

ORDINANCE NO. 4244

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PINELLAS PARK, PINELLAS COUNTY, FLORIDA, AMENDING CHAPTER 16 OF THE CODE OF THE CITY OF PINELLAS PARK, FLORIDA, TO ADD A NEW SECTION 16-126 PROVIDING FOR THE IMPOUNDMENT OF MOTOR VEHICLES USED TO FACILITATE CERTAIN CRIMES WITHIN CITY LIMITS; PROVIDING FOR NOTICE AND HEARINGS TO BE CONDUCTED WITHIN CERTAIN TIME LIMITATIONS; PROVIDING FOR THE IMPOSITION OF A CIVIL PENALTY FOR THE USE OF MOTOR VEHICLES TO FACILITATE CERTAIN CRIMES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, driving under the influence, reckless driving and racing on streets continues to impact and endanger the citizens of Pinellas Park despite the efforts of City Council, the Administration and the Police Department; and

WHEREAS, drug related crimes and prostitution continue to impact the citizens of Pinellas Park despite the efforts of City Council, the Administration and the Police Department; and

WHEREAS, motor vehicles are frequently used as part of or to facilitate the commission of drug related crimes and prostitution, which use has the effect of bringing the undesirable aspects of those crimes to neighborhoods, schools and other areas in the City; and

WHEREAS, the City Council of the City of Pinellas Park recognizes the Constitutional requirements of due process; and

WHEREAS, due process of the owner of an impounded motor vehicle can be afforded by holding a hearing, if requested, within five business days of the impoundment of the vehicle in addition to a final hearing within fifteen (15) business days of receipt of the request for a final hearing.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PINELLAS PARK, FLORIDA:

SECTION ONE: That Chapter 16 of the "Code of Ordinances" of the City of Pinellas Park, Florida, is hereby amended to add a new Section 16-126 to read as follows:

Sec. 16-126 Impoundment of motor vehicles used to facilitate certain crimes within City limits.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Business days means days other than Saturday, Sunday, or holidays recognized by the City.

Co-owner means any natural person owning a motor vehicle in common with another, regardless of marital relationship or the conjunctive term used on registration or title documents.

Hearing master means the person contracted with by the City as provided herein for the purpose of conducting the administrative hearing provided for herein.

Lienholder means any individual or entity which, as of the time of impoundment, has properly perfected a lien on the vehicle subject to impoundment.

Owner means the natural person who is a registered or titled owner of a motor vehicle, or a natural person having other indicia of ownership of a motor vehicle, including, but not limited to, a bill of sale or open title signed by a previous owner.

(b) Seizures and impoundment. A motor vehicle shall be subject to seizure and impoundment whenever a Police Officer has probable cause to believe that the vehicle:

(1) Was driven or operated under the influence in violation of F.S. § 316.193;

(2) Was driven or operated in violation of F. S. § 316.191 pertaining to racing on highways, street takeovers and stunt driving;

(3) Was recklessly driven or operated in violation of F. S. § 316.192;

(4) Unlawfully contains any controlled substance as defined in F.S. §§ 893.02 and 893.03;

(5) Was used to facilitate the commission of any violation of F.S. ch. 893;

(6) Was used to facilitate the commission or attempted commission of an act of prostitution, assignation or lewdness as defined in F.S. § 796.07;

(7) Was used to facilitate the commission of an act of solicitation for prostitution, lewdness, or assignation in violation of F.S. § 796.07;

(8) Was used to facilitate human trafficking in violation of F.S. § 787.06;

(9) Was driven to travel to meet a minor for sexual activity in violation of F.S. §847.0135(4);

(10) Was used to facilitate the commission of an unnatural or lascivious act in violation of F.S. § 800.02; or

(11) Was used to facilitate the commission of the exposure of sexual organs in violation of F.S. § 800.03.

(c) *Exceptions.* This section shall not apply and no vehicle shall be seized or impounded pursuant to this section if:

(1) The vehicle was stolen at the time that it was otherwise subject to seizure and impoundment;

(2) A law enforcement agency seizes the vehicle pursuant to the Florida Contraband Forfeiture Act; or

(3) At the time the vehicle is subject to seizure and impoundment, it is under the control of a person other than an owner or co-owner and the owner or co-owner was not present at the time the vehicle became subject to seizure and impoundment.

(d) *Duties of attending Police Officer.* Upon impounding a motor vehicle, the Police Officer shall:

(1) Arrange for the towing of the vehicle by a company having a written agreement with the City to provide towing and motor vehicle storage services, to the impound lot maintained by the company for the storage of motor vehicles pursuant to the agreement;

(2) Provide written notice of impoundment by hand delivery to any owner or co-owner of the vehicle who is present at the time the vehicle is impounded. The notice shall include a statement of the fact of the vehicle impoundment, a statement that the owner has the right to request a preliminary hearing to contest the seizure and impoundment pursuant to subsection (e) of this section and a final hearing pursuant to subsection (f) of this section, and a

statement of the procedure and deadlines for requesting such hearings.

The notice shall also include a statement that the owner may elect to pay the administrative civil penalty, plus any towing and storage costs, as provided herein and waive the preliminary hearing, the final hearing, or both;

- (3) The Police Department shall, within two business days of the impoundment, provide a notice of impoundment to any co-owner or lienholder whose name and address are known or can be ascertained after a search of the public records. The notice shall include a statement that the co-owner or lienholder has the right to request a preliminary hearing pursuant to subsection (e) of this section and a final hearing pursuant to subsection (f) of this section and shall describe the procedure and deadlines for requesting such hearings.

(e) Preliminary hearing; administrative penalty.

- (1) Within five business days of receipt of the notice described in subsection (d) of this section, the owner, co-owner or lienholder may request a preliminary hearing by delivering to the address provided in the notice a written request for a preliminary hearing. Such request for a preliminary hearing shall set forth a telephone number and correct address where the owner, co-owner or lienholder may be contacted. The written notice must be received at the address provided in the notice within the allotted time, or the right to a preliminary hearing shall be deemed to be waived.
- (2) Upon timely receipt of a written request for a preliminary hearing, the Police Chief or his/her Designee shall schedule a hearing to be held within five business days following the date of receipt of the request. The requesting party shall be notified by telephone of the date, time and location of the hearing; however, notice may be provided by other means at the election of the Police Chief or his/her Designee.
- (3) The hearing shall be held before a hearing master provided by the City. At the outset of such hearing, the hearing master shall determine that notice of the hearing was perfected. The sole issue to be considered by the hearing master is whether the impounding 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.

- (4) If the City establishes probable cause to support the impoundment, the hearing master shall order the continued impoundment of the vehicle pending final hearing or the payment of an administrative civil penalty of \$500.00 together with all fees and charges incurred for towing and storage services, in amounts not to exceed the amounts previously established by agreement between the City and the wrecking company for such services. Alternatively, the owner may secure release of the vehicle by posting a cash bond (money order or certified check) in the amount of \$500.00 with the City, and payment of towing and storage charges to the wrecker company.

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 penalties or fees whatsoever, and in such event any fees or costs paid to the City or for towing and storage of the vehicle shall be promptly refunded to the owner.

- (5) An owner may elect to waive the preliminary hearing, the final hearing, or both, and pay the administrative civil penalty of \$500.00 to the City and any towing and storage charges due the wrecker company. An executed waiver shall bind both the owner and any co-owner. An owner subsequently found not guilty of all criminal offenses that arose out of conduct that caused the vehicle to be impounded shall have the right to receive a refund of the civil penalty paid at the time of executing the waiver and towing and storage charges provided such request for a refund is made utilizing the form provided by the City within 60 days of the conclusion of all such criminal proceedings.

(f) Final hearing.

- (1) Within 15 days of receipt of the notice described in subsection (d) of this section, the owner, co-owner, or lienholder may request a final hearing by delivering to the address provided in the notice a written request for a final hearing, together with a \$50.00 final hearing fee (certified check or money order). Such a request for a final hearing shall set forth a telephone number and correct address where the owner, co-owner, or lienholder may be contacted. The written notice must be received by the Police Department

within the allotted time, or the right to a final hearing shall be deemed to be waived.

Within five business days of receipt of the request for a final hearing, the Police Department shall notify by hand delivery or by certified mail, return receipt requested, the party requesting the final hearing of the date, time and location of a final hearing to be conducted pursuant to this subsection. Notification shall be complete upon mailing. Unless continued by order of a hearing master, the final hearing shall be held no later than 15 business days after receipt of the request for final hearing. The formal rules of evidence will not apply at the final hearing and hearsay evidence is admissible. Cross examination shall be permitted and all witnesses shall be sworn. The City shall have the burden to show by clear and convincing evidence that the vehicle was used as set forth in subsection (b) of this section.

It shall be a defense that the vehicle was stolen or that the vehicle was under the control of a person other than an owner or co-owner and the owner or co-owner was not present at the time the vehicle became subject to seizure and impoundment. The owner shall have the burden of proving this defense by a preponderance of the evidence.

(2) If, after the hearing, a finding is made that the vehicle is subject to impoundment as provided herein and that none of the exceptions listed in subsection (c) of this section apply, unless the vehicle has previously been released to the owner, the hearing master shall enter an order requiring continued impoundment of the vehicle for a period not to exceed 30 days pending payment of a \$500.00 administrative civil penalty, plus hearing fee of \$50.00 with the City, and payment of towing and storage charges to the wrecker company. If the hearing master determines that the City did not meet its burden of proof or that one of the exceptions set forth in subsection (c) of this section apply, the vehicle shall be released to the owner as soon as practical without the imposition of penalties or fees whatsoever. Any cash bond posted shall be returned.

(3) If the final hearing is not held as provided in subsection (f)(1) of this section the vehicle shall be released to the owner as soon as practical without the imposition of penalties or fees whatsoever. The owner shall not be entitled to release of the vehicle for delays in receiving

notice of the final hearing absent a showing of resulting prejudice.

(g) Failure to pay fine. A failure by the owner to pay any fine assessed plus any accrued towing and storage charges within the time specified in the final order shall constitute abandonment of the vehicle. In the case where the vehicle is subject to a perfected lien, the City may release the vehicle to the lienholder upon payment of the administrative civil penalty and cost of the hearing to the City and accrued towing and storage fees to the wrecker company.

(1) If no final hearing is timely requested, the cash bond has not been posted with the Police Department, and the vehicle is subject to a perfected lien, the City may release the vehicle to the lienholder upon payment of the administrative civil penalty and accrued towing and storage fees to the wrecker company.

(2) If no final hearing is timely requested and the cash bond is not posted with the Police Department and the vehicle is not subject to a perfected lien, the vehicle shall be deemed abandoned by the owner and the vehicle shall be released to the wrecker company to satisfy the wrecker company's lien 30 days after the date of impoundment.

(h) Enforcement of provisions. Nothing herein shall be construed to prohibit the City from enforcing the provisions of this section against a vehicle initially impounded pursuant to the Florida Contraband Forfeiture Act.

(i) Recording of order. A certified copy of the order of the hearing 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 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 rate authorized by law 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 such personal property; however, such order shall not be deemed a court judgment except for enforcement purposes. In an action to enforce an order as provided in this section, the City shall be entitled to recover all costs, including a reasonable attorney's fee that it incurs thereby.

(j) Appeal. The owner of the vehicle that was seized and impounded may appeal a ruling or order of the hearing master by proceeding in circuit court in accordance with Rule 9.190, Florida Rules of Civil Procedure. An appeal shall be filed within 30 days of the rendition of the order to be appealed. The nature of the appeal shall be from a final administrative order.

(k) Authority to appoint hearing master. The City Manager is authorized to contract with an individual to perform the functions of a hearing master. Any such person with whom the City Manager contracts shall be designated as a hearing master and have all powers of the hearing master, as provided within this section.

SECTION TWO: The provisions of this ordinance shall be deemed severable, and should any court of competent jurisdiction declare any part of this ordinance unconstitutional or invalid, the remaining parts hereof shall not, in any way, be affected by such determination as to the invalid part.

SECTION THREE: This Ordinance shall be in full force and effect immediately after its passage and approval in the manner provided by law.

PUBLISHED THE _____ DAY OF _____, 202

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FIRST READING THE _____ DAY OF _____, 202

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SECOND READING & PUBLIC HEARING _____ DAY OF _____, 202

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PASSED THIS _____ DAY OF _____, 2024.

AYES:

NAYES:

ABSENT:

ABSTAIN:

APPROVED THIS _____ DAY OF _____, 202

4.

Sandra L. Bradbury
MAYOR

ATTEST:

Jennifer R. Carfagno, MMC
CITY CLERK