumption that the operator of said vehicle has the express or implied consent of the owner or lessor unless the owner or lessor can demonstrate by clear and convincing evidence otherwise.
- B. The lessor or owner of a motor vehicle shall not be liable for fines or penalties or other Office costs imposed pursuant to the City of Yonkers Code if:

LOCAL LAW NO. 18-2023 (CONTINUED)

- (1) Prior to any violation of this Code, or other applicable Laws, Rules or Regulations, the lessor or owner has filed an approved form with the Office the registration plate number, plate type and place of registration of the vehicle regarding which the notice of any violation was issued and said lessor or owner has paid in advance the required yearly filing fee provided in Subsection F of this section as well as providing to the Office the current address and contact information for the Interested Parties; and
  - (2) Within 37 days after receiving notice from the Office of the date and time of a violation, together with the other information contained in the original notice of violation, the lessor or owner submits to the Office in writing or by e-mail the correct name and current address of the lessee or operator of the vehicle identified in the notice of violation at the time of such violation, together with such other additional information contained in the rental, lease or any other documents as may be reasonably required by the Office to locate and provide notification to the lessee or operator as the case may be of the violation.
- C. If the lessor or owner has complied with Subsection B(1) and B(2) of this section, the lessor or owner shall not be liable for any fines, costs or penalties in excess of the scheduled fine unless the lessor or other Interested Party fails to appear and otherwise lawfully respond to the notice of violation within 37 days of actual transmission by the Office of a notice of violation and provided full compliance with all Office requirements and other lawful process pursuant to Subsection E of this section.
- D. If the lessor or owner who has complied with Subsection B(1) of this section has paid any fine, costs or penalty for which he, she or it is is liable and the Office subsequently collects from the operator or lessee the amount of the scheduled fine, costs and penalty owed by such person or entity, or any portion thereof, the lessor or owner shall be entitled to reimbursement from the Office of the amount of the fine and penalty unlawfully paid by the lessor, less the Office's costs of collection.

LOCAL LAW NO. 18-2023 (CONTINUED)

- E. The lessor or owner shall not be liable for any fines or penalties in connection with a notice of violation for a vehicle whose registration plate number is filed and the fee therefor paid prior to the time of issuance of a notice of violation, unless the lessor or owner receives notice from the Office of the date and time of such violation, together with the other information contained in the original notice of violation, within 90 days after service of the notice of violation, in accordance with § 109-37 and the lessor or owner fails to appear or otherwise lawfully respond to the notice of violation.
  
- F. The annual fee for filing a registration plate number with the Office by lessors or owners under this section shall be \$12 or such other amount as lawfully permitted per fiscal year. Lessors and owners shall also provide the Office with such other additional information in such format as the Office, by regulation, may reasonably require. The registration plate number shall not be considered filed with the Office unless the annual filing fee provided for in this subsection shall have been paid in advance. Lessors and owners shall not be entitled to a refund, reduction, credit or other consideration in connection with such annual filing fee in the event that such registration plate number is withdrawn from service, destroyed or surrendered during the fiscal year for which such registration plate number shall have been filed. In the event that a lessor or owner files with the Office registration plate numbers during a fiscal year, the annual filing fee for the same shall be prorated on a monthly basis in accordance with a schedule that the Office shall promulgate by regulation. The primary filing by each lessor or owner for each fiscal year shall be made at least 30 days prior to the commencement of the fiscal year.
  
- G. Where the United States postal authorities return to the Office a notice of violation or other delinquency notice forwarded by the Office to a name and address of a lessee or operator furnished by a lessor or owner in accordance with provisions of this section, such return notice shall be presumptive evidence of the furnishing of an incorrect name and address by the lessor or owner to the Office. The lessor or owner may, however, conclusively rebut such presumption if, within 60 days after receiving notification from the Office of the returned mail notice, the lessor or owner shall provide to the Office a copy of any documents, including the rental agreement or lease agreement for such lessee containing a correct and current the name and address to the Office for the lessee or operator. In the event that a lessor shall fail

LOCAL LAW NO.18-2023 (CONTINUED)

to rebut the presumption established by this subsection, the lessor or owner shall be liable for all fines and penalties in accordance with the rules and regulations promulgated by the Office. All interested Parties have the sole and individual responsibility to provide the Office with accurate information about the Interested Parties' address for receiving any notice at all times.

- H. The Office shall, by rules and regulations, prescribe the manner and method of giving notice of outstanding violations to the operators, lessees, and owners except that notices of impending default judgment shall be forwarded by mail, in accordance with § 109-42B. All notices to lessors, owners, or operators under this section shall be by first-class mail to the address on file with the Office or by such other means as shall be provided for in the rules and regulations of the Office.
- I. A lessor and owner shall cooperate with the Office in the enforcement of judgments rendered against lessees as well as operators or in providing the Office or its designated agents with such other additional information as shall be contained in any such documents, including a lessor's rental or lease agreements with their lessees as shall be available to them.

Section 3. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by amending §109-42 "Final determinations; judgments" in Article V entitled "Parking Violations" to read as follows:

§ 109-42. Final determinations; judgments.

- A. The ALJ shall make a determination on the charges or other issues, either sustaining or dismissing them. The ALJ shall not examine the prior violation record of a person charged before making a determination. Where the ALJ determines that the charges have been sustained, he or she may examine the prior parking violations record prior to rendering a final determination. Final determinations sustaining or dismissing charges shall be entered on a final determination roll maintained by the Office, together with records showing payment and nonpayment of penalties. A copy of such judgment record or a transcript thereof may be filed in the office of the Clerk of the City Court

LOCAL LAW NO.18-2023 (CONTINUED)

of Yonkers and/or in the office of the Clerk of the County of Westchester and/or in such other county wherein the respondent resides or is employed.

B. Where an operator or owner fails to enter a plea to a charge of a parking violation or other violation of the City Code, including but not limited to Red Light Camera Violation of any violation of City Laws, Rules or Regulations; or fails to appear on a designated hearing date or subsequent adjourned date or fails, after a hearing, to comply with the determination of an ALJ, as prescribed by this article, Charter Article VIA, or by rule or regulation of the Office or the City Code, such failure to plead, appear or comply shall be deemed, for all purposes, an admission of liability and shall be grounds for rendering and entering a default judgment in an amount authorized by this chapter and the rules and regulations of the Office.

C. Prior to rendering a default judgment after a failure to plead, appear or comply, the Office shall notify the operator or registered owner, in writing, by first-class mail:

(1) Of the violation charged;

(2) Of the impending default judgment;

(3) That such judgment will be entered in the City Court of the City of Yonkers or other court of civil jurisdiction or any other place provided for the entry of civil judgments within the State of New York; and

(4) That a default may be avoided by entering a plea or making an appearance within 30 days of the sending of such notice.

D. Pleas entered or appearance made within the period authorized in Subsection C of this section shall be in the manner prescribed in the notice and not subject to additional penalty or fee. ~~A notice of impending default judgment shall not be required prior to the rendering and entry thereof in the case of operators or owners who are nonresidents of the State of New York.~~ In no case shall a default

LOCAL LAW NO.18-2023 (CONTINUED)

judgment be rendered or, where required, a notice of impending default judgment be sent more than two years after the expiration of the time prescribed for entering a plea. When a person has demanded a hearing, no fine or penalty shall be imposed for any reason prior to the holding of the hearing. If the hearing examiner shall make a determination on the charges, sustaining them, he shall impose no greater penalty or fine than those upon which the person was originally charged.

E. A judgment entered pursuant to the provisions of this section shall remain in full force and effect for eight years, notwithstanding any other provision of law.

F. Once a judgment is entered, and that judgment alone or the judgment in addition to outstanding cumulative tickets, together, in the totality, exceed \$300, then the City shall notify all interested parties that any such judgment or judgements could result in the suspension of the vehicle's registration, impoundment, removal, seizure, immobilization, storage and sale of the subject vehicle in accordance with § 109-132 of this Chapter.

Section 4. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by amending §109-132 entitled "Removal, immobilization and storage of vehicles with outstanding traffic warrants or parking fines" to read as follows:

§109-132. Removal, immobilization and storage of vehicles with outstanding traffic warrants or judgments for parking fines or Red Light Camera violations or other violations of the City Code.

A. The Police Commissioner or any lawful agent of the Police Commissioner, including but not limited to the Office, shall have the power and authority to provide for the removal, immobilization and storage of vehicles on which there are outstanding traffic warrants or fines, outstanding tickets, or outstanding judgments, unpaid parking tickets or other lawfully imposed costs for entered in accordance with § 109-42 for unpaid parking violations or other violations of the City



LOCAL LAW NO.18-2023 (CONTINUED)

Code, including but not limited to the Red Light Camera violations as well as any and all violations of the Laws, Rules and Regulations of the City, the New York State Department of Motor Vehicles and the New York State Vehicle and Traffic Law where the total amount of such warrant(s) or judgment(s) or tickets, including interest, is \$300 or greater.

- B. Such vehicles may be removed, towed, immobilized or stored or otherwise secured by or under the direction of members of the Police Department or authorized agent by means of towing or other methods or means of removal, securing by use of a wheel lock or other immobilizing device and storage at a public or private impound lot, facility or locations designed by the Police Commissioner.
- C. Such removal, immobilization and storage shall be at the expense and risk of the owner or lessor of the vehicle.

Section 5. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by amending §109-134 entitled "Notice of towing or removal" to read as follows:

§109-134. Notice of towing or removal

- A. When any motor vehicle is towed or otherwise removed, the Police Commissioner or lawful agent of the Police Commissioner shall with all reasonable due diligence promptly notify all Interested Parties as defined herein in this Chapter of such towing or removal as well as how such vehicle can be recovered.
- B. The notification to the Interested Party shall be to the address filed in the relevant City Department or Office or if no such address can be reasonably ascertained, then the Office shall determine the identity of the Interested Parties through an exercise of reasonable due diligence under the circumstances.
- C. In the event records maintained by the New York State Department of Motor Vehicles or similar data bases do not reveal the identity and addresses of all the Interested Parties, then the relevant City Department or Office shall use reasonable due diligence to locate by any other means to ascertain the identity and address of any Interested Parties.

LOCAL LAW NO.18-2023 (CONTINUED)

- D. The notification required in Section B herein shall be sent by the Office promptly after the towing or seizure of the vehicle and said Office notification shall advise the Interested Party of the right to a Seizure Hearing. Any Interest Party seeking such a Seizure Hearing shall within ~~ten~~ thirty (40 30) ~~business calendar~~ days of the date of said Office notification send such a request for said Hearing by certified mail to the Office address set forth on said notification or appear in person at the aforesaid address of said Office to demand such a Seizure Hearing.

The notification shall contain the following information:

- (1) The make, plate, body type and vehicle identification number ("VIN") of the seized vehicle;
- (2) A plate summary of all violations associated with this seizure;
- (3) A statement that the purpose of said Hearing is to determine the possessory interests in the vehicle and the person or entity who will or can retained the vehicle subsequent ~~prior~~ to the conclusion of the Hearing;
- (4) The outstanding fines, judgments, warrants, unpaid parking tickets and other penalties incurred, in addition to any fees associated with the immobilization towing and storage of the vehicle;
- (5) That the aforesaid fines and, penalties and fees can be contested at that Hearing and the right to possession of the vehicle also determined;
- (6) That the lawful basis of the seizure or tow can be contested;
- (7) That the Interested Party can post a financial bond in twice the amount of the outstanding fines and judgments in satisfactory form as security for payment of the aforesaid costs assessed to obtain the immediate release of the vehicle to the Interested Party;
- (8) That the Interested Party can appear in person as well as by an Attorney duly licensed to practice law in the State of New York;
- (9) That a neutral decision maker which is an Administrative Law Judge as provided for herein shall determine all of the above issues pursuant to article VIA, Part B, Section C6A-12 of the City Code and all other applicable provisions of law-;
- (10) That an appeal of the Hearing Decision can be made pursuant to applicable law.

LOCAL LAW NO.18-2023 (CONTINUED)

- E. Within no less than fifteen (15) business days and no more than thirty (30) business days after the Office receives and such request for a Seizure Hearing, the Office shall schedule such a Hearing and provide the Interested Party with written notice of the place, time and date of said Hearing and any other information require by law.
- F. Nothing herein shall permit an Interested Party to contest at said Seizure Hearing any other violations previously adjudicated lawfully pursuant to the Code. Should more than one Interested Party request a Seizure Hearing, said Hearings shall be scheduled jointly with any other requested Hearing regarding the same tow or seized of a vehicle.

Section 6. Chapter 109 of the Code of the City of Yonkers entitled "Vehicles and Traffic" is hereby amended in part by amending §109-136 entitled "Redemption of vehicles" to read as follows:

§109-136. Redemption of vehicles

- A. The Interested Party of any motor vehicle towed or removed from the public streets, highways or elsewhere or stored or immobilized under the authority of this article, or his, her or its agent, before being permitted to obtain release of any impounded or immobilized vehicle such motor vehicle, shall furnish satisfactory evidence as to his, her or its identity and as to the ownership or superior right of possession of such motor vehicle and shall, prior to the delivery of the motor vehicle to him, her or it make payment of all authorized charges incurred in the removal and storage of said motor vehicle, make payment of all outstanding parking fines, adjudicated violations or judgments, including but not limited to Red Light Camera violations, or other violation of the City Code, or any other violation of City Laws, Rules or Regulations; judgments, and costs and satisfy all outstanding traffic warrants as well as New York State Department of Motor Vehicle suspensions lawfully related to the subject vehicle and/or Interested Party.
- B. A motor vehicle shall not be delivered to the Interested Party or his, her or its agent by the owner, operator or employee of any public garage or parking facility to which it has been towed, removed or stored except on order or other lawful direction from the appropriate agency or authority of the City of Yonkers indicating that the requirements of this article have been complied with.

LOCAL LAW NO.18-2023 (CONTINUED)

C. While a vehicle is immobilized as herein provided, any parking restrictions which such vehicle would be in violation of by reason of the immobilization shall be waived and suspended for a period not to exceed three days.

Section 7. This Local Law shall take effect upon compliance with §C4-6 of the Charter of the City of Yonkers and the provisions of the Municipal Home Rule Law of the State of New York.

THIS LOCAL LAW WAS ADOPTED BY THE CITY COUNCIL AT A STATED MEETING HELD ON TUESDAY, NOVEMBER 28, 2023. BY A VOTE OF 6-0. COUNCILMEMBER WILLIAMS WAS ABSENT.

*L. Call-Bellamy*  
COUNCIL PRESIDENT

12/1/2023  
DATE

SENT TO MAYOR 12/4/2023  
DATE

*Mike Russo*

MAYOR

APPROVED 12/12/23  
DATE

ATTEST:

*Mike Demodelli*  
DEPUTY CITY CLERK

12/12/23  
DATE