

**CITY OF GAINESVILLE**  
Office of the City Attorney

**Legistar No. 980285**

**Memorandum**

334-5011/Fax 334-2229

Box No. 46

September 14, 1998

TO: Mayor and City Commission

DATE: ~~August 24, 1998~~

FROM: Marion J. Radson, City Attorney

**FIRST READING**

**SECOND READING**

SUBJECT: Ordinance No. 0-98-87

An ordinance of the City of Gainesville, Florida, amending section 26-46 of the code of ordinances relating to vehicle owner's liability for illegal parking, clarifying the procedure for notification of owner and payment of fees; allowing collection activity by an agency designated by the city manager and allowing the city to provide a list of owners with three or more outstanding parking violations to the state; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective

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Recommendation: The City Commission: (1) hear proposed amendments to the ordinance by the City Manager; and (2) adopt the proposed ordinance (as amended).

At its meeting on August 10, 1998, the City Commission authorized the City Attorney to draft and the Clerk to advertise an ordinance proposing to clarify the processes involved in the review of contested citations and collection of parking fines.

The City Manager is requesting certain changes as shown in his memorandum to further clarify when fees are due.

Prepared by:

  
Patricia M. Carter  
Assistant City Attorney

Approved and  
Submitted by:

  
Marion J. Radson  
City Attorney

MJR:PC:sw

Ordinance No. \_\_\_\_\_  
0-98-87

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2  
3  
4 **An ordinance of the City of Gainesville, Florida, amending section 26-46**  
5 **of the code of ordinances relating to vehicle owner's liability for illegal**  
6 **parking, clarifying the procedure for notification of owner and payment**  
7 **of fees; allowing collection activity by an agency designated by the city**  
8 **manager and allowing the city to provide a list of owners with three or**  
9 **more outstanding parking violations to the state; providing directions to**  
10 **the codifier; providing a severability clause; providing a repealing clause;**  
11 **and providing an immediate effective date.**  
12

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

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

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

21 **Section 1.** Section 9-2 of the Code of Ordinances amended to read as follows:

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

23 ~~(a) The city commission hereby finds and declares:~~

24 ~~—(1) The city is desirous of providing maximum safety and convenience for all persons~~  
25 ~~who use the streets, highways, alleys and motor vehicle parking areas in the city.~~

26 ~~—(2) An acute problem has developed in the city because of the legal difficulty experienced~~  
27 ~~in the enforcement of parking ordinances against either the operator or owner of a vehicle, and~~  
28 ~~as a result, parking ordinances of the city are being ignored with impunity which encourages~~  
29 ~~further disrespect for all the laws and legal processes of the city.~~

1 —(3) It is impractical and in most cases impossible, to ascertain and establish the identity of  
2 a driver of a motor vehicle which has been left illegally parked, and unless the registered owner  
3 of the vehicle is held responsible for such illegal parking, the parking ordinances of the city will  
4 continue to be unenforceable and ignored.

5 —(4) The continued ignoring of the parking ordinances of the city constitutes a public  
6 nuisance and in each instance is a trespass on the rights of the public generally and immediate  
7 action is required to correct these problems.

8 —(5) The city has the power to regulate, limit, restrict and prohibit the privilege of parking  
9 on the streets, highways, alleys, parking lots and other areas open to and used by vehicular  
10 traffic in the city.

11 —(6) The city provides many benefits for motor vehicles and expends considerable public  
12 funds which benefits the owner of the vehicles.

13 —(7) The legislature in enacting Chapter 74-377, Laws of Florida, intended to decriminalize  
14 certain traffic violations thereby facilitating the implementation of a more uniform and  
15 expeditious system for the disposition of traffic offenses.

16 (a)(b) Any and all violations of the following sections of this article specified in this section  
17 relating to the parking of vehicles are hereby declared to be a public nuisance and trespass. The  
18 sections of this article are:

- 19 (1) Parking, etc., Generally, sections 26-47 through 26-52;
- 20 (2) Parking Meters and Parking Lots, sections 26-71 and 26-73 through 26-80;
- 21 (3) Curb Loading Zones, etc., sections 26-95 through 26-101; and
- 22 (4) Controlled Vehicular Parking in Residential Areas, sections 26-116 through 26-124.

1 (b) Any person cited for a violation of the sections specified above shall be deemed to be  
2 charged with a noncriminal infraction and shall be cited for such an infraction and ordered to  
3 appear before the Traffic Hearing Officer for Alachua County. Each day any violation occurs  
4 or continues shall constitute a separate offense. For overtime parking in a space, each  
5 succeeding equal time period beyond that authorized as the maximum time period for the  
6 parking space shall constitute a separate offense.

7 ~~(c) In any prosecution involving a violation of any of the parking regulations specified in this~~  
8 ~~section, the~~ The registered owner of a motor vehicle ~~when the vehicle is parked or left standing~~  
9 ~~in violation of the regulations~~ is hereby declared to be directly responsible to the city for the  
10 payment of the fine and fees for the vehicle when the vehicle is parked or left standing in  
11 violation of these regulations ~~being so parked or left standing~~. The term “registered owner” is  
12 the person or entity ~~that who~~ is lawfully registered as the owner of the motor vehicle with the  
13 department of highway safety and motor vehicles ~~as provided by state law~~ on the day the  
14 violation occurs.

15 (d) When any law enforcement officer, police service technician, or traffic enforcement  
16 technician finds a vehicle parked in violation of any of the parking regulations specified in this  
17 section:

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

1 traffic infraction for the violation; ~~and of the potential civil penalty provided in F.S. Ch. 318,~~  
2 ~~for such noncriminal infraction.~~

3 (2) Affidavit of explanation/first delinquency notice. ~~If the administrative fee as provided~~  
4 ~~for in this section is not paid within seventy-two (72) hours, the police department or its~~  
5 ~~designee shall mail a copy of the notice of violation together with the information specified in~~  
6 ~~subsection (d)(1) to the registered owner of the vehicle informing the owner that an additional~~  
7 ~~delinquency fee of five dollars (\$5.00) has been assessed for the violation. The registered~~  
8 ~~owner is directed to pay the administrative fee and the delinquency fee within ten (10) days.~~

9 a. Any person who fails to respond to the original parking violation notice within the  
10 time period specified, shall be deemed to have waived the right to contest the merits of such  
11 parking violation; ~~except as provided below.~~

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

- 15 1. Malfunctioning meter.
- 16 2. Valid and verifiable emergencies.
- 17 3. Government employees on official business, verified by a supervisor.
- 18 4. City volunteers actually detained because of their volunteer duties, as verified  
19 by volunteer coordinator.
- 20 5. Error in the issuance of the citation ~~when an affidavit of explanation is filed,~~  
21 ~~and the chief of police determines that no parking infraction proceeding should issue.~~

22 c. If the administrative fee as provided for in this section is not paid within 72  
23 hours of the citation being issued, or within 96 hours of the date of denial of an "affidavit of

1 explanation,” whichever is later, the city manager or designee shall mail a copy of the notice of  
2 violation to the registered owner of the vehicle demanding payment of the administrative fee  
3 plus an additional delinquency fee of five dollars. The registered owner is directed to pay the  
4 administrative fee and the delinquency fee within 10 days.

5 (3) Second delinquency notice. If the specified administrative fee and the delinquency fee  
6 are is not paid within 10 ten-(10) calendar days after the date said notice is mailed, the police  
7 department or its city manager or designee shall mail a second notice of violation to the  
8 registered owner with a second an additional delinquency fee of five dollars added (\$5.00)  
9 assessed to the fees described in subsection (d)(2). If the above total administrative and  
10 delinquent fees are not paid within 10 ten-(10) calendar days after the second notice is mailed,  
11 the entire administrative fee and delinquent fees owed, including any and all collection costs,  
12 will be referred for collection to an a-collection agency designated by the city manager.

13 (4) Amount of fee. The administrative fees provided for violations of any of the parking  
14 regulations specified in this section shall be in accordance with the schedule set out in  
15 Appendix A.

16 (e) At any hearing of the case involving illegal parking in which the owner of the motor vehicle  
17 is being tried under this chapter, it shall be sufficient evidence on which the court or Traffic  
18 Hearing Officer may rely to establish the name of the registered owner of such vehicle if a  
19 police officer, police service technician, or traffic enforcement technician of the city shall state  
20 on oath that he/she has made inquiry of the department of highway safety and motor vehicles  
21 or similar agency of the state where the vehicle is registered and has been advised by them of  
22 the identity of the registered owner. ~~However, if~~ If the person on trial denies that he/she is the  
23 registered owner, and such fact cannot be otherwise established, the court or Traffic Hearing

1 Officer may defer the final determination of the case until a certified record or appropriate  
2 certificate can be obtained from the office of the appropriate agency ~~department of highway~~  
3 ~~safety and motor vehicles~~ showing the record in that office on the date in question.

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

9 ~~(g) Any person cited for a violation of this section or of the sections specified in this section~~  
10 ~~shall be deemed to be charged with a noncriminal infraction and shall be cited for such an~~  
11 ~~infraction and cited to appear before an official. The procedures and civil penalties provided in~~  
12 ~~F.S. Ch. 318 shall apply as closely as is possible in handling the infractions. Each day any~~  
13 ~~violation occurs or continues shall constitute a separate offense. For overtime parking in a~~  
14 ~~space, each succeeding equal time period beyond that authorized as the maximum time period~~  
15 ~~for the parking space shall constitute a separate offense.~~

16 ~~(g)-(h)~~ The city ~~clerk of the court or the traffic violations bureau~~ shall supply the department of  
17 highway safety and motor vehicles (department) with a magnetically encoded computer tape  
18 reel or cartridge or send by other electronic means data that ~~which~~ is machine readable by the  
19 installed computer system at the department, listing persons who have three (3) or more  
20 outstanding parking violations, including violations of s. 316.9155, Fla. Stat. The department  
21 shall mark the appropriate registration records of persons so reported. ~~The tax collector and~~  
22 ~~the clerk of the court shall each be entitled to receive costs reimbursement pursuant to F.S. §~~  
23 ~~320.03(8).~~

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

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

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

10 **Section 5.** This ordinance shall be effective immediately upon its adoption.

11  
12 **PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 1998.  
13  
14

15 \_\_\_\_\_  
16 PAULA M. DeLANEY  
17 MAYOR  
18

19  
20 ATTEST: Approved as to form and legality  
21

22  
23 \_\_\_\_\_  
24 KURT M. LANNON  
25 CLERK OF THE COMMISSION

23 \_\_\_\_\_  
24 MARION J. RADSON  
25 CITY ATTORNEY

26 This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

27 This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 1998.  
28

29 carter:ordinances:0-98-87 parking violations



# City of Gainesville

## Inter-Office Communication

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City Manager's Office  
Mail Sta. #7  
334-5010

TO: Hon. Mayor Members of the City Commission      DATE: August 31, 1998

FROM: Wayne Bowers  
City Manager


SUBJECT: Administrative Changes To Proposed Ordinance  
Number 0-98-97 Illegal Parking (#980285)

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This is written to request administrative revisions to subject proposed ordinance. Subsequent to first reading of ordinance number 0-98-97 I was made aware of a significant administrative problem with the language. The language on pages 4 & 5 passed at first reading tied the delinquent penalties to the passage of time rather than to the issuance date of the citation. It is very difficult to administer properly on this basis since it requires staff to collect based on the hour of the day of payment rather than the date of payment. I am also requesting the removal of the mandatory requirement for the second notice but will, as part of our collection procedures, send repeat notices. Attached is a copy of the requested revisions as shown on page 4, lines 22 and 23 and page 5, lines 5-10.

The City Attorney has researched these proposed changes and finds no legal ramifications and considers them administrative changes only.

Respectfully submitted,

  
Wayne Bowers  
City Manager

*Seery*

Attachment

1 traffic infraction for the violation, ~~and of the potential civil penalty provided in F.S. Ch. 318,~~  
2 ~~for such noncriminal infraction.~~

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4 ~~for in this section is not paid within seventy two (72) hours, the police department or its~~  
5 ~~designee shall mail a copy of the notice of violation together with the information specified in~~  
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19 by volunteer coordinator.

20 5. Error in the issuance of the citation ~~when an affidavit of explanation is filed,~~  
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4 directed to pay the administrative fee and the delinquency fee within 10 days.

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6 not paid within 10 ~~ten~~ (10) calendar days after the date of the citation being issued ~~said notice~~  
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8 ~~registered owner with a~~ a second ~~an additional~~ delinquency fee of five dollars ~~(\$5.00)~~  
9 ~~assessed~~ is added to the fees described in subsection (d)(2). If the ~~above~~ total administrative  
10 and delinquent fees are not paid within 20 ~~ten~~ (10) calendar days of the citation being issued,  
11 the entire administrative fee and delinquent fees owed, including any and all collection costs,  
12 will be referred for collection to an ~~a collection~~ agency designated by the city manager.

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21 vehicles or similar agency of the state where the vehicle is registered and has been advised ~~by~~  
22 ~~them~~ of the identity of the registered owner. ~~However, if~~ If the person on trial denies that  
23 he/she is the registered owner, and such fact cannot be otherwise established, the court or