

1 **BILL NO. 2009-21**

2 **ORDINANCE NO. _____**

3 AN ORDINANCE TO UPDATE THE HEARING PROCEDURES OF THE MUNICIPAL CODE
4 RELATING TO PARKING INFRACTIONS, AND TO PROVIDE FOR OTHER RELATED
MATTERS.

5 Proposed by: Bradford R. Jerbic, City Attorney Summary: Updates the hearing procedures of
6 the Municipal Code relating to parking
infractions.

7 THE CITY COUNCIL OF THE CITY OF LAS VEGAS DOES HEREBY ORDAIN
8 AS FOLLOWS:

9 SECTION 1: Title 11, Chapter 10, Section 80, of the Municipal Code of the City of
10 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

11 **11.10.080:** (A) [A person who responds to a Notice of Infraction] The owner or operator of a
12 vehicle concerning which a Notice of Infraction has been issued and served in accordance with this
13 Chapter must:

14 (1) "Admit" responsibility for the commission of the infraction and liability
15 for the penalty imposed and pay the appropriate civil fine and penalty;

16 (2) Contact the Director of Finance and Business Services, or his authorized
17 designee, "admit" responsibility and liability for the commission of the infraction and any penalties
18 thereon and arrange a schedule for the payment of such fines and penalties;

19 (3) [Accept responsibility as the owner and/or operator of the vehicle while
20 reserving the right] Request a binding hearing, as provided for in Subsections (B) to (J), inclusive, of
21 this Section in order to disclaim responsibility as the owner or operator, or to dispute the propriety of
22 the issuance of the Notice of Infraction and any penalties [thereon and agree to a binding hearing in
23 the nature of an arbitration or alternative dispute resolution as provided in Subsections (B) through
24 (J), inclusive of this Section; or] related thereto; or

25 (4) [Await the filing and receipt of a civil Complaint and Summons (or
26 Affidavit of Complaint and Order) in accordance with Section 11.10.100 through Section 11.10.120,
27 inclusive and appear as summonsed to defend against such civil Complaint (or Affidavit of
28 Complaint) or be subject to the entry of a default judgment at the time of such failure to appear as

1 summonsed (or ordered) and upon proof of service of the Complaint and Summons (or Affidavit of
2 Complaint and Order) as provided in Section 11.10.110.] Request a judicial hearing in order to
3 disclaim responsibility as the owner or operator, or to dispute the propriety of the issuance of the
4 Notice of Infraction and any penalties related thereto. A person requesting a judicial hearing pursuant
5 to this Paragraph (4) must file a written request for hearing with the Municipal Court and pay such
6 filing fee as the Court may require. In addition, the person requesting the hearing must post a bond
7 in the amount of five hundred dollars. The bond may be used to satisfy any liability of the person
8 requesting the hearing, and any portion remaining thereafter shall be returned to the person requesting
9 the hearing. The scheduling and conduct of the hearing shall be in accordance with such rules as the
10 Court may establish for hearings of this type.

11 (B) [Unless the City has sought judicial enforcement of the Notice of Infraction
12 pursuant to Section 11.10.100, a] A person may initiate a hearing pursuant to Paragraph (3) of
13 Subsection (A) of this Section by personally contacting the Director of Finance and Business Services,
14 or his designee, identifying his/her name, current address and the Notice(s) of Infraction(s) and
15 penalties thereon which such person wishes to subject to such hearing and receiving a date for such
16 hearing. Any person initiating such a hearing in this manner thereby stipulates to be bound by the
17 decision of the Hearing Officer concerning liability for the infraction(s) and responsibility for the
18 penalties thereon and shall acknowledge the same in writing. Any person scheduling a hearing before
19 the Hearing Officer thereby further stipulates that in the event of his or her failure to appear at such
20 hearing without having first sought and obtained a continuance of such hearing, the Hearing Officer
21 may enter a decision against the defendant for the full amount of fines and penalties scheduled to be
22 reviewed and shall acknowledge the same in writing. The acknowledgment provided for herein shall
23 be in substantially the following form:

24 I _____, hereby request a binding hearing [in the nature of
25 arbitration or alternative dispute resolution] before the Hearing Officer. My address is
26 _____. I request that this hearing involve Notice(s) of Infraction(s)
27 Number _____. I understand that the Hearing Officer is an attorney and not an elected
28 or appointed judge.

1 I understand that I am agreeing to be bound by the decision of the Hearing Officer. I
2 understand that if I fail to appear for the scheduled hearing before the Hearing Officer without
3 first obtaining a continuance of such hearing, the Hearing Officer can and will enter a decision
4 against me for the full amount and penalties scheduled to be reviewed. I understand and agree
5 that if necessary due to my lack of timely payment, the City of Las Vegas can and will use this
6 binding decision to have a formal civil judgment entered against me in the Las Vegas
7 Municipal Court.

8 I understand that if a civil judgment is obtained, the City may seek and obtain a writ
9 of execution against me. I understand that if a writ of execution is obtained, my wages and/or
10 bank accounts may be garnished, liens may be put on my property and my vehicle(s) may be
11 towed or immobilized. I also understand that my vehicle(s) may be immobilized without a
12 writ of execution if:

13 1. I accumulate more than \$500.00 in unpaid civil fines, judgments and penalties
14 for parking violations, or

15 2. At least five Notices of Infraction have been issued and served with respect to
16 vehicles I own and have not been responded to within the time set forth in LVMC 11.10.090.

17 Knowing all of the above, I still wish to request a binding hearing before the Hearing
18 Officer on the above-described Notice(s) of Infraction(s). I hereby acknowledge the above and
19 further acknowledge that at my request a hearing has been set for _____, 20_____
20 at the hour of _____ m.

21
22 _____
Defendant

23 (C) Any hearing conducted pursuant to Subsection (A), Paragraph (3) and
24 Subsection (B) of this Section shall be presided over by a Hearing Officer who shall be an attorney
25 licensed to practice law in the State of Nevada.

26 (D) With respect to any hearing conducted pursuant to Subsection (A), Paragraph
27 (3) and Subsection (B) of this Section, a properly filed Notice of Infraction shall constitute a claim of
28 liability and a claim for relief and no other such claim shall be required. Prima facie proof of the

1 violation alleged shall be established by the City providing the Hearing Officer with either a certified
2 copy of the Notice of Infraction or the data stored in a computer or other device as described in
3 Subsection (B) of Section 11.10.030, [, Subsection (B) of this Chapter.] No formal appearance by the
4 City Attorney's office is required. The hearings and dispositions of all such actions shall be informal,
5 with the Hearing Officer receiving witness statements or testimony and other evidence for the sole
6 purpose of dispensing fair and speedy justice between the parties.

7 (E) The burden of proving any defense shall be upon the person raising such
8 defense.

9 (F) If the Hearing Officer finds that the infraction did not occur or that an infraction
10 was committed, but one or more of the defenses set forth below is applicable, the Hearing Officer shall
11 enter his decision for the defendant. Such a decision shall release the registered owner and/or operator
12 from all liability thereunder. Such defenses include, but are not limited to:

13 (1) At the time of the receipt of the notice, possession of the subject vehicle
14 had been acquired by another in violation of the laws of the State of Nevada;

15 (2) If the notice alleges a violation of any ordinance pertaining to a meter,
16 such meter was mechanically malfunctioning to the extent that its reliability was questionable;

17 (3) Compliance with the subject ordinances would have presented an
18 imminent danger to persons or property;

19 (4) The area of the alleged violation was so inadequately marked or lit as
20 to fail to give sufficient notice that access to the area was restricted or prohibited;

21 (5) A mechanical malfunction of the vehicle caused it to be parked in the
22 area alleged and it was removed as soon as could be reasonably expected thereafter;

23 (6) At the time of the issuance of the Notice of Infraction, the vehicle was
24 parked consistent with public safety, by a physically handicapped person, a disabled veteran or a
25 person transporting a physically handicapped person or disabled veteran in compliance with NRS
26 484.407.

27 (G) Except as provided in Subsection (H) of this Section, the defendant shall pay
28 the total civil fines and penalties forthwith or at such times and on such conditions as the Hearing

1 Officer shall prescribe if it is found that the person has either failed to appear or otherwise defend
2 against the issuance of the infraction as agreed or that the infraction has been committed and no
3 applicable defense exists. It is the defendant's burden to establish by a preponderance of the evidence
4 that, through no fault of himself or his agent, he failed to receive notice of the issuance of the Notice
5 of Infraction as provided in this Chapter. If the defendant meets this burden, he is not liable for any
6 civil penalties which would otherwise apply and such penalties shall not be included in any decision
7 against the defendant.

8 (H) Upon request and proper proof, the Hearing Officer may reduce his decision
9 concerning liability by up to twenty-five percent of the original amount found due in consideration of
10 the timely payment of the prior balance if satisfied by the defendant that a preponderance of the
11 evidence shows that the defendant has become indigent and will be unable to pay the balance.

12 (I) Upon reaching a decision, the Hearing Officer shall as soon as practicable
13 thereafter, file a written decision substantially conforming to the following form:

14 City of Las Vegas, Clark County, Nevada, City of Las Vegas, Plaintiff v. _____,
15 Defendant. Before, _____, Hearing Officer for the City of Las Vegas, Clark
16 County, Nevada, decision is entered in favor of _____, (plaintiff or defendant) for
17 \$_____ (enter \$0.00 if judgment is for the defendant), on the ____ day of _____,
18 20____. I certify that the foregoing is a correct reflection of the decision entered in the action
19 properly brought for my consideration pursuant to [Title 11, Chapter 10, Section 080 of the
20 Las Vegas Municipal Code.] Section 11.10.080.

21 _____
22 Hearing Officer

23 (J) Based upon the defendant's stipulation to be bound by the decision of the
24 Hearing Officer, the City Attorney may petition the Las Vegas Municipal Court for the entry of a civil
25 judgment against the defendant in an amount equal to that stated in the written decision of the Hearing
26 Officer if the City Attorney determines this action to be necessary to enforce such decision. Service
27 of such petition on the defendant must be made by certified mail, return receipt requested, restricted
28 delivery, addressed to the registered owner of the vehicle at his last known address, as indicated by

1 the vehicle registration which is maintained by the Nevada Department of Motor Vehicles or in any
2 other manner which is authorized by law. An affidavit or declaration of mailing, a signed, returned
3 receipt, or other evidence of service shall be filed upon such service of the petition. Once a petition
4 for civil judgment pursuant to this Subsection (J) has been filed with the Municipal Court, the
5 assigned judge has jurisdiction to grant or deny the relief prayed for therein.

6 SECTION 2: Title 11, Chapter 10, Section 90, of the Municipal Code of the City of
7 Las Vegas, Nevada, 1983 Edition, is hereby amended to read as follows:

8 **11.10.090:** (A) A response to a Notice of Infraction, as provided in [Subsection (A) or
9 Subsection (B) of] Section 11.10.080, must be made within thirty calendar days after the date on
10 which the Notice of Infraction is served. If no response is received during such thirty-day period, an
11 additional civil penalty which is equal to the amount of the original civil fine must be assessed.

12 (B) After the expiration of the thirty-day response period, the Director of Finance
13 and Business Services, or his authorized designee must send a Notice of Delinquency by mail to the
14 registered owner of the vehicle at the registered owner's last known address, as indicated by the
15 vehicle registration which is maintained by the Nevada Department of Motor Vehicles. The Notice
16 of Delinquency must contain the date of the infraction, the amount of the civil fine and the amount
17 of any penalty which is associated therewith. The registered owner has fifteen calendar days after the
18 date of the Notice of Delinquency in which to respond thereto in the manner which is provided in
19 [Subsection (A) or Subsection (B) of] Section 11.10.080. If no response is made to the Notice of
20 Delinquency within such additional fifteen-day period, a civil penalty must be assessed equal to two
21 times the original civil fine amount, in addition to the original civil fine.

22 SECTION 3: Title 11, Chapter 10, Sections 100, 110 and 120, of the Municipal Code
23 of the City of Las Vegas, Nevada, are hereby repealed in their entirety.

24 SECTION 4: If any section, subsection, subdivision, paragraph, sentence, clause or
25 phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or
26 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
27 effectiveness of the remaining portions of this ordinance or any part thereof. The City Council of the
28 City of Las Vegas hereby declares that it would have passed each section, subsection, subdivision,

1 paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections,
2 subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional,
3 invalid or ineffective.

4 SECTION 5: All ordinances or parts of ordinances or sections, subsections, phrases,
5 sentences, clauses or paragraphs contained in the Municipal Code of the City of Las Vegas, Nevada,
6 1983 Edition, in conflict herewith are hereby repealed.

7 PASSED, ADOPTED and APPROVED this _____ day of _____, 2009.

8 APPROVED:

9
10 By _____
OSCAR B. GOODMAN, Mayor

11 ATTEST:

12 _____
13 BEVERLY K. BRIDGES, CMC
City Clerk

14 APPROVED AS TO FORM:

15 Val Heed 5-6-09
Date

1 The above and foregoing ordinance was first proposed and read by title to the City Council on the
2 _____ day of _____, 2009, and referred to the following committee composed of
3 _____ and _____ for recommendation;
4 thereafter the said committee reported favorably on said ordinance on the _____ day of
5 _____, 2009, which was a _____ meeting of said Council; that at said
6 _____ meeting, the proposed ordinance was read by title to the City Council
7 as first introduced and adopted by the following vote:

8 VOTING "AYE": _____

9 VOTING "NAY": _____

10 ABSENT: _____

11
12 APPROVED:

13
14 By _____
OSCAR B. GOODMAN, Mayor

15 ATTEST:

16 _____
17 BEVERLY K. BRIDGES, CMC
City Clerk