

Note: (underlines and strikeouts indicate changes made between 1st and 2nd reading)

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

(a) Definitions.

- (1) Business days mean any day, Monday through Friday, which is not designated as a holiday pursuant to the city's personnel rules and regulations, Rule 10.1, Authorized Holidays.
- (2) Owner means the person or persons to whom a particular motor vehicle is registered or titled.
- (3) Special master means the code enforcement special master or masters appointed by the city commission pursuant to chapter 2, article V, division 5, of the Sarasota City Code.
- (4) Stolen means the trespassory taking and carrying away of the tangible personal property of another with the intent to permanently deprive.

(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).

(c) This section shall not apply and no vehicle shall be seized or impounded pursuant to this section if a law enforcement agency seizes the vehicle pursuant to the Florida Contraband Forfeiture Act.

(d) Upon seizing a motor vehicle, the police officer or other officer or agent of the city police department shall:

- (1) Arrange for the towing of the vehicle; and
- (2) Provide written notice to any present owner, or person in control of the vehicle, of the fact of the seizure, the right to request a preliminary

hearing pursuant to subsection (e) and the right to request a final hearing pursuant to subsection (g); and

- (3) Provide notice of seizure by hand delivery or send notice by certified mail to all other owner(s) of the vehicle at address(es) set forth in the vehicle registration, if any, within three (3) business days of the date of seizure. The notice shall include the fact of the seizure, the right to request a preliminary hearing pursuant to subsection (e) and the right to request a final hearing pursuant to subsection (g).
- (e) Preliminary hearing; administrative penalty.
- (1) Within five (5) business days of receipt of the notice of seizure any owner may request a preliminary hearing, by delivering to the city, at the address set forth in the notice, a written request for a preliminary hearing. The written request must be received by the city within the allotted time or the right to a preliminary hearing shall be waived. The request must include a telephone number(s) where the owner or the owner's designated agent can be telephonically notified of the date, time and location of the preliminary hearing, and the hours indicating when the owner or designated agent will be available for such telephonic notification.
 - (2) Upon timely receipt of an owner's written request for a preliminary hearing, the city shall schedule a hearing to be held within two business days following the date of receipt of the request, or as soon as practicable thereafter. The city shall make a good faith effort to notify the requesting owner telephonically of the date, time and location of the hearing, at the telephone number(s), during the hours indicated, as set forth on the request for preliminary hearing. However, at the election of the city, notice may be provided by any other means.
 - (3) If the requesting owner fails to attend the preliminary 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 preliminary hearing. Any failure of the requesting owner to receive actual notice of the preliminary hearing shall not otherwise invalidate the administrative penalty proceedings as set forth herein.
 - (4) The preliminary hearing shall be held before a special master. The sole issue to be considered by the special master is whether the seizing police officer had probable cause under this section to seize and impound the vehicle. The formal rules of evidence shall not apply and hearsay evidence, including any relevant police report, is admissible. The burden of demonstrating probable cause is on the city.
- (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.
- (h) A certified copy of an order of special master imposing an administrative civil penalty and assessing towing, storage and hearing costs may be recorded in the public records of any county. Upon recording, the order shall constitute a lien against any real or personal property owned by the vehicle owner. Such lien shall be superior to all other liens, except a lien for taxes and shall bear interest at the maximum rate allowed by law, as set forth in F.S. § 687.03, as amended from time to time, from the date of its filing. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the real or personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. The city attorney or his designee is authorized to foreclose any lien established hereby in the same manner as is provided by law for the foreclosure of other municipal liens or alternatively, as provided by law for the foreclosure of mortgages. No lien created pursuant to this chapter may be foreclosed on real property which is homestead under § 4, Art. X of the State Constitution. In an action to enforce an order or to foreclose on a lien as provided in this section, the city shall be entitled to recover all costs, including a reasonable attorney's fee that it incurs thereby.
- (i) The city attorney, or his designee, is hereby authorized to enter into settlement agreements as may be appropriate to accomplish the objectives of this section. In addition, nothing herein shall prohibit the city from releasing a motor vehicle seized under the provisions of this section, if such release is determined to be in the best interests of the city.

- (j) Nothing herein shall be construed to prohibit the city from enforcing the provisions of this section against a vehicle initially seized pursuant to the Florida Contraband Forfeiture Act (but not both) if in the best interest of the city.
- (k) The owner of the vehicle which was seized and impounded may appeal a ruling or order of the special master by proceedings in the circuit court for the county in accordance with Rule 9.190, the Florida Rules of Appellate Procedure. An appeal shall be filed within thirty (30) days of the execution of the order to be appealed. The nature of the appeal shall be from a final administrative order.