

LEGISLATIVE #

110952



MEMORANDUM

Office of the City Attorney

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Box 46

CITY ATTORNEY CONSENT

TO: Mayor and City Commissioners

DATE: June 21, 2012

FROM: Marion J. Radson
City Attorney

SUBJECT: Amendment to the City of Gainesville Traffic and Motor Vehicle Ordinance
overtime metered parking.

Recommendation: The City Commission authorize the City Attorney to draft, and the Clerk to advertise, an ordinance amending Section 26-76 of the City of Gainesville Code of Ordinances to provide that overtime metered parking, or overtime signs, shall not be applicable to employees on official business in governmental owned vehicles, whether or not marked by governmental license plates or other official governmental marking.

Section 26-76 pertaining to the Exception for governmental vehicles in the parking codes exempts government vehicles that either have government license plates or have government markings on the vehicles. By definition, this exception does not apply to unmarked government vehicles. For example, covert (aka "undercover") law enforcement vehicles driven by federal, state and local law enforcement officers are not exempted from overtime parking at meters, when on government business. This leads to inequitable results for those driving unmarked vehicles. For example, if an FBI agent attends a hearing at the Federal Courthouse while under subpoena, and parks an unmarked government vehicle in a metered parking spot and pays for the maximum of 2 hours parking and ends up testifying for three hours, the agent has violated the City of Gainesville parking ordinance. Alternatively, a patrol officer who parks a marked vehicle, in the same situation, would qualify for the exception and not be in violation of the city ordinance. There is no exception for unmarked government vehicles, only marked government vehicles.

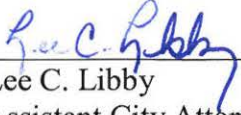
In practice, the officers in covert vehicles who receive a parking citation can now request a hearing. On occasion the hearing officer may dismiss the ticket at the hearing. When this happens, the city has to pay the non-prevailing party fee, which is now \$40.00 per case. Not only is the City out the non-prevailing party fee, but the parking officers have to attend the hearing, instead of patrolling the streets. Under the proposed amendment, if the driver of an unmarked government vehicle, who otherwise meets the criteria of the exception, gets a citation

because a vehicle is an unmarked government vehicle, the driver would file an Affidavit of Explanation and the citation could lawfully be dismissed pursuant to the proposed amendment to the exception.

The proposed amendment is not intended to excuse the initial payment of the parking meter fees, nor is it to be used as a substitute for normal government employee parking.

Therefore, amending the ordinance so that unmarked vehicles are also exempt, not only corrects an inequity, but it will save the city money, and keep the offending officer and parking officers from having to spend time at hearings when the citations are going to be dismissed as a matter of course. The only change proposed is to include unmarked government vehicles to the exception that already exists, with all of the other already existing requirements remaining as they are.

Prepared by:



Lee C. Libby
Assistant City Attorney II

Prepared, Submitted and Approved by:



Marion J. Radson
City Attorney

DRAFT 5/9/12

ORDINANCE NO. 110952

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3 **An ordinance of the City of Gainesville, Florida, amending**
4 **Chapter 26 of the Code of Ordinances of the City of**
5 **Gainesville relating to the regulation of parking meters,**
6 **parking lots and parking garages; amending Sec. 26-76,**
7 **Exception for governmental vehicles; providing directions to**
8 **the codifier; providing a severability clause; providing a**
9 **repealing clause; and providing an immediate effective date.**
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12 **WHEREAS**, at least 10 days notice has been given of the public hearing once by
13 publication in a newspaper of general circulation notifying the public of this proposed ordinance
14 and of a public hearing in the City Commission meeting room, first floor, City Hall in the City of
15 Gainesville; and

16 **WHEREAS**, the public hearings were held pursuant to the published notice described at
17 which hearings 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 26-76, entitled "Exception for governmental vehicles", Code of
22 Ordinances of the City of Gainesville, is amended to read as follows:

23 **Sec. 26-76. – Exception for governmental vehicles.**

24 The provisions of this division referring to overtime metered parking, or overtime signs,
25 shall not be applicable to employees on official business in governmental owned vehicles,
26 whether or not marked by governmental license plates or other official governmental marking.
27 This provision is not intended to obviate initial payment of meter fees, nor is it to be used as a
28 substitute for normal governmental employee parking.

DRAFT 5/9/12

1 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
2 this 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 renumbered
4 or relettered in order to accomplish such intentions.

5 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance
6 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
7 finding shall not affect the other provisions or applications of the ordinance which can be given
8 effect without the invalid or unconstitutional provisions or application, and to this end the
9 provisions of this ordinance are declared severable.

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

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

13 **PASSED AND ADOPTED** this ____ day of July, 2012.

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CRAIG LOWE
MAYOR

ATTEST:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this _____ day of June, 2012.

This Ordinance passed on second reading this _____ day of July, 2012.