



CITY COUNCIL

Darryl Moore
Councilmember District 2

CONSENT CALENDAR
April 29, 2014

To: Honorable Mayor and Members of the City Council
From: Councilmember Darryl Moore, District 2
Subject: Parking Management on Private Property

RECOMMENDATION

Direct the City Manager to draft ordinance language that would allow private property owners to manage parking on their property.

BACKGROUND

Parking meters were invented in 1935 for the sole purpose of keeping business owners and employees out of the prime parking spaces in order for customers to have a place to park. After its invention in 1935, Berkeley was one of the first cities in the nation to install parking meters. The implementation of parking meters was due to recognizing that the value of parking is not derived from the amount revenue is generated by each parking meter or citations, but rather the revenue is generated by the vehicle occupants parked in that parking space. Parking meters are a mechanism to better manage parking so that customers could shop, dine and spend money in a commercial district.

Parking plays a huge role in consumer confidence. If a customer has a bad parking experience, it discourages them from patronizing a particular business or commercial district. Not only are individual businesses and commercial districts in competition, neighboring cities are also in competition for the same clientele. This means in order for the City of Berkeley to maintain a healthy retail environment, parking must be effectively managed. Since approximately 75% - 80% of ALL parking in the State of California being privately owned, private property owners must be allowed to effectively manage the parking on their site to affect the overall parking conditions.

Private property owners need a variety of options to effectively manage the parking on their site. This consists of installing parking meters, instituting time limits on parking as well as the ability to issue invoices to customers who have not prepaid.

FISCAL IMPACTS OF RECOMMENDATION

Unknown

CONTACT PERSON

Councilmember Darryl Moore, District 2 981-7120

Attachments:
Walnut Creek Private Parking Ordinance

CHAPTER 10. PRIVATE PARKING LOTS

6-10.01 Definitions.

- a. "Business hours" mean the period from one hour before a business is open for customers until the business' closing time for customers. For parking spaces designated for users of automated teller machines, or for employee, tenant or other non-customer reserved parking, "business hours" shall mean 24 hours a day.
- b. "Mail-in parking fee" or "mail-in parking charge" means a charge for parking in an offstreet parking lot affixed to a vehicle whose driver is not authorized by signs to park in the offstreet parking lot for no fee.
- c. "Notice of a parking charge" means a written document affixed to a vehicle which notifies the vehicle driver of a mail-in parking fee that is due as a result of unauthorized parking in an offstreet parking lot.
- d. "Offstreet parking lot" means privately owned property that is generally held open to the public, or a discernible portion thereof, for the parking of vehicles at no fee.
- e. "Person" shall mean any natural person, firm, company, corporation, partnership, or association.
- f. "Private parking operator" means any person who owns or controls, or person who acts on behalf of or at the behest of a person who owns or controls, an offstreet parking lot. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02 and by 1§, Ord. 2010, eff. 3/20/03)

6-10.02 Compliance with This Chapter.

It shall be unlawful, and an unfair business practice within the meaning of Business and Professions Code Section [17200](#) for any person in an offstreet parking lot to charge a mail-in parking fee, or to issue or cause to be issued a notice of parking charge that is not in compliance with this chapter. Any notice of parking charge that is not in compliance with this chapter shall be invalid. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02 and by §1, Ord. 2010, eff. 3/20/03).

6-10.03 Mail-in Fees, Issuance of Notices of Parking Charges.

- a. During normal business hours a private parking operator may charge a mail-in parking fee to owners of vehicles parked in the lot without authorization.
- b. Where an offstreet parking lot of a closed business is in actual use for valet parking by an off-site business which is open for business and while valet parking is occurring additional signs are posted prohibiting all public parking a private parking operator may charge a mail-in parking fee to owners of vehicles parked in the lot without authorization.
- c. Where an offstreet parking lot of a closed business utilizes a lock-box or other device requiring payment before parking, a private parking operator may charge a mail-in parking fee to owners of vehicles parked in the lot without authorization.
- d. Except as provided in subsection (b) and (c), no mail-in parking fee shall be charged by a private parking operator outside of normal business hours for parking spaces designated for customer parking only during business hours. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02 and by §1, Ord. 2010, eff. 3/20/03)

6-10.04 Amount of Fee.

No mail-in parking fee charged pursuant to this chapter shall exceed the initial amount of bail for violation of Municipal Code Section [4-6.301](#) (signed private parking) which currently is \$20. No late charge or other fee shall be imposed unless expressly authorized by a resolution of the City Council. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00 §1, Ord. 2004, eff. 11/14/02 and by §1, Ord. 2010, eff. 3/20/03)

6-10.05 Additional Requirements-Signs

In addition to meeting the requirements of section [6-10.03](#) signs shall be posted as required by this section.

a. No mail-in parking fee shall be charged and no notice of parking charge shall be issued unless there are in place signs substantially in the form required by this chapter.

b. Signs shall contain a statement that the parking is restricted. For example:

"Parking for XXX Customers Only"

"Free Parking for XXX Customers Only"

"This Space Reserved for XXX"

"Parking for Tenants Only"

"Pay at Lock-box when Store Closed"

"Parking Lot Closed-Valet Parking Only"

c. Signs shall contain a statement with the fee for unauthorized parking. For example:

"All Unauthorized Parking \$20"

" Immediate \$20 Fee for Unauthorized Parking"

d. Signs shall contain a statement with the hours the parking restrictions are in force during which a mail-in parking fee may be charged. For example:

"\$20 Fee Enforced During All Business Hours"

"Reserved Parking Restrictions Enforced 24 Hours A Day"

"Pay at Lock-box when Store Closed"

e. Signs must be posted at each entrance and exit to the lot, and must be visible from each restricted parking space. Where different restrictions apply to parking spaces with common entrances and exits, the restrictions applicable to each space shall be clearly delineated. The sign at each entrance shall include text or a symbol, to the approval of the Community Development Director, indicating that the offstreet parking lot has been certified by the City to allow private enforcement of parking controls within the lot.

f. The Community Development Director is hereby authorized to establish uniform sign sizes, colors,

sizes of lettering, and other information that may be required on all signs in order to be in compliance with this section. If the Director establishes such criteria, all signs required by this chapter shall be brought into compliance within 60 days. The Director may authorize signs that vary from subsections (b) through (d), and such signs shall be deemed to be in compliance with this section.

g. Signs which indicate that a customer may park for no fee shall indicate whether the authorized parking is only for the time the customer is on the premises or whether it is for a limited duration of time. In the absence of such designation, a customer shall not be charged a mail-in parking fee.

h. Nothing in this chapter shall be construed to modify the requirements Municipal Code Section [4-6.301](#) imposes on persons who seek to have the vehicles towed or have the City of Walnut Creek issue citations. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00; §1, Ord. 2004, eff. 11/14/02 and by §1, Ord. 2010, eff. 3/20/03)

6-10.06 Notice of Parking Charges.

a. No person shall place on any vehicle a notice of a parking charge which does not contain at the top of the notice in at least 12 point print the words "INVOICE" followed by "PARKING FEE IMPOSED BY XXX," inserting the name and street address of the business whose customers are designated to use the customer only parking during normal business hours.

b. No person shall place on any vehicle a notice of a parking charge which does not contain in at least 10 point print the listed Walnut Creek telephone number of the business whose customers are designated to use the customer only parking.

c. Where the reserved parking space is for someone other than a customer, the information required by subsection (a) and (b) shall be replaced with the corresponding information of the person who owns or controls the reserved parking space.

d. Every notice of parking charge shall end with the legend "This parking charge notice is not issued by the City of Walnut Creek." This provision shall be in a least 12 point print.

e. No notice of parking charge shall display any feature that resembles a City of Walnut Creek parking citation. The notice of parking charge shall be a color distinctive from a City parking citation. The Chief of Police shall approve the color or colors of the notice of parking charge.

f. Every notice of parking charge shall state that the business identified in subsection (a) may cancel the mail-in parking charge at any time for any reason. The categorical refusal of the business identified in subsection (a) to review a notice of parking charge upon request shall void the mail in parking fee.

g. Every notice of parking charge shall provide fair notice of the dispute resolution procedure described in [§6-10.08](#). (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02) and by (§1, Ord. 2010, eff. 3/20/03)

6-10.07 Registration of Private Parking Operators and Certification of Offstreet Parking Lots.

a. Every private parking operator who issues notices of parking charges shall register with the Community Development Director before doing business in City of Walnut Creek. In addition to the information required by this section, the Community Development Director may require such other

information as may enable the Director to determine compliance with this chapter. The fee for registering and amending the registration shall be set by City Council resolution.

b. The registration shall include the name, address and telephone number of the private parking operator, the names, home and business addresses and telephone numbers of each person owning 10% or more of the business, and the Walnut Creek business license number of the business.

c. The registration shall also include a list of all offstreet parking lots where mail-in parking fees are charged, which shall be updated prior to any new lot being added or within one month of any lot being dropped, along with the name, address and telephone number of each contact person or person authorized to resolve disputes for each offstreet parking lot.

d. Every private parking operator shall maintain for at least one year a list by offstreet parking lot of the notices of parking charges issued for each offstreet parking lot. This list shall be broken down by date, and for each date shall show the time, the parking violation and the license number of the vehicle issued the notice of parking charge. Upon request, these records or copies of these records shall be furnished to the Community Development Director.

e. On and after July 1, 2003 no notice of parking charge shall be issued in an offstreet parking lot unless the signing for the offstreet parking lot has been certified as being in compliance with this chapter. The Community Development Director shall do the certification. The frequency of the certification and the charge for certification of parking lots shall be fixed by resolution of the City Council. The certification may be withdrawn or suspended by the Director following notice and opportunity for a hearing if (i) the signing for the offstreet parking lot is found to be out of compliance with this chapter, (ii) if private parking charges are found to have been issued in violation of this chapter for parking in the lot, or (iii) if the private parking lot operator engaged in any other acts or omissions constituting a violation of this chapter with relation to the offstreet parking lot.

f. Any private parking lot owner aggrieved by a decision of the Director under subsection (e) may, within five business days of receipt of the decision, appeal the decision in writing to the City Manager who shall, following a hearing affirm, reverse or modify the decision of the Director. The decision of the City Manager shall be final. Upon the final administrative determination to suspend or withdraw the certification of an offstreet parking lot, the text or symbol indicating certification of the lot shall be immediately removed. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02) and by (§1, Ord. 2010, eff. 3/20/03)

6-10.08 Dispute Resolution.

a. Every private property operator issuing notices of parking charges shall establish a written dispute resolution policy for contested parking charges that shall comply with this section. A copy of the current policy shall be filed with the Community Development Director. Every such policy shall contain the provision that allows the retailer, business or property owners who has issued the notice of parking charge, or authorized notices to be issued, to cancel the notice and parking charge at any time for any reason.

b. For a period of 21 calendar days from the issuance of a notice of parking charge or 14 calendar days from the mailing of a notice of delinquent parking charge, a person may request an initial review of the notice by the private parking operator. The request may be made by telephone, in writing, or in person.

There shall be no charge for this review. If, following the initial review, the private parking operator is satisfied that the unauthorized parking did not occur, that the registered owner was not responsible for the charge, or that extenuating circumstances make dismissal of the charge appropriate in the interest of justice, the private parking operator shall cancel the notice of parking charge or notice of delinquent parking charge. The private parking operator shall mail the results of the initial review to the person contesting the notice.

c. If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the charge no later than 21 calendar days following the mailing of the results of the private parking operator's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit the amount of the parking charge with the private parking operator. The private parking operator shall provide a written procedure to allow a person to request an administrative hearing without payment of the parking charge upon satisfactory proof of an inability to pay the amount due. Notice of this procedure shall be provided to all persons requesting an administrative hearing. An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this section. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

d. The administrative hearing process shall include the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the City of Walnut Creek.

(2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking charge without the necessity of the appointment of a guardian. The private parking operator may proceed against the minor in the same manner as against an adult.

(3) The administrative hearing shall be conducted in accordance with written procedures established by the private parking operator and approved by the Community Development Director. The hearing shall provide an independent, objective, fair, and impartial review of contested parking charges.

(4) (A) The private parking operator shall contract with an independent third party that is not controlled by a private parking operator who shall provide qualified examiners to conduct the administrative hearings. Examiners shall demonstrate those qualifications, training, and objectivity necessary to conduct a fair and impartial review. An examiner shall not be employed, managed, or controlled by a person whose primary duties are as a private parking operator, parking charge processing, collection, or issuance. The examiner shall be separate and independent from the parking charge collection or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of parking charges collected by the examiner.

(B) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The private parking operator may reimburse the examiner for those costs. Training may be provided through (i) an accredited college or university, (ii) a program conducted by the Commission on Peace Officer Standards and Training, (iii) American Arbitration Association or a similar established

organization, or (iv) through any program approved by the Chief of Police, including a program developed and provided by, or for, the City. Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, private parking operator procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval of the Chief of Police, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of the training requirements described in this subparagraph may be credited to an individual, at the discretion of the Chief of Police, based upon training programs or courses described in (i) to (iv), inclusive, that the individual attended within the last five years.

(5) The person who issues a notice of parking charge shall not be required to participate in an administrative hearing. The private parking operator shall not be required to produce any evidence other than the notice of parking charge or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the charge.

(6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail.

(7) Following a determination by the examiner that a person owes the charge, the examiner may allow payment of the parking charge in installments, or a private parking operator may allow for deferred payment or allow for payments in installments, if the person provides evidence satisfactory to the examiner or the private parking operator, as the case may be, of an inability to pay the parking penalty in full. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02) and by (§, Ord. 2010, eff. 3/20/03

6-10.09 Unauthorized Business Practices.

- a. No private parking operator shall utilize the Denver boot or other similar device that is attached to the vehicle and which immobilizes the vehicle.
- b. No person shall report or threaten to report an unpaid notice of a parking charge to a credit bureau or a collection agency unless a small claims court or other judicial proceeding has established the debt. No person shall take any action or threaten to take any action to collect, or contact with another person who takes or threatens to take any action to collect an unpaid notice of a parking charge other than to seek establishment of the debt in a small claims court or other judicial proceeding.
- c. No private parking operator shall pay any employee or independent contractor a salary or fee that is in any way based on the number of notices of private parking charges they issue.
- d. Every private parking operator who collects a mail in parking charge in violation of this chapter shall refund the fee to the owner of the vehicle (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02) and by (§1, Ord. 2010, eff. 3/20/03)

6-10.10 Application to Core Area.

- a. This chapter shall only apply within the Core Area of Walnut Creek as that portion of Walnut Creek is designated in the Planning Boundaries map shown in Chapter 1, Figure 2, of the Walnut Creek General Plan.

b. The City Council may by resolution designate other areas of the City of Walnut Creek where the provisions of this chapter shall be applicable. (§2, Ord. 1940, eff. 3/4/99; §1, Ord. 1971, eff. 10/19/00, §1, Ord. 2004, eff. 11/14/02 and by §1, Ord. 2010, eff. 3/20/03)

6-10.11 Penalty.

Any person who violates any provision of this chapter shall be guilty of a misdemeanor or an infraction.

a. If charged as an infraction, the penalty upon conviction of such person shall be a fine as set forth in [§1-2.01](#) of this code.

b. If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the county jail for a period not to exceed six months, or a fine not exceeding \$1,000 of by both such fine and imprisonment. (§1, Ord. 2010, eff. 3/20/03)

The Walnut Creek Municipal Code is current through Ordinance 2126, passed February 4, 2014.

Disclaimer: The City Clerk's Office has the official version of the Walnut Creek Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

those caused by natural or man-made disasters.

b. Businesses and individuals using maintenance equipment in the Core Area and in business parks may commence at 7:00 a.m. on weekdays which are not holidays but are otherwise subject to the limitations set forth above.

c. Schools within the City's limits using maintenance equipment may commence at 7:00 a.m. on weekdays which are not holidays but are otherwise subject to the limitations set forth above. (§1, Ord. 1753, eff. November 8, 1990)

d. If the Community Development Director determines that the public health, safety and welfare will not be impaired by the operation of golf course maintenance equipment, expressly for the purpose of preparing greens and sand trap areas prior to a course being opened for play, he or she may allow such operations to occur prior to the normal operating hour limitations as set forth in Section [4-6.203](#) (g) of the Municipal Code, but in no instance prior to 30 minutes before sunrise or 6:00 A.M., whichever is later. In granting such an exemption, the Community Development Director may impose any conditions as deemed necessary to ensure that the operation of golf course maintenance equipment prior to the normally permitted operating hours will not unreasonably disturb the occupants of residences located adjacent to the golf course requesting the exemption. Exemptions granted by the Community Development Director can be revoked at any time. Decisions by the Community Development Director shall be final. (§1, Ord. 1920, eff. 2/19/98.)

4-6.207 Penalty; Misdemeanor or Infraction.

Any person who violates any provision of §§[4-6.203](#) through [4-6.204](#) shall be deemed guilty of a misdemeanor or an infraction.

a. If charged as an infraction, the penalty upon conviction of such person shall be a fine as set forth in [§1-2.01](#) of this Code.

b. If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the county jail for a period not to exceed six months, or by a fine not exceeding \$1000.00, or by both fine and imprisonment. (§1, Ord. 1753, eff. November 8, 1990)

4-6.208 Abatement of Noise as Nuisance.

Any noise maintained in violation of any provision of this article shall additionally be deemed a public nuisance. Such public nuisance may be abated by the Chief of Police, the Community Development Director, or his or her designees, in accordance with the procedures authorized by this Code. (§1, Ord. 1753, eff. November 8, 1990)

Article 3. Parking on Private Property

4-6.301 Private Parking Signing.

a. No person shall drive or park a motor vehicle upon land or premises where the owner or the person occupying or having possession, or the agents thereof, have posted on such property or premises a notice in substantially the following form, and where the permission therein referred to shall not have been granted:

1. A statement that parking is restricted and to whom it applies:

Examples: "Parking for XXX customers only";
 "This space reserved for XXX";
 "Parking for tenants only";
 "No parking in this area";
 "Parking by permit holders only";

2. A statement that violators may or will be cited:

Examples: "Violators will be cited by Walnut Creek Police";
 "Unauthorized vehicles will be cited or towed at owner's expense";

3. A reference to this Municipal Code section:

Examples: "Sec. [4-6.301](#) Walnut Creek Muni. Code";
 "Section [4-6.301](#) W.C.M.C."

Lettering shall be on a contrasting background and of such size and so placed as to be reasonably visible to all persons entering the private parking area. If the parking area is shared by more than one business or firm, those stalls for the private use by each shall be clearly identified.

Nothing in this section shall be construed as placing a requirement upon the Police Department to patrol such private property for violations and no enforcement action shall be taken except upon specific request by an authorized agent, owner or person in lawful possession or control thereof.

b. Where parking meters are used, signs on the parking meters that are consistent with the signs on the parking meters placed on the public streets or public parking lots shall be deemed to meet the requirements of subsection (a). (5420, as amended by §1, Ord. 1270, eff. April 7, 1976, and by §1, Ord. 1965, eff 8/10/00.)

4-6.302 Interference With Use of Property.

No person, without permission of the owner or person entitled to the possession thereof, shall park any motor vehicle in or upon any private property so as to interfere with the use thereof. (5421)

4-6.303 Unlawful Parking.

It is unlawful for any person to operate, drive or leave any vehicle in, over or upon any private property without the express or implied permission of the owner thereof, the person entitled to the possession thereof for the time being, or the authorized agent of either. The provisions of this section shall not apply to public or private parking lots. (5422)

4-6.304 Removal of Vehicles.

Any regularly employed and salaried officer of the police department, the owner of any private property, the person entitled to the possession thereof for the time being, or the authorized agent of either may

remove or cause to be removed any vehicle parked or left standing on any private property in violation of the provisions of [§4-6.303](#) of this article. (5423, as amended by §1, Ord. 1143, eff. August 30, 1972)

4-6.305 Liability For Wrongful Removal of Vehicles.

If a vehicle removed from such private property was rightfully there, the person who complained of the presence of such vehicle and/or the person (other than the employees of the Police Department) who caused such vehicle to be removed shall be liable for any and all charges for towing and for caring for and keeping safe such vehicle. (5424, as amended by §1, Ord. 1143, eff. August 30, 1972)

4-6.306 Removal of Vehicles to Places of Safety.

Any person referred to in Section [4-6.304](#) of this article who removes any vehicle from any private property in the City is hereby authorized to remove such vehicle to the nearest garage or other place of safety or to a garage designated or maintained by the City. (5425)

4-6.307 Notice to Owner of Removed Vehicle.

Any person referred to in Section [4-6.304](#) of this article who removes a vehicle from private property shall give notice to the owner of the vehicle as provided in the Vehicle Code of the State. (5426)

4-6.308 Garage Keeper's Lien.

The keeper of any garage in which any vehicle is stored in accordance with the provisions of this article shall have a lien thereon for his compensation for towing and for caring for and keeping safe such vehicle and may satisfy such lien upon compliance with and under the conditions stated in the Vehicle Code of the State. (5427)

4-6.309 Notification to Police Department.

Any person, including any tow truck operator or driver, as defined under the provisions of this article, who removes or causes to be removed a vehicle, shall notify the Police Department of the location from which the vehicle was towed, the vehicle license number and description and the place of storage within two (2) hours of removal. (§1, Ord. 1212, eff. May 29, 1974)

4-6.310 Business Records.

Any person, as defined under the provisions of this article, who removes or causes to be removed a vehicle shall keep appropriate records of the removal, including the name, address and telephone number of the person authorizing the removal from private property. (§1, Ord. 1212, eff. May 29, 1974)

Article 4. Weed Abatement (Repealed)

Article 4 of Chapter 6, Title IV (Weed Abatement) repealed in its entirety by §1, Ord. 1480, eff. August 14, 1980.

Article 4. Trespass

4-6.401 Business Premises Trespass.

a. No person shall remain upon the outdoor portion of any business premises after being notified by the owner, the person in lawful possession, or their agent, or by a peace officer at the request of the owner, the person in lawful possession, or their agent, to leave the premises.

