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**THE CITY OF BERWYN**  
COOK COUNTY, ILLINOIS

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**ORDINANCE**  
NUMBER 23-09

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**AN ORDINANCE AMENDING CHAPTERS 426 AND 460 OF THE CODIFIED ORDINANCES OF BERWYN REGARDING STREET RACING, DRIFTING AND RELATED ACTIVITIES FOR THE CITY OF BERWYN, COUNTY OF COOK, STATE OF ILLINOIS.**

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**Robert J. Lovero, Mayor**  
**Margaret Paul, City Clerk**

**Scott Lennon**  
**James Woywod**  
**Richard E. Leja**  
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Published in pamphlet form by authority of the Mayor and City Clerk of the City of Berwyn on this 26<sup>th</sup> day of April, 2023.

ORDINANCE 23-09

**AN ORDINANCE AMENDING CHAPTERS 426 AND 460 OF THE CODIFIED ORDINANCES OF BERWYN REGARDING STREET RACING, DRIFTING AND RELATED ACTIVITIES FOR THE CITY OF BERWYN, COUNTY OF COOK, STATE OF ILLINOIS.**

**WHEREAS**, the City of Berwyn (the “City”) is a home rule unit of local government as is provided by Article VII, Section 6 of the Illinois Constitution of 1970 and, as such, may exercise various powers and perform numerous functions pertaining to its government and affairs in any manner not otherwise prohibited by law; and

**WHEREAS**, the Mayor (the “Mayor”) and the City Council (the “City Council” and with the Mayor, the “Corporate Authorities”) have established regulations related to the safe use and operation of vehicles within the City (the “Regulations”); and

**WHEREAS**, illegal street racing, drifting, and related activities recklessly endanger the life, safety, and welfare of City residents, pedestrians, and motorists; and

**WHEREAS**, the Corporate Authorities recognize the need to update the Regulations in regard to street racing, drifting and related activities; and

**WHEREAS**, based on the foregoing, the Corporate Authorities have determined that the Codified Ordinances of Berwyn (the “City Code”) should be amended to update the Regulations; and

**WHEREAS**, in light of the foregoing and pursuant to the City’s home rule powers, the Corporate Authorities have determined that it is necessary, advisable and in the best interests of the City and its residents to amend various sections of Chapter 426 and Chapter 460 of the City Code as forth herein (the “Amendments”);

NOW, THEREFORE, BE IT ORDAINED by the Mayor and the City Council of the City of Berwyn, County of Cook, State of Illinois, in the exercise of the City's home rule powers, as follows:

**Section 1.** The statements set forth in the preambles to this Ordinance are found to be true and correct and are incorporated into this Ordinance as if set forth in full.

**Section 2.** The Amendments are hereby adopted. The Corporate Authorities hereby approve the amendments and the additions to the City Code, as described below.

**Section 3.** Chapter 426, Section 426.01 of the City Code is hereby amended, notwithstanding any provision, ordinance, resolution or City Code section to the contrary, with all existing substantive language remaining in place and full force and effect as follows:

**§ 426.01 DEFINITIONS.**

(A) For purposes of this chapter, the definitions contained in ILCS Ch. 625, Act 5, §§ 1-100 to 1-300 shall apply.

(B) **HOLIDAY** or **LEGAL HOLIDAY** means or includes all state holidays.

(C) **STREET RACING** means the act of: (1) two or more individuals competing or racing any motor vehicle on any street, highway or other public way in a situation in which one of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver and the one driver attempts to prevent the competing driver from passing or overtaking, either by acceleration or maneuver; or (2) one or more individuals competing in a race against time on any street, highway or other public way.

(D) **DRIFTING** means a driving technique in which the driver of a motor vehicle, in the absence of an emergency, either: (1) causes the vehicle to spin, skid, slide, turn abruptly or sway upon acceleration or braking; or (2) uses or controls the vehicle's throttle, brakes, clutch, gear shifting, steering input or other driving mechanisms, in any combination, to keep the vehicle in a state of oversteer while maneuvering the vehicle from turn to turn, or in circles, or in a figure eight, in a manner such that: (i) the rear slip angle of the wheels is greater than the front slip angle, and the front wheels are pointing in the opposite direction to the turn (e.g. the vehicle is turning left, wheels are pointed right); or (ii) the vehicle slides sideways through the turn(s); or (iii) the amount of countersteer (or opposite lock) coupled with the simultaneous modulation of the vehicle's throttle and brakes shifts the weight balance of the vehicle back and forth through the turn(s); or (iv) any or all of the vehicle's tires lose traction

or grip on the road; or (v) an audible squeak or squeal sound coming from the vehicle's wheel area occurs when the vehicle is in motion or when the brakes are applied.

**Section 4.** Chapter 426, Section 426.04 of the City Code is hereby amended, notwithstanding any provision, ordinance, resolution or City Code section to the contrary, with all existing substantive language remaining in place and full force and effect as follows:

**§ 426.04 VEHICLE SEIZURE AND IMPOUNDMENT; USE OF MOTOR VEHICLES FOR UNLAWFUL PURPOSES.**

(A) *Definitions.* For the purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BUSINESS DAY.** Any day in which the office of the City Clerk of the City of Berwyn is open to the public for a minimum of seven hours.

**MOTOR VEHICLE.** Every vehicle which is self-propelled, including but not limited to automobiles, trucks, vans, motorcycles and motor scooters.

**OWNER OF RECORD.** The record title holder(s) of the vehicle as registered with the Secretary of State, State of Illinois or if not registered in Illinois, the particular state where the vehicle is registered.

(B) *Conduct prohibited.* A motor vehicle that is used in connection with any of the following violations may be subject to seizure and impoundment by the city, and the owner of record of the vehicle shall be liable to the city for an administrative penalty of \$750 per towable offense as set forth in this section, plus any applicable towing fees if:

(1) The vehicle is operated by a driver under the influence of alcohol, other drug or drugs, intoxicating compound(s) or any combination thereof, as provided in ILCS Ch. 625, Act 5, § 11-501(a);

(2) The vehicle is operated by a driver while driver's license, permit or privilege to operate a motor vehicle is suspended or revoked, as a result of suspension related to conviction for drugs, alcohol, intoxicating compound or any combination thereof, pursuant to ILCS Ch. 625, Act 5, § 11-501(a), as provided in ILCS Ch. 625, Act 5, § 6-303 or is suspended or revoked for any other reason and the vehicle is being operated in violation of ILCS Ch. 625, Act 5, § 6-303;

(3) The operation of any motor vehicle with open alcohol in violation of ILCS Ch. 625, Act 5, § 11-502;

(4) Any vehicle operated and occupied solely by minors wherein alcoholic beverages, whether open or sealed, are found in violation of the Codified Ordinances of the city, § 804.27(B);

(5) Any vehicle being operated wherein there is found cannabis in violation of the Cannabis Regulation and Tax Act (ILCS Ch. 410, Act 705, §§ 1-1 et seq.) or the State Cannabis Control Act (ILCS Ch. 720, Act 550, § 4); or

(6) Any vehicle being operated or having been operated while the operator or occupants of the vehicle are in the commission of or fleeing from the commission of a crime constituting a charge of a Class A misdemeanor, or any felony.

(7) A violation of ILCS Ch. 720, Act 5, § 11-14, "Prostitution," of the Illinois Criminal Code of 1961, as amended, ILCS Ch. 720, Act 5, § 11-14.1, "Solicitation of a Sexual Act," of the Illinois Criminal Code of 1961, as amended, ILCS Ch. 720, Act 5, § 11-15, "Soliciting for a Prostitute," of the Illinois Criminal Code of 1961, as amended, ILCS Ch. 720, Act 5, § 11-15.1, "Soliciting for a Juvenile Prostitute," of the Criminal Code of 1961, as amended, ILCS Ch. 720, Act 5, § 11-18, "Patronizing a Prostitute," of the Illinois Criminal Code of 1961, as amended, ILCS Ch. 720, Act 5, § 11-18.1, "Patronizing a Juvenile Prostitute," of the Illinois Criminal Code, as amended, or Chapter 660, "Public Morals Nuisance Violations," of the Codified Ordinances of the city.

(8) Any vehicle being operated by a driver upon a highway in the state when such driver does not possess a valid license or permit or a restricted driving permit in violation of the Illinois Vehicle Code, ILCS Ch. 625, Act 5, § 6-101(a).

(9) Any motor vehicle that contains an unregistered firearm or a firearm that is not broken down in a non-functioning state, except that (a) if the vehicle is operating as a common carrier and the violation occurs without the knowledge of the person in control of the vehicle or (b) if the owner proves that the presence of the firearm was permissible pursuant to the provisions of the Illinois Vehicle Code.

(10) Any motor vehicle being used in violation of Section 5/3-801 of the Illinois Vehicle Code, 625 ILCS 5/3-801, and Section 5/3-413 of the Illinois Vehicle Code, 625 ILCS 5/3-413, for a period in excess of six (6) months regarding no registration of a motor vehicle, Section 5/3-401 of the Illinois Vehicle Code, 625 ILCS 5/3-401, for no valid registration, or Section 5/3-702 of the Illinois Vehicle Code, 625 ILCS 5/3-702, and Section 5/3-708 of the Illinois Vehicle Code, 625 ILCS 5/3-708, for operation of a motor vehicle when registration is cancelled, suspended, or revoked.

(11) Any motor vehicle that is inoperable due to the arrest of the owner or operator.

(12) Any motor vehicle that is illegally parked in a tow away zone.

(13) Any abandoned motor vehicle pursuant to Chapter 468 of this Code, including any motor vehicle that poses a hazard to pedestrians or motorists on or near a highway.

(14) Any motor vehicle which is being used to engage in street racing or drifting.

(C) *Seizure and impoundment.*

(1) Whenever a police officer has a reason 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 approved by the Chief of Police. This section shall not apply if the vehicle used in the violation was stolen at that time and the theft was reported to the appropriate police authorities within 12 hours after the theft was discovered or reasonably should have been discovered.

(2) The police officer shall notify any person identifying himself or herself as the owner of the vehicle or any person who is found to be in control of the vehicle at the time of the alleged violation, if there is a person, of the fact of the seizure and of the vehicle owner's right to request an administrative hearing to be conducted under this section.

(D) *Administrative hearing.* Within five days after a vehicle is seized and impounded pursuant to this section, the city shall notify by personal service or by certified mail the owner of record of the owner's right to request a hearing to challenge whether a violation of this section has occurred. The owner of record seeking a hearing must file a written request for a hearing with the Chief of Police or his or her designee no later than ten business days after notice was mailed. The hearing date must be scheduled no more than ten business days after a 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 shall not apply at the hearing and hearsay evidence shall be admissible. Within seven days after the hearing, if the Hearing Officer determines by a preponderance of the evidence that the vehicle was used in violation of this section, then the Hearing Officer shall enter an order finding the owner of record of the vehicle civilly liable to the city for the administrative penalty of \$750 per towable offense as set forth in subsection (B). If, after the hearing, the Hearing Officer does not determine by a preponderance of the evidence that the vehicle was used in a violation, the Hearing Officer shall enter an order finding for the owner and for the return of the vehicle. If the owner of record requests a hearing but fails to appear at the hearing or fails to request in a timely manner, the owner of record shall be deemed to have waived his or her right to a hearing and the Hearing Officer shall enter a default order in favor of the city in the amount of the administrative penalty. However, if the owner of record pays the penalty and the vehicle is returned to the owner, no default order need be entered if the owner is informed of his or her right to a hearing and executes a written waiver, in which case an order of liability shall be deemed to have been made when the city receives the written waiver.

(E) *Disposition of impounded vehicle.* A penalty imposed pursuant to this section shall constitute a debt due and owing the city. A vehicle impounded pursuant to this section shall remain impounded until:

(1) The penalty of \$750 per towable offense as set forth in subsection (B) is paid to the city and all applicable towing fees are paid to the towing agent, in which case the owner of record shall be given possession of the vehicle;

(2) A bond in the amount of \$750 is posted with the Police Department and all applicable towing fees are paid to the towing agent, at which time the vehicle will be released to the owner of record; or

(3) The vehicle is deemed abandoned, in which case the vehicle shall be disposed of in the manner provided by law for the disposition of abandoned vehicles.

(F) *Posting of bond.* If a bond in the amount of \$750 is posted with the Police Department, the impounded vehicle shall be released to the owner of record; the owner of the vehicle shall still be liable to the towing agent for any applicable towing fees. If one or more \$750 penalties are imposed for violation of this section, the \$750 bond will be forfeited to the city; however if a violation of this section is not proven by a preponderance of the evidence, the \$750 bond will be returned to the person posting the bond. All bond money posted pursuant to this section shall be held by the city until the Hearing Officer issues a decision, or if there is a judicial review, until the Court issues its decision.

(G) *Vehicle possession.* Any motor vehicle that is not reclaimed within 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 at the time a final administrative decision is rendered against an owner of record who is in default, may be disposed of as an unclaimed vehicle as provided by law, provided, however, that where proceedings have been instituted under state or federal or asset forfeiture laws, the subject vehicle may not be disposed of by the city except as consistent with those proceedings.

**Section 5.** Chapter 460, Section 460.12 of the City Code is hereby adopted, notwithstanding any provision, ordinance, resolution or City Code section to the contrary as follows:

**§ 460.12 PROHIBITION OF STREET RACING AND DRIFTING; PENALTY.**

(A) No person who operates a motor vehicle shall engage in street racing or drifting, as defined in Chapter 426, Section 426.01, on any street, highway or other public way within the City or on any City owned property or parking area.

(B) In addition to any other penalty provided by law, any person who violates this section shall be subject to a fine of not less than \$5,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(C) Any motor vehicle used in connection with a violation of this Section shall be subject to seizure and impoundment in accordance with Chapter 426, Section 426.04.

**Section 6.** The officers, employees and/or agents of the City shall take all action necessary or reasonably required to carry out, give effect to, and consummate the amendments contemplated by this Ordinance and shall take all action necessary in conformity therewith. The officers, employees and/or agents of the City are specifically authorized and directed to draft and disseminate any and all necessary forms to be utilized in connection with the amendments contemplated by this Ordinance.

**Section 7.** All prior actions of the City's officials, employees and agents with respect to the subject matter of this Ordinance are hereby expressly ratified.

**Section 8.** The provisions of this Ordinance are hereby declared to be severable, and should any provision of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision shall be excluded and deemed inoperative, unenforceable and as though not provided for herein, and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect.

**Section 9.** All ordinances, resolutions, rules and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded.

**Section 10.** This Ordinance shall be in full force and effect ten (10) days after passage, approval and publication or as otherwise provided by law. A full, true and complete copy of this Ordinance shall be published in pamphlet form as provided by the Illinois Municipal Code, as amended.


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ADOPTED by the City Council of the City of Berwyn, Cook County, Illinois on this 25<sup>th</sup> day of April, 2023, pursuant to a roll call vote, as follows:

	YES	NO	ABSENT	PRESENT
Lennon	✓			
Woywod	✓			
Leja	✓			
Fejt	✓			
Pabon	✓			
Ruiz	✓			
Arenella	✓			
Carmichael	✓			
(Mayor Lovero)				
<b>TOTAL</b>	<u>8</u>			

APPROVED this 25<sup>th</sup> day of April, 2023.

  
 Robert J. Lovero  
 MAYOR

ATTEST:  
  
 Margaret Paul  
 CITY CLERK

