

ORDINANCE NO. _____
0-07-107

An ordinance of the City of Gainesville, Florida, amending Section 26-2 of the Gainesville Code of Ordinances to provide a definition for parking enforcement specialist; amending Section 26-46 to delete the term traffic enforcement technician and to provide parking enforcement authority to parking enforcement specialists; amending Section 26-53 by deleting the term traffic enforcement technician, providing parking enforcement authority to parking enforcement specialists; providing for notice by department initiating impoundment and prohibiting tampering or removing immobilization devices without authority of department initiating immobilization; deleting obsolete references in sections 26-46 and 26-53; 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 in the City Commission Auditorium in City Hall, City of Gainesville; and

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

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

Section 1. Section 26-2 of the Gainesville Code of Ordinances is amended to read as follows:

Sec. 26-2. Definitions.

In addition to the definitions adopted by section 26-1 from F.S. Ch. 316, the following words and phrases, when used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

Bicycle shall mean any device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is twenty (20) inches or more in diameter, and including any device generally recognized as a bicycle though equipped with two (2) front and/or two (2) rear wheels.

Bike lane shall mean a lane marked within the travelled roadway area specified for preferential use by bicycles. It is identified by standard guide signing, special lane lines and/or other pavement markings.

Bike path shall mean a facility physically separated from a travelled roadway area for the use of bicycles and/or pedestrians. It shall be identified by standard guide signing and pavement markings as necessary.

Bike route shall mean a bike route identified as bicycle facility by standard guide signing.

Parking Enforcement Specialist shall mean an individual who successfully completes a training program established and approved by the Criminal Justice Standards and Training Commission for parking enforcement specialists and whose current duties with the city include parking enforcement.

Parking lines shall mean the marks upon the pavement of any street painted for the purpose of indicating parking for vehicles and the space included in such line shall be designated as parking spaces.

1 **Section 2.** Section 26-6 of the Gainesville Code of Ordinances is amended to read as
2 follows:

3 **Sec. 26-6. Obedience to police officers, or police service technicians, ~~or traffic enforcement~~**
4 **~~technicians.~~**

5 Drivers must at all times comply with any direction by voice or hand of any member of the
6 police department as to stopping, starting, rate of speed, manner of approaching or departing
7 from any place, the manner of taking on or letting out passengers, or loading or unloading goods
8 in any place, or any directions deemed necessary by any police officer or police service
9 technician, ~~or traffic enforcement technician~~ in the interest of the public safety and convenience.

10 **Section 3.** Section 26-46 of the Gainesville Code of Ordinances is amended to read as
11 follows:

12 **Sec. 26-46. Owner's liability for illegal parking.**

13 (a) Any and all violations of the following sections of this article relating to the parking of
14 vehicles are hereby declared to be a public nuisance and trespass.

15 (1) Parking, etc., Generally, sections 26-47 through 26-52;

16 (2) Parking Meters and Parking Lots, sections 26-71 and 26-73 through 26-81;

17 (3) Curb Loading Zones, etc., sections 26-95 through 26-101; and

18 (4) Controlled Vehicular Parking, sections 26-116 through 26-127.

19 (b) Any person cited for a violation of the sections specified above shall be deemed to be
20 charged with a noncriminal infraction and shall be cited for such an infraction and ordered to
21 appear before the traffic hearing officer for the county. Each day any violation occurs or
22 continues shall constitute a separate offense. For overtime parking in a space, each succeeding

equal time period beyond that authorized as the maximum time period for the parking space shall constitute a separate offense.

(c) The registered owner of a vehicle is declared to be directly responsible to the city for the payment of the fine and fees for the vehicle when the vehicle is parked or left standing in violation of these regulations. The registered owner is the person or entity that is lawfully registered as the owner of the vehicle with the department of highway safety and motor vehicles on the day the violation occurs.

(d) When any law enforcement officer, police service technician, or ~~traffic enforcement technician~~ parking enforcement specialist, finds a vehicle parked in violation of any of the parking regulations specified in this section, {the following actions shall occur}:

(1) *Notice of violation.* The officer shall issue a notice of violation to the vehicle and shall place the notice in a conspicuous place on the vehicle. The notification form shall contain language informing the registered owner of the vehicle which section of this chapter has been violated, the procedures available to the registered owner under this section, and the administrative fee which the registered owner may pay to avoid citation for a noncriminal traffic infraction for the violation.

(2) *Affidavit of explanation/first delinquency notice.*

a. Any person who fails to respond to the original parking violation notice within the time period specified shall be deemed to have waived the right to contest the merits of such parking violation.

b. The city manager or designee may waive the specified administrative fee, after receipt of an affidavit of explanation, received or postmarked within 72 hours of the writing of the original citation, under the following circumstances:

1. Malfunctioning meter.
2. Valid and verifiable emergencies.
3. Government employees on official business, verified by a supervisor.
4. City volunteers actually detained because of their volunteer duties, as verified by the volunteer coordinator.
5. Error in the issuance of the citation.

~~e. If the administrative fee, as provided for in this section, is not paid within 72 hours of the date [of] the citation being issued or within 96 hours of the date of denial of an affidavit of explanation, whichever is later, the city manager or designee shall mail a copy of the notice of violation to the registered owner of the vehicle demanding payment of the administrative fee, plus an additional delinquency fee of \$5.00. The registered owner is directed to pay the administrative fee and the delinquency fee within ten days.~~

~~(3) *Second delinquency.* If the specified administrative fee and delinquency fee are not paid within ten calendar days after the date of the citation being issued, a second delinquency fee of \$5.00 is added to the fees described in subsection (d)(2). If the total administrative and delinquent fees are not paid within 20 calendar days of the citation being issued, the entire administrative fee and delinquent fees owed, including any and~~

1 ~~all collection costs, will be referred for collection to an agency designated by the city~~
2 ~~manager.~~

3 (34) *Amount of fee.* The administrative fees provided for violations of any of the
4 parking regulations specified in this section shall be in accordance with the schedule set
5 out in appendix A.

6 (e) At any hearing of the case involving illegal parking in which the owner of the vehicle is
7 being tried under this chapter, it shall be sufficient evidence on which the court or traffic hearing
8 officer may rely to establish the name of the registered owner of such vehicle if a city police
9 officer, police service technician, or ~~traffic enforcement technician~~ parking enforcement
10 specialist, ~~of the city~~ shall state on oath that he/she has made inquiry of the department of
11 highway safety and motor vehicles or similar agency of the state where the vehicle is registered
12 and has been advised of the identity of the registered owner. If the person on trial denies that
13 he/she is the registered owner, and such fact cannot be otherwise established, the court or traffic
14 hearing officer may defer the final determination of the case until a certified record or
15 appropriate certificate can be obtained from the office of the appropriate agency showing the
16 record in that office on the date in question.

17 (f) At any hearing of a case involving illegal parking in which the owner of the vehicle is
18 being tried under this chapter, the judge or hearing officer may, in his/her discretion, allow any
19 person, whether the registered owner or not, to testify or otherwise give evidence if the person
20 admits under oath or affirmation to have parked the vehicle at the time and place of the alleged
21 offense.

(g) The city shall supply the department of highway safety and motor vehicles (department) with a magnetically encoded computer tape reel or cartridge or send by other electronic means data that is machine-readable by the installed computer system at the department, listing persons who have three or more outstanding parking violations, including violations of F.S. § 316.9155. The department shall mark the appropriate registration records of persons so reported.

Section 4. Section 26-53 of the Gainesville Code of Ordinances is amended to read as follows:

Sec. 26-53. Impoundment or immobilization of vehicle in violation of article.

(a) *Authority of police and designated parking enforcement personnel.*

(1) When any vehicle is parked or left standing in violation of this article on any city or publicly owned property, including city streets, highways, roads, alleys, parking lots or any other premises of the city, any police officer, police service technician, or ~~traffic enforcement technician~~ parking enforcement specialist, is authorized to take possession of such vehicle and to remove such vehicle from such property and to store and possess such vehicle in conformity with this section.

(2) When any vehicle is parked or left standing in violation of this chapter on any private property, any police officer, police service technician, or ~~traffic enforcement technician~~ parking enforcement specialist, is authorized, after receiving a written complaint from the owner or lawful possessor of such property and to store and possess such vehicle in conformity with this section.

(b) *Immobilization.*

(1) Any law enforcement officer, police service technician, or ~~traffic enforcement technician~~ parking enforcement specialist, who comes into contact with an unoccupied

1 parked vehicle, either on a public street or off-street parking facility, which he/she
2 reasonably believes to be a vehicle for which there is three or more unpaid recorded
3 parking violations, shall immobilize the vehicle in the manner prescribed in paragraph
4 (b)(2), and fee shall be assessed in accordance with the fee schedule established in
5 Appendix A.

6 (2) Immobilization of vehicles pursuant to paragraph (b)(1) shall be accomplished by
7 means of a Denver boot or other nondestructive device which prevents the vehicle from
8 moving under its own power. The law enforcement officer, police service technician, or
9 ~~traffic enforcement technician~~ parking enforcement specialist, who causes the vehicle to
10 be immobilized shall attach a notice to the vehicle advising the owner of the vehicle of
11 the information necessary to enable the owner to have the immobilizing device removed.
12 The notice shall be signed by the law enforcement officer, police service technician, or
13 ~~traffic enforcement technician~~ parking enforcement specialist, and indicate his/her
14 identification number.

15 (c) *Impoundment.*

16 (1) Any law enforcement officer, police service technician, or ~~traffic enforcement~~
17 ~~technician~~ parking enforcement specialist, who comes into contact with an unoccupied
18 parked vehicle, either on a public street or off-street parking facility, which he/she
19 reasonably believes to be a vehicle for which there is five or more unpaid recorded
20 parking violations, shall impound the vehicle in the manner prescribed in paragraph
21 (c)(2).

1 a. Any law enforcement officer, police service technician, or ~~traffic~~
2 ~~enforcement technician~~ parking enforcement specialist, who comes in contact
3 with an unoccupied vehicle parked on the street in an area designated in section
4 26-50.1 outside the permitted time limit shall issue a citation as provided in
5 appendix A and shall impound the vehicle in the manner prescribed in subsection
6 (c)(2).

7 b. The city's contract towing company may be authorized to tow, without
8 individual request by the city, any vehicle parked on the street in an area
9 designated in section 26-50.1 beyond the regulated time limits authorized herein.

10 (2) Impoundment of vehicles pursuant to subsection (c)(1) shall be accomplished by
11 means of removal of the vehicle to the nearest facility or other place of safety, or to a
12 facility designated or maintained by the municipality.

13 (d) *Owner responsibility and storage charges.* The cost of towing, booting, or removing a
14 vehicle impounded or immobilized under this section and the cost of storing the same or
15 removing the immobilization device shall be chargeable against the owner and shall be a lien
16 upon the vehicle. The owner of the vehicle shall pay these charges and any outstanding
17 administrative delinquency, or collection fees owed, before the vehicle will be released. The
18 vehicle may be stored in a public or private place. If the vehicle is stored in a private place, the
19 amount charged for storage shall be the amount the city must pay for the vehicle's storage. If the
20 vehicle is stored on city property, the charges for storage shall be \$2.00 per day. The charges to
21 the owner for towing shall be the cost of towing to the city.

(e) *Notice to owner.* Upon taking possession of any such vehicle, as provided in this section, the police department or other department initiating impoundment, shall endeavor to notify the owner thereof that such vehicle has been impounded and is being held for the towing and storage charges. A notice shall be given to the person to whom the vehicle is licensed in accordance with the registration list furnished by the register of motor vehicles. The notice shall be given within a reasonable time by registered mail and the actual charge for the giving of such notice shall be collected at the time the vehicle is returned to the owner thereof.

(f) *Recovery.* The registered owner of such vehicle shall be entitled to recover such vehicle only after making payment for the charges and expenses to the police department for the cost of towing or immobilizing such vehicle, plus the cost of storage and any outstanding administrative delinquency, or collection fees owed of such vehicle herein specified. The registered owner of such vehicle shall be responsible for paying the charges and fine as herein provided whether such registered owner was the person who unlawfully parked or left standing such vehicle, or not, and in each instance the police department shall require payment of the sums herein provided for before restoring to the registered owner possession of such vehicle.

(g) *Sale of unredeemed vehicles.* If the impounded vehicle is not claimed and all charges paid within 30 days after the police, police service technician, or ~~traffic enforcement technician~~ parking enforcement specialist, have taken possession of such vehicle an action may be commenced in the county court or in any other court by the city attorney in the name of the city as plaintiff and against the name of the owner as defendant for the amount of the charges due and after judgment is obtained in favor of the city the vehicle may be levied upon and sold for the purpose of satisfying the judgment as required by law.

(h) *Tampering or unauthorized removal of an immobilization device.*

(1) It shall be unlawful for any person to tamper with an immobilization device or remove such device without proper authorization from the Gainesville Police Department, or other department initiating immobilization.

(2) A violation of the provisions of this subsection shall be punishable as provided in section 1-9 of the Gainesville Code of Ordinances.

Section 5. It is the intention that Sections 1 through 4 of this ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered or relettered in order to accomplish such intentions.

Section 6. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or applications of the ordinance which can be given effect without the valid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

Section 7. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 8. This ordinance shall become effective immediately on final adoption.

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PASSED AND ADOPTED this ____ day of _____, 2008.

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PEGEEN HANRAHAN,
MAYOR

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11 ATTEST:

APPROVED AS TO FORM AND LEGALITY

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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This Ordinance passed on first reading this 14th day of January, 2008.

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This Ordinance passed on second reading this ____ day of _____, 2008.