

Safety Committee Minutes

Honorable Council
City of Newark, Ohio
July 31, 2013

The Safety Committee met in Council Chambers on Monday, July 29, 2013 following the Finance Committee meeting. These members were present:

Marc Guthrie, Chair
Jeff Rath
Bill Cost Jr

Carol Floyd
Rhonda Loomis

We wish to report:

Mr. Guthrie- we have two pieces of legislation for this evening they are both regarding the issue of booting and towing on private property regarding parking lots in the city. He asked if Linda K. Smith was present. He suggested since there were two pieces of legislation anybody that speaks there is probably going to be some overlap in the discussion therefore he thought that they would allow people to express their concerns one way or another. We received a letter, at least I did and if anybody else didn't get it I will pass it along to you. The letter is from Linda K. Smith, he asked her for clarification on her company's name.

Linda Smith-5140 Price Rd, Newark, I assume that everybody received the letter, it is pretty much self-explanatory. My situation is trying to be reasonable, I own the property and it has been a parking lot for many, many years. I rented space to a lot of people who work here in the city building, I also have tenants who have an expectation when they rent that they will have a place to park and unfortunately that hasn't been the case lately. In fact, just the other day I had a young lady complain to me, they have a mobile x-ray business, she was carrying in big frames for x-rays and had to park the next block over. Her expectation is that she will have a parking space, unfortunately she doesn't have that. They pay rent and they are entitled to that. I have an issue with the fact that the booting has been the only viable solution. The reason that is the case is when you look at property, you look at the size of the parking spaces, you look at the size of the cars, you look at the size of not tow trucks but the size of roll backs today and a roll back can't get in there and physically tow vehicles when there are cars parked on the lot so unfortunately a tow truck is not always the answer to control my problem. I have been threatened a number of times, I have ladies that work in this building that have been threatened on the lot. That's not really right either, nor should anyone expect to call the police every time something like that should happen. In an effort to control my problem on my property, I was offered a solution that would have been booting cars to gain control of my property so that I can utilize it. Other than that I think the letter speaks for itself I think that it is pretty clear and if it's not I would be glad to answer any questions.

Mr. Guthrie- asked if everyone had seen the letter

Mrs. Floyd- asked where her lot was

Mrs. Smith- across the street, back where the attorney Dave Martin is at

Mr. Rath- I am not real sure where Dave Martin is but we are talking about right next to the Claggett building correct, just on 4th St?

Mr. Smith- confirmed he was correct

Mr. Cost- when a vehicle is parked on your lot then a call is made to a towing company to have this vehicle booted or removed or is there already someone there for a lack of a better term policing the lot, I am just trying to get the dynamic of it

Ms. Smith- The law requires that I contract with a towing company and they post their signs. That process is not something that I monitor or police in the past. In years past when towing was an option I did call a tow truck if we had an offender. I don't police that, I have a full time job like everybody else.

Mr. Cost- I, understand that, do you have someone who polices that for you

Ms. Smith- yes it is posted Heavy Duty Towing

Mr. Cost- again I understand the signage but you have someone there policing it, watching this lot

Ms. Smith- I contract with a towing company.

Mr. Cost- and I understand that also by the sign, but is there someone sitting there watching to see if someone is going to violate the ordinance or the sign, is there someone waiting to see if someone parks illegally?

Ms. Smith- that is not a question that I can answer you would have to ask the towing company

Mr. Cost- thank you

Mr. Rath- how do you know if a car is parked there illegally or not

Ms. Smith- they have parking passes that are issued to people that pay to park there or that are tenants or residents

Mr. Rath- if there is a vehicle parked there with a parking pass, obviously that is not messed with, but if there is a vehicle there parked without a parking pass then who notifies the towing company to boot it or to tow it or to do whatever it is they do to it

Ms. Smith- I assume that they police that or monitor that

Mr. Rath- the towing company themselves, ok, really

Mr. Guthrie- do you have anything else Mr. Rath

Mr. Rath- I just can't imagine for the life of me how a towing company can afford spending enough time doing that, I guess if the towing company is here I would like to ask them that question but not necessarily at this time.

Mr. Rath- can we ask the towing company if there is a representative here

Mr. Guthrie- do we have representatives of towing companies present who are involved in this type of activity who would like to come forward and make any comments or answer any questions

Mark Christenberry- 143 Maholm St

Mr. Rath- Mark can you just in plain terms explain to us how the process works

Mr. Christenberry- generally we just send somebody down there in that truck

Mr. Rath- who is we

Mr. Christenberry- I do, I own the company, and I have the contract, Heavy Duty Towing. It is so bad that we do afford to have someone sit there and watch it is that bad. We have done 12 and

14 a day it is that bad. It is starting to clean up some and we expected and anticipated that but we knew from past experience that the first 30-45 days were going to be pretty a lot.

Mr. Rath- is there ever a case where somebody comes in and tries to park in their parking spot. I guess first can I ask are the parking spots assigned. Like if I buy a parking spot on that lot do I park in A-3 or do I park in whatever spot is open.

Ms. Smith- they are assigned

Mr. Rath- so is there an opportunity for someone to come in and see their assigned parking spot illegally occupied and calls you

Mr. Christenberry- we send somebody down because in the process we put in place we wanted to be down there relatively quickly and it not be a long drawn out affair. Normally when you call a tow truck, the tow truck comes and takes the vehicle and takes it to another place in town, obviously the address has to be on the sign. In our case that would be over on McKinley Ave. That is quite a ways from downtown and we were trying to get people not to park there. The law that we were going by said that if you were preparing a car for towing and the individual who owns it or is driving it walks up to you and says something to you, you must give them the opportunity to pay half price. So we said we would boot them and start at half price that is where we said we would start the whole process. The whole idea of doing it was to get people not to park there. I am assuming that over time and we had that discussion with the young men who were doing this course over at COTC at the Police Academy, they knew that hopefully this was not going to be a long drawn out process but for the first 30-45 days. We got about three weeks in when we were stopped.

Mr. Rath- so you were stopped after two weeks, what did she do a month ago or two months ago or 6 months ago or a year ago

Mr. Christenberry- she tried to call a tow truck but the problem is, is my tow trucks go anywhere from here to Columbus, they have been to Pittsburg and Cincinnati. When you call my truck they could be anywhere and so from the time she to the actual time the truck gets here it could be anything from 15 minutes to a couple of hours. So it's not really a viable option because they go and do their business, shop around town then they get in their car and leave then by that time I have spent the money to pay a guy by the hour to show up in my truck, using my diesel fuel and the car is gone. I believe she has probably tried three or four different towing companies and we all have the same problem. That's the problem with tow trucks you can't just sit there and wait because a \$50,000 truck is a \$50,000 truck so you are out doing other things and you do it when you can. That is why we sat up the situation trying to fix it for her. It was getting better and eventually we probably wouldn't have been able to afford to have someone down there.

Mr. Guthrie- Mr. Christenberry how many parking lots do you police downtown

Mr. Christenberry- I have two that I was policing and I had another person sign on and a couple of other people that were asking. Parking downtown has been a problem for a long time and the landlords are getting aggravated with it. The one at the corner of 5th and main is a relatively new one, we signed a contract on that one a day or two before we were stopped. That would have been three; I don't know how many parking spaces that would be.

Mr. Cost- I want to make sure that I understand the procedure. Do I understand you to say that you have someone sitting there and when they see someone park illegally then the car is

booted? So it's not like they are sitting there and they receive a phone call from a merchant they are sitting there, they see the car park, the person walks away the car is booted.

Mr. Christenberry- pretty much but what we normally do is make sure they aren't going to some place they aren't supposed to. Like the one young lady that cuts hair she depends on her parking spaces so if you pull in off the street and go into the hair salon it's not like anybody does anything it's no big deal because you are going to do business with one of the ladies that signed a contract with us. We are watching, we have written down who goes where. About 18% of the business comes to this building, about 65% or so goes to the pawn shop.

Mr. Cost- is there ever an approach of saying you're parking somewhere you're in violation

Mr. Christenberry- we tried some of that

Mr. Cost- was it confrontational

Mr. Christenberry- we were flipped off and told to go places and do things

Mr. Cost- isn't it just as confrontational when they come back and find this thing on their car; I am going to be honest with you I was sitting here reading paperwork by City Hall and looked over and saw this process going on and I haven't seen a car booted in years. The gentleman got out of his car and went to the pawn shop and 10 minutes later he turned around and walked back out and it wasn't a real cheery get together. It was an interesting exchange of views about the whole concept. That is why I was asking if there was ever any attempt to say I'm sorry but you are not allowed to park there even before this happens or is it confrontational or is it any different when they come back. So if the person is gone 10 minutes or four hours they are still going to come back and find their car booted or is it towed.

Mr. Christenberry- eventually if they stay long enough we will tow it that is part of the process, they need their parking spaces. In the three weeks we did it we took one. Most generally people are just running in and out doing their stuff. That is why we chose the individuals we chose to do this process. We didn't just take any Harry off the street we specifically got individuals who are going to school to be police officers specifically to understand how to not have those kinds of problems and to deal with things correctly and professionally they had shirts also. Police were called and at that time the police told them to pay it and go on with their lives. I don't know how you are going to take that out of the process people are going to be aggravated but it is worse if they find their car gone. Then they have to call the police, they have to go across town once they figure what the deal was, it is a longer drawn out process that costs twice as much. We thought that it was an efficient, decent, intelligent response to the problem that was at hand.

Mrs. Floyd- I guess my question was pretty similar to what Bill was asking. I was just going to say your guy is sitting there waiting, if somebody parks do they say, "sir this is an assigned parking place you can see the sign right there" or do they wait until they walk away and boot it.

Mr. Christenberry- sometimes they do and sometimes they don't, I have never told them that they had to; they have been known to do that. Part of the process is showing people the booting process is going on so generally we would use one boot at a time. The idea is for people to pull up and see that there is a yellow boot on this car I probably need to park someplace else. Again this was kind of a teaching process. I guess you would have to judge the demeanor of the individual getting out of the car, is it going to make a difference, are they going to get mean and nasty with you. Do they care do we care. I guess it would be a case by case call.

Mr. Rath- there is an alternative that I would think of is you said you were keeping track of who goes where, if you are keeping track of that then you are keeping track. You're probably keeping track of who you are booting. I would think that there would be ample opportunity to allow somebody to be booted the first time and have that boot removed for free the first time saying here is your fair warning you are parked here illegally the next time you have a boot on your car you will have this fee. Although I don't know if that will avoid a confrontation and to be perfectly honest with you I don't think you can avoid a confrontation, they are going to be as confrontational with you as they would a police officer who pulls them over for running a stop sign or speeding.

Mr. Christenberry- yes I suppose in a perfect world where my guys were on welfare I suppose that would work but you have to pay them something. Obviously some people are going to get it and some people are not, I don't know how fair we can make that. I got to make a little bit of money or I can't pay them to go down there and sit.

Mr. Cost- so when a person comes back and their car has a boot on it what are their options as far as if they don't have on them whatever the dollar amount is, does the car sit there or does the car then get towed, what occurs.

Mr. Christenberry- it is a case by case basis, if they are nice, we know them, we have taken driver's license and you come back and give us the money, there has been a time or two we ask how much do you have, \$20.00 we will take \$20.00 get out of here. We try to work with people the best way we can, there is no reason to make this huge. I figure if they gave you \$20.00 then they probably learned their lesson and that is what it was about. If they are belligerent, I would assume they are going to pay the whole \$45.00.

Mr. Cost- so if they don't have the \$45.00 or a charge card or write a check then their car is towed until they can recover it.

Mr. Christenberry- we worked with as many people as we possibly could. In 3 months' time we towed one car and she said she wasn't paying a dime, got her stuff and went on down the road and it was in the process of being reposed anyways.

Mr. Rath- asked the Law Director if this is legal or is it illegal now

Mr. Guthrie- we are here because there seems to be some vagueness in our current City Ordinance and that is why we have the two options in front of us so that we can clarify that.

Law Director Sassen- I think that there is ambiguity in the law, I think that Mr. Christenberry makes the argument that he is preparing the vehicle for towing and there is a provision in the existing code with regard to as he said if the person comes back while the vehicle is being prepared to be towed and pay half the fee. Well what exactly does prepared to be towed mean, there is a thousand different definitions for that. There is a strict reading of the language that basically provides for towing not for booting so it is that ambiguity that I would like to clear up and the reason for that is that this should really be debated here in City Council and resolved once and for all so that we know because I don't want a situation where you have on a hot summer afternoon you have a police officer trying to resolve the ambiguity when you have a person that has the boot on the car and you have a person over here that is angry that he or she has a boot on their car. It's not an issue for law enforcement it is an issue we should clear up here. With regard to whether you permit the use of the boot or not I have no opinion on that. Some cities allow it some don't, there's no real legal issues associated with it, it's just a matter of preference as to whether Council wants to allow it or not but I just need that

clarification, I need that ambiguity cleared up so that it is clear for Mr. Christenberry, his employees, property owners and so we don't have to worry about police officers trying to sort that out on the street.

Mr. Cost- the Law Director has opened up another concept as far as I'm concerned. Every time you put a boot on a car, are you indeed preparing the car to tow or are you see in that as the end result because it as sounds to me like if you have only towed one as you said then you are not preparing them for towing, are booting them and waiting for the person to return so that you can charge them for their misconduct.

Mr. Christenberry- well the end result will be that it is towed. We are giving you the chance to show up and pay half the price and not chase you r car across town. We would rather do business like that; it's cheaper, it's better for us, better for everybody. It is a process, you put a boot on the car and it sits there for more than two hours it's out of there.

Mr. Cost- but it was my understanding that you can't tow the cars because there isn't enough room with the type of equipment that you are using.

Mr. Christenberry- over two hours' time we can make enough space, I mean three hours' time. Well by the time that you get these people to move and get things situated over a several hour period of time. I think that the City charges a \$110.00, I don't know what they charge, and they give us \$110.00 for a flatbed tow for the police. \$90.00 today is all you are allowed to charge for private property impounds, that's today. The State legislators are in the process of rewriting all of that law piece by piece. Over a 2 or 3 hour period of time I can make the space to do it, it's just not worth the \$90.00 that is why the towing companies in Newark they all hang the signs but they never show up.

Mr. Cost- so the vehicles can be towed

Mr. Christenberry- they could be towed yes. I need to clarify. Towing is somewhat of an art form. The front wheels if you pull into these parking spaces you will drag and hurt that car making it happen. So there is a lot more to this than just that much easier, you don't want to tear somebody's car up, you will so again there is more to this than the pieces and parts.

Mr. Guthrie- I just want to make sure that everybody understands that Ordinance 13-25 prohibits booting and Ordinance 13-24 permits booting. It is my hope that the Committee sends one ordinance or the other or neither on to full Council instead of both. I think that we need to do our work and send a piece of legislation that the Committee believes in. Are there any other folks in the audience that would like to address this, anyone who has had experience with it?

Dorothy Flowers- I was just wondering since he said that there was somebody on that lot at all times taking down information why couldn't they go up to that car and say you can't park here. That would be solution and nobody would have to get their tires booted.

Mr. Guthrie- I think Ms. Flowers to be quite frank that there would be no incentive for the towing company to do that because there wouldn't be a profit involved in that. I think that I am right on this Mr. Christenberry, there is no money unless you boot or tow correct?

Mr. Christenberry- yes

Mr. Guthrie- there isn't any incentive to be good Samaritans so to speak.

Roland West- 420 N Cedar St, I don't have a whole lot of personal experience but I have seen it happen and I have told people that you are not allowed to park here, they tell me where I can go and can do and it's not the politest thing. I would say if that happens over here then

immediately put a boot on it, bring in a tow truck and take it over to Columbus and park it over there.

Katilyn Kenny- 90 N Buena Vista St apartment 32, she asked what if somebody only has \$8.00 or \$9.00 on them instead of half the towing fee like was mentioned. What if they come back later after they go to the bank and it has the boot on it and getting ready to be towed, how is that fair?

Mr. Guthrie- the bottom line, Ms. Kenny is that it is between the towing company and the individual. The legislation simply permits the action of booting and established a maximum fee.

Motion to send Ordinance 13-24 on to full Council, second by Mr. Rath

Mr. Rath- shared an experience of being booted on that lot 17 years ago and hasn't forgot it so he knows it works. It's commerce, it's a private property and she has the right to lease those spaces out and I don't want to have to call the police because somebody is parked there and charge somebody with trespassing they have better things to do.

Mrs. Loomis- I wanted this to move forward because the Law Director asked for some guidance and clarification

Mrs. Floyd- stated that she has thought about this for several days now, I see booting sort of as heavy handed and something I don't particularly like on the other hand I read the letter and I understand the concerns of the property owner who rents out spaces and if I had rented out a space and it wasn't there when I came for it I would be very upset. I will support this motion.

Mr. Cost- I have parking lot that I have had with my business that I have had for over 30 years. My situation is a little different in the way that I police my own parking lot. I know it is a different situation that what you are dealing with because you are not there to monitor. I have a lot of parking challenges in my lot. I have people who stop to see a neighbor, I have people who have a yard sale, and I have people next door picking up something or dropping something off. 9 out of 10 times the problem is resolved inside of 10 minutes. I will occasionally have folks leave a car and what I have done in the past is it has sat there for the biggest part of the day then I eventually call the non-emergency police number and ask them to trace the car and get a phone number and call them or contact them and ask them to move the vehicle and again 9 out of 10 times that vehicle is gone that very same day. I have also had people put cars on my lot that are marked for sale. He calls the number and asks them to move or he will have it towed. He has the signs up that states the vehicles can be towed, in 30 years he has towed 3 vehicles. I don't want anything to be confrontational where my business is at, I don't want hard feelings with a neighbor, and I don't want hard feelings with a potential customer. I just think that it can be avoided; I think that it can be handled in a manner that isn't quite so strong armed. I think this is a confrontation approach and I can't support it.

Mr. Guthrie- I have similar concerns but I am going to vote to send it on to full Council, it feels a little **gustopo** but at the same time I do respect the property owners right to police their property. Our existing ordinances don't clearly authorize this, I do think that there are occasions when I think booting is financial a better option for the violator. As long as that option exists it might save the violators some money. At the same time I am bothered by vendors sitting by watching these lots but I do think we need to have the authority on the books so I am going to vote to send it on to full Council.

Mr. Guthrie- asked Director Sassen if they needed to act on the other piece of legislation

Law Director Sassen- theoretically you could send both pieces on to full Council, I like you would prefer that only one go. The committee seems to have spoken for Ordinance 13-24. I think that we could just deem 13-25 died for a lack of motion.

Mr. Guthrie- Correct me if I am wrong, say there was a majority of Council who wanted to substitute language they could substitute language and form an amendment.

Law Director- next week, yes absolutely.

Motion passed by a 4-1 vote, nay Mr. Cost

Mr. Cost- so if we only submit this one piece of legislation and if this one piece of legislation is defeated than what we will have if we don't have an option.

Law Director- we have nothing

Mr. Guthrie- all you have to do is amend it, to take the booting out

Director Sassen- what we could do, if you wanted to, next week this will come for a first reading, because it is written as an emergency it would come for a vote. If you were interested you could simply raise a motion to amend to substitute the language of 13-25 for the language of 13-24 make your argument for the amendment and see what happens. There is a way to keep the debate alive and prevent that derailing.

Mr. Guthrie- we don't need the emergency clause on this do we

Law Director- I suggested the emergency clause be put on there so it would be effective immediately. So Mr. Christenberry and Ms. Smith would know what their rights are and Newark Police Department would know what their obligations are. The scenario is such that I think everybody involved needs that clarification and they need it as soon as possible.

Mr. Guthrie- reminded folks that the both community gardens one on S 6th St and Western Ave are having open gardens tonight and would like everyone to attend.

Marc Guthrie, Chair