

ORDINANCE NO. 42

AN ORDINANCE PROHIBITING THE PARKING OF MOTOR VEHICLES ON THE SOUTH-EAST SIDE OF 42nd. STREET BETWEEN U. S. HIGHWAY 98 AND MIRAMAR DRIVE. AUTHORIZING THE REMOVAL OF VEHICLES SO PARKED; PROVIDING FOR PENALTIES FOR VIOLATION HEREOF; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND AND RECITING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE PEOPLE OF THE TOWN OF MEXICO BEACH:

Section 1. The parking of motor vehicles on the south-east side of 42nd. Street between U. S. Highway 98 and Miramar Drive is hereby prohibited.

Section 2. If any unauthorized vehicle is parked contrary to the provisions of Section 1 hereof, the Chief of Police of the Town of Mexico Beach, Florida, shall have the authority to have the vehicle removed at the expense of its owner.

Section 3. Anyone violating Section 1 of this Ordinance shall be guilty of a misdemeanor and shall be subject to a fine not to excede \$25.00.

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Ordinance shall take effect as provided by law.

INTRODUCED at a Regular Meeting of the Town Council on the 11th day of June, 1974, and ADOPTED by the Town Council on the 11th day of June, 1974, as an emergency Ordinance.

TOWN OF MEXICO BEACH, FLORIDA

BY Charles E. Sulphard
Mayor-Councilman

ATTEST:

Harry F. Cook
Town Clerk

IN THE COUNTY JUDGE'S COURT
IN AND FOR BAY COUNTY, FLORIDA

FILED

STATE OF FLORIDA,

77 OCT 7 AM 11 32

-vs-

CASE NO. 77-5270-TN-A-41

RALPH BUSH,

DOUGLAS WARREN
CLERK COUNTY COURT
BAY COUNTY, FLORIDA

Defendant.

O R D E R

THIS CAUSE having come before the Court upon the Defendant's Motion to Dismiss and the Court after hearing argument of counsel finding that:

1. Ordinance No. 42 of the Town of Mexico Beach is unconstitutional since it delegates legislative power to an administrative agency of the town.

Ordinance No. 42, Section 2, states:

If any unauthorized vehicle is parked contrary to the provisions of Section 1 hereof, the Chief of Police of the Town of Mexico Beach, Florida, shall have the authority to have the vehicle removed at the expense of its owner.

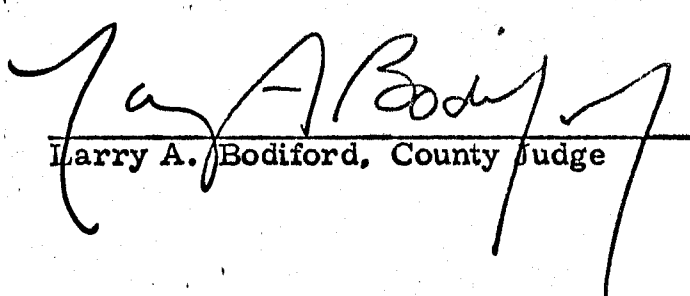
The use of the words "unauthorized vehicle" indicate that some vehicles are authorized to park in the zone referred to in Ordinance No. 42. However, no definitions of "authorized" and "unauthorized" vehicles are set forth in the Ordinance, nor are any guidelines for determining what is an authorized vehicle given to the Police force of the town, the administrative agency charged with enforcing town ordinances. Ordinance No. 42, therefore, vests unbridled discretion in the Chief of Police to define "unauthorized vehicle." Powers vested in the governing body of a town cannot be delegated to the administrative officials of the municipality. When such delegation is attempted, the ordinance is unconstitutional as in the case of City of Miami Beach v. Fleetwood Hotel, Inc., 261 So.801 (Fla. 1972), wherein Miami Beach by ordinance delegated legislative authority to a city rent agency without establishing guidelines for the exercise of the power. Accord, Amara v. Daytona Beach Shores, 181 So.2d

722 (1st D.C.A. Fla. 1966). The Town Council of Mexico Beach as in the cited cases gave legislative authority to an administrative agency of the city without establishing any guidelines for determining the types of vehicles which would be authorized or unauthorized to park on the street in question.

2. Ordinance No. 42 of the Town of Mexico Beach is unconstitutionally void for vagueness. In addition to its failure to define "unauthorized vehicles," the Ordinance also fails to designate with particularity the person or persons who shall be subject to punishment. The question arises as to whether it is the owner of the vehicle or the operator, or both, who is to be punished. Section 1 states only, "(The) parking of motor vehicles... is hereby prohibited." Section 2 is just as passive and non-specific in stating: "(If) any unauthorized vehicle is parked...." Finally, Section 3 states, "(Anyone) violating Section 1... shall be guilty of a misdemeanor...." The question of who "anyone" refers to is not resolved by the vaguely drawn ordinance. A patent ambiguity therefore exists in defining who commits the violation and the party who is to be punished for the violation. An ordinance must specify who should justly answer for infringement, and an ordinance which forbids the doing of an act in terms so vague that people of common intelligence must necessarily guess at its meaning and differ as to its application violates the due process clause of the 14th Amendment to the U.S. Constitution and Article 1, Section 9, of the Florida Constitution (1968). McCall v. State, 23 So.2d 492 (Fla. 1945); Steffens v. State, 343 So.2d 90 (3d D.C.A. 1977); State v. Smith, 237 So.2d 139 (Fla. 1970); Connally v. General Construction Company, 269 U.S. 385 46 S. Ct. 126, 70 L. Ed. (1926). It is therefore

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss the charges filed in this case is granted on the ground that the Ordinance under which he is charged is unconstitutional on its face.

DONE AND ORDERED this 7 day of October, 1977, at Panama City, Bay County, Florida.


Larry A. Bodiford, County Judge