

STAFF REPORT

TO: Mayor and Council DATE: 3/24/09

FROM: Robert W. Oast, Jr., City Attorney

SUBJECT: Regulate non-consensual towing from private parking lots

Summary Statement: The consideration of an ordinance to regulate non-consensual towing from private parking lots

Review and Analysis: For several years, City Council and City staff have been receiving complaints from individuals whose vehicles are towed from private parking lots. The vehicles in question are parked in private parking lots without authorization from the person in control of the lot, and are towed without consent of the vehicle owner. Sometimes, tow trucks are patrolling the lots for unauthorized parkers, and the tow is initiated almost as soon as the vehicles are parked. This practice is known variously as non-consensual towing, predatory towing, and trespass towing.

These incidents usually occur in the downtown or Biltmore Village areas, where visitor traffic is heavy and parking is at a premium. Not unusually, the incidents occur at night and on weekends, when private lots are largely empty. The complaints include reports of: vehicles being towed with pets trapped inside, vehicles being towed away even though the vehicle owner encounters the tow operator in the parking lot, fees for towing and storage being unreasonably high and arbitrary, the tow operator accepting cash only (no credit cards), vehicle storage areas being remote and unsafe, tow operators not responding to calls to retrieve vehicles, denying access to vehicle to retrieve personal property (including medicines). In addition to these complaints, the police recently completed a "sting" operation where two cars that had paid to park on a designated lot were towed. The tow operators have been charged criminally.

On the other side of this situation are the owners of the lots and the lessees of the spaces. Asheville has a substantial population of downtown residents, workers, and resident/workers, and they all depend on the availability of the space that they pay for or own in order to go about their daily business. Also, businesses depend on the availability of their parking to provide customers access to their stores or offices, and justifiably believe that they ought to have the ability to keep unauthorized parkers off their lots without having to install physical barricades or fences.

Over the years, Council has taken an incremental approach this issue beginning with simply requesting lot owners or businesses to barricade or post their lots with signs. In 2003, Council began to require the posting of lots in the downtown and Biltmore Village areas with signs prohibiting parking, and stating that unauthorized parkers will be towed. It is unknown how many incidents of unauthorized parking have been deterred by these efforts, but clearly incidents are continuing to occur.

Another factor in this equation is the tow operators. While there have certainly been legitimate complaints about non-consensual towing, most tow operators perform a sometimes necessary service for lot owners who request it. There have been reports of occasions when tow truck drivers engaged in removing a vehicle parked without authorization have been verbally abused and/or physically threatened. In addition, the operators have on occasion not received payment for the tow because stop payment orders are issued on personal checks or credit card authorizations are withdrawn, which has led some of the operators to require payment in cash only.

Non-consensual towing is really a matter between the lot owner, the vehicle owner, and the tow operator, and does not necessarily involve the City. However, when issues of public safety and the “peace and dignity” of the City arise, the City has a basis in State law for regulation. Due to the complex interplay of local, State, and federal law on this issue, determining how to structure and implement such regulations has required considerable investigation, and is continuing to evolve. Under federal law, local governments may regulate the price and other aspects of non-consensual towing as a matter of consumer protection. Within these limitations, cities in North Carolina and elsewhere have with increasing frequency been regulating nonconsensual towing.

The attached draft ordinance draws from ordinances that have been adopted in Raleigh and Wilmington. The main features of the ordinance are:

1. It applies only in the downtown and Biltmore Village areas.
2. It establishes a fee schedule for towing and related matters (see note below).
3. It requires the release of a vehicle if the vehicle owner encounters the tow operator in the parking lot.
4. It establishes some standards for the storage lot to which the vehicle is removed.
5. It requires the tow operator to notify the police if a tow is performed, and to respond to calls within a specified time.
6. It requires that vehicle operators be allowed to retrieve personal property from the vehicle.
7. It requires the tow operators to accept credit and debit cards, but prohibits persons from cancelling payments.
8. It prohibits interference with a tow operator performing a tow.
9. Violations of the ordinance are subject to civil and criminal penalties; repeated violations are subject to increasing civil penalties.

Note: the \$100.00 “base fee” used in the attached draft ordinance is based on the Raleigh ordinance, as is the 50% “release fee.” The rate schedule could also be established in the Fees and Charges manual, or could be keyed to the rate for police-initiated tows, which are negotiated periodically. Research into rates is continuing.

Compliance with Plan: This item is consistent with the Strategic Operating Plan in that it supports the goal of improving public safety downtown; and is a form of community policing.

Committee Review: This item was reviewed by the Public Safety Committee on March 17, and their comments have been incorporated into the draft where possible. A proposal to license tow operators is being explored, but may require additional review as a business regulation.

Fiscal Impact: Some additional costs for administration and monitoring compliance, not likely to be offset by collected fines.

Pros:

- Regulates problematic activity while recognizing interests of parties
- Establishes reasonable/predictable fees
- Promotes safety

Cons:

- Increases administrative burden on already-thin City staff

Recommendation: Adoption of the proposed ordinance is recommended, with delayed effective date to permit notification of interested parties.

Attachments:
(1) Ordinance

ORDINANCE NO.

ORDINANCE AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE TO REGULATE TRESPASS TOWING FROM PRIVATE PARKING LOTS

WHEREAS, the City has the authority pursuant to N.C.G.S. 160A-174 to adopt ordinances regulating activities detrimental to the health, safety and welfare of the City, and to the peace and dignity of the City, and pursuant to Article 15 of N.C.G.S. 160A, including N.C.G.S. 160A-301 (as amended by N.C. Sess. L. 2003-165), may prescribe regulations as to the towing of vehicles from private parking lots; and

WHEREAS, the towing of vehicles from private parking lots in the City, without the consent of the owner of the vehicle, as engaged in by some parties, is a threat to the health and safety of the operators and passengers of the towed vehicles, and is detrimental to the peace and dignity of the City; and

WHEREAS, the owner and lessors of private parking lots in the downtown and Biltmore Village depend on the availability of their parking to conduct their businesses and activities, and should have the ability to remove vehicles parked in those lots without authorization, and free from undue interference; and

WHEREAS, the City Council desires to regulate certain aspects of non-consensual towing while recognizing the right of the owners or lessors of private parking lots, including downtown residents and business owners;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

Section 1. Section 11-18 of the Asheville City Code is amended as follows:

(a) By adding a new subsection (c1) to read:

“(c1) It shall be unlawful to engage in trespass towing as defined herein except in accordance with the following provisions:

(1) Definitions:

- a. *Trespass towing.* The practice of towing, removing or storing a motor vehicle that is parked or left on private property without the consent of the vehicle operator.
- b. *Vehicle operator.* Registered owner or other person legally responsible for a motor vehicle.
- c. *Motor vehicle.* The definition of “Class C Motor Vehicle” contained in N.C.G.S. 20-4.01 is hereby incorporated by reference.

- d. *Private lot.* Any private property that is subject to subsection (a) of this section, whether or not a designated parking area is located thereon.
 - e. *Tow service.* Any person or business that is engaged in the business of towing or removing motor vehicles for a fee.
 - f. *Trespass vehicle.* Any motor vehicle that is parked or left in a private lot without permission or authority from the owner, lessor, or person in legal control of said lot.
 - g. *Storage facility.* A place to which trespass vehicles are transported and stored in connection with a trespass tow.
- (2) Fees. The fees for trespass towing services charged to the vehicle operator are subject to the following limitations:
- a. The fee for a completed tow (removal from a private lot) may not exceed \$100.00, and shall be all inclusive (herein “base fee”).
 - b. The fee for releasing vehicles as pursuant to subsection (b), below, may not exceed 50% of the base fee.
 - c. The fee for storing a towed vehicle shall not exceed 25% of the base fee, and shall not begin to accrue until the vehicle has been stored at least 12 hours, beginning with the time of notification of the police.
 - d. The fee for releasing an immobilized or “booted” vehicle shall not exceed 50% of the base fee.
- (3) Any tow service that has initiated a trespass tow by, at a minimum, positioning a tow truck or wrecker in preparation for securing the trespass vehicle to the tow truck by a hook, chain, cable or similar device, but has not removed the trespass vehicle from the private lot shall upon request of the vehicle operator, release said vehicle upon payment of the release fee.
- (4) Any tow service that is engaged in a trespass tow shall, upon request of the vehicle operator, permit the vehicle operator to have access to the trespass vehicle for the purpose of retrieving personal property therefrom.
- (5) Any tow service that engages in a trespass tow shall accept nationally recognized credit or debit cards in payment for any fee established in this ordinance.

- (6) The lot or facility to which any trespass vehicle is removed shall be located within a ten mile radius of the Central Business District or Biltmore Village, and shall be secured and lighted in such a manner as to keep the vehicle safe from break-ins or damage while in storage. A fenced storage yard with average surface level lighting of two footcandles shall be deemed compliant with this section.
- (7) Any tow service that engages in a trespass tow shall, within 30 minutes of removing the vehicle from the private lot report, to the Asheville Police Department by telephone communication the fact that a vehicle was towed and shall provide a description of the vehicle including make, color, and license tag number.
- (8) Any tow service that engages in a trespass tow shall have a person on call 24 hours every day who is capable of acknowledging requests to retrieve a towed vehicle within 15 minutes of receiving such request, and of releasing said vehicle within 45 minutes of receiving the request.
- (9) Failure or refusal by a vehicle operator to pay any of the fees assessed pursuant to this section, including but not limited to cancellation of an authorization for payment by charge card or debit card, or stopping payment of a check, is a violation of this section.
- (10) Interference with any tow service that is carrying out a trespass tow, except to request release of, access to, or retrieval of the vehicle, is a violation of this section.
- (11) Any person or business that engages in immobilizing or “booting” a trespass vehicle shall include such information on the sign required by subsection (a), above, and shall comply with subparagraph (8), above, as to responding to requests to release the vehicle.
- (12) This subsection (c1) shall not apply to statutory parking violations such as parking in spaces designated for handicap parking, or parking in fire lanes; nor shall this subsection (c1) apply to non-consensual tow initiated by a governmental enforcement officer.

Section 2. If any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Violations of this ordinance are subject to enforcement as provided in Sec. 1-5 of the Asheville City Code. In addition, second or subsequent violations of this ordinance within any twelve-month period shall subject the offender to civil penalties as follows:

second violation	--	\$200.00
third violation	--	\$300.00
fourth violation	--	\$400.00
fifth violation	--	\$500.00

Appendix B of the Asheville City Code, Schedule of Civil Penalties, shall be amended to specify said civil penalties.

Section 5. This ordinance is effective upon adoption.

Read, approved and adopted this 24th day of March, 2009.

City Clerk

Mayor

Approved as to form:

City Attorney