

Tow Hearings Webinar

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Resources

- Administrative Proceedings Deskbook at pages 86 – 97; available at this link: <http://www.tjctc.org/tjctc-resources/Deskbooks.html>
- Chapter 2308 of the Occupations Code; available here: <https://statutes.capitol.texas.gov/Docs/OC/htm/OC.2308.htm#2308.001>
- Consumer information: <https://www.tdlr.texas.gov/towing/consumerinfo.htm>

What is a Tow Hearing?

- It is a hearing in justice court requested by an owner or operator whose vehicle was booted or towed without their consent.
- The purpose of the hearing is to determine whether the vehicle should have been booted or towed and whether either party owes the other any money.

What is the Filing Fee?

- The court **may** charge a filing fee of \$20 if a hearing is requested.
-- Occupations Code § 2308.457
- If the court chooses to charge this, we believe that the court should also charge the \$10 electronic filing fee (Government Code § 51.851), the \$6 indigent legal services fee (Local Government Code § 133.153), and the new \$5 judicial education on court security fee (Government Code § 51.971).

Definitions

- Owner or operator
- Consent tow
- Non-consent tow
 - Private Property tow
 - Incident Management tow
- Parking Facility
- Boot
 - See Handout for complete definitions

Removal of Unauthorized Vehicle

- Parking facility owner may, without consent of the owner, cause a vehicle to be removed and stored if:
 - Compliant signs prohibiting unauthorized vehicles are located on the parking facility at the time of towing and for the preceding 24 hours;

Removal of Unauthorized Vehicle

- The owner or operator received actual notice from the parking facility owner that the vehicle will be towed;
- The parking facility owner gives notice to the owner or operator of the vehicle by attaching a notice to the windshield; **or**

Removal of Unauthorized Vehicle

- The parking facility owner provides (on request) to the owner or operator of the vehicle the name of the towing company and storage facility if:
 - The vehicle obstructs traffic, a fire lane or is in a disabled parking space without a tag; or
 - The vehicle is in an or adjacent to an apartment complex and is obstructing a gate or a restricted parking space or in a tow away zone.
 - See Handout for full text
 - Occupations Code § 2308.252(a)

Notice by Posting Compliant Signs

- For a sign to be “compliant” it must:
 - Be visible and conspicuous;
 - Be at each entrance or if not possible within 25 feet of each entrance; and
 - Meet certain specifications
 - See Handout for full text
- Occupations Code § 2308, Subchapter G

Notice by Posting Compliant Sign

Example of a Compliant Sign:



Notice by Posting Compliant Sign

Example of a Non - Compliant Sign:



Parking Facility Owner Giving Notice

- The parking facility owner may give notice by:
 - Giving actual notice; or
 - By posting a conspicuous note to the windshield **and also** by sending a notice by certified mail to the last registered owner of the vehicle.
 - See Handout for full text
 - Occupations Code § 2308.252(b)

Notice Posted on a Vehicle

- Notice posted on the vehicle must:
 - state that the vehicle is in a parking space in which the vehicle is not authorized to be parked;
 - describe all other unauthorized areas in the parking facility;
 - state that the vehicle will be towed at the expense of the owner or operator of the vehicle if it remains in an unauthorized area of the parking facility; and
 - provide a telephone number that is answered 24 hours a day to enable the owner or operator of the vehicle to locate the vehicle.
- Occupations Code § 2308.252(b)

Notice Posted on a Vehicle

- Notice is not required a second time if the owner moves the vehicle to another prohibited area after notice was posted on the vehicle.
 - See Handout for full text
- Occupations Code § 2308.252(c), (d)

Other Reasons for a Non-consent Tow or Booting

- An owner or operator of a vehicle (other than a government emergency vehicle) may not leave unattended on a parking facility a vehicle that obstructs traffic or exits or is parked in a disabled parking space without a tag.
 - See Handout for full text.
- Occupations Code § 2308.251

Other Reasons for a Non-consent Tow or Booting

- An owner or operator may not leave a vehicle unattended on a parking facility or real property serving or adjacent to an apartment complex if the vehicle obstructs a gate, is in or obstructs a restricted parking space that is properly marked or is in a tow away zone that is clearly marked.
 - See Handout for full text.
- Occupations Code § 2308.253

Requirements for Booting

- If a vehicle is parked illegally as described in the statute, then a parking facility owner may initiate booting if:
 - Compliant signs are located on the parking facility at the time of the booting and were there 24 hours before the booting; and
 - The boot operator installs a conspicuous notice to the windshield or driver's side window with certain information.
 - See Handout for Information Required on Notice
 - Occupations Code § 2308.257, 2308.258, 2308.454(c),(d)

Requirements for Boot Removal

- The booting company must remove the boot not later than one hour after the time the owner or operator of the vehicle contacts the company to request removal of the boot.
 - If it fails to have the boot removed on time, the booting company must waive the amount of the fee for removal of the boot, excluding any associated parking fees.

Requirements for Boot Removal

- A booting company responsible for the installation of more than one boot on a vehicle may not charge a total amount for the removal of the boots that is greater than the amount of the fee for the removal of a single boot.

Requirements for Boot Removal

- The boot operator must accept e-check, debit and credit cards for payment of the boot removal fees
 - If they are unequipped to do so, they must remove the boot without charging the fee!

Requirements for Boot Removal

- On removal of a boot, the boot operator must provide a receipt to the vehicle owner or operator stating:
 - the name of the person who removed the boot;
 - the date and time the boot was removed;
 - the name of the person to whom the vehicle was released;
 - the amount of fees paid for removal of the boot and any associated parking fees; and
 - the person's rights under Ch. 2308 of the Occupations Code, including the right of the vehicle owner or operator to a hearing.
 - Occupations Code § 2308.257, 2308.258, 2308.454(c),(d)

Notice of Right to a Hearing

- Booting: When boot is installed and removed a notice of the person's rights, including their right to a hearing, must be included in the notice.
- Tow: When a storage facility receives a vehicle it must provide a notice to the owner and lienholder of the person's rights including their right to a hearing.

Notice of Right to a Hearing

- The notice must contain:
 - a statement of:
 - the person's right to submit a request within 14 days for a court hearing to determine whether probable cause existed to remove, or install a boot on, the vehicle;
 - the information that must be contained in a request for a hearing;
 - any filing fee for the hearing; and
 - the person's right to request a hearing in any justice court in the county in which the vehicle was parked.

Notice of Right to a Hearing

- The notice must also contain:
 - the name, address, and telephone number of the towing company that removed the vehicle or the booting company that booted the vehicle;
 - the name, address, telephone number, and county of the vehicle storage facility in which the vehicle was placed;

Notice of Right to a Hearing

- the name, street address including city, state, and zip code, and telephone number of the person, parking facility owner, or law enforcement agency that authorized the removal of the vehicle; and
- the name, address, and telephone number of each justice court in the county from which the vehicle was towed or, for booted vehicles, the county in which the parking facility is located, or the address of an Internet website maintained by OCA that contains the name, address, and telephone number of each justice court in that county.

-- Occupations Code § 2308.454, 2308.455

Where is the Hearing Held?

- The hearing shall be held in any justice court in:
 - the county from which the motor vehicle was towed; or
 - for booted vehicles, the county in which the parking facility is located.
- So wherever the vehicle **was parked** is the county where the hearing will be held.
- Note: the hearing can be in any justice court in the county
 - It does not have to be in the precinct where the car was parked.

-- Occupations Code § 2308.453

Request for Hearing

- In general the person whose car was towed or booted must request a hearing within **14 business days** of the tow or boot or they waive their right to a hearing.
- **But:**
 - The 14-day period does not begin to run until the date on which the towing company or storage facility provides the information for the owner to complete the material required for the request for hearing; and

Request for Hearing

- If the towing company has not given the person notice of their rights as required by the statute, then there is no deadline to request a hearing.
 - Occupations Code § 2308.456

Request for Hearing

- A request for hearing must contain:
 - the name, address, and telephone number of the owner or operator of the vehicle;
 - the location from which the vehicle was removed or in which the vehicle was booted;
 - the date when the vehicle was removed or booted;
 - the name, address, and telephone number of the person or law enforcement agency that authorized the removal or booting;
 - the name, address, and telephone number of the vehicle storage facility in which the vehicle was placed;

Request for Hearing

- the name, address, and telephone number of the towing company that removed the vehicle or of the booting company that installed a boot on the vehicle;
 - a copy of any receipt or notification that the owner or operator received from the towing company, the booting company, or the vehicle storage facility; and
 - if the vehicle was removed from or booted in a parking facility:
 - one or more photographs that show the location and text of any sign posted at the facility restricting parking of vehicles; or
 - a statement that no sign restricting parking was posted at the parking facility.
- Occupations Code § 2308.456

When Must the Court Hold the Hearing?

- A hearing must be held within **21 calendar days** of the justice court's receipt of the hearing request.

Court's Notice of the Hearing

- The court must send a copy of the hearing request and notice of the date, time and place of the hearing to:
 - the person who requested the hearing for a towed or booted vehicle;
 - the parking facility owner or law enforcement agency that authorized the removal of the vehicle or the parking facility in which the vehicle was booted;
 - the towing or booting company; and
 - the vehicle storage facility in which the vehicle was placed (if vehicle was towed).
- Occupations Code § 2308.458(a), (b), (b-2).

The Hearing

- At the hearing, the burden of proof is on the person who requested the hearing and hearsay evidence is admissible if it is considered otherwise reliable by the justice of the peace.

The Hearing

- The court must consider the following issues (as applicable) and make written findings of fact and a conclusion of law:
 - Was there probable cause for the non-consent tow/booting?
 - Vehicle parked in a restricted area?
 - Correct signage posted?
 - Proper notice given?

The Hearing

- Was the correct amount charged for towing/booting/storage?
 - State-wide rates are set by the Texas Department of Licensing and Regulation (TDLR) as authorized by the Occupations Code. These rates can be found at the following link: <https://www.tdlr.texas.gov/towing/consumerinfo.htm>
 - A county may set its own rates, but the rates may not exceed those set by TDLR.
 - If the notice required by Occupations Code § 2303.151 (the notice that a storage facility is required to send to an owner/lienholder when they receive their car) is not timely sent, then no storage fees may be charged until 24 hours after the notice has been sent.
- Occupations Code § 2303.151(f); § 2308.458(b-1), (c), (c-1), (d)

Possible Outcomes of the Hearing

- If the court finds that there was NOT probable cause for the non-consent tow or booting:
 - The person who authorized the removal or booting shall:
 - pay the costs of the removal/storage or of the booting/any related parking fees; or
 - reimburse the owner or operator for the cost of the removal/storage or booting/any related parking fees paid by the owner or operator.
- The towing company or vehicle storage facility is liable if they failed to provide the identity of the owner/agency requesting the tow.

Possible Outcomes of the Hearing

- If the court finds that there WAS probable cause for the non-consent tow or booting:
 - The court shall order the person who requested the hearing to pay the costs of the removal and storage or the costs of the booting (but the costs must not exceed the amount allowed as described above).

Possible Outcomes of the Hearing

- If the court finds that there was probable cause for a non-consent tow or booting, but the charges collected exceeded the amount allowed (as described above):
 - The court shall order the towing company to reimburse the owner or operator of the vehicle for however much they paid that was over the allowed amount.

Possible Outcomes of the Hearing

- Attorney's fees/costs:
- In addition to the possible outcomes above, the court may award:
 - court costs and attorney's fees to the prevailing party; and
 - the reasonable cost of photographs (submitted as part of a hearing request) to a vehicle owner or operator who is the prevailing party.

Possible Outcomes of the Hearing

- Other Damages:
- There is no option for a person to be awarded damages other than what is describe above.
- For example, damages such as damage to a vehicle or "actual damages" suffered because of not having a car could not be included in this type of proceeding.
 - Occupations Code § 2308.451, 2308.458(e)

Appeal

- Appeals are governed by the Texas Rules of Civil Procedure except that no appeal bond may be required.
 - Occupations Code § 2308.459.

Enforcement of Judgment

- A judgment may be enforced by any means available for the enforcement of a judgment for a debt.
 - The owner or operator of the vehicle is required to submit a certified copy of the final judgment to the Texas Department of Licensing and Regulation (TDLR), which shall:
 - suspend a license holder's license if the license holder fails to pay a final judgment before the 60th day after the date of the final judgment; and
 - on receipt of the certified copy of the unpaid final judgment, disqualify a person from renewing a license or permit because the person, towing company, or vehicle storage facility has not paid a final judgment awarded to an owner or operator of a vehicle.
- Occupations Code § 2308.460

Flowchart

Tow Hearing

Occupations Code
Subchapter J
2308.451

