

**ORDINANCE NO. 2020-0721-17**

**AN ORDINANCE TO AMEND APEX TOWN CODE CHAPTER 20 c**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF APEX AS FOLLOWS:

**Section 1. That Chapter 20 of the Town of Apex Code of Ordinances is hereby amended with the addition of a new Article XI to read as follows:**

**ARTICLE XI. TOWING FROM PRIVATE LOTS**

**Sec. 20-205. Findings and intent.**

- (a) The Town Council of the Town of Apex has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.
- (b) North Carolina General Statute 160A-174 allows a city by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the city.
- (c) Some practices related to the non-consensual towing of motor vehicles from private property have resulted in the public and members of the towing industry being exposed to harm.
- (d) The Apex Town Council desires to minimize and control the harmful and adverse effects that occur during the non-consensual towing of motor vehicles.

**Sec. 20-206 Applicability.**

The provisions of this Article shall apply to any private property used for non-residential and multi-family residential purposes.

**Sec. 20-207 Exceptions.**

Notwithstanding any other provision of this article, no notice shall be required for the towing or removal of a vehicle (i) if the vehicle obstructs adequate ingress and egress, or (ii) if the vehicle has been left on private residential property for a period of time greater than two (2) hours, (iii) if the vehicle is removed pursuant to N.C.G.S. §25-9-609, (iv) if the vehicle tow is initiated by the Town of Apex pursuant to Chapter 20, Article III of the Apex Town Code, or (v) if the vehicle is being removed pursuant to the direction of a law enforcement officer or other officer in accordance with the provisions of this Code or state law.

## **Sec. 20-208 Notice required.**

(a) It shall be unlawful to tow or remove a vehicle which is parked on private property without the permission of the owner or lessee of that private property unless notice in accordance with the provisions of this section is posted on the private property from which the towing or removal is made. Such notice shall fulfill the following requirements:

(1) A notice, in the form of a sign structure, at least twenty-four (24) inches by twenty-four (24) inches in size, shall be prominently placed on the private property at each access or curb cut allowing vehicular access to the property, no greater than five (5) feet from the street right-of-way line. If there are no curb or access barriers, signs shall be posted not less than one (1) sign each fifty (50) feet of the frontage to the public street. The maximum size for any sign shall be four (4) square feet.

(2) The notice shall clearly display the following:

a. In not less than one-and one-half (1½) inch high letters on a contrasting background, the words "tow-away" or "tow-away zone" or "towing enforced," or a similar phrase.

b. In not less than one-inch high letters on a contrasting background, a statement indicating that parking by unauthorized vehicles is prohibited by the use of a phrase such as "private property", "leased parking", "no parking", "parking for customers only", "parking for residents only", or a similar phrase. If parking by unauthorized vehicles is not prohibited on a twenty-four-hour continuous basis, the days of the week and hours of the day during which unauthorized parking is prohibited shall be posted.

c. If the property owner adopts a policy where the vehicles are subject to immediate towing when the vehicle operator steps off the property immediately after conducting business on the property, the signage shall also depict the phrase "If you walk-off this property, you are subject to being towed. This includes patrons who are frequenting business on this property" or similar language which conveys this message in one-inch high letters on a contrasting background.

d. In not less than one-half (½) inch high letters on a contrasting background, the name and telephone number of the towing and storage company at which a person available to release the vehicle that has been towed, removed, or immobilized may be contacted at any time. Phone calls to the telephone number must be answered by a person or a call back must be initiated, by a person, within fifteen (15) minutes of a message being left on voice mail or answering machine type device. A person with the authority and ability to release the vehicle must respond to the location of the vehicle within thirty (30) minutes of a call being answered or voice message, when applicable, being returned.

e. In not less than one-half (½) inch high letters on a contrasting background, the maximum fees and charges for towing, hooking up but not towing, and storage; a statement that debit and credit cards may be

used for payment; and the amount or percent of additional charges which may be added for use of debit and credit cards.

(b) The sign structure displaying the required notices shall be permanently installed with the bottom of the sign not less than four (4) feet above ground level and not more than five (5) feet above ground level. Pedestrian safety should be taken into consideration when locating freestanding signs.

**Sec. 20-209 Towing Receipt Required, Fees Reported to the Police Department.**

(a) The towing or storage firm shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:

- (1) The name address and telephone number of the tow company.
- (2) Sufficient information to allow the employee who towed the vehicle to be identified.
- (3) A total fee with a breakdown of towing and storage fees.
- (4) A clear and accurate reason for the towing and the date and time of the towing. Receipts shall not use descriptions that might cause individuals to associate private property towing with municipal action.

(b) The fees referred to in this section shall be payable by cash, debit card and at least two (2) major national credit cards. Failure to accept credit or debit cards for payment is a violation of this section and is punishable as a misdemeanor.

(c) The Tow Operator must provide a fee schedule to the Police department. Any changes in fees must be provided to the police and posted on the signs, required in Section 20-208 at least 24 hours before they go into effect.

**Sec. 20-210 Report to police department.**

When towing a vehicle pursuant to this article, the tow truck operator who is removing the vehicle shall report by telephone to the Apex Police Department a license tag number, description of the vehicle, the location that the vehicle is being towed from, its intended storage location, and the contract information for the person from whom the vehicle owner may retrieve the vehicle. This report to the police department shall be made before the tow truck towing the vehicle leaves the private property from which the vehicle is towed.

**Sec. 20-211 Release prior to tow.**

If, prior to the tow truck and vehicle having left the private property at which the vehicle was parked, the owner or operator or other person able to move the vehicle returns to the property, the tow truck operator shall release the vehicle to that person upon payment of the release fee.

**Sec. 20-212 Regulations for tow storage lots.**

- (a) Tow operators are required to provide the location of their tow storage lots to the Apex Police Department on an annual basis.
- (b) The tow storage lot must be located within ten (10 mile radius of Apex Town Hall.
- (c) Tow storage lots must be clearly signed. The lot shall be secured and lighted in such a manner as to keep the vehicle safe from break-ins or damage while in storage. A fenced storage yard with average surface level lighting sufficient for transacting nighttime business shall be deemed compliant with this section.

**Sec. 20-213 Penalties.**

- (a) Any violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty as follows:
  - (1) In the amount of fifty dollars (\$50.00) for the first offense;
  - (2) In the amount of one hundred dollars (\$100.00) for the second offense within a twelve-month period; and
  - (3) In the amount of two hundred fifty dollars (\$250.00) for each offense when the offense is the third or subsequent offense with a twelve-month period.
- (b) This article may also be enforced by an appropriate equitable action.
- (c) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this article.

**Section 2. It is the intention of the governing body, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances and the sections of this ordinance may be renumbered to accomplish such intention.**

**Section 3. Severability, Conflict of Laws. If this ordinance or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.**

**Section 4. Effective Date. This ordinance shall be effective upon adoption.**

Introduced by Council Member: \_\_\_\_\_

Seconded by Council Member: \_\_\_\_\_

This the 21st day of July 2020.

\_\_\_\_\_  
Jacques K. Gilbert  
Mayor

ATTEST:

\_\_\_\_\_  
Donna B. Hosch, MMC, NCCMC  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Laurie L. Hohe  
Town Attorney