

City of Fayetteville Staff Review Form

2022-0921

Legistar File ID

10/18/2022

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Mike Reynolds

9/26/2022

POLICE (200)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends amending Fayetteville City Ordinance §72.02 Nonconsensual, Police Initiated Towing, Storage and Impoundment Procedures to include illegally parked trailers and constructed alleys.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u> No </u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u> No </u>	Item Cost \$ -
Budget Adjustment Attached? <u> No </u>	Budget Adjustment \$ -
	Remaining Budget \$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF OCTOBER 18, 2022

TO: Mayor and City Council
FROM: Mike Reynolds, Chief of Police
DATE: September 26, 2022

A handwritten signature in black ink that reads "Mike Reynolds".

SUBJECT: Providing the Fayetteville Police Department the Right to Tow a Trailer Blocking an Alley

RECOMMENDATION:

Staff recommends amending Fayetteville City Ordinance §72.02 Nonconsensual, Police Initiated Towing, Storage, and Impoundment Procedures to include illegally parked trailers and constructed alleys.

BACKGROUND:

Last year, a complaint was filed with code compliance against a resident who had parked a large trailer in a public alley. The City prosecutor filed a criminal case over the matter for violation of 98.01 Obstruction Prohibited. Unfortunately, the trailer's owner failed to appear and the trailer is still illegally parked.

DISCUSSION:

To give the Fayetteville Police Department the power to remove illegally parked trailers blocking alleys, 72.02 Nonconsensual, Police-Initiated Towing, Storage, and Impoundment Procedures will need to be amended to include illegally parked trailers and constructed alleys.

BUDGET/STAFF IMPACT:

There is no budget or staff impact with this item.

Attachments:

City Attorney Memo
City Attorney Departmental Correspondence
Letter from Lamar Pettus
Proposed Change to Ordinance 72.02
Photos
City Ordinance 72.02



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**

CC: **Susan Norton, Chief of Staff**
Chief Reynolds

FROM: **Kit Williams, City Attorney**

DATE: **July 22, 2022**

RE: Extend Police-initiated Towing, Storage and Impoundment Powers to Tow a Trailer Blocking a Constructed Alley or Trail

I think that the ordinance I drafted to give our Police Department authority to have a trailer blocking a constructed alley or trail should go forward to the City Council. I realize that the large semi-sized trailer which has blocked a paved alley for over a year will still be a logistics problem, but the City through its police force should have authority to tow away trailers improperly blocking paved alleys.

The City Prosecutor's prosecution attempt has been unsuccessful as the owner failed to appear for his criminal case. A Failure to Appear warrant has been issued, but the owner has not been served nor arrested yet. Thus, the trailer remains illegally parked in and blocking an alley to the detriment of his neighbors. The City needs the power and authority to nonconsensually tow this trailer (and any other offending trailer) even though it will be a difficult proposition.

I have attached my proposed Agenda Memo, which I supplied on May 19, 2022. I still believe it is better for City Staff or the Fayetteville Police Department to be the sponsor of this code change ordinance.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Mayor Jordan**
City Council

CC: **Kara Paxton, City Clerk/Treasurer**
Susan Norton, Chief of Staff
Chief Reynolds

FROM: **Kit Williams, City Attorney**

DATE: **May 19, 2022**

RE: **Providing the Fayetteville Police Department the Right to Tow a Trailer Blocking a Paved Public Alley**

Last year Council Members Petty and Kinion assisted Lamar Pettus in filing a complaint in Code Compliance against a neighbor that had blocked a paved alley needed for use by Mr. Pettus. Evidently Code Compliance had to refer this complaint to the City Prosecutor who properly filed a criminal case for violation of §98.01 **Obstruction Prohibited**: "It shall be unlawful for any person to obstruct any street, alley or sidewalk or to choke up any gutter in the city."

Unfortunately, the trailer's owner failed to appear for his criminal trial. A failure to appear was issued for the trailer's owner, but he has not been able to be served with that and his trailer is still illegally blocking the alley. I understand that an additional criminal prosecution for the continuing violation of §98.01 is in the works.

To give the Fayetteville Police Department the power to remove this illegally parked trailer blocking the alley, §72.02 **Nonconsensual, Police-initiated Towing, Storage and Impoundment Procedures** will need to be amended to include illegally parked trailers and also to include alleys. When enforcing criminal violations or authorizing the seizing personal property (like a trailer), the *Fayetteville Code* must provide clear and unambiguous authority to the Fayetteville Police Department. Thus, an amendment is needed before this trailer can be towed by the Police to open up normal use of the paved alley for nearby residents. Attached is Mr. Pettus' letter and two photos of the large trailer blocking the paved public alley.

Lamar Pettus
PO Box 10306
Fayetteville, AR 72703-0041
pettus720@icloud.com
479-530-4719

RECEIVED
MAY 17 2022
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

May 12, 2022

Mayor Lioneld Jordan
City Hall
113 W. Mountain Street
Fayetteville, AR 72701

Dear Mayor Jordan:

I hate to bother you with the following matter; however, a year has passed since I brought this matter to the attention of members of the City Council, Mr. Matthew Petty and Mr. Mark Kinion. I appreciate their immediate assistance and have no criticism of either.

The problem: Robert Drew Spurlock, 114 W. Watson St. has moved a trailer into City Alley 164. This trailer is the type pulled by a tractor and the units are commonly referred to as "18 wheelers". Alley 164 is a north south alley lying between property owned by Pettus Family, LLC (104/106 W. Watson) and Mr. Spurlock (114 W. Watson). Alley 164 intersects Alley 362. Alley 362 dead ends into the Pettus Family LLC property.

With the assistance of Mr. Kinion and Mr. Petty, I filed a Code Compliance Complaint against Mr. Spurlock. I do not know the results of that complaint.

An action was brought against Mr. Spurlock for a violation of City Code 98.01, obstructing an alleyway. The action is filed in District Court as Case No. CVZD-2021-000349.

On January 21, 2022 in response to my inquiry of the status, Mr. Chad Ball, Investigator, City Prosecutor's Office sent an email stating a hearing or trial was scheduled for 1/19/22 and Mr. Spurlock failed to appear.

Mayor Jordan, not only is this trailer blocking an Alley, it constitutes a fire hazard. At one time in 2021, it appeared a person was living in the trailer. If so then it is a health hazard.

I am enclosing some photographs printed on my printer. I would request you drive by 114 W. Watson and get a personal view of what has happened.

Thank you for you past, present and future service to the people of the City of Fayetteville.

Respectfully,

Lamar Pettus

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §72.02 NONCONSENSUAL, POLICE-INITIATED TOWING, STORAGE AND IMPOUNDMENT PROCEDURES TO ALLOW TOWING OF A TRAILER BLOCKING AN ALLEY

WHEREAS, vehicles parked in alleys which prevent property owners from using their abutting alleys for normal use are already illegal, pursuant to the *Fayetteville Code*, but also should be subject to police-initiated nonconsensual tows.

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 amends §72.02 (A) of the *Fayetteville Code* to add “constructed alleys” and amends subsection (3) and subsection (3)(a) to read as follows:

“(3) When any vehicle or trailer is parked or left unattended upon a city street, street right-of-way, constructed alley, trail, or trail right-of-way and:

(a) Constitutes a hazard or obstruction to the normal movement of traffic or vehicles on the street, constructed alley, or trail...”

PASSED and APPROVED this _____ day of _____, 2022.

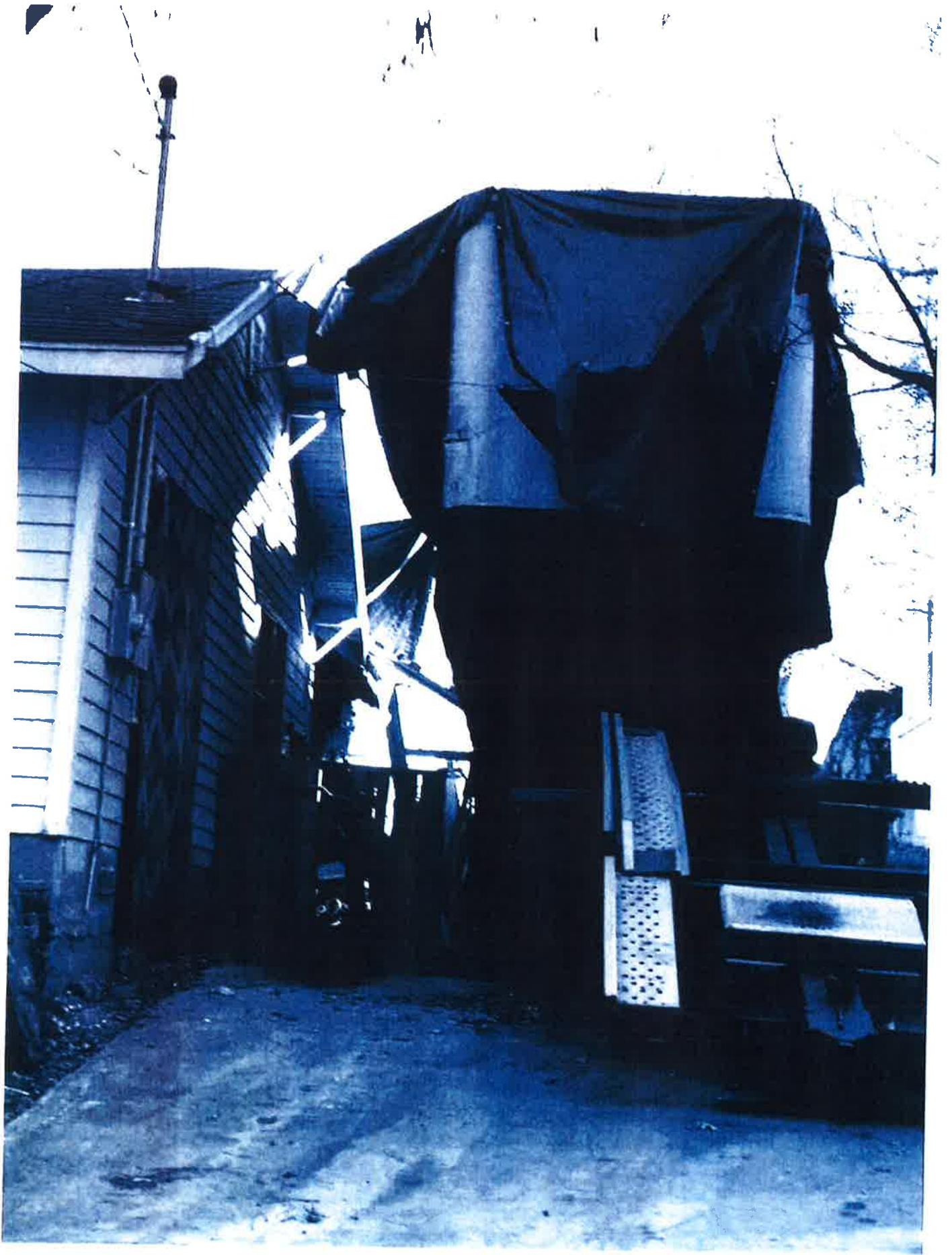
APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer





72.02 - Nonconsensual, Police-Initiated Towing, Storage And Impoundment Procedures

- (A) In addition to ticketing an illegally parked vehicle, the Police Department is hereby authorized to initiate a nonconsensual tow or otherwise remove a vehicle from a highway, street, street right-of-way, trail, trail right-of-way, city parking lot or other city owned property or right-of-way not authorized for parking, and have it towed to a storage facility within Fayetteville or within 3 miles of the city limits under the following circumstances:
- (1) When any vehicle is left unattended upon any bridge, viaduct or causeway or in any tunnel where such vehicle constitutes an obstruction to traffic.
 - (2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal.
 - (3) When any vehicle is parked illegally and left unattended upon a street, street right-of-way, trail or trail right-of-way; and
 - (a) Constitutes a hazard or obstruction to the normal movement of traffic on the street or trail;
 - (b) Obstructs a driveway or access to a fire hydrant,
 - (c) Is parked in a prohibited area or tow away zone that is so designated by a sign or other official markings; or
 - (d) Is parked continuously upon any street for more than seventy-two (72) hours.
 - (4) When any vehicle is parked beyond the period allowed in a city parking lot and the parking space is needed for reserved parking or a special event or if parked more than twenty-four (24) continuous hours beyond the period allowed. The Mayor or Mayor's designee may also order such illegally parked vehicle in a city parking lot to be towed at the vehicle owner's expense.
 - (5) If a difficult to tow vehicle that cannot reasonably be towed by the property owner's normal towing company needs to be removed from a private parking lot, the parking lot owner may request the police department to initiate a nonconsensual tow. If the police officer agrees that the vehicle presents an unusual and difficult towing situation and the property owner presents facts to support a substantial need for the immediate removal of the vehicle, the police officer may initiate a nonconsensual tow using the Police Department's normal towing company.
- (B) Whenever the Police Department removes a vehicle from a prohibited parking area under this section and does know or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, the Police Department shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons

therefor and the place to which such vehicle has been removed.

(C) Whenever the Police Department moves a vehicle from a prohibited parking area under this section and does not know and is not able to ascertain the name of the owner, or for any other reason is unable to give the notice to the owner as hereinabove provided, and in the event the vehicle is not returned to the owner within a period of three (3) days, written report of such removal shall be made to the state department whose duty it is to register motor vehicles. Such notice shall include a complete description of the vehicle, the date, time and place from which removed, the reasons for such removal, the name of the garage or place where the vehicle is stored.

(D) The owner or lessee of any vehicle towed or impounded pursuant to this section is entitled to a prompt post-deprivation hearing and all rights there under as provided in §72.58(L). The owner or lessee of any vehicle properly towed pursuant to this section shall be required to pay the towing and storage costs.

(Code 1965, §19-140; Ord. No. 1447, 6-7-65; Ord. No. 2630, 5-6-80, Code 1991, §72.02; Ord. No. 4388, 4-16-02; Ord. No. 5326, 6-1-10; Ord. No. 5843, §§1, 2, 1-19-16)