

RECOMMENDED: Public Safety Committee
Johnathan Austin, Chairman

SUBMITTED: Acting Chief Assistant
City Attorney

ORDINANCE NO. 10-11

AN ORDINANCE OF THE CITY OF BIRMINGHAM, ALABAMA ADDING and ENACTING A NEW SECTION 11-8-9 OF THE CODE OF THE CITY OF BIRMINGHAM TO MAKE IT UNLAWFUL TO PARK A MOTOR VEHICLE IN THE FRONT YARD OF A RESIDENCE AND OR BUSINESS OR UPON AND OR OVER A SIDEWALK WITHIN THE CORPORATE LIMITS OF BIRMINGHAM, THE VIOLATION FOR WHICH A PARKING CITATION MAY BE ISSUED.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BIRMINGHAM, ALABAMA:

THAT A NEW SECTION 11-8-9 OF THE CODE OF THE CITY OF BIRMINGHAM BE ADDED AND ENACTED TO READ AS FOLLOWS:

Section 11-8-9 Prohibited Parking in Front Yard

(a)Prohibition. It shall be unlawful within the corporate limits of the City of Birmingham to:

- (1) Park or place, within a residential area a motor vehicle, recreational vehicle, boat, trailer, or other type of similar wheeled conveyance, in the front yard of a residence unless it is parked on a paved and properly permitted driveway that provides access to a carport or garage that is incorporated into the main house structure; or that provides access to a parking area located entirely within the side or rear yard.
- (2) Park or place, within a commercial area, a motor vehicle, recreational vehicle, boat, trailer, or similar type of wheeled conveyance, in the front yard of a business unless it is parked upon a properly paved and permitted parking lot or paved driveway that provides access to the same.
- (3) Park a motor vehicle, recreational vehicle, boat, trailer, or other type of wheeled conveyance over any part of a curb, sidewalk, or unpaved portion of the public right-of-way.

(b) Definitions: For purposes of this section the following definitions shall apply:

(1) *Front yard.* Any portion of a lot or parcel of land which extends its full width and lies between the edge of a public street and the front of the principal building or structure on the lot or parcel.

(2) *Principal Building.* The principal dwelling house, office, or, if there is no principal dwelling house or office, that building which is closest in distance to the public street. The front of the principal building shall be all of the principal building which lies between the two corners which constitute the widest portion of that side of the principal building which faces the public street and shall include all sides of a building which face a public street where the lot or parcel either lies in a curve of the public street, or which occupies a corner bounded on two or more sides by a public street.

(3) *Driveway.* Any area which is constructed for the purpose of accessing a parking space or area, and which is surfaced with concrete or asphalt, or brick, concrete or stone pavers. For the purposes of this ordinance any driveway must connect to the public street and must include a curb cut where street curbing is present. All driveways must be permitted by the Department of Planning Engineering and Permits prior to their installation.

(4) *Sidewalk.* Any area within the public right of way which is surfaced with asphalt, concrete, pavers or stone, and which is set aside and maintained by the City of Birmingham for the purpose of accommodating pedestrian traffic.

(5) *Motor vehicle.* Any motorized or electric vehicle which is required to be registered and licensed by the State of Alabama in order to be driven on a public street.

(6) *Registered Owner.* The owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country.

(7) *Variance:* A lessening of the requirements of the Zoning Ordinance. A variance can only be granted by the Zoning Board of Adjustment in a public hearing.

(c) Exceptions

(1) *Limited Use:* For the purposes of this ordinance, parking in the front yard, as restricted by Section a(1) above, shall not be prohibited where the motor vehicle is parked for the limited purpose of loading, unloading, or washing. This exception shall only apply while the owner or operator of the motor vehicle is actively engaged in the said task, and in no event shall this exception apply for more than three (3) hours in any given twenty-four (24) hour period.

(2) Emergency Vehicles: The prohibitions of this ordinance shall not apply to authorized emergency vehicles parked while emergency personnel are engaged in answering a call or rendering assistance. Authorized emergency vehicles shall include police and fire vehicles, as well as ambulances and hearses.

(3) Historic Districts: The provisions of this ordinance shall not operate to allow the construction of driveways or the use of property in historic districts which conflicts with the rules and regulations governing land use in those districts.

(4) Variance: Locations in compliance with a variance granted by the Zoning Board of Adjustment to allow parking in the front yard shall be deemed to be in compliance with this Ordinance.

(d) Imposition of Penalties for Violations

(1) Any person or property owner found to have himself parked, to have allowed others to be parked, or having a parked vehicle on his property, in violation of this ordinance shall be subject to a fine of Fifty Dollars (\$50.00). Each calendar day in which a violation hereunder continues or re-occurs shall constitute a separate violation.

(2) The Mayor of the City of Birmingham, or his duly appointed designee, shall be charged with the enforcement of this ordinance. For each violation, a citation shall be posted on or near the front windshield of the motor vehicle found to be parked in violation of this ordinance. The property owner or registered owner of the vehicle shall have thirty (30) calendar days within which to enter a guilty plea and pay the said fine.

(A) *Failure to pay Fine.* If the fine is not paid within the prescribed thirty (30) calendar days, a summons shall issue from the municipal court commanding the presence of the property owner or registered owner of the offending motor vehicle in municipal court to defend the prosecution of the said violation.

(B) *Failure to Appear.* If the property owner or registered owner does not appear at the time and place prescribed in the summons, and fails to enter a guilty plea and pay the fine before the said prescribed time, the Municipal Court may issue a warrant for the arrest of the property owner or registered owner, who may be fined up to Fifty Dollars (\$50.00) and held for up to five (5) days in the municipal jail.

(C) *Hearing.* A hearing shall be held by the Municipal Court at the time and place prescribed in the summons. Upon a determination by the Municipal Court that a violation has occurred, the Court shall order the property owner or person found to have been operating the vehicle to pay the fine set out in Section d(1) above. The Municipal Court shall have the additional authority to impose any court costs which may be allowable by Alabama law upon a conviction after hearing or upon receiving a guilty plea after the issuance of the summons.

(D) *Failure to Pay Court Ordered Fine and Costs.* If, after the hearing, the Municipal Court orders the payment of the fine and/or costs set out in Section d(2)(C) above, and the person so ordered to pay fails to pay the said amounts, the Municipal Court may enforce the said order in accordance with Rule 26.11 of the *Alabama Rules of Criminal Procedure* as well as any other law, whether state, federal, or local which may empower the court to enforce the said order.

(3) The Mayor of the City of Birmingham, or his duly appointed designee, shall have the authority to enter upon private property for the purpose of ticketing an offending vehicle found parked in violation of this ordinance.

This ordinance shall become effective when published as required by law.

Adopted by the Council of the City of Birmingham January 26, 2010 and Approved by the Mayor February 4, 2010


Paula B. Smith
City Clerk 