

Code
change

ORDINANCE NO. 2016- 81

AN ORDINANCE OF THE CITY OF TAMPA, FLORIDA, AMENDING TAMPA CODE SECTION 14-30 TO MODIFY THE DEFINITION OF KNOWLEDGE REQUIRED ON THE PART OF A VEHICLE OWNER TO DENY QUALIFICATION AS AN INNOCENT OWNER UNDER THE ORDINANCE AND TO CHANGE THE STANDARD OF PROOF REQUIRED IN JUDICIAL PROCEEDINGS; PROVIDING FOR SEVERABILITY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Tampa Code Section 14-30 provides for the impoundment of motor vehicles under certain circumstances when the vehicle is used to facilitate misdemeanor crimes of prostitution, lewdness or drug possession; and

WHEREAS, Florida courts have in the past evaluated and adjudicated the validity of ordinances like Section 14-30 by comparing the substantive and procedural requirements of Florida's Contraband Forfeiture Act (Florida Statutes Sections 932.701-932.7062); and

WHEREAS, in the recently concluded session, the Florida Legislature amended the Florida Contraband Forfeiture Act modifying, among other things, the level of knowledge necessarily proven in judicial proceedings in order to deny innocent owner status to an owner of seized property and modifying the standard of proof from "clear and convincing evidence" to "proof beyond a reasonable doubt"; and

WHEREAS, in keeping with the above mentioned judicial precedents, Tampa Code Section 14-30 should be amended as hereinafter provided to mirror in all relevant aspects the changes made to the Florida Contraband Forfeiture Act effective July 1, 2016.

NOW, THEREFORE,
BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF TAMPA, FLORIDA:

Section 1. That Tampa Code Section 14-30 is hereby amended to read in its entirety as follows:

Sec. 14-30. Use of Motor Vehicle to Facilitate Prostitution, Lewdness or Drug Related Crimes.

(a) *Definitions:*

- (1) *Co-owner* means any owner of a motor vehicle in common with another regardless of marital status or the conjunctive/disjunctive term used on registration or title documents.
- (2) *Owner* means the person(s) or entity legally entitled to possession of a particular motor vehicle whether or not a

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1 registered or titled owner.

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- 3 (3) ~~Reason to know~~Actual Knowledge. A person or entity shall be
- 4 deemed to have "reason to know actual knowledge" a motor
- 5 vehicle may be used in violation of this section if such person
- 6 or entity knows the person who was granted control of the
- 7 vehicle has previously been arrested for any prostitution,
- 8 lewdness or drug related offense or if other facts demonstrate
- 9 knowledge that the person granted control of the vehicle has in
- 10 the past, or is presently inclined to engage in prostitution,
- 11 lewdness or unlawful drug activity.

- 12
- 13 (b) It shall be a violation of this section and a motor vehicle shall be subject to
- 14 impoundment whenever the vehicle:

- 15
- 16 (1) Was used or intended to be used to facilitate the commission
- 17 or attempted commission of an act of prostitution or lewdness
- 18 as those terms are defined in Florida Statute Section 796.07;
- 19 or
- 20
- 21 (2) Was used, intended, or attempted to be used to facilitate the
- 22 commission or attempted commission of any misdemeanor
- 23 violation of Florida Statutes Chapter 893;

24

25 by any owner or co-owner of said vehicle or by any other person utilizing or

26 occupying said vehicle with the express or implied consent of any owner or

27 co-owner.

- 28
- 29 (c) It shall be a complete defense to any legal action arising out of this section
- 30 that at the time of the incident resulting in impoundment, the vehicle was
- 31 under the control of a person other than an owner or co-owner and none of
- 32 said owners or co-owners ~~knew, or had~~ reason to know actual knowledge, that
- 33 the vehicle may be used in a manner constituting a violation of this section. If
- 34 all owners/co-owners appear to qualify as innocent owners, payment of the
- 35 penalty specified in this section shall not be required to secure release of the
- 36 vehicle.

- 37
- 38 (d) Procedures upon impoundment of a motor vehicle pursuant to this section:

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- 40 (1) When a law enforcement officer determines that a violation
- 41 of this section has occurred, the officer will arrange for the
- 42 subject vehicle to be transported to the police impound lot. A
- 43 Notice of Impoundment shall be provided to any present
- 44 owner and to the person in lawful control of the vehicle. The
- 45 Notice of Impoundment shall state the reason for impounding
- 46 the vehicle and outline procedures to obtain release of the

1 vehicle. The Notice of Impoundment shall also advise
2 owners of the right to a hearing in the event they choose to
3 challenge the impoundment of the vehicle. Unless hand-
4 delivered at the time of impoundment, the Notice of
5 Impoundment shall be sent by certified mail to all registered
6 owners, within seven (7) business days of the date of
7 impoundment. This notice may be sent together with any
8 notice required pursuant to Florida Statute Section 713.78.
9 Written Notice of Impoundment shall also be provided within
10 seven days to all properly perfected lien holders and lessors.

11
12 (2) Any owner or co-owner may obtain release of the vehicle
13 upon payment of the penalty provided herein plus towing,
14 storage and mailing charges. The owner will be provided
15 with an opportunity to elect to challenge the impoundment of
16 the vehicle in court pursuant to the procedures provided in
17 subsection (d)(3). If the owner elects to challenge the
18 impoundment under these procedures, the owner may obtain
19 possession of the vehicle by payment of the penalty plus
20 towing and storage which when collected by the City shall be
21 considered a bond to be refunded to the owner in the event
22 the owner prevails at trial. If the owner declines to tender the
23 full amount of the penalty plus the cost of towing, accrued
24 storage and mailing costs, the vehicle will remain impounded
25 pending conclusion of the judicial proceedings.

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28 (3) Any owner or other interested party with legal standing may
29 deliver to the Tampa Police Department Legal Unit a request
30 for trial. The request for trial must be hand delivered or sent
31 by certified mail. Within five (5) business days of receipt of a
32 request for trial the City must either file a hearing request in
33 the appropriate court seeking judicial review of the
34 lawfulness of the impound or notify the person who
35 requested the trial that the City will not assess the \$500 civil
36 penalty and that the vehicle may be retrieved from the
37 impound lot upon payment of towing, storage, and mailing
38 costs. If within five (5) business days of receipt of a proper
39 and timely request the City fails to file the hearing request or
40 fails to notify the requesting person that no penalty will be
41 assessed, storage charges cease to accrue as of the fifth
42 business day after receipt of the request and no penalty shall
43 be assessed. Telephonic notification shall be attempted. If
44 unsuccessful, notification by U.S. mail shall be deemed
45 timely if delivered to the U.S. Postal Service within five (5)
46 business days following receipt of the request for trial.

- (4) Nothing in this section shall be construed to waive or alter the provisions of Florida Statute Section 713.78 in the event no person or entity takes possession of the vehicle.
- (5) Violation of this section is a civil, not criminal, offense. In any action arising from the impoundment of a motor vehicle pursuant to this section, the court shall determine whether the City has established by ~~clear and convincing evidence~~ proof beyond a reasonable doubt that a violation of subsection (b) has occurred.

Section 2. That should a court of competent jurisdiction declare any part of this ordinance to be invalid, to the extent possible all remaining provisions hereof shall remain valid and unaffected by such determination.

Section 3. That this ordinance shall take effect immediately upon becoming a law.

PASSED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAMPA, FLORIDA, ON JUN 0 2 2016.

ATTEST:



CHAIRMAN/CHAIRMAN PRO-TEM
CITY COUNCIL



CITY CLERK/DEPUTY CITY CLERK

APPROVED BY ME ON JUN 0 3 2016



BOB BUCKHORN, MAYOR

PREPARED BY AND APPROVED
AS TO LEGAL SUFFICIENCY:

KIRBY C. RAINSBERGER
ASSISTANT CITY ATTORNEY