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# City of Detroit

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**TO:** Detroit City Council

**FROM:** David Whitaker, Director  
Legislative Policy Division 

**DATE:** April 22, 2022

**RE:** **Privately Owned Parking Lot Enforcement**

The Legislative Policy Division (LPD), along with the Law Department have been requested by Council Member Gabriela Santiago-Romero, to provide a report regarding privately owned parking lots in the city of Detroit. The Council Member asked questions regarding parking lots in downtown and throughout the city that are privately owned, and wanted information to ensure citizens are protected:

**1. What remedies are available to the City to ensure citizens don't fall victim to scams by way of paying parking lot attendant impersonators?**

All licensed parking lot owners operating a parking lot in the city of Detroit must comply with the Detroit City Code Section 32-1-71 *Required*:

- (a) No person shall be employed or perform as a commercial parking attendant within the city unless such person holds a valid commercial parking attendant license in the form of an identification badge that has been issued pursuant to this division.

Pursuant to this provision, any parking attendant employed by the licensed operator of a parking lot is required to hold a commercial parking attendant license identification badge. This

provision is designed to address situations where a parking customer is being directed to park and pay at a parking facility that does not have an automated parking apparatus. That being the case, it is imperative that the parking customer utilize due diligence and request to see the identification of the parking attendant, prior to providing any monetary payment if there is a question as to the validity of the attendant's authority.

**2. What remedies or laws exist to compel lot owners to address potential scams?**

The owners of private parking lots are liable for actions under law and as set forth under Section 32-1-5 *Duties of licensee as bailee*, which provides:

Each licensee under this article shall faithfully perform such licensee's duties as bailee and shall use such licensee's best endeavors to employ honest and competent attendants and help on such licensee's commercial parking lot. Failure to comply with this section shall be cause for revocation of the license of such licensee.

The Michigan court has provided guidance regarding the establishment of a bailment between parties in *Goldman v Phantom Freight, Inc*, 162 Mich.App. 472, (1987), stating:

“Bailment,” in its ordinary legal signification, imports the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished. *Id* at 480.

In order for the owners of the parking lot to be liable for actions occurring on their premises, there must be a duty established that was breached. The general duty owed a person parked on the owners parking lot is that of bailment. However, where an impersonator takes money and directs another to drive onto the parking lot without the parking lot owner's knowledge or consent does not develop the contractual bailor/bailee relationship in which a duty of bailment is created. There being no duty on the part of the parking lot owner, there is no liability for the criminal act of the third party impersonator.

**3. What additional remedies could the City implement to address this issue? For example, require lots be fenced in, appropriately signed (owner name and contact information; lot hours; whether open/closed), staff to have appropriate identification indicating they work for lot owner, etc.?**

The City Code currently addresses most if not all of the issues indicated in the question. As provided above in the answer to question 1, Section 32-1-71 requires parking attendants to have a valid parking attendant license in the form of an identification badge. The City Code also requires the following be implemented by licensed parking lot owners;

**Sec. 32-1-9. - Barriers.**

- (a) Commercial parking lots shall be enclosed with a continuous barrier along all portions contiguous to street or alley frontage, except at points of ingress and

egress. Barriers shall be at least three feet in height and shall consist of one of the following types of construction:

- (1) Steel posts connected with one-quarter-inch rod chains or one-half-inch steel cable;
  - (2) Woven wire fence construction of not less than No. 9 gauge galvanized wire.
  - (3) Angle iron posts and bumpers;
  - (4) Structural steel channeling or rail; or
  - (5) Wood posts not less than six inches by six inches with rails not less than six inches by six inches.
- (b) Barriers shall be properly maintained in a neat, orderly manner and kept free from signs, advertising and other displays. The requirement for a continuous barrier to enclose commercial parking lots shall apply to all parking lots in the area within which surfacing is required under this article and also to all other lots located outside these areas wherein the parked cars are not locked and keys removed while stored on the parking lots.

**Sec. 32-1-20. - Signs denoting hours and rates**

- (a) A licensee shall permanently display at each entrance to any commercial parking lot, on a sign constructed and operated in accordance with Chapter 4 of this Code. Advertising and Signs, and in a manner that is suitable to apprise persons using such lot, the name of the licensee, the address of the lot, the hours of the day and night during which such places are open for storing motor vehicles, and the rates charged for such storage. All such information shall be displayed using numbers, letters, and figures not less than six inches in height. Where more than one rate is charged for parking, all rates shall be displayed in the same size and dimensions.
- (b) Where separate rates or charges are made during the day, notice thereof shall be displayed as described in Subsection (a) of this section.

An additional requirement might be that parking attendants be required to wear some sort of paraphernalia identifying them as an agent of the parking lot owner.

**4. What is the Law Department's view on Olympia Development creating parking tickets which could be construed as official City enforcement material?**

As this question was directed specifically to the Law Department, LPD will not respond and allow for their official response.

## 5. Is it legal for a private entity to levy fines for trespassing?

The City Code Section 46-4-16, *Parking on private property*, provides:

- (a) It shall be unlawful for any person to park any vehicle on any private property, without the express or implied consent, authorization or ratification of the owner, holder, occupant, lessee, agent or trustee of such property. Complaint for the violation of this section shall be made by the owner, holder, occupant, lessee, agent or trustee of such property.

This provision prohibits a person from parking a vehicle on private property without the owners consent making it unlawful. In furtherance of the City Code, Section 46-1-42, *Issuance of parking violation notices and citations*, govern the parameters through which a citation may be issued and state in pertinent part:

- (a) Whenever any motor vehicle is **found parked**, standing, or stopped in **violation of any of the provisions of this chapter**, or of any order promulgated under this chapter or in violation of state law, the police officer observing such vehicle shall take its registration number may take any other information displayed on the vehicle, which may identify its registered owner, and shall conspicuously affix to such vehicle a parking violation notice or citation. In accordance with Section 1-1-10 of this Code, the Mayor may delegate the police power to issue and affix such parking violation notices or citations to other civilian employees of the City but no other power normally exercised by a police officer in the exercise of the officer's normal duties.
- (b) The issuance of a parking violation notice or citation by a police officer or other authorized civilian employee of the City shall be deemed an allegation of a civil infraction. Such parking violation notice or citation shall indicate the length of time available to the registered owner for response to the Parking Violations Bureau, or court having jurisdiction thereof, before the addition of penalties, the procedure for responding, the address of the Bureau or court, the hours the Bureau or court is open and the amount of the fine scheduled to be paid for the violation. Further, if a parking violation notice or citation was issued, it shall indicate that other civil action as authorized by law will be taken if such registered owner fails to respond within the prescribed time.

Pursuant to the City Code, parking of a vehicle found in violation of the Chapter 46, Traffic and Vehicles, including Section 46-4-16, *Parking on private property*, would be subject to a citation issued by a police officer or other City employee designated by the Mayor to affix such parking violation citation or notice. LPD could not identify any authority granting a private entity the ability to levy a fine for unauthorized parking.<sup>1</sup>

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<sup>1</sup> LPD notes that unauthorized parking or trespass is different than parking that was authorized but gone beyond the permitted use under the parking agreement. A breach of the authorized parking terms may subject the vehicle owner to additional fines or cost levied by the parking lot owner.

There is lawful authority for private property owners to have vehicles that are trespassing on their property to have the vehicle removed. Pursuant to State law a vehicle is considered abandoned and trespassing if it is on the private property of the owner without consent. MCL 257.252a provides in pertinent part:

- (1) **A person shall not abandon a vehicle in this state.** It is presumed that the last titled owner of the vehicle is responsible for abandoning the vehicle unless the person provides a record of the sale as that term is defined in section 240.
- (2) As used in this section and sections 252b through 252l, "abandoned vehicle" means any of the following: **(a) A vehicle that has remained on private property without the consent of the owner.**
- (10) **If a vehicle has remained on private property without the consent of the property owner, the owner of the private property may have the vehicle taken into custody as an abandoned vehicle by contacting a local towing agency.** A local towing agency is considered a towing agency whose storage lot is located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vehicle.

Under State law, the private owner of the parking lot can have a vehicle that is on its property without permission towed at the owner's expense. According to HomeGuide.com<sup>2</sup>:

Most tow companies charge between \$50 to \$125 for a five or ten-mile local tow, or a \$75 hook-up fee and \$2 to \$4 per mile for long-distance towing. The average 40-mile tow will range from \$125 to \$250.

The cost of towing does not include the cost of storage until the owner retrieves the vehicle. LPD notes that the parking lot owner by issuing the citation to the vehicle owner, may arguably be authorizing the vehicle to remain on its premises under the terms set forth in the citation. At that point, the parking lot owner arguably engages in a bailor/bailee relationship and takes on the liability of a bailee.

If we can be of further assistance please call upon us.

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<sup>2</sup> <https://homeguide.com/costs/towing-service-cost#>