

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: John A. George, Chief of Police (954) 693-8320

SUBJECT: Ordinance

AFFECTED DISTRICT: Townwide

TITLE OF AGENDA ITEM: AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE CODE OF ORDINANCES, CHAPTER 24, DIVISION 2, ENTITLED "ENFORCEMENT" TO COMPLY WITH CURRENT STATE LAWS, INCLUDING THOSE APPLICABLE TO PARKING SPACES FOR DISABLED PERSONS AND TO MODIFY EXISTING PROCEDURES SO AS TO DELEGATE AUTHORITY FOR ENFORCEMENT AND COLLECTION OF PARKING VIOLATION FINES TO THE OFFICE OF THE BROWARD COUNTY, FLORIDA, CLERK OF THE COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT; AUTHORIZING THE USE OF HEARING OFFICERS IN THE SYSTEM ESTABLISHED BY BROWARD COUNTY FOR SUCH PURPOSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

REPORT IN BRIEF: The Police Department wishes the Town of Davie to update its Ordinances which govern stopping, standing and parking of vehicles within the Town, to comply with current State laws and the department feels it is economically advisable and expedient to delegate authorization to enforce and collect fines for parking violations to the Clerk of the Court for Broward County in the Seventeenth Judicial Circuit of Florida, since that agency presently has in place a collections system and a hearing officer system which both serve the County and other cities within the County. The Town Attorney has reviewed this ordinance and any recommended changes have been made.

PREVIOUS ACTIONS: n/a

CONCURRENCES: n/a

FISCAL IMPACT: n/a

Additional Comments: There will be an estimated increase in fines collected of about \$32,000 per year.

RECOMMENDATION(S): Motion to approve the ordinance.

Attachment(s): Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING THE TOWN OF DAVIE CODE OF ORDINANCES, CHAPTER 24, DIVISION 2, ENTITLED "ENFORCEMENT" TO COMPLY WITH CURRENT STATE LAWS, INCLUDING THOSE APPLICABLE TO PARKING SPACES FOR DISABLED PERSONS AND TO MODIFY EXISTING PROCEDURES SO AS TO DELEGATE AUTHORITY FOR ENFORCEMENT AND COLLECTION OF PARKING VIOLATION FINES TO THE OFFICE OF THE BROWARD COUNTY, FLORIDA, CLERK OF THE COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT; AUTHORIZING THE USE OF HEARING OFFICERS IN THE SYSTEM ESTABLISHED BY BROWARD COUNTY FOR SUCH PURPOSE; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Davie wishes to update its Ordinances which govern stopping, standing and parking of vehicles within the Town, to comply with current State laws; and

WHEREAS, the Town of Davie has determined it is economically advisable and expedient to delegate authorization to enforce and collect fines for parking violations to the Clerk of the Court for Broward County in the Seventeenth Judicial Circuit of Florida, since that agency presently has in place a collections system and a hearing officer system which both serve the County and other cities within the County.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF DAVIE, FLORIDA, THAT:

SECTION 1. Division 2, entitled "Enforcement" of Article III, entitled "Parking, Stopping and Standing," codified within Chapter 24 of the Town Code of Ordinances, which chapter is entitled "Traffic and Vehicles" is amended as follows:

Sec. 24-74. Notice of Illegally parked vehicles.

- (a) Whenever any vehicle is found parked, stopped or standing in violation of any of the restrictions imposed by any ordinance of this town or state statute, the officer or parking enforcement specialist finding such vehicle shall issue a parking citation in the form approved by the town administrator and shall conspicuously affix this citation to the vehicle in violation.

This citation shall notify the person responsible for the vehicle to pay the fine indicated on the citation within ~~five (5)~~ ten (10) days at the place specified on the citation. ~~excluding Saturdays, Sundays and legal holidays.~~

- (b) If the fine indicated on the citation is not paid within ~~five (5)~~ ten (10) days, excluding the date of issuance of the citation Saturdays, Sundays and legal holidays, late fees of ~~two~~ twelve dollars (\$12.00) for each day elapsing beyond the original five day period may be assessed for that violation to cover additional administrative costs will be assessed.
- (c) If an alleged violator of any parking, stopping or standing ordinance, any provision of this Code or of law does not respond to a notice or citation issued and affixed to the subject motor vehicle within a period of ten (10) working days from the date of issuance, then the Clerk of the Broward County Court, to which the Town of Davie has delegated its collection and enforcement authority for such citations, shall notify the alleged violator that if the applicable amount of the citation and the late fee are not paid within a period of ten (10) working days from the notice, proceedings may be instituted in which a fine may be imposed in excess of that shown on the notice of citation.

Sec. 24-76. Administrative appeal.

~~The chief of police or his designee is hereby appointed as the administrative hearing officer. Any person wishing to contest a parking citation may appeal to the administrative hearing officer as follows:~~

- (1) ~~If the person who received the citation believes the citation itself is incorrect for any reason, such person shall place a written objection, including a full explanation, inside the mailer in lieu of payment. Such objections to the citation must be mailed to the department and postmarked no later than five (5) days from the date of issuance of the citation. The administrative hearing officer will then make a decision as to the validity of the citation within five (5) days of receipt of~~

the written objections and notify the person as to the decision by mail. If a decision is made that the citation is valid, the violator is given five (5) days from the receipt of such notice to remit payment.

~~(2) If the violator does not agree with such adverse decision of the administrative hearing officer, then, upon notice of the adverse decision, such person shall so inform the department within five (5) days of the decision, and the department shall then prepare the case for forwarding to the town prosecutor for institution of court proceedings. For such instances, court costs shall be levied in addition to the fine.~~

(a) Any person wishing to contest a parking violation citation may appeal and contest such citation by making a written request for an administrative hearing to the Broward County, Florida Clerk of Court within ten (10) working days of the date the citation was issued.

(b) The Clerk of Court shall set the hearing within sixty (60) calendar days of the date the citation was issued, giving the person issued the citation at least seven (7) working days advance notice of the date of the hearing, such days excluding Saturdays, Sundays and legal holidays. The notice shall be sent by regular mail to the address of the registered owner of the vehicle or, in the event that the driver of the vehicle is not the owner, to the driver's address if the driver requests a hearing.

(c) The person issued the citation may:

- 1) Be represented by council;
- 2) Call and examine witnesses;
- 3) Introduce exhibits;
- 4) Examine opposing witnesses on any relevant matter; and
- 5) Impeach any witness

(d) All hearings shall be conducted insofar as practical in accordance with the Florida Rules of Civil Procedure and the Florida Evidence Code. However, the general nature of the hearing shall be conducted in an informal manner. All irrelevant, immaterial or unduly repetitious evidence

shall be excluded, but all other evidence of a type commonly relied upon by reasonable and prudent persons in the conduct of their affair shall be admissible whether or not such evidence may be received in written form and all testimony of parties and witnesses shall be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Any interested party or person may make application and upon good cause shown may be allowed by the hearing officer, in the reasonable exercise of such officer's discretion, to intervene in a pending proceeding.

- (e) Any person who receives a parking citation but who does not reside in Palm Beach, Broward or Dade County, Florida, may contest the citation in writing. Such person must submit a written request to contest the citation by mail, accompanied by all evidence upon which the person relies, within ten (10) working days of the date the citation was issued. The written request to contest the citation by mail and evidence must be sent to the Clerk of Courts. The Clerk of Court shall present the case to a hearing officer within sixty (60) calendar days of the date the citation was issued. The evidence presented must include a notarized statement by the person cited, which statement must identify the citation at issue by its number and date of issuance, must set forth the name and current address of the person cited and may contain argument in defense against the citation. The hearing officer will not consider any statement that is not notarized. The evidence submitted may include notarized statements of witnesses. Such statements must include the name and address of each witness as well as the basis of the witness' knowledge about the facts asserted in the statement. The evidence submitted may also include such documents that are relevant and material to the disposition of the citation. All evidence submitted is subject to the evidentiary rules set forth above.

(f) Pursuant to Florida law, any person who elects to appear before a hearing officer or to contest a citation by mail, shall be deemed to have waived the right to pay the civil penalty amount set forth on the citation. The hearing or consideration of mailed-in admissible evidence will be decided within thirty (30) calendar days after the request for hearing was made or the evidence to be considered was received. After a hearing or consideration of mailed-in admissible evidence, the hearing officer shall make a determination based on the greater weight of the evidence as to whether a parking violation has been committed and shall issue an order imposing a civil penalty of two hundred fifty dollars (\$250.00) for any violation of a disabled parking law or ordinance or civil penalty not to exceed one hundred dollars (\$100.00) for a violation of any other parking ordinance or violation of law, in addition to applicable late fees. The hearing officer may grant additional time to pay the civil penalty amount and late fees; otherwise such fines are due and payable within ten (10) working days from the date the order of the hearing officer was issued. All orders shall be in writing and shall be signed and dated by the hearing officer. If at the conclusion of the hearing or consideration of mailed-in admissible evidence, the hearing officer orders a dismissal of the citation because no violation was found, the hearing officer shall so state and issue an order of dismissal in writing signed and dated by the hearing officer which shall contain findings of the acts supporting the order. A copy of such order will be forwarded to the alleged violator. An order of the hearing officer may be appealed by the filing of a Petition of a Writ of Certiorari in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, by any party receiving an adverse ruling within thirty (30) calendar days from the date the order was issued.

Sec. 24-77. Liability for payment of parking ticket violations.

(a) Under authority of Florida Statutes, Section 316.1967, the owner of a vehicle is responsible and liable for payment of any parking ticket violation or notice to appear under this chapter unless

the owner can furnish evidence that the vehicle was, at the time of the parking violation, in the care, custody or control of another person. In such instances, the owner of the vehicle is required, within a reasonable time after notification of the parking violations, to furnish to the court liaison officer of the police department, or his designated assistant, the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle. The owner of a vehicle is not responsible for parking violations if the vehicle involved was, at the time, stolen or in the care, custody or control of some person who did not have permission of the owner to use the vehicle.

- (b) Prima facie evidence that the vehicle involved was, at the time, stolen or in the care, custody or control of some person who did not have permission of the owner to use the vehicle shall be in the form of a report from the appropriate law enforcement official that the vehicle was not under the care, custody or control of the owner of the vehicle.

Sec. 24-78. Fines and assessments.

The following fines have been established for improper parking within the town limits:

- ~~(a) Restricted parking. Any person parked in violation of sections 24-42, 24-49, 24-53, 24-56, 24-65 or 24-66 shall be liable for a fine of ten dollars (\$10.00).~~
- ~~(b) Improper parking. Any person found in violation of Sections 24-46, 24-50, 24-51, 24-52 or 24-63 shall be liable for a fine of ten dollars (\$10.00).~~
- ~~(c) Prohibited parking. Any person found in violation of sections 24-43, 24-44, 24-54, 24-55, 24-58 or 24-62 shall be liable for a fine of fifteen dollars (\$15.00).~~
- ~~(d) Hazardous parking. Any person found in violation of Sections 24-47, 24-48, 24-57, 24-59, 24-60 or 24-61 shall be liable for a fine of twenty dollars (\$20.00).~~
- ~~(e) Handicapped parking. Any person found in violation of Section 24-45 shall be liable for a fine of one hundred dollars (\$100.00).~~

- (a) All violations of any disabled parking law or ordinance shall have the penalty of two hundred and fifty dollars (\$250.00). The penalty for all other parking violations of any kind is thirty dollars (\$30.00).
- (b) In addition to above fines, pursuant to F.S.S. 318.21 (12)(a), a five dollar (\$5.00) assessment for the Town of Davie School Crossing Guard Program and pursuant to F.S.S. 938.19 and Broward County Code 10-13, a three dollar (\$3.00) assessment for teen court will be added to the fine for each parking violation.

Sec. 24-79. Penalty for nonpayment.

- (a) After adjudication of guilty by a court of competent jurisdiction, or a written plea of guilty to any violation in this article, it shall be a separate violation for any person to fail or refuse to pay the required fee.
- (b) The penalty for a violation of this section shall be a fine of not more than one hundred dollars (\$100.00) or imprisonment of not more than five (5) days, or both, at the discretion of the court.

SECTION 2. This ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS _____ DAY OF _____, 2002

PASSED ON SECOND AND FINAL READING THIS _____ DAY OF _____, 2002

Mayor/Council Member

ATTEST:

Town Clerk

APPROVED THIS _____ DAY OF _____, 2002