

**2-0-09**

**AN ORDINANCE**

**Renaming and Amending Title 11, Section 2, of the Evanston City Code, Entitled "Parking and Compliance Violations"**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

**SECTION 1:** That Title 11, Chapter 2, of the Evanston City Code, 1979, as amended, "Parking Violations," be renamed "Parking and Compliance Violations," and is hereby further amended to read as follows:

**11-2-1: PURPOSE; SCOPE; ADOPTION OF RULES AND REGULATIONS:**

(A) The purpose of this Chapter is to provide for the administrative adjudication of violations of the ordinances enumerated in Subsection 11-2-2(B) of this Chapter regulating motor vehicular (hereinafter, "vehicular," "vehicle") standing, parking, and compliance, including the condition or use of equipment on any vehicle within the City, (collectively, "parking") and to establish a fair, equitable, and efficient system for the enforcement of such ordinances. The administrative adjudication system set forth in this Chapter is established pursuant to Section 11-208.3 of the *Illinois Vehicle Code, 625 Illinois Compiled Statutes*, as amended, which authorizes any municipality to provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations, and vehicle compliance violations, and pursuant to *65 Illinois Compiled Statutes 5/1-2.1 et seq.*, which authorizes home rule municipalities to enact a system of administrative adjudication of municipal violations.

(B) The City Manager shall appoint a City Traffic Compliance Administrator who is authorized to redelegate authorities to:

1. Adopt, distribute, and process parking violation notices and additional notices, collect money paid as fines and penalties for violations of parking ordinances;
2. Establish procedures necessary for the prompt, fair and efficient operation of the administrative adjudication system; and
3. Adopt rules and regulations pertaining to: the hearing process, the selection and appointment of administrative law officers, the content of forms and

procedures, and the daily operation of the administrative adjudication of parking violations program.

(C) The City Traffic Compliance Administrator shall delegate to the Director of Administrative Adjudication his/her authority to appoint Administrative Hearing Officers, to adopt rules and regulations pertaining to administrative hearing proceedings to adjudicate the violations set forth in Subsection 11-2-2(B) of this Chapter conduct administrative hearing proceedings, including the functions and responsibilities of the Traffic Compliance Administrator set forth in Subsections (A), (B)2 and (B)3 of this Section, Subsections 11-2-5(A) through (F), Sections 11-2-6 through 11-2-10, Subsections 11-2-11(B) through (H), and Sections 11-2-12 and 11-2-13 of this Chapter.

**11-2-2: VIOLATION; PENALTY:**

(A) Violation of Subsection (B) of this Section prohibiting or restricting vehicular standing or parking, shall be a civil offense punishable by applicable fines and penalties, provided for in Section 10-11-17 of this Code, and no criminal penalty, or civil sanction other than that prescribed in said Section 10-11-17 of this Code shall be imposed.

(B) Determination of liability for notices of violation issued for violations of Title 10, Chapters 4, 5, 8, and 12 of this Code, and no other sections of Title 10 of this Code, shall be pursuant to the administrative adjudication provisions of this Title.

**11-2-3: PRIMA FACIE RESPONSIBILITY FOR VIOLATION AND PENALTY; PARKING VIOLATION ISSUANCE AND REMOVAL:**

(A) Whenever any vehicle in violation of any provision of this code prohibiting or restricting vehicular parking, standing, or compliance, except for seat belt or child passenger protection statutes, any person, whether owner or lessee, in whose name the vehicle is registered with the secretary of State of Illinois or other state's registry of motor vehicles shall be *prima facie* responsible for the violation and subject to the penalty therefor.

(B) Whenever any vehicle exhibits a violation of any provision of this code prohibiting or restricting vehicular parking or standing, any Police Officer, Parking Enforcement Officer, or other person designated by the City Manager, who observes such violation may issue a notice of parking violation as provided for in Section 11-2-4 of this Chapter and serve the notice on the registered owner of the vehicle by handing it to the operator of the vehicle, if he is present, or by affixing it to the vehicle in a conspicuous place. The issuer of the notice shall specify on the notice his identification number, the particular parking ordinance allegedly violated, the make and state registration number or the vehicle identification number (VIN) of the cited vehicle, and the place, date, time and nature of the alleged violation and shall certify the correctness of the specified information by signing his name at the time of service as provided in Section 11-208.3 of the *Illinois Vehicle Code*, or, in the case of a computer-generated notice, by signing a single certificate to be kept by the City Traffic Compliance Administrator or his/her

designee attesting to the correctness of all notices produced by the device while it was under his control.

(C) It shall be unlawful for any person, other than the registered owner of the vehicle or his/her designee, to remove from a vehicle a parking violation notice affixed pursuant to this Chapter. The fine for a first-time violation of this Section shall be two hundred fifty dollars (\$250.00). Subsequent violations shall be penalized by imposition of a five hundred dollar (\$500.00) fine.

(D) Whenever any operator or passenger is in violation of Section 11-2-2 for violation of seat belt requirements stated in Section 12-603.1 of the *Illinois Vehicle Code* or the Child Passenger Protection Act, the violation notice shall be served on the person in violation of the regulations by handing the notice to that person. The person identified in the violation notice for violating said statutes shall be known as the "Respondent."

**11-2-4: NOTICES; CONTENTS, DISTRIBUTION, AND RECORD KEEPING:**

(A) Parking violation notices shall contain the information required under Subsection 11-2-3 of this Chapter. In addition, the notices shall state the applicable fine, the monetary penalty which shall be automatically assessed for late payment, that vehicle immobilization and driver's license suspension may be imposed if fines and penalties are not paid in full, that payment of the stated fine, and of any applicable penalty for late payment, shall operate as a final disposition of the violation, and information as to the availability of an administrative hearing in which the violation may be contested on its merits and the time and manner in which such hearing may be had.

(B) The City Traffic Compliance Administrator or his/her designee shall distribute parking violation notices to parking enforcement officers, other persons authorized to issue parking violation notices, and the Department of Police for issuance pursuant to Subsection 11-2-3 of this Chapter. The City Traffic Compliance Administrator shall assure the maintenance of a record of each set of notices issued to all persons authorized to issue parking violation notices.

(C) The City Traffic Compliance Administrator or his/her designee shall compile and maintain complete and accurate records relating to all parking violation notices issued pursuant to Section 11-2-3 of this Chapter and the dispositions thereof. Notwithstanding any of the foregoing, the Director of Administrative Adjudication shall compile and maintain records of adjudicated parking violation notices.

**11-2-5: DETERMINATION OF LIABILITY:**

(A) A person served with a parking violation notice pursuant to Section 11-2-3 of this Chapter shall, within ten (10) days from the date of the notice: 1) pay the indicated fine; or, in the manner indicated on the notice, either 2) submit the materials set forth in Section 11-2-7 of this Chapter to obtain an adjudication by United States Postal Service or electronic mail; or 3) request an administrative hearing as set forth in Section 11-2-8

of this Chapter to contest the charged violation. A response by mail shall be deemed timely if postmarked within ten (10) days of the issuance of the notice of violation.

(B) If the Respondent submits documentary evidence to obtain an adjudication by United States Postal Service or electronic mail pursuant to Section 11-2-7 of this Chapter, the Director of Administrative Adjudication shall send the Respondent a copy of the Administrative Hearing Officer's determination in accordance with Subsection (F) of this Section.

(C) If the Respondent requests an administrative hearing to contest the cited violation pursuant to Section 11-2-8 of this Chapter, the Director of Administrative Adjudication shall notify the Respondent in writing of the location and time available for a hearing in accordance with Subsection (F) of this Section.

Where a Respondent, who has requested an administrative hearing, either fails to pay the stated fine prior to the hearing or fails to appear at a hearing, a determination of parking violation liability shall be entered in the amount of the fine, penalty, or cost indicated on the notice of violation. Upon the occurrence of a final determination of liability as provided for below, any unpaid fine, penalty, and/or cost will constitute a debt due and owing the City. The Director of Administrative Adjudication will cause a notice of hearing providing this information to be sent to the Respondent in accordance with Subsection (F) of this Section.

(D) If no response is made in accordance with Subsection (A) of this Section, the Traffic Compliance Administrator shall cause a second notice of violation to be sent to the Respondent in accordance with Subsection (F) of this Section. The notice shall specify the date and location of the violation, the make and state registration number of the cited vehicle, the Code provision violated, the applicable fine and penalty and the time and manner in which the Respondent may obtain an adjudication by United States Postal Service or electronic mail or request a hearing to contest the violation. If the Respondent requests an administrative hearing to contest the cited violation, the Director of Administrative Adjudication will cause a notice of hearing to be sent to the Respondent as provided in subsection (C) of this Section.

If the Respondent fails to pay the indicated fine, submit documentary evidence to obtain an adjudication by mail, or request a hearing to contest the charged violation within thirty-five (35) days from the date of such notice, as provided in Section 11-2-6 of this Chapter, a determination of liability shall be entered in the amount of the fine indicated on the notice of violation. Failure to pay the fine within ten (10) days of issuance will result in the imposition of a late payment penalty pursuant to Subsection (E) of this Section. Upon the occurrence of a final determination of liability, any unpaid fine, penalty, and/or cost will constitute a debt due and owing the City. The second notice of violation shall provide the above information.

(E) Failure by a Respondent to pay the fine for a parking violation within ten (10) days of issuance automatically subjects the Respondent to a penalty for late payment.

The penalty for late payment shall be in accordance with Section 10-11-17 of the City Code.

(F) The Director of Administrative Adjudication shall serve the notice of hearing, the second notice of violation, the Administrative Hearing Officer's determination, the notice of final determination of liability, the notice of impending vehicle immobilization, and the notice of impending driver's license suspension, where applicable, by first class mail, postage prepaid, to the address of the registered owner of the vehicle as recorded with the Secretary of State of Illinois. If the vehicle is registered in a state other than Illinois, the Director of Administrative Adjudication shall send the notices in question to the address of the registered owner as recorded in such other state's registry of motor vehicles.

**11-2-6: GROUNDS FOR ADJUDICATION BY MAIL OR ADMINISTRATIVE HEARING:**

A person charged with a parking or compliance violation (other than for seat belt or child passenger protection regulations) may contest the charge through an adjudication by United States Postal Service or electronic mail or at an administrative hearing limited to one or more of the following grounds with appropriate evidence to support:

(A) The Respondent was not the owner or lessee of the cited vehicle at the time of the violation;

(B) The cited vehicle or its state registration plates were stolen at the time the violation occurred;

(C) The relevant required signs prohibiting or restricting parking were missing or obscured;

(D) The subject parking meter was inoperable or malfunctioned through no fault of the Respondent;

(E) The facts alleged in the parking violation notice are materially inconsistent or do not support a finding that the specified regulation was violated.

**11-2-7: ADJUDICATION BY US OR ELECTRONIC MAIL; PROCEDURE:**

(A) Administrative hearings to review materials submitted for the adjudication by United States Postal Service or electronic mail of notices of parking violations issued pursuant to Section 11-2-3 of this Chapter shall be held by an Administrative Hearing Officer appointed by the Director of Administrative Adjudication and conducted in accordance with Chapter 1 of this Title. Notwithstanding any of the foregoing, in the event of a conflict between Chapter 1 of this Title and this Chapter, the latter shall be controlling.

(B) The Respondent may contest a parking violation based on one or more of the grounds provided in Section 11-2-6 of this Chapter, by mailing either through United States Postal Service or electronic means to the Division of Administrative Adjudication the following materials and information: the notice of violation, the full name, address, and telephone number(s) of the Respondent; the make, model, and year of the vehicle; any documentary evidence to rebut the charge; and a written statement signed by the Respondent setting forth facts relevant to establishing a defense to the charge. A legible photocopy of any documentary evidence submitted by any party shall be accepted as the equivalent of the original document.

(C) No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a parking violation notice, or a copy thereof, shall be *prima facie* evidence of the correctness of the facts specified therein.

(D) Upon review of the materials submitted in accordance with Subsection (B) of this Section, the Administrative Hearing Officer shall enter a determination of no liability or of liability in the amount of the fine and any applicable penalty or costs for the subject violation. Upon issuance, such determination shall constitute a final determination for purposes of judicial review under the Administrative Review Law of Illinois.

**11-2-8: ADMINISTRATIVE HEARINGS; PROCEDURE:**

(A) Administrative hearings for the in-person adjudication of parking violation notices issued pursuant to Section 11-2-3 of this Chapter shall be held before an Administrative Hearing Officer appointed by the Director of Administrative Adjudication and conducted in accordance with Chapter 1 of this Title. Notwithstanding any of the foregoing, in the event of a conflict between Chapter 1 of this Title and this Chapter, the latter shall be controlling.

(B) All testimony shall be given under oath or affirmation, which shall be administered by the administrative hearing officer. The Administrative Hearing Officer may issue subpoenas to secure the attendance and testimony of witnesses and the production of relevant documents; provided, however, that a Respondent who appears by an attorney shall not be compelled to attend the hearing and may submit his testimony, if any, by affidavit. In addition, witnesses who have not been subpoenaed to attend the hearing may submit their testimony, if any, by affidavit.

(C) No violation may be established except upon proof by a preponderance of the evidence; provided, however that a parking or compliance violation notice, or a copy thereof, issued, signed, and served in accordance with Section 11-2-3 of this Chapter shall be *prima facie* correct and shall be *prima facie* evidence of the correctness of the facts specified therein.

**11-2-9: HEARING; DETERMINATION OF LIABILITY OR OF NO LIABILITY; PETITION:**

(A) Upon conclusion of a hearing under Section 11-2-8 of this Chapter, the Administrative Hearing Officer shall issue a determination of no liability or of liability in the amount of the fine for the subject violation as provided in Section 10-11-17 of this Code. Upon issuance, such determination shall constitute a final determination for purposes of judicial review under the Administrative Review Law of Illinois.

(B) If a person fails to respond to the violation notice and the second notice of violation, a determination of liability shall be entered pursuant to Section 11-2-5 of this Chapter and shall be served upon the person in accordance with Subsection 11-2-5(F) of this Chapter. Such determination shall become final for purposes of judicial review under the Administrative Review Law of Illinois upon the denial of, or the expiration of the time in which to file, a timely petition to set aside the determination as provided in subsection (C) of this Section.

(C) Within twenty one (21) days from the issuance of a determination of liability pursuant to subsection (B) of this Section, the person against whom the determination was entered may petition the Director of Administrative Adjudication by appearing in person, at the location specified in the determination, to set aside the determination; provided, however, the grounds for the petition shall be limited to: 1) the person not having been the owner or lessee of the cited vehicle on the date the parking violation notice was first issued; 2) the person having already paid the fine or penalty for the parking violation in question; or 3) excusable failure, based upon criteria established by the Director of Administration Adjudication, to appear at or request a new date for a hearing. The petitioner shall appear with appropriate evidence, pursuant to Section 11-2-6 of this Chapter, so that if the petition is granted, he is prepared to proceed immediately with a hearing on the merits.

**11-2-10: NOTICE OF FINAL DETERMINATION:**

(A) If any fine, penalty, and/or cost is owing and unpaid after a determination of liability under this Chapter has become final and the Respondent has exhausted or failed to exhaust judicial procedures for review, the Director of Administrative Adjudication shall cause a notice of final determination of liability to be sent to the Respondent in accordance with Subsection 11-2-5(F) of this Chapter.

(B) Any fine, penalty, and/or cost remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the City. Failure of the Respondent to pay such fine or penalty within fourteen (14) days of the notice may result in: 1) the immobilization of the person's vehicle for failure to pay fines or penalties for five (5) or more parking violations, and 2) the suspension of the person's driver's license for failure to pay fines or penalties for ten (10) or more parking violations.

**11-2-11: IMMOBILIZATION PROGRAM:**

(A) The City Traffic Compliance Administrator or his/her designee is hereby authorized to direct and supervise a program of vehicle immobilization for the purpose of enforcing the parking ordinances of the traffic code. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle located on the public way or any City-owned property by placement of a restraint in such a manner as to prevent its operation.

(B) When the registered owner of a vehicle has accumulated five (5) or more final determinations of parking violation liability, in any combination, for which the fines and applicable penalties, if applicable, have not been paid in full, the Director of Administrative Adjudication shall cause a notice of impending vehicle immobilization to be sent, in accordance with Section 10-6-15 of this Code. The notice of impending vehicle immobilization shall state the name and address of the registered owner, the state registration number of the vehicle or vehicles registered to such owner, and the serial numbers of parking violation notices which have resulted in final determination of liability for which fines and/or penalties remain unpaid. Failure to pay the fines and penalties owed within twenty one (21) days from the date of the notice will result in the inclusion of the state registration number of the vehicle or vehicles of such owner on an immobilization list. A person may challenge the validity of the notice of impending vehicle immobilization by requesting a hearing and appearing in person to submit evidence which would disprove liability within twenty one (21) days of the date of the notice. Documentary evidence which disproves liability shall be based on the following grounds:

1. That all fines and penalties for the violations cited in the notice have been paid in full; or

2. That the registered owner has not accumulated five (5) or more final determinations of parking violation liability which were unpaid at the time the notice of impending vehicle immobilization was issued.

(C) Upon immobilization of an eligible vehicle, a notice shall be affixed to the vehicle in a conspicuous place. Such notice shall warn that the vehicle is immobilized and that any attempt to move the vehicle may result in its damage. The notice shall also state that the unauthorized removal of or damage to the immobilizing restraint is a violation of subsection (H) of this Section. The notice shall also provide information specifying how release of the immobilizing restraint may be had, and how the registered owner may obtain an immobilization hearing. If the restraint has not been released within twenty four (24) hours of its placement, the restraint shall be released and the vehicle towed and impounded.

(D) The owner of an immobilized vehicle or other authorized person may secure the release of the vehicle by paying the immobilization, towing, and storage fees provided in



subsection (G) of this Section, and all fines and penalties remaining due on each final determination of liability issued to such person.

(E) The owner of an immobilized vehicle shall have the right to a hearing to determine whether the immobilization or any subsequent towing was erroneous, if the owner requests a hearing with the Director of Administrative Adjudication within fourteen (14) days after immobilization or fourteen (14) days of the date of the notice sent pursuant to Subsection (F) of this Section, whichever is later. Hearings requested pursuant to this Subsection shall be conducted by an Administrative Hearing Officer upon request for a hearing. The determination of the Administrative Hearing Officer regarding the validity of the immobilization shall become final for the purpose of judicial review under the Administrative Review Law of Illinois upon issuance.

(F) Within ten (10) days after a vehicle has been impounded, a notice of impoundment shall be sent by certified mail, return receipt requested, to the address of the registered owner as listed with the Secretary of State. The notice shall state that the owner has the right to request a post-immobilization and post-towing hearing as provided in Subsection (E) of this Section, and that if the vehicle is not claimed within thirty (30) days from the date of the notice, the vehicle may be sold or otherwise disposed of in accordance with Section 4-208 of the *Illinois Vehicle Code*.

(G) The fee for removal of immobilization device shall be one hundred twenty-five dollars (\$125.00). Fees for towing and storage will be the current year's City contract price for said services.

(H) It shall be unlawful to remove or damage the immobilizing device or to relocate or tow any vehicle restrained by an immobilization device without the prior approval of the City Traffic Compliance Administrator. Any person who violates this Section shall be subject to a penalty of five hundred dollars (\$500.00) for each such violation.

**11-2-12: DRIVER'S LICENSE SUSPENSION:**

(A) When a person has failed to pay any fine or penalty due and owing pursuant to this Chapter on ten (10) or more parking violations, the Director of Administrative Adjudication shall cause a notice of impending driver's license suspension to be sent, in accordance with Subsection 11-2-5(F) of this Chapter. The notice shall state that failure to pay the amount owing within forty-five (45) days of the date of the notice will result in the City's notifying the Secretary of State that the person is eligible for initiation of suspension proceedings pursuant to Section 6-306.5 of the *Illinois Vehicle Code*.

(B) If a person sent a notice pursuant to subsection (A) of this Section fails to pay the amount owing within the time stated on the notice, the Director of Administrative Adjudication may file with the Secretary of State a certified report, in accordance with Section 6-306.5(c) of the *Illinois Vehicle Code*, that the person is eligible for initiation of suspension proceedings, the Director of Administrative Adjudication shall assess a ten

dollar (\$10.00) filing fee against the person named in the certified report with the Secretary of State.

(C) A person named in a certified report filed pursuant to Subsection (B) of this Section may, within twenty-one (21) days of the date of the notice sent by the Secretary of State pursuant to Section 6-306.5(b) of the *Illinois Vehicle Code*, request from the Director of Administrative Adjudication a hearing; provided, however, the grounds for such challenge shall be limited to: 1) the person not having been the owner or lessee of the vehicle or vehicles receiving ten (10) or more parking violation notices on the date or dates such notices were issued; or 2) the person having already paid the fine and penalty for the ten (10) or more violations indicated on the report.

(D) If a person named in a certified report has paid the previously reported fine or penalty or if the report is determined by the Director of Administrative Adjudication to be in error, the Director of Administrative Adjudication shall notify the Secretary of State in accordance with Section 6-306.5(d) of the *Illinois Vehicle Code*. A certified copy of such notification shall be given, upon request and at no charge, to the person named therein.

**11-2-13: LESSOR OF VEHICLE NOT LIABLE FOR VIOLATIONS; WHEN:**

(A) In accordance with Section 11-1306 of the *Illinois Vehicle Code*, no person who is the lessor of a vehicle pursuant to a written lease agreement shall be liable for a violation of any standing or parking regulation involving such vehicle during the period of the lease, if, upon receipt of a notice of violation sent within one hundred twenty (120) days of the violation, he shall, within sixty (60) days thereafter, provide to the Director of Administrative Adjudication, the name and address of the lessee.

(B) Upon receipt of a lessor's notification of the name and address of his lessee, provided pursuant to Section 11-1305 or 11-1306 of the *Illinois Vehicle Code*, the Director of Administrative Adjudication shall cause a notice of violation to be sent to the lessee as provided for in Subsection 11-2-5(D) of this Chapter. The lessee of the vehicle shall be afforded the same opportunities to contest the notice of violation as are afforded to the registered owner.

**11-2-14: EFFECTIVE DATE:**

This Chapter shall be in full force and effect from and after its passage and approval and publication, as required by law.

**SECTION 2:** That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 3:** That, if any provision of this Ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such

invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

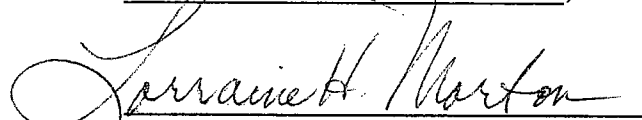
**SECTION 4:** That this Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Introduced: February 23, 2009

Adopted: March 9, 2009

Approved:

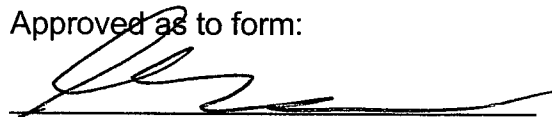
March 12, 2009

  
Lorraine H. Morton, Mayor

Attest:

  
Rodney Greene, City Clerk

Approved as to form:

  
Elke Tober-Purze, Interim  
First Assistant Corporation Counsel

