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AGENDA ITEM NO. F-1
3/19/07

**Land Use Planning
and Zoning
Local Government Law
Appellate Practice**

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MEMORANDUM

TO: City Council Members

FROM: David La Croix, City Attorney

SUBJECT: Ordinance Creating Appeals Procedure for Parking Citations and Authorizing the Recording of Liens on the Vehicle Owners' Property for Unpaid Citations

DATE: March 6, 2007

Ever since the Legislature reorganized the court system and obligated the City for all costs related to enforcement of municipal ordinances in the courts, it has been cost prohibitive to pursue the payment of parking citations in the courts.

The attached ordinance sets up a procedure for appeals of parking citations to the City's hearing officer. It also applies the appeal process to your recently enacted boom box ordinance.

The ordinance also gives the City a way to enforce unpaid parking citations by the recording of liens on all property of the owner of a vehicle for which a citation was given. It further provides that, if an officer discovers a vehicle parked in the City owned by someone who has three or more recorded and unpaid liens for parking citations, that vehicle may be towed and stored at the owner's cost until all charges are paid.

Throughout the process, all City costs are borne by the alleged violator, including all costs of an appeal to the hearing officer, except for when the hearing officer finds that no violation occurred. All costs assessed to the violator are included in the City's liens.

ORDINANCE NO. 743

AN ORDINANCE OF THE CITY OF BROOKSVILLE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF BROOKSVILLE, FLORIDA, CHAPTER 82, "TRAFFIC AND VEHICLES," ARTICLE II, "PARKING," SECTIONS 82-38 THROUGH 82-42, AND ADDING A NEW SECTION 82-43, SO AS TO PROVIDE AN APPEAL PROCEDURE FOR PARKING VIOLATIONS AND CERTAIN TRAFFIC INFRACTIONS; RENUMBERING AND AMENDING EXISTING CODE SECTIONS 82-43 AND 82-44; PROVIDING FOR RECORDED LIENS FOR UNPAID CIVIL PENALTIES; AMENDING A CODE REFERENCE IN SECTION 82-53; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, FLORIDA as follows:

SECTION 1. The Code of Ordinances of the City of Brooksville, Florida, Chapter 82, "Traffic and Vehicles," Article II, "Parking," Sections 82-38 through 82-42, are hereby amended, a new Section 82-43 is hereby added, and existing Sections 82-43 and 82-44 are hereby renumbered and amended, so as to read as follows:

Chapter 82

TRAFFIC AND VEHICLES

. . .

ARTICLE II. PARKING

. . .

Sec. 82-38. Forms of notifying violators of this article to appear; attachment to vehicle; response by owner or operator.

The chief of police of the city shall provide, in triplicate, suitable serially-numbered forms for notifying violators to appear and answer to charges of violating this article and other traffic laws and regulations of the city. Such forms shall be issued and receipted by the chief of police, his duly authorized representative or any other person acting for him. Upon any violation of this article, any police officer shall attach to the windshield of a parked vehicle a notice in accordance with this section, stating that the owner ~~or~~ and operator ~~is~~ are in violation of this article and that the owner or operator may, within 72 hours of the time when such notice was attached to such

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vehicle, pay to the city police department as a civil penalty for, and in full satisfaction of, such violation the sum set forth in section 82-445. The form shall also notify the owner or operator that the failure of such owner or operator to make such payment to the city police department within 72 hours shall render such owner ~~or operator~~ subject to late charges, or other enumerated penalties as are set forth in this article, and of the owner's right of appeal as set out in section 82-42.

Sec. 82-39. Surcharge for late payment.

Any of the ~~finer~~ civil penalties set forth in section 82-445 which are not paid within 72 hours of issuance of the citation shall be subject to a surcharge. The surcharge will equal 50 percent of the stated ~~fine~~ civil penalty and shall be due and payable to the city.

Sec. 82-40. Payment of ~~fine~~ civil penalty without ~~trial~~ appeal hearing.

Any person in violation of this article who desires to pay the ~~fine~~ civil penalty and late payment charge, if any, without resort to ~~the courts of the state~~ an appeal to a hearing officer pursuant to section 82-42, shall pay such ~~fine~~ civil penalty and late charge to the city at the police department or the finance department, within seven days of issuance of a ~~notice~~ notices of violation. Upon payment of any ~~fine~~ civil penalty ~~or~~ and applicable late charge, the city shall accept the ~~fine~~ civil penalty and issue a receipt to the violator. The city shall keep an easily accessible record of all violations during the preceding 12 months, whether ~~such~~ such guilt was established ~~in court by a hearing officer~~ or such violator has voluntarily paid the ~~fine~~ civil penalty ~~or~~ and applicable late charge. The ~~city~~ city chief of police shall keep records and submit summarized monthly reports to the city manager of all citations issued for violations of this article and other traffic laws of the city and the state within the municipal limits of the city. The ~~city~~ city chief of police shall also keep a record of all the ~~finer~~ civil penalties collected by the city and of the final disposition of each violation in every case handled by the city. Such records shall be so maintained as to show all types of violations and the totals of each.

Sec. 82-41. Unpaid parking citations.

If a parking violation citation remains unpaid after a seven-day period, as set forth in section 82-40, and if no appeal is filed within said seven-day period pursuant to section 82-42, then the city shall have a lien for the

~~unpaid civil penalty and late charge, plus a fifteen dollar (\$15.00) administrative fee, on all property of the vehicle owner located in Hernando County and shall cause such lien to be recorded on the public records of Hernando County a summons to be issued by the clerk of the county court. The clerk of the county court shall mail The lien shall bear interest at the rate of one percent (1%) per month until paid, which shall be stated in the recorded lien. A copy of the recorded lien shall be mailed to the registered owner of the cited vehicle a summons by registered mail, setting forth a date for a hearing of the cited violation. The summons shall advise the registered owner of the right to pay the fine, surcharge or delinquency fee, or that the violator shall otherwise appear at the hearing scheduled on the summons. The party summoned shall also be advised that if the court finds the party in violation, then the party shall be required to pay the fine plus a penalty.~~

Sec. 82-42. Appeal Hearing before hearing officer or judge.

~~(a) If the registered owner fails to pay the fines, any surcharges and delinquency fees as set forth in sections 82-39 and 82-44 or upon the hearing and a finding of a violation by the hearing officer or judge, then the penalty shall be not less than \$50.00 nor more than \$500.00, plus all hearing and administrative costs. If the registered owner fails to appear after being summoned by registered mail, then failure to appear shall be deemed as an admission of the violation, and a judgment of fine plus costs shall be entered against the summoned party, for not less than \$50.00 nor more than \$500.00, plus court costs. wishes to appeal a parking citation issued pursuant to this article, he or she may do so within seven (7) days after issuance of the citation by filing a notice of appeal with the city manager, on such form as may be approved by the city manager, and by paying a filing fee of \$250.00. If the appeal is successful and the violation is dismissed, the filing fee shall be returned to the person who filed the appeal. If the appeal is not successful, the filing fee shall be retained by the city to cover the costs of the hearing officer. The appeal form shall include, at a minimum, the name, mailing address and telephone number of the person filing the appeal, and a copy of the citation appealed shall be attached to the form.~~

~~(b) Within 60 days after the filing of a notice of appeal, the city manager shall arrange for a hearing officer, who shall be an attorney licensed to practice law in Florida, and shall schedule the hearing at a time agreeable to the person filing the appeal and to the police~~

officer who issued the citation, but in no event later than 90 days after the filing of the notice of appeal.

(c) Within 15 days after the hearing, the hearing officer shall issue a written decision either dismissing the citation or affirming the citation, assessing a civil penalty and late charge, and assessing attorney's fees and administration costs of the city. The decision shall be mailed to the city manager and to the person filing the appeal at the address listed on the appeal form.

Sec. 82-43. Liens for unpaid civil penalties and costs after appeal.

The city shall have a lien for the assessed civil penalty and late charge, plus assessed attorney's fees and administrative costs, on all property of the vehicle owner located in Hernando County. If any of said amounts remains unpaid more than fifteen (15) days after the date of the hearing officer's decision, the city shall cause such lien to be recorded on the public records of Hernando County. The lien shall bear interest at the rate of one percent (1%) per month until paid, which shall be stated in the recorded lien. A copy of the recorded lien shall be mailed to the registered owner of the cited vehicle. Any lien recorded pursuant to this article may be foreclosed if unpaid more than ninety (90) days.

Sec. 82-434. Removal of vehicle.

(a) F.S. chs. 316 and 705 are adopted and incorporated in this article. In addition, the city shall have the right to cause any vehicle to be impounded if such vehicle is parked either wholly or partially in a fire lane, is double parked, parked at a fire hydrant, or parked either wholly or partially on a sidewalk of a designated and marked pedestrian crossway. Upon the removal and impoundment of such vehicle, the owner shall be entitled to possession of same upon payment of all costs of removal, storage fees and ~~fin~~es civil penalties imposed.

(b) The city shall also have the right to cause any vehicle to be impounded if such vehicle is found in any public place in the city after three liens have been recorded on the public records of Hernando County pursuant to this article, which liens attach to said vehicle, and which liens remain unpaid. Upon the removal and impoundment of such vehicle, the owner shall be entitled to possession of same upon payment of all costs of removal, storage fees and the amounts owed on any unpaid recorded liens.

(14) Unlawful parking of tow trucks and wreckers in residential areas. The ~~fine~~ civil penalty for the unlawful parking of tow trucks and wreckers in residential areas shall be \$50.00.

~~(b) If found to be in violation, the violator will be responsible to pay all hearing and administrative costs associated therewith.~~

~~(c) All violations as set forth in this section are noncriminal infractions.~~

SECTION 2. The Code of Ordinances of the City of Brooksville, Florida, Chapter 82, "Traffic and Vehicles," Article III, "Noise from Vehicles," Section 82-53, is hereby amended to read as follows:

Chapter 82

TRAFFIC AND VEHICLES

. . .

ARTICLE III. NOISE FROM VEHICLES

. . .

Sec. 82-53. Enforcement.

Enforcement of this Article shall be in the same manner as for parking violations, as provided in Sections 82-38 through 82-424 of this Chapter.

SECTION 3. Inclusion in Code. This ordinance shall be and become a part of the Code of the City of Brooksville, Florida, pursuant to Sections 1-4 and 1-5 thereof.

SECTION 4. Conflict. Any ordinance or code of the city, or any portion thereof, in conflict with the provisions of this ordinance, is hereby repealed to the extent of such conflict.

SECTION 5. Severability. In the event that any portion or section of this ordinance is determined to be invalid, unlawful or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this ordinance, which shall remain in full force and effect.

SECTION 6. Effective Date. This ordinance shall take effect immediately upon its adoption by the Brooksville City Council.

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ADOPTED IN REGULAR SESSION THIS _____ DAY OF _____, 2007,
A.D.

CITY OF BROOKSVILLE

Attest: _____
Karen M. Phillips
City Clerk

By: _____
David Pugh
Mayor

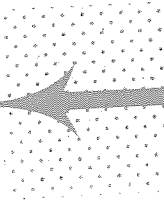
PASSED on First Reading _____

PASSED on Second & Final Reading _____

Approved as to form and content
for the reliance of the City of
Brooksville only:

VOTE OF COUNCIL:
Bernardini _____
Bradburn _____
Burnett _____
Lewis _____
Pugh _____

David La Croix, City Attorney



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