

ORDINANCE NO. 08-4816

AN ORDINANCE OF THE CITY OF SARASOTA, FLORIDA AMENDING CHAPTER 33 OF THE CITY CODE PERTAINING TO IMPOUNDMENT OF MOTOR VEHICLES USED TO FACILITATE PROSTITUTION OR DRUG RELATED CRIMES; AMENDING THE OFFENSES FOR WHICH A VEHICLE MAY BE SEIZED TO INCLUDE DRIVING WHILE LICENSE SUSPENDED (WITH KNOWLEDGE), MOTOR VEHICLE NOISE AND LEAVING THE SCENE OF AN ACCIDENT; PROVIDING FOR THE SEVERABILITY OF THE PARTS HEREOF IF DECLARED INVALID; REPEALING ORDINANCES IN CONFLICT; PROVIDING FOR READING BY TITLE ONLY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 33-271 of the Sarasota City Code currently provides for the impoundment of motor vehicles used to facilitate prostitution and drug related crimes; and,

WHEREAS, the City Commission of the City of Sarasota, Florida finds that the offenses of leaving the scene of an accident, driving while license suspended, revoked, canceled, or disqualified and the improper use of radios or other sound making devices in vehicles adversely impact the citizens of the City of Sarasota, Florida; and,

WHEREAS, the City Commission desires to discourage the commission of such offenses by imposing a civil administrative penalty for the use of a motor vehicle to commit these crimes; and,

WHEREAS, the City Commission finds the amendments to Section 33-271, as more particularly set forth herein will promote the public health, safety and welfare of the citizens of the City of Sarasota, Florida.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. The Code of the City of Sarasota; Chapter 33, Traffic and Motor Vehicles; Section 33-271, is hereby amended as follows: (unrevised subsections have been ommitted.)

"Sec. 33-271. Impoundment of motor vehicles used to facilitate ~~prostitution and drug related~~ certain crimes and offenses.

"(b) A motor vehicle shall be subject to seizure and impoundment whenever a police officer has probable cause to believe that the vehicle:

- (1) Was used to facilitate the commission or attempted commission of an act of prostitution, assignation or lewdness as defined in F.S. § 796.07, as amended; or
- (2) Contains any controlled substance as defined in F.S. § 893.02, as amended; or
- (3) Was used, intended or attempted to be used, to facilitate the commission of any violation of F.S. ch. 893, as amended; or,
- (4) Was used, intended or attempted to be used, to facilitate the commission of any violation of F.S.316.061 (leaving the scene of an accident); or,
- (5) Was used, intended or attempted to be used, to facilitate the commission of any violation of F.S. §322.34(2), driving while license suspended, revoked, canceled, disqualified (with knowledge); or,
- (6) Was used to facilitate the commission any violation of F.S. 316.3045 (operation of radios or other sound making devices in vehicles)."

"(f) Administrative fine/posting bond.

- (1) If a preliminary hearing is not requested, or if it was waived, or if the special master finds that there was probable cause to seize and impound the vehicle, then the vehicle shall continue to be impounded pending final hearing or the payment of an the appropriate administrative civil penalty of ~~five hundred dollars (\$500.00)~~, as designated in subsection (f) (2), together with all towing costs and storage. Alternatively, the owner may secure release of the vehicle by posting a cash bond (money order or certified check) in the amount of ~~five hundred dollars (\$500.00)~~ the administrative penalty together with all towing and storage costs, plus final hearing costs of fifty dollars (\$50.00). If no probable cause is found at the preliminary hearing, the vehicle shall be released to the owner as soon as practical without the imposition of an administrative fine, towing and storage costs or hearing costs.
- (2) Violations of subsections (b) (1-5) shall be subject to an administrative civil penalty of five hundred dollars (\$500.00), in addition to any towing and storage costs, plus any hearing costs. A first violation of subsection (b) (6) shall only be subject to the towing and storage costs, as well as any hearing costs. No additional penalty shall be imposed for a first violation. In addition to all towing and storage fees as well as any applicable hearing costs, a second violation shall be subject to an administrative civil penalty of two hundred and fifty dollars (\$250.00), and a third or subsequent violation shall be subject to an administrative penalty of five hundred dollars (\$500.00)."

"(g) Final hearing.

- (1) The vehicle owner may request a final hearing by delivering to the city, within fifteen (15) days of receipt of the notice of seizure, a request for a final hearing. The request must be delivered to the address provided in the notice of seizure and must include an address where the owner or the owner's designated agent can be notified of the date, time, and place of the final hearing.
- (2) Upon timely receipt of a request for final hearing, the city shall schedule a hearing to be held within thirty (30) days of the receipt of the request, or as soon as practicable thereafter. The city shall provide written notice to the requesting owner by hand delivery or by certified mail to the address on the request for final hearing. The notice shall state the date, time and location of the final hearing to be conducted by the special master pursuant to this subsection.
- (3) If an owner fails to timely request a final hearing, or if the owner fails to attend the final hearing, and the special master finds, that the city has complied with the notice procedures, as set forth herein, then such failure shall constitute a waiver of the owner's right to a final hearing and it shall be deemed admitted that the seized vehicle was used in violation of section (b).
- (4) If not waived, the final hearing shall be held before the special master. The formal rules of evidence will not apply at the final hearing and hearsay evidence shall be admissible. The city shall have the burden to prove by a preponderance of the evidence that the vehicle was used as set forth in subsection (b) above. It shall be a defense that the vehicle was stolen at the time that it was seized and impounded. The owner of the vehicle shall have the burden to prove said defense by a preponderance of the evidence.
- (5) If the final hearing has been waived, or if, after the hearing, the special master finds by a preponderance of evidence that the vehicle was used as set forth in subsection (b) above, the special master shall enter an order authorizing the continued impoundment of the vehicle pending payment of a ~~five hundred dollar~~ ~~(\$500.00)~~ the appropriate administrative civil penalty prescribed in subsection (f)(2), towing and storage costs, plus hearing costs of fifty dollars (\$50.00) or until otherwise released by the city. Any bond posted shall be used to satisfy the imposition of such penalty and costs. If the special master finds that the city did not meet its burden of proof, or that the vehicle owner has proven by a preponderance of the evidence that the vehicle was stolen at the time it was used as

set forth in subsection (b), the vehicle shall be released to the vehicle owner as soon as practicable without the imposition of an administrative fine, storage or hearing costs, and any cash bond posted shall be returned."

Section 2. For a period of three months subsequent to the adoption of this ordinance, operators of motor vehicles used to violate Section 33-271(b)(6) shall receive a verbal warning. Said warning shall notify the operator of the vehicle of this ordinance and of the possible penalties that may be imposed and the procedures, including the towing of the vehicle, that are followed during the seizure of vehicles pursuant to this ordinance. During this three month period no vehicles shall be seized under Section 33-271 (b)(6).

Section 3. Should any section, sentence, clause, part or provision of this ordinance be held or declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part held or declared to be invalid.


Section 4. Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This ordinance shall take effect immediately upon second reading.

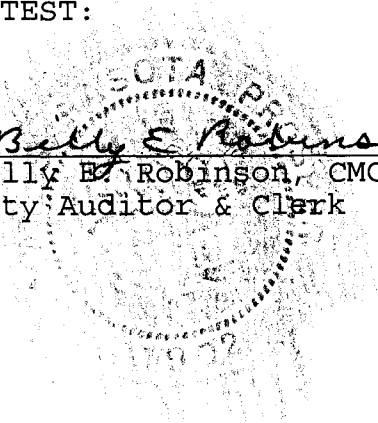

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this 21st day of April, 2008.

PASSED on second reading and finally adopted this 19th day
of May, 2008.

CITY OF SARASOTA, FLORIDA


Lou Ann Palmer, Mayor

ATTEST:



Billy E. Robinson, CMC
City Auditor & Clerk