

CHAPTER 95: ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES

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§ 95.01 ADMINISTRATION.

(A) The Town Manager and the Police Department of the Town of Liberty shall be responsible for the administration and enforcement of this chapter.

(B) The Police Department shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the town, and on property owned by the town.

(C) The Town Manager shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property.

(D) The town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this chapter and applicable state laws.

(E) Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

(F) The Town Manager is authorized to secure an administrative search and inspection warrant, as provided by G.S. § 15-27.2, in order to conduct any necessary inspection of the premises and to obtain evidence to determine whether there is any violation of any provisions of this chapter for which the Town Manager has the duty to enforce code provisions.

(1981 Code, § 16-1) (Ord. passed 3-26-1990; Am. Ord. passed 3-24-2003)

§ 95.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE. As authorized and defined in G.S. § 160A-303, one that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left on a public street or highway for longer than 7 days;
- (3) Is left on property owned or operated by the town for longer than 24 hours; or
- (4) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than 2 hours.

AUTHORIZING OFFICIAL. The supervisory employee of the Police Department or the Town Manager, respectively, designated to authorize the removal of vehicles under the provisions of this chapter.

JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 160A-303.2, a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self propelled or moved in the manner in which it originally was intended to move; or
- (3) Is more than 5 years old and appears to be worth less than \$100.

MOTOR VEHICLE OR VEHICLE. All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

NUISANCE VEHICLE. A vehicle on public or private property that is determined and declared to be a health or safety hazard or a public nuisance, including but not limited to a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
- (2) A point of heavy growth of weeds or other noxious vegetation over 8 inches in height;
- (3) A point of collection of pools or ponds of water;
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods and the like;
- (6) So situated or located that there is a danger of it falling or turning over;
- (7) One which is a point of collection of garbage, food waste, animal waste or any other rotten or putrescible matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (9) Any other vehicle specifically declared a health or safety hazard or a public nuisance by the Town Council.

(1981 Code, § 16-2) (Ord. passed 3-26-1990)

Statutory reference:

G.S. § 160A-303(b1)(4), from which subdivision (2) of the definition of abandoned vehicle derives, currently reads "Is left on any public street or highway for longer than seven days or is determined by law enforcement to be a hazard to the motoring public." As of the 2012 S-3, the town had not adopted such an ordinance.

G.S. § 160A-303(b2)(2), from which subdivision (3) of the definition of junked motor vehicle derives, currently reads "Is more than five years old and worth less than one hundred dollars (\$100.00) or is more than five years old and worth less than five hundred dollars (\$500.00) as provided by the municipality in an ordinance adopted under this section; or." As of the 2010 S-2, the town had not adopted such an ordinance.

§ 95.03 ABANDONED VEHICLE UNLAWFUL; REMOVAL.

(A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow the vehicle to be abandoned as the term is defined herein.

(B) Upon investigation, proper authorizing officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(1981 Code, § 16-3) (Ord. passed 3-26-1990) Penalty, see § 10.99

§ 95.04 NUISANCE VEHICLE UNLAWFUL; REMOVAL.

(A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle, or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.

(B) Upon investigation, the Town Manager may determine and declare that a vehicle is a health or safety hazard or a nuisance vehicle as defined above, and order the vehicle removed.

(1981 Code, § 16-4) (Ord. passed 3-26-1990) Penalty, see § 10.99

§ 95.05 JUNKED MOTOR VEHICLE REGULATED; REMOVAL.

(A) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(B) It shall be unlawful to have more than 1 junked motor vehicle, as defined herein, on the premises of public or private property. Single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.

(C) It shall be unlawful for any owner, person entitled to the possession of a junked motor vehicle, or for the owner, lessee or occupant of the real property upon which a junked motor vehicle is located to fail to comply with the locational or

concealment requirements of this section.

(D) (1) Subject to the provisions of division (E) below, upon investigation, the Town Manager may order the removal of a junked motor vehicle as defined in this chapter after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner.

(2) The finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance.

(3) The following, among other relevant factors, may be considered:

- (a) Protection of property values;
- (b) Promotion of tourism and other economic development opportunities;
- (c) Indirect protection of public health and safety;
- (d) Preservation of the character and integrity of the community; and
- (e) Promotion of the comfort, happiness and emotional stability of area residents.

(E) Permitted concealment or enclosure of junked motor vehicle:

(1) *One junked motor vehicle.*

(a) One junked motor vehicle, in its entirety, may be located in the rear yard as defined by Chapter 154 if the junked motor vehicle is entirely concealed by an acceptable covering from public view from a public street and from view from abutting premises.

(b) The Town Manager has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision.

(c) The covering must remain in good repair and must not be allowed to deteriorate. The covering or enclosure must be compatible with the objectives stated in the preamble of this chapter.

(2) *More than one junked motor vehicle.*

(a) Any other junked motor vehicle(s) must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property.

(b) A garage or building structure means one which is allowed pursuant to a valid nonconforming use, or a garage or a building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations.

(1981 Code, § 16-5) (Ord. passed 3-26-1990) Penalty, see § 10.99

§ 95.06 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.

(A) Except as set forth in §95.07 below, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle.

(B) In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail.

(C) The person who mails the notice(s) shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed.

(D) If names and addresses cannot be ascertained of if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specific date, no sooner than 7 days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(E) With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession chooses to appeal the determination that the vehicle is abandoned, is a nuisance vehicle or, in the case of a junked motor vehicle, that the aesthetic benefits of removing the vehicle outweigh the burdens, the appeal shall be made only after the vehicle has been towed and during the right to probable cause hearing outlined in § 95.09 below.

(1981 Code, § 16-6) (Ord. passed 3-26-1990; Am. Ord. passed 3-24-2003)

§ 95.07 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.

(A) The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare.

(B) The findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include, among others, the following.

(1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of a vehicle may be warranted when they are:

- (a) Obstructing traffic;
- (b) Parked in violation of an ordinance prohibiting or restricting parking, parked in a no-stopping or standing zone;
- (c) Parked in loading zones;
- (d) Parked in bus zones; or
- (e) Parked in violation of temporary parking restriction imposed pursuant to ordinance.

(2) *Other abandoned or nuisance vehicles.*

(a) With respect to abandoned or nuisance vehicles left on town-owned property other than the streets or highways, and on private property, vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare.

(b) By way of illustration and not of limitation, like circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in a location or manner so as to pose a traffic hazard, and vehicles causing damage to public or private property.

(1981 Code, § 16-7) (Ord. passed 3-26-1990)

§ 95.08 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

(A) Any abandoned, nuisance or junked motor vehicles which has been ordered removed may, as directed by the town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform services for the town.

(B) Whenever a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, notice to include the following:

- (1) The description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

(C) The town shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set forth in divisions (B)(1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his or her agent.

(D) If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(E) Whenever an abandoned, nuisance or junked motor vehicle is removed, and the vehicle has no valid registration or registration plates, the authorizing town official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in divisions (B)(1) through (5) above.

(1981 Code, § 16-8) (Ord. passed 3-26-1990)

§ 95.09 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

(A) After the removal of an abandoned vehicle, nuisance vehicle or junked motor vehicle, the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle.

(B) A request for hearing must be filed in writing with the Town Council within 5 days of receiving the post towing notice.

(C) Failure to notify the Town Council, as provided by this section, shall be deemed a waiver of the right to a hearing.

(D) At the hearing the owner of the vehicle will have an opportunity to present evidence in order to show cause why the sale or disposition of the vehicle should not occur in accordance with this chapter.

(E) The owner has the right to have counsel present at the hearing.

(F) The Town Council shall serve as the hearing officer, shall conduct the hearing at their next regularly scheduled

meeting, shall conduct the hearing in accordance with the procedures stated in this section, and shall prepare a written report within 5 days of the hearing stating their conclusions concerning whether the vehicle was in violation of this chapter and the reasons and evidence upon which the conclusion has been based.

(G) The written report shall determine that the vehicle shall either be disposed of in accordance with this chapter or be immediately returned to the registered owner.

(H) If the Town Council determines that the vehicle was not in violation of this chapter, then it must be immediately returned to the registered owner and the owner not charged with the cost of removal expenses. A copy of the report shall be mailed to the owner and the town shall retain the original report.

(I) The owner, the person who requested the hearing if someone other than the owner, the tower and the person who authorized the towing shall be notified of the time and place of the hearing.

(J) The owner, the tower, the person who authorized the towing and any other interested parties may present evidence at the hearing. The person authorizing the towing and the tower may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

(K) The only issue at this hearing is whether or not probable cause existed for the towing. If the Town Council finds that probable cause did exist, the charge for towing and storage continues. If the Town Council finds that probable cause did not exist, the charge for towing and storage will be paid by the town.

(1981 Code, § 16-9) (Ord. passed 3-26-1990; Am. Ord. passed 3-24-2003)

§ 95.10 REDEMPTION OF VEHICLE DURING PROCEEDINGS.

(A) At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of fees and charges to the tow truck operator or towing business having custody of the removed vehicle.

(B) Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this chapter.

(1981 Code, § 16-10) (Ord. passed 3-26-1990)

§ 95.11 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of a like vehicle shall be carried out in coordination with the town and in accordance with G.S. Ch. 44A, Article I.

(1981 Code, § 16-11) (Ord. passed 3-26-1990)

§ 95.12 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.

(A) As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state law procedures.

(B) In no case will a vehicle be removed by the town from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Town Manager.

(C) The town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage or sale thereof.

(1981 Code, § 16-12) (Ord. passed 3-26-1990)

§ 95.13 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.

No person disposing of a vehicle as provided in this chapter shall be subject to a criminal action or held accountable in a civil action by any owner or other person legally entitled to the possession of the vehicle.

(1981 Code, § 16-13) (Ord. passed 3-26-1990)

§ 95.14 EXCEPTIONS.

Nothing in this chapter shall apply to any vehicle:

(A) Which is located in a bona fide automobile graveyard or junkyard as defined in G.S. § 136-143, in accordance with the Junkyard Control Act, G.S. §§ 136-143 *et seq.*;

(B) Which is in an enclosed building;

(C) Which is on the premises of a business enterprise being operated in a lawful place and if the vehicle is necessary to the operation of the enterprise; or

(D) Which is an appropriate storage place or depository maintained in a lawful place and manner by the town.

(1981 Code, § 16-14) (Ord. passed 3-26-1990)

§ 95.15 UNLAWFUL REMOVAL OF IMPOUNDED VEHICLE.

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the town any vehicle which has been impounded pursuant to the provisions of this code unless and until all towing and impoundment fees which are due, or bond in lieu of fees, have been paid.

(1981 Code, § 16-15) (Ord. passed 3-26-1990) Penalty, see § 10.99