ORDINANCE NO. 2949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA, AMENDING CHAPTER 54, ARTICLE IV, IMPOUNDMENT OF MOTOR VEHICLES BY REPEALING SUCH ARTICLE IV IN ITS ENTIRETY AND ADOPTING A NEW ARTICLE IV RELATING TO IMPOUNDMENT OF MOTOR VEHICLES USED TO FACILITATE CERTAIN CRIMES INCLUDING PROSTITUTION ASSIGNATION, LEWDNESS OR SOLICITATION OF SAME OR UNNATURAL OR LASCIVIOUS ACTS OR EXPOSURE OF SEXUAL ORGANS OR CONTAINING A CONTROLLED SUBSTANCE AS DEFINED IN FLORIDA STATUTES 893.02 AND 893.03 OR COMMISSION OF ANY VIOLATION OF CHAPTER 893 OF THE FLORIDA STATUES AS AMENDED; PROVIDING FOR DEFINITIONS; PROVIDING FOR EXCEPTIONS, PROVIDING PROCEDURES; PROVIDING FOR PRELIMINARY HEARING AND ADMINISTRATIVE PENALTIES; PROVIDING ADMINISTRATIVE FINES AND FINAL HEARINGS; PROVIDING FOR POSSIBLE SETTLEMENTS; PROVIDING FOR APPEALS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bradenton had previously adopted Ordinance No. 2583 codified as Chapter 54, Article IV of the Code of Ordinances of the City of Bradenton, Florida; and

WHEREAS, the City of Bradenton has not utilized the provisions of such Ordinance for a period of five (5) years; and

WHEREAS, various Court decisions have been rendered during such period of time; and

WHEREAS, the City of Bradenton now wishes to readopt its Ordinance in compliance with Court orders and to further to provide for the protection of the health, safety and welfare of its citizens by reducing the commission of certain crimes.

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

ARTICLE IV – IMPOUNDMENT OF MOTOR VEHICLES USED TO FACILITATE PROSTITUTION OR DURG RELATED CRIMES

Sec. 54-100 – Definitions.

Business days shall mean any day, Monday through Friday, which is not designated as a holiday pursuant to the City of Bradenton's personnel rules and regulations.

Co-Owner shall mean 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.

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

Owner shall mean 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 pervious owner.

Special master shall mean the special master or special masters appointed by the mayor and approved by the City Council. Special master shall be an attorney and shall be in good standing with the Florida Bar Association.

Stolen shall mean the trespassory taking and carrying away of the tangible personal property of another with the intent to permanently deprive.

Section 54-101 – Motor vehicles subject to 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 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) Was used to facilitate the commission of an act of solicitation for prostitution, lewdness, or assignation in violation of F.S.§796.07; or
(3) Was used to facilitate the commission of an unnatural or lascivious act in violation of F.S. §800.02;
(4) Was used to facilitate the commission of the exposure of sexual organs in violation of F.S. §800.03; or
(5) Contains any controlled substance as defined in F.S. § 893.02, as amended; or
(6) Was used, intended or attempted to be used, to facilitate the commission of any violation of F.S. Ch. 893, as amended.

Sec. 54-102 – Exceptions.

This ordinance shall not apply and no vehicle shall be impounded if:

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

(2) 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.

(3) This article 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.

Sec. 54-103 – Procedure.

Upon seizing a motor vehicle, the police officer or other officer or agent of the Bradenton Police Department shall:

(1) Arrange for the towing of the vehicle by a company used by 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; and

(2) Provide written notice of seizure 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 seizure, the right to request a preliminary hearing pursuant to section 54-104 and the right to request a final hearing pursuant to section 54-106; and

(3) The Police Department shall provide notice of seizure by hand delivery or send notice by certified mail to all other co-owner(s) or leinholder 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 section 54-104 and the right to request a final hearing pursuant to section 54-106.

Sec. 54-104 – Preliminary hearing; administrative penalty.

(a) Within five (5) business days of receipt of the notice seizure the owner, co-owner(s) or lienholder 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 in the allotted time or the right to a preliminary hearing shall be waived. The request must include a telephone number(s) where the owner, co-owner(s), lienholder, 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, co-owner(s), leinholder or the owner's

designated agent or designated agent will be available for such telephonic notification.

(b) Upon timely receipt of any owner's, co-owner(s), leinholder's, or the owner's designated agent written request for a preliminary hearing, the City shall schedule a hearing to be held within three (3) 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, co-owner(s), leinholder, or the owner's designated agent 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.

(c) If the requesting owner, co-owner(s), leinholder, or the owner's designated agent 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, co-owner(s), leinholder's or the owner's designated agent right to a preliminary hearing. Any failure of the requesting owner, co-owner(s), lienholder, or the owner's designated agent to receive actual notice of the preliminary hearing shall not otherwise invalidate the administrative penalty proceedings as set forth herein.

(d) 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.

Sec. 54-105 – Administrative fine/posting bond.

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 administrative civil penalty of $500.00 together with all towing costs and storage. Alternatively, the owner, co-owner(s), lienholder, or the owner's designated agent may secure release of the vehicle by posting a cash bond (money order or certified check) in the amount of $500.00 together with all towing and storage costs, plus final hearing costs of $50.00, if such final hearing is requested. If no probable cause is found at the preliminary hearing, the vehicle shall be released to the owner, co-owner(s), lienholder, or the owner's designated agent as soon as practical without the imposition of any administrative fine, towing and storage costs or hearing costs.

Sec. 54-106 – Final hearing.

(a) The vehicle owner, co-owner(s), lienholder, or the owner's designated agent 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 together with a $50.00 final hearing fee. The request and final hearing fee must be delivered to the address provided in the notice of seizure and must include an address and phone number(s) where the owner, co-owner(s), lienholder, or the owner's designated agent can be notified of the date, time, and place of the final hearing.

(b) 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, co-owner(s), lienholder, or the owner's designated agent by hand delivery or by US 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.

(c) If an owner, co-owner(s), lienholder, or the owner's designated agent fails to timely request a final hearing, or if the owner, co-owner(s), lienholder, or the owner's designated agent 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, co-owner(s), lienholder, or the owner's designated agent right to a final hearing and it shall be deemed admitted that the seized vehicle was used in violation of section 54-101.

(d) 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 clear and convincing evidence that the vehicle was used as set forth in section 54-101 above. It shall be a defense that the vehicle was stolen at the time that it was seized and impounded 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 or co-owner(s) of the vehicle shall have the burden to prove said defense by a preponderance of evidence.

(e) If the final hearing has been waived, or if, after the hearing, the special master finds by clear and convincing evidence that the vehicle was used as set forth in section 54-101 above, the special master shall enter an order authorizing the continued impoundment of the vehicle pending payment of a $500.00 administrative civil penalty, towing and storage costs, plus hearing cost of $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 one of the exceptions set forth in subsection (d) above apply, the vehicle shall be released to the vehicle owner, co-owner(s), lienholder, or the owner's designated agent as soon as practicable without the imposition of an administrative fine, towing, storage or hearing costs, and any cash bond posted shall be returned.

(f) If the final hearing is not provided as set forth in this ordinance the vehicle shall be released to the owner, co-owner(s), lienholder, or the owner's designated agent as soon as practical without the impositions of penalties or fees. The owner, co-owner(s), lienholder, or the owner's designated agent shall not be entitled to release of the vehicle for delays in receiving notice of the final hearing absent a showing of resulting prejudice.

Sec. 54-107 – Costs.

A certified copy of an order of the 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 rate of twelve (12%) percent per annum 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 that 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 Section 4, Article 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.

Sec. 54-108 – Settlement agreements.

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.

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.

Sec. 54-109 – Appeals

The owner, co-owner(s), lienholder, or the owner's designated agent 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 Manatee County Florida. An appeal shall 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.

Sec. 54-110 – Savings clause.

If any section, part of a section, paragraph, clause, phrase or word of this ordinance is declared invalid the remaining provisions of this ordinance shall not be affected.

This Ordinance shall take effect 5-22-2013.

PASSED IN REGULAR SESSION, this 22nd day of MAY, 2013.

ATTEST:

City Clerk

President, City Council