

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

C. 1
§72.73 Regulation of Wheel
Clamps or Booting
Page 1 of 16

9/3/2013

City Council Meeting Date
Agenda Items Only

Kit Williams
Submitted By

City Attorney
Division

City Attorney
Department

Action Required:

Enact §72.73 Regulation Of Wheel Clamps or Booting On Private Pay To Park Lots Within The Entertainment District Parking Zone into The Fayetteville Code.

<u>\$0</u> Cost of this request	<u>\$ -</u> Category / Project Budget	<u></u> Program Category / Project Name
<u></u> Account Number	<u>\$ -</u> Funds Used to Date	<u></u> Program / Project Category Name
<u></u> Project Number	<u>\$ -</u> Remaining Balance	<u></u> Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature] August 15, 2013 Previous Ordinance or Resolution #
Department Director Date

Original Contract Date:

[Signature] August 15, 2013 Original Contract Number:
City Attorney Date

[Signature] 8/16/13
Finance and Internal Services Director Date

Received in City Clerk's Office 15-13A10:57 RCL
[Signature]

[Signature] 8/19/13
Chief of Staff Date

Received in Mayor's Office
ENTERED 8/15/13
[Signature]

[Signature] 8/21/13
Mayor Date

Comments:

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Sharon Waters, Parking & Telecommunications Manager

FROM: Kit Williams, City Attorney



DATE: June 13, 2013

**RE: Regulating "Booting" on Private Pay to Park Lots within the
Dickson Street Entertainment District**

After the Legislature granted (upon our request) cities in Arkansas the power to regulate nonconsensual towing, the City Council passed nonconsensual towing regulations which reduced the over \$100.00 fees and prevented tows to distant storage lots which had plagued visitors to Dickson Street who parked on private pay to park lots. The numerous citizen and tourists complaints about such nonconsensual towing virtually disappeared.

Unfortunately, some private pay to park lots owners (to maintain a large revenue source from these \$100.00 and more penalties for overparking in their lots) began to institute booting of overparked cars. Certainly, the parking lot owners and managers need some way to ensure that owners of vehicles do not overpark and then just drive away without paying for their overparking. Unfortunately, the private pay to park lot owners and managers began to charge over \$100.00 to remove the wheel clamp (also known as "boots") from a vehicle of a driver who may have overparked only a few minutes. Additionally, the signs about booting cars for overparking and the large penalty fees to remove the wheel clamps were not very visible nor clear about the large fee. Some parkers believed that some private parking lots were City public parking lots and thus were shocked to face a demand of an over \$100.00 cash payment to be able to drive

home (instead of a \$15.00 parking ticket that could be paid later). The City began receiving numerous complaints about the booting of cars. Some drivers complained that their cars had been booted even before their paid parking time had expired.

Mayor Jordan and his administration wanted to resolve this problem by regulating such booting companies as the City had regulated the towing companies. We asked our legislative delegation to sponsor a bill that would authorize us to regulate booting. We would like to thank our region's legislative delegation and especially Representative David Whitaker who sponsored Act 1364 which empowered cities to "by ordinance regulate the use of wheel clamps." As with most other Acts, Act 1364 will become effective on August 16, 2013.

I have drafted a proposed new code section in the **Parking** Chapter of the Fayetteville Code which would immediately follow §72.71 and §72.72 which require signage for private pay to park lots that are empowered to nonconsensually tow overparked vehicles and regulate such towing. §72.73 would require a very similar sign (which can be combined into one sign for both towing and booting) which warns parkers that their overparked vehicle may be booted and that the lot's manager may charge up to \$40.00 to remove the boot. §72.73 would also regulate the maximum charge (\$40.00) and how it could be paid.

I am suggesting the \$40.00 maximum fee which is lower than the current \$60.00 maximum fee for nonconsensual towing because of the lower costs to the parking lot management of booting rather than towing a vehicle.

The City could regulate other aspects of companies using a wheel clamp such as requiring clearly visible identification of each worker, uniforms, requiring wheel clamps to be removed within a certain number of minutes of the car owner offering payment, etc., but I did not include such regulations nor other type of regulation that I did not think absolutely necessary at this time. I believe it is better to limit the amount of regulation as much as possible knowing that the City Council can revisit the issue and impose additional regulations in the future if necessary.

The proposed ordinance or any modification thereof cannot be presented for official City Council action before the effective date of Act 1364 (August 16, 2013). However, I suggest we be ready with an ordinance to enact §72.73 in a form agreeable to the City Council at the City Council's meeting of August 20, 2013. It would probably be wise to consider this proposed ordinance at an Ordinance Review Committee in July so that the City's Parking Division and any other City staff can present their comments and suggestions and so the City Council members make any necessary or desirable amendments.

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Jeremy Pate, Development Services Director
Sharon Waters, Parking & Telecommunications Manager

FROM: Kit Williams, City Attorney



DATE: June 28, 2013

RE: Two Revisions to proposed Wheel Clamp/Booting Regulations

After speaking with staff at the Municipal League conference, I am suggesting two additions to the Booting/Wheel Clamp ordinance. The first is to require acceptance of cash. (I did not realize this was a problem.) Second, I suggest requiring the removal of the wheel clamp within 15 minutes of the telephone call or the notice to the entity which has installed the wheel clamp or boot if the owner or operator of the vehicle has paid the fee (maximum would be \$40.00).

Attached is the revised proposed omit section which would be Exhibit A to the enacting ordinance. The revisions are in subsections (E) and (F). I still request that the Ordinance Review Committee schedule a meeting in July to consider this wheel clamp/booting regulating ordinance.

*Kit Williams
City Attorney*

*Jason B. Kelley
Assistant City Attorney*

**TO: Mayor Jordan
City Council**

**CC: Don Marr, Chief of Staff
David Jurgens, Utilities Director
Sharon Waters, Parking & Telecommunications Manager**

FROM: Kit Williams, City Attorney

DATE: August 15, 2013

RE: Regulation of Wheel Clamps

I want to thank the Ordinance Review Committee for meeting to discuss the proposed § 72.73 **Regulation of Wheel Clamps or Booting on Private Pay To Park Lots Within the Entertainment District Parking Zone**. I regret that I could not attend because I was out of state. Jason has informed me of your comments and suggestions about this proposed ordinance.

(1) Wheel clamp company employees must wear uniforms and display photo identification

I understand that you want the wheel clamp company employees to be required to wear company uniforms and display photo identifications. I will place these requirements in § 72.73 (F) of the Fayetteville Code of Ordinances pursuant to your requests.

(2) Expand the application of the towing and booting regulations beyond the Entertainment District Parking Zone

I would like to discuss your suggestion to apply these regulations City-wide rather than only applying it within the Entertainment District Parking Zone as has been done successfully for the towing regulations. My understanding is that citizen towing complaints have pretty much disappeared since the enactment of our current towing regulation.

Expanding the application of all of the towing regulations city wide is not needed and could have adverse unintended consequences. In the first place, almost all of nonconsensual towing problems were located within the Entertainment District Parking Zone. We had only had towing problems with one other parking lot outside the Entertainment District and solved that problem by buying that lot for the Fayetteville Police Department use.

There is one private pay to park lot outside the Entertainment District Parking Zone on Mountain Street near College Avenue that boots over parked vehicles. If you wanted to extend the booting regulations to cover this lot, you could extend booting regulations to cover private pay to park lots in this Downtown Business Parking District Zone. We would also then need to extend only the regulation of the towing regulations applicable to private pay top park lots to the Downtown district. I will work on such an amendment, but it is not ready for the Tentative Agenda.

(3) Extensive permitting and criminal background checks for all wheel clamp company employees

I am somewhat concerned that you wish to require the same background checks of all wheel clamp company employees as you did for door-to-door solicitors. Below is the extensive permitting/background checks that you required of door-to-door solicitors to permit them to go up to our citizens' front doors for solicitation purposes.

“(D) *Permit for peddlers/solicitors.* In addition to the principal permit, each peddler or solicitor acting for the principal shall also obtain a permit from the Planning Department before peddling or soliciting within the city. The cost to obtain a peddler/solicitor permit is \$5.00. In applying for the permit, each applicant shall provide the following to the Planning Department:

- (1) The name of the principal applicant for whom they are going to act as a peddler or solicitor;
- (2) The name, address, and telephone number of the person who is going to act as a peddler or solicitor, and in addition, they must also provide photo identification;
- (3) A signed statement under oath that the person applying to be a peddler/solicitor has not been convicted of felonies or any misdemeanors involving theft, sexual offenses, or violence;
- (4) A criminal background check from the Arkansas State Police and from the State Police of the State which issued the Driver’s License of the applicant which shows that peddler or solicitor has not, within the preceding five years, been convicted of any felonies, or any misdemeanors involving theft, sexual offense or violence, nor has been incarcerated in prison at any time during the last five years. No person shall be issued a permit as a peddler or solicitor that has been convicted of any of the offenses set out above nor in prison during the last five years.”

This very extensive permitting process is now only required for door-to-door solicitors and is justified to protect our residents in their homes from possible criminal acts. We enjoy enhanced rights of security and privacy in our homes which are inherently greater than when we park our car in someone else’s private parking lot. Thus, the justification for an extensive criminal background check and permitting process is much

greater for door-to-door solicitors than any other group of workers regulated by the City.

The inherent (although very small) danger of using a taxi is far greater than having an employee remove a wheel clamp and yet our permitting system for taxi drivers, pedicab operators, limo drivers, etc. is much less than proposed for wheel clamp company employees. We do not now require any criminal background check for tow company employees.

To apply the same extensive criminal background check and permitting process for door-to-door solicitors to wheel clamp company employees would be expensive and time consuming for the companies and whatever City division you would decide must administer this program. Is there a true current problem with wheel clamp company employees that justifies this cost and expenditure by the companies and the City? I suggest we not place such extensive permitting process into the law until our Police Department reports about problems that would justify such regulation.

(4) Penalty Provision

Unless the penalty for violating this proposed code section is **not** to be the standard \$500.00 maximum, pursuant to § 72.99, there is no need to state the penalty in the code section. Indeed, it is inadvisable to needlessly lengthen the Fayetteville Code by inserting a penalty provision in a code section that simply repeats the penalty that is already applicable to the violation of this code section and all other code sections that do not have a different express penalty.

(5) Receipt for payment

I assumed the wheel clamp company already provided receipts for payments. If not, they certainly should, and so I have included this requirement in the ordinance in § 72.73 (E) pursuant to your recommendation.

CONCLUSION

I want to thank the Ordinance Review Committee for reviewing the proposed Booting Regulation Ordinance and for your several recommendations. I have incorporated some of those recommendations into the proposed ordinance that I will submit the full City Council for its review and final decision.

I regret that the Ordinance Review Committee meeting could not have been scheduled so I could have attended. If I would have been there, I could have explained the long history of citizen complaints about improper towing actions, our three year efforts to obtain statutory authority to regulate towing and the extensive and thoughtful work of the previous City Council when it enacted the towing regulation ordinance after contentious City Council meetings. I believe this history explains why the City Council applied the regulations only within the Entertainment District.

When wheel clamp companies began giving our City a bad name by overcharging citizens using a private parking lot without adequate warning signs, Mayor Jordan and I sought help from our legislative delegation. Representative David Whitaker sponsored our requested legislation giving cities the authority to regulate wheel clamping activities. This law will soon be in effect so we can enact our booting regulations.

ORDINANCE NO. _____

AN ORDINANCE TO ENACT §72.73 REGULATION OF WHEEL CLAMPS OR BOOTING ON PRIVATE PAY TO PARK LOTS WITHIN THE ENTERTAINMENT DISTRICT PARKING ZONE AND THE DOWNTOWN BUSINESS PARKING DISTRICT ZONE INTO THE FAYETTEVILLE CODE

WHEREAS, numerous Fayetteville citizens and visitors have complained about excessive charges, unprofessional conduct and the lack of adequate signage to warn parkers that their vehicles would be booted if parked overtime in some private pay to park lots within Fayetteville's Entertainment District and Downtown Business Parking District Zone; and

WHEREAS, the excessive booting fees charged with insufficient notice has damaged the Fayetteville's reputation as a fun and welcoming place to visit and enjoy our great restaurants and night life; and

WHEREAS, Mayor Lioneld Jordan and his staff requested State Representative David Whitaker to sponsor an Act to provide the City of Fayetteville the power and authority to regulate the use of wheel clamps (also known as "boots") in order to ensure the use of such wheel clamps would not be oppressive, unfair or surprising to vehicle owners who choose to park in private pay to park lots; and

WHEREAS, the Fayetteville City Council has determined that reasonable regulations of private pay to park lots' use of wheel clamps to necessary to preserve and improve the peace, welfare and safety of its citizens and visitors and the economic well being of Downtown and the Dickson Street Entertainment District.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby enacts **§72.73 Regulation Of Wheel Clamps or Booting On Private Pay To Park Lots Within The Entertainment District Parking Zone and the Downtown Business Parking District Zone** into The Fayetteville Code as shown as Exhibit A attached hereto and made a part hereof.

PASSED and **APPROVED** this 3rd day of September, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Exhibit A

72.73 Regulation of Wheel Clamps or Booting on Private Pay to Park Lots Within the Entertainment District Parking Zone and the Downtown Business Parking District Zone

- (A) *Exemption from the Sign Ordinance.* All signs required by this section shall be exempt from further regulation of the Sign Ordinance pursuant to §174.03(F).
- (B) *Location and size of Wheel Clamps/Booting Warning Sign.* Every owner of a private pay to park lot with five or more spaces that desires to use wheel clamps (also known as boots) must have an easily readable Wheel Clamp/Booting Warning Sign that is not more than 16 square feet, devoid of any advertising and prominently placed at each entrance to the parking lot.
- (C) *Contents of Sign for Private Pay To Park Lots.* The Wheel Clamp/Booting Warning Sign shall contain only the following information in clearly legible letters at least one inch in height in the following order from the top of the sign for a private parking lot that allows paid parking.
- (1) "Private Pay To Park Lot."
 - (2) At the option of owner, the sign may identify the lot by name.
 - (3) Either "Pay to park at all hours" or "Pay to park during (posted hours)."
 - (4) At the owner's option, the sign may show the hourly rate and any maximum day or evening rate for the parking lot.
 - (5) "Parking in violation of posted restriction will result in a fee for the booting and overtime parking of the vehicle at owner's expense, up to a maximum total of \$40.00."
 - (6) Name, address and telephone number of firm authorized to boot vehicles on this private pay to park lot.
 - (7) If the private pay to park lot owner wishes to boot and tow overparked vehicles, the sign information required by this section and §72.71 may be combined into a single sign.
- (D) *Allowed maximum charge for placing and removing a wheel clamp or boot upon an overparked vehicle.* Within the Entertainment District Parking Zone and the Downtown Business Parking District Zones, no private pay to park lot owner, manager, company or other entity may charge more than Forty Dollars (\$40) total to place and remove a wheel clamp or boot on a vehicle that has been parked longer than the period for which the vehicle's owner has paid to park. No other fees may be charged. With proper signage required by §72.71, the parking lot owner, manager, company or other entity managing the lot may tow this vehicle pursuant to the Fayetteville Code, but can charge only the nonconsensual towing fee and not add or charge the booting fee allowed in this section.
- (E) *Payment by the owner/operator for the installation and removal fee for Wheel Clamps or Boots.* The parking lot owner, manager, company or other entity which has installed wheel clamps or boots upon overparked vehicles must accept valid credit and debit cards and cash for the payment allowed by (D) at the parking lot and may accept any other form of payment. An accurate and legible receipt for this payment must immediately be provided to the vehicle owner or operator.
- (F) *Company must answer telephone and promptly remove wheel clamp.* The private pay to park lot owner, manager, company or other entity shall immediately answer every telephone call for the number displayed upon the Wheel Clamp/Booting Warning Sign after a vehicle has been booted as long as such vehicle remains in the company's possession. The entity must respond to any telephone call or other notice from the vehicle's owner or operator and remove the wheel clamp within 15 minutes of such call or notice if the owner or operator has paid the allowed fee. All wheel clamp company employees dealing with customers must wear a company uniform and display a company photo ID.
- (G) *No application to University of Arkansas property.* §§72.71-.73 have no limitation, application or effect upon the University of Arkansas's nonconsensual towing or booting powers for vehicles parked on any University of Arkansas lot or parking space.

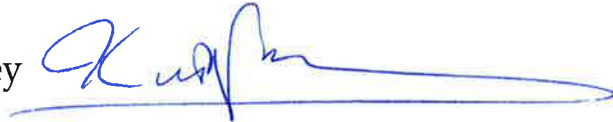
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Casey Jones, Prosecuting Attorney
Sharon Waters, Parking & Telecommunications Manager

FROM: Kit Williams, City Attorney



DATE: August 21, 2013

RE: Ordinance Review Committee's recommendation for §§ 72.73
Regulation of Wheel Clamps

Although I have previously pointed out where I disagreed with the recommendations of the Ordinance Review Committee made to my proposed Regulation of Wheel Clamps Ordinance, I thought I should draft the committee's proposed ordinance for the City Council's consideration. It is attached to this memo.

**Ordinance Review Committee's
recommendation**

**72.73 Regulation of Wheel Clamps or
Booting on Private Pay to Park Lots
Throughout Fayetteville**

- (A) *Exemption from the Sign Ordinance.* All signs required by this section shall be exempt from further regulation of the Sign Ordinance pursuant to §174.03(F).
- (B) *Location and size of Wheel Clamps/Booting Warning Sign.* Every owner of a private pay to park lot with five or more spaces that desires to use wheel clamps (also known as boots) must have an easily readable Wheel Clamp/Booting Warning Sign that is not more than 16 square feet, devoid of any advertising and prominently placed at each entrance to the parking lot.
- (C) *Contents of Sign for Private Pay To Park Lots.* The Wheel Clamp/Booting Warning Sign shall contain only the following information in clearly legible letters at least one inch in height in the following order from the top of the sign for a private parking lot that allows paid parking.
- (1) "Private Pay To Park Lot."
 - (2) At the option of owner, the sign may identify the lot by name.
 - (3) Either "Pay to park at all hours" or "Pay to park during (posted hours)."
 - (4) At the owner's option, the sign may show the hourly rate and any maximum day or evening rate for the parking lot.
 - (5) "Parking in violation of posted restriction will result in a fee for the booting and overtime parking of the vehicle at owner's expense, up to a maximum total of \$40.00."
 - (6) Name, address and telephone number of firm authorized to boot vehicles on this private pay to park lot.
 - (7) If the private pay to park lot owner wishes to boot and tow overparked vehicles, the sign information required by this section and §72.71 may be combined into a single sign.
- (D) *Allowed maximum charge for placing and removing a wheel clamp or boot upon an overparked vehicle.* No private pay to park lot owner, manager, company or other entity may charge more than Forty Dollars (\$40) total to place and remove a wheel clamp or boot on a vehicle that has been parked longer than the period for which the vehicle's owner has paid to park. No other fees may be charged. With proper signage required by §72.71, the parking lot owner, manager, company or other entity managing the lot may tow this vehicle pursuant to the Fayetteville Code, but can charge only the nonconsensual towing fee and not add or charge the booting fee allowed in this section.
- (E) *Payment by the owner/operator for the installation and removal fee for Wheel Clamps or Boots.* The parking lot owner, manager, company or other entity which has installed wheel clamps or boots upon overparked vehicles must accept valid credit and debit cards and cash for the payment allowed by (D) at the parking lot and may accept any other form of payment. An accurate and legible receipt for this payment must immediately be provided to the vehicle owner or operator.
- (F) *Company must answer telephone and promptly remove wheel clamp.* The private pay to park lot owner, manager, company or other entity shall immediately answer every telephone call for the number displayed upon the Wheel Clamp/Booting Warning Sign after a vehicle has been booted as long as such vehicle remains in the company's possession. The entity must respond to any telephone call or other notice from the vehicle's owner or operator and remove the wheel clamp within 15 minutes of such call or notice if the owner or operator has paid the allowed fee. All wheel clamp company employees dealing with customers must wear a company uniform and display a company photo ID.
- (G) *Permit for Wheel Clamp Company employees and required criminal background checks.* Every wheel clamp employee who may come into contact with the public shall obtain a permit from the Planning Department before beginning employment with the wheel clamp company. The cost to obtain the wheel clamp company employee permit is \$5.00. In applying for the permit,

each applicant shall provide the following to the Planning Department:

(1) the name of the owner or manager of the wheel clamp company;

(2) the name, address and telephone number of the wheel clamp company employee and his or hers photo identification;

(3) a signed statement under oath that the person applying to be a wheel clamp company employee has not been convicted of felonies or any misdemeanors involving theft, sexual offenses, or violence:

(4) a criminal background check from the Arkansas State Police and from the State Police of the state which issued the Driver's License of the wheel clamp company employee which shows that the employee has not within the preceding five years been convicted of any felonies, or any misdemeanors involving theft, sexual offense or violence, nor has been incarcerated in prison at any time during the last five years.

No person shall be issued a permit as a wheel clamp company employee who has been convicted of any of the offenses set out above or who has been in prison at any time during the last five years.

- (H) *No application to University of Arkansas property.* §§72.71-.73 have no limitation, application or effect upon the University of Arkansas's nonconsensual towing or booting powers for vehicles parked on any University of Arkansas lot or parking space.
- (I) *Penalty.* Any person convicted for violating this section shall be fined up to \$500.00.

