



MEMORANDUM

Office of the City Attorney

Registar No. 040782

Phone: 334-5011/Fax 334-2229
Box 46

May 23, 2005

TO: Mayor and City Commission

DATE: ~~May 9, 2005~~

FROM: City Attorney

~~FIRST READING~~
SECOND READING

SUBJECT: Ordinance No. 0-05-31

An Ordinance of the City of Gainesville, Florida; amending subsections 26-140(b) and 26-140(c), City of Gainesville Code of Ordinances, relating to appeal procedures for impounded vehicles; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

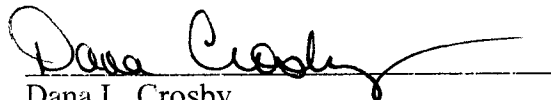
Recommendation: The City Commission adopt the proposed ordinance.

The City Commission, at its meeting of December 13, 2004, authorized the City Attorney to draft an ordinance updating appeal provisions for impounded vehicles as follows:


- Clarifying that a written request for an appeal hearing may be delivered to the City Manager or the City Manager's designee;
- Changing the method of delivery from registered mail to certified and first class mail; and
- Extending the time for the Board of Adjustment hearing from 3 days to 20 days minimum from date of receipt of the request for an appeal.

This ordinance requires two public hearings. Should the Commission adopt the ordinance on first reading; the second and final reading will be held on Monday, May 23, 2005.

Prepared by:


Dana L. Crosby
Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson,
City Attorney

MJR:DLC:sw

PASSED ON FIRST READING BY A VOTE OF 7-0.

ORDINANCE NO. _____
0-05-31

An Ordinance of the City of Gainesville, Florida; amending subsections 26-140(b) and 26-140(c), City of Gainesville Code of Ordinances, relating to appeal procedures for impounded vehicles; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Subsections (b) and (c) of section 26-140, City of Gainesville Code of Ordinances, are hereby amended to read as follows:

Sec. 26-140. Impoundment.

(b) Notice:

(1) In those cases where a vehicle is reasonably determined to be in violation of sections 26-137, 26-138 and 26-139(a), the enforcing official shall cause to be placed on the vehicle a notice declaring that the vehicle is in violation of such sections, stating with reasonable particularity the factors or reasons which caused such determination. The notice shall indicate the

1 date upon which it is issued and further indicate that the vehicle will be impounded and costs
2 imposed unless removed or repaired within ten days after the date of issuance of the notice, so as
3 to no longer be in violation. The notice shall also advise that after proper impoundment the
4 vehicle will be released to the owner only upon payment of reasonable towing, storage and
5 notice costs. The notice shall further state that if the owner of the vehicle wishes to contest the
6 validity of the proposed impoundment and imposition of costs, the owner must, within ten days
7 after the issuance of the notice, deliver to the city manager a written request for a hearing on
8 such matters. The enforcing official shall also cause a copy of the notice to be sent by certified
9 ~~registered~~ mail, return receipt requested, and regular first class mail to the address of the
10 vehicle's owner as last shown by the records of the division of motor vehicles of the state, or, if
11 the vehicle has an out of state license plate, by the records of the division of motor vehicles of
12 that state. If the owner is present at the time of the issuance of the notice, the notice may be hand
13 delivered in lieu of posting and mailing.

14 (2) In those cases where a vehicle is reasonably determined to be in violation of
15 subsection 26-139(b), the enforcing official shall cause to be placed on the vehicle a notice
16 declaring that the vehicle is in violation of subsection 26-139(b), stating with reasonable
17 particularity the factors or reasons which cause such determination. The notice shall indicate the
18 date upon which it was issued and further state that the vehicle will be immediately impounded
19 and costs imposed unless repaired or removed so as to no longer constitute such danger. The
20 notice shall also advise that after proper impoundment the vehicle may be released to the owner
21 after payment of reasonable towing, storage and notice costs. The notice shall further state that if
22 the owner of a vehicle impounded pursuant to subsection 26-139(b) wishes to contest the validity
23 of the impoundment and the imposition of costs, the owner must, within ten days after the

1 issuance of the notice, deliver to the city manager or designee a written request for a hearing on
2 such matters. The enforcing official shall also cause a copy of the notice to be sent by certified
3 ~~registered~~ mail, return receipt requested, and regular first class mail to the address of the
4 vehicle's owner as last shown by the records of the division of motor vehicles of the state, or, if
5 the vehicle has an out of state license plate, by the records of the division of motor vehicles of
6 that state. If the owner is present at the time of the issuance of the notice, the notice may be hand
7 delivered in lieu of posting and mailing.

8 (c) Hearing. If a written request for a hearing to contest the validity of the determination to
9 impound and impose costs is delivered to the city manager or designee in accordance with the
10 time limitations imposed by this article, the matter shall be considered at the next meeting of the
11 board of adjustment occurring not less than 20 ~~three~~ days after the filing of the request. The
12 owner or his/her representative as well as the city manager or his/her ~~designated~~
13 ~~representatives~~ shall be notified of the time and place of the hearing. No appeal fees or other
14 notices shall be required.

15
16 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
17 this ordinance shall become and be made a part of the Code of Ordinances of the City of
18 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered
19 or relettered in order to accomplish such intentions.

20 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be
21 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no
22 way affect the validity of the remaining portions of this ordinance.

23 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
24 such conflict hereby repealed.

D R A F T

3-30-05

1 **Section 5.** This ordinance shall become effective immediately upon final adoption.

2 **PASSED AND ADOPTED** this ____ day of _____, 2005.

3
4
5
6
7
8

PEGEEN HANRAHAN,
MAYOR

9 ATTEST:

Approved as to form and legality

10
11

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

14
15 This Ordinance passed on first reading this ____ day of _____, 2005.

16
17 This Ordinance passed on second reading this ____ day of _____, 2005.

18
19