

CITY OF GAINESVILLE
Office of the City Attorney

Legistar No. 980285
Memorandum
334-5011/Fax 334-2229
Box No. 46

TO: Mayor and City Commission
FROM: Marion J. Radson, City Attorney


DATE: August 24, 1998
FIRST 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 date.


Recommendation: The City Commission adopt the proposed ordinance.

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.

Prepared by:


Patricia M. Carter
Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson
City Attorney

MJR:PC:sw

1 Ordinance No. _____
2 0-98-87
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,⁴ 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.
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16 _____
17 PAULA M. DeLANEY
18 MAYOR
19

20 ATTEST: Approved as to form and legality
21

22
23
24 _____
25 KURT M. LANNON MARION J. RADSON
CLERK OF THE COMMISSION 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