



Charlotte City Council
**COMMUNITY SAFETY
COMMITTEE**

Meeting Summary for June 11, 2015

COMMITTEE AGENDA TOPICS

- I. Subject:** **Towing and Booting Businesses Ordinance**
Action: The Committee directed staff to research ways to strengthen the Ordinance.
- II. Subject:** **Public Safety Zones**
Action: The Committee directed staff to continue researching Public Safety Zones.

COMMITTEE INFORMATION

Present: Claire Fallon, Al Austin, and Kenny Smith
Time: 12:00 pm – 12:50 pm

ATTACHMENTS

1. Agenda Package
2. Presentations

DISCUSSION HIGHLIGHTS

Chairwoman Fallon called the meeting to order and asked everyone in the room to introduce themselves. She then turned it over to Assistant City Manager Ann Wall.

I. Towing and Booting Businesses Ordinance

Ms. Wall introduced Police Attorney Rusty Perlungher. Mr. Perlungher began reviewing the “Towing and Booting Businesses Ordinance” presentation (copy attached). Mr. Perlungher reviewed with the Committee the amendments that were made to the ordinance in 2011 based on community concerns. In summer of 2014, the Town of Chapel Hill’s ordinance was challenged and due to the Supreme Court’s decision our fee schedule for towing services is now unenforceable. The Supreme Court upheld the notice and signage requirements as well as the

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payment requirements. The Supreme Court struck down the fee provisions or fee schedules that the tow companies were adhering to and struck down the provision preventing tow truck companies from charging the customer the extra surcharge for using a credit card or debit card. Staff proposes to delete the fee provisions from the Ordinance.

Austin: Does Chapel Hill have a list of fees?

Perlungher: Yes, they had a fee schedule that was set by the Town Manager's Office.

Austin: But we do not have that in Charlotte?

Perlungher: Our fees were capped depending on the size of the vehicle.

Fallon: If we cannot set it, but it is predatory, can the sign say something like, "you can appeal to a judge?"

Perlungher: We can advise that the citizen would have a civil cause of action.

Fallon: Could we put out contracts where the City can say we use these tow companies and then we can set the fee they charge?

Perlungher: We do that with the division wreckers that tow on public streets, but we cannot do that for private lots. We do not have that authority.

Fallon: We are going to have companies take advantage of the citizens.

Perlungher: We do have some proposals to strengthen the remaining provisions of the ordinance.

Fallon: Have you heard if the tow companies have increased their fees?

Pellicone: We've heard they have increased them to \$175. They were at \$150. Our existing ordinance helped with keeping their fees lower.

Austin: Explain why the Supreme Court ruled that we cannot cap fees.

Perlungher: The NC Supreme Court ruled cities cannot cap fees because it implicates the towing company's fundamental right to earn a living and they said there is no express authority in the General Statute for the City to regulate the fees. The City also cannot fit it under our general police power to protect the public safety and welfare because the amount they charge has to be rationally related to protection.

Smith: We are able to set limits to the Passenger Vehicle for Hire (PVH) Ordinance for a cab company, but not here?

Perlungher: The differentiating factor is the General Statute allows it for PVH, but not for towing.

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Austin: Could we get something looked at in Raleigh?

Perlungher: We could get it on a legislative agenda.

Smith: The complaints I get are regarding the trucks just waiting to boot/tow a car. Can we make it harder on the tow trucks, meaning not allowing them to just sit and watch a parking lot?

Perlungher: We can do research to see about strengthening the remaining provisions in the ordinance. We may be able to establish some sort of waiting period. We could also look at amending the signage requirements to say the tow company has to post on the sign what they are going to charge when they tow or boot a car. Matthews established civil penalties and we could look into that as well.

Fallon: I think putting how much they can charge on the sign is good, because they cannot change the price. Then if you get towed, you have been notified by the sign.

Austin: At this point, right now, they can charge anything?

Perlungher: Yes.

Austin: Do they have a coordinated industry?

Newbold: They are politically well organized.

Austin: Do we know if they have gone to the General Assembly yet, similar to Uber and Lyft?

Newbold: Not that I am aware of.

Austin: So what are the recommendations from staff?

Perlungher: The recommendation is to move forward with an amendment to the ordinance to remove the fee provision which is unlawful. We can continue to research and see how we can strengthen this and just do one amendment.

Fallon: Can we get a maximum amount on the sign of what they are going to charge?

Perlungher: We can look at it.

Smith: My preference would be to strengthen the ordinance and remove the fee provision at one time. I think we need to relook at the hours of operations for the businesses that would be authorizing the tow as well.

Wall: Based on the Committee comments we will bring back language that deletes the fee provisions and look at different requirements in our ordinance regarding hours, signage, how other communities are treating predatory towing and also check with Mr. Fenton regarding the legislature.

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Austin: It would be easiest if the legislature would just allow us to regulate fees and put that in the Statute.

Smith: My issue is less the fee cap, but more the issue of predatory towing.

Wall: Yes, we will look at what other communities are doing as well.

Newbold: I like the idea of raising fees for violations from the towing companies, like Matthews.

Smith: How many complaints do we get on predatory towing?

Pellicone: We average about 10-15 calls per week that are mostly related to booting.

Fallon: Great, staff will bring this back at our September meeting.

II. Public Safety Zones

Mr. Newbold summarized the core sections of this proposed ordinance. The key change is how the zones are defined. The proposal would define the zone based on incidents of certain criminal activity and would allow the Chief of Police to adjust the perimeter based on that criminal activity. He discussed that there is a civil exclusion process, a variance process, and an appeal. Mr. Newbold also discussed the penalty and reviewed the different crimes that could be included. The signs in the zone would read what type of zone is in that particular problem area.

Council member Austin asked that we include the ACLU in any discussions regarding Zones and he assured the Committee he would do that. The Committee thanked Mr. Newbold for his quick update and voted 3-0 (in favor of) for staff to continue researching this and bring back to the Committee at a later meeting.

Ms. Wall stated that the next meeting is September 10 and at that meeting they will review towing, public safety zones and door-to-door solicitation.

Meeting adjourned at 12:50 p.m.

Community Safety Committee
Thursday, June 11, 2015; 12:00 – 1:30 p.m.
Room 280

Committee Members: Claire Fallon, Chair
Michael Barnes, Vice Chair
Al Austin
Greg Phipps
Kenny Smith

Staff Resource: Ann Wall, Assistant City Manager

AGENDA

I. Towing and Booting Businesses Ordinance

Staff Resources: Captain Rich Austin, Police

Rusty Perlungher, Police Attorney's Office

Staff will provide a presentation to explain the purpose and intent of the Ordinance, to provide an explanation of the North Carolina Supreme Court case which invalidated fee provisions, and to explain the suggested revisions. Staff will also provide information on current concerns regarding towing and booting practices.

Action: Recommend to Council for approval.

II. Public Safety Zones

Staff Resources: Rodney Monroe, Chief of Police

Mark Newbold, Police Attorney's Office

Staff will provide a presentation discussing a model ordinance for setting up a Public Safety Zones.

Action: No action at this time

Next Meeting: Thursday, September 10 at Noon, Room 280



Community Safety Committee
June 11, 2015

Towing and Booting Businesses Ordinance



Towing Ordinance

- Amendment adopted February 2011; effective April 2011
- Community Concerns
 - Predatory towing
 - Excessive charges
 - Inconsistent signs
 - Difficulty in retrieving vehicles
 - Stranded late at night

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Towing Ordinance

- Public Safety Concerns
 - Breach of Peace (BOP)
 - BOP between owner and tow driver
 - BOP over fees
 - BOP at storage lot
 - Physical interference with lawful tow
 - Late night stranded motorist
 - Reports of “stolen” vehicles

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Towing Ordinance

- Signage requirements
- Fee provisions
- Drop requirement
- Access to vehicle
- Method of payment

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Towing Ordinance

- On call
- Location of storage facility
- Authorization to tow
- Interference with tow
- Criminal penalty

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King v. Town of Chapel Hill

- Challenge to Town's towing ordinance regulating nonconsensual towing from private parking lots
- NC Supreme Court upheld
 - notice and signage requirements
 - requirement that towing companies accept cash, debit cards and at least two major credit cards

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King v. Town of Chapel Hill

- Court struck down
 - fee schedule for towing services
 - prohibition against passing the costs of accepting credit cards on to citizens
- Municipalities do not have authority to impose a fee schedule or otherwise cap fees for nonconsensual towing from private lots

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Towing Ordinance

- Sets maximum fees for towing services and for booting
 - \$120 for vehicles less than 9,000 pounds
 - \$500 for vehicles 9,000 pounds or more
 - \$15/day for storage
 - \$50 for booting
- Prohibits towing companies from charging fees for uncompleted trespass tows or retrieval of property from illegally parked vehicles

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Towing Ordinance

- In light of the Supreme Court's decision, these provisions are now unenforceable
- Proposed amendment would delete fee provisions from the Ordinance

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Towing Ordinance

- Current citizen concerns
 - Predatory towing
 - Fees
 - Signage
 - Identification of towing/booting services employees

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Towing Ordinance

- The Committee is requested to forward the following recommendation to the full City Council:
 - Adoption of ordinance amending the Towing and Booting Businesses Ordinance
- Questions ??




CHARLOTTE.
Public Safety Zones
Community Safety Committee
June 11, 2015



 **Public Safety Zones**

- Proposed Core Sections
 - Definitions
 - Designation of Public Safety Zone
 - Outer Public Safety Zone
 - Civil Exclusion Process
 - Notice and Opportunity to be Heard
 - Variance Process
 - Appeal
 - Penalty