

## Chapter 11 - SOLID WASTE AND ENVIRONMENTAL REGULATIONS

### ~~ARTICLE IV. - ABANDONED, MOTOR VEHICLES<sup>[3]</sup>~~

### ARTICLE IV. - ABANDONED, NUISANCE, AND AESTHETIC NUISANCE MOTOR VEHICLES<sup>[3]</sup>

Footnotes:

--- (3) ---

State Law reference— Removal and disposal of junked and abandoned motor vehicles, G.S. 160A-303.

#### ~~Sec. 11-26. Removal of abandoned and junked vehicles authorized.~~

- ~~(a) Subject to subsection (b) of this section, the town may have abandoned or junked motor vehicles within the town removed in accordance with the provisions of this article.~~
- ~~(b) No motor vehicle classified as abandoned because it is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours may be removed without the written request of the owner, occupant, or lessee of the premises. The town may require any person requesting the removal of such vehicle to indemnify the town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.~~

~~(Prior Code, § 11-26; Ord. of 2-10-1992)~~

#### ~~Sec. 11-27. Notice required before vehicle removal.~~

- ~~(a) Before removing a vehicle under the circumstances specified herein, the town shall attempt to notify the owner of its intent to tow such vehicle as provided in subsections (b) and (c) of this section. This pre-towing notification is required before removing a vehicle:
  - ~~(1) That is classified as abandoned because it is:
    - a. Left on property owned or occupied by the town for longer than 24 hours; or
    - b. Left on any public street or highway for longer than seven days.~~
  - ~~(2) That is classified as abandoned for any reason if such vehicle has neither a valid registration plate nor registration and the officer authorizing the vehicle to be towed has made a reasonable but unsuccessful effort, including checking the vehicle identification number, to determine the owner of such vehicle, except that notification before towing such vehicle shall not be required if the vehicle impedes the flow of traffic or otherwise jeopardizes the public welfare so that immediate towing is necessary.~~~~
- ~~(b) The notice required under subsection (a) of this item shall:
  - ~~(1) Identify the vehicle;~~
  - ~~(2) Specify its location;~~
  - ~~(3) State why the vehicle is subject to removal;~~
  - ~~(4) Inform the owner that, unless the vehicle is removed by a specified date and time, which shall be at least seven days after the date the notice is mailed or posted under subsection (c) of this item, the town shall have the vehicle removed and that, in that event, all charges incident to the removal and storage of such vehicle will have to be paid before the vehicle may be reclaimed;~~
  - ~~(5) Provide the owner with the name and phone number of a representative of the town who may be contacted to discuss any matter contained in the notice.~~~~
- ~~(c) The notice required in subsection (a) of this item shall be sent by mail or posted on the vehicle as follows:
  - ~~(1) If notice is required under subsection (a) (1) of this item the notice shall be sent by mail to the owner of the vehicle at his last known address according to information derived from the registration number or vehicle identification number.~~
  - ~~(2) If notice is required under subsection (a) (2) of this item the notice shall be posted on the vehicle's windshield or some other conspicuous place.~~~~

~~(Prior Code, § 11-27; Ord. of 2-10-1992)~~

#### ~~Sec. 11-28. Notice required when removed; hearing.~~

- ~~(a) Whenever any junked or abandoned motor vehicle is towed in accordance with this article, the town shall promptly give notification to the owner of the matters set forth in subsection (d) of this section, if the owner can, with reasonable diligence, be identified and contacted.~~
  - ~~(b) If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours. If the vehicle is not registered in this state, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone, but in any case notice shall also be mailed to the owner's address unless the owner or his agent waives this notice in writing.~~
  - ~~(c) If the vehicle has neither a valid registration plate nor registration, then a reasonable effort shall be made, including checking the vehicle identification number, to identify the owner and notify him as promptly as possible of the matters set forth in subsection (d) of this section.~~
  - ~~(d) The notice required under this section shall be sent by mail (certified receipt requested if the owner has not previously been reached by telephone) and shall:
    - ~~(1) Contain a description of the vehicle;~~
    - ~~(2) State why and under what authority the vehicle was removed and identify any violation with which the owner is charged;~~
    - ~~(3) Explain where the vehicle is stored and what the owner must do to obtain possession, including paying the towing fee or posting a bond for double the amount of the fee;~~
    - ~~(4) Inform the owner that he is entitled to request in writing a hearing before a magistrate to determine if probable cause existed for the towing. The notice shall further explain that if the magistrate finds probable cause did not exist, the tower's lien is extinguished and if the owner has already paid the towing fee, he will be entitled to reimbursement from the town.~~~~
- ~~(Prior Code, § 11-28; Ord. of 2-10-1992)~~

~~Sec. 11-29. Use of private towing operators.~~

~~The town may have vehicles removed under this article by private towing operators. Such private towing operators shall have a lien on the vehicles towed and may dispose of such vehicles in accordance to the provisions of G.S. art. 1, ch. 44A.~~

~~(Prior Code, § 11-29; Ord. of 2-10-1992)~~

~~Sec. 11-30. Exempted vehicles.~~

~~The provisions of this article shall not apply to any vehicle in an enclosed building, enclosed meaning three solid walls, closable doors, and a roof; or any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise; or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the town.~~

~~(Prior Code, § 11-30; Ord. of 2-10-1992; Ord. of 7-10-2006, § 2(11-30))~~

~~Sec. 11-31. Motor vehicles dangerous or prejudicial to public health and safety.~~

- ~~(a) Nothing contained in this article shall be construed to limit the authority of the town to effect the removal or abatement of any motor vehicle, regardless of whether it is located on private property with the consent of the owner, lessee, or occupant thereof, if the motor vehicle is found to constitute a public nuisance or a situation dangerous or prejudicial to the public health or safety in accordance with part 2 of article VI. Any vehicle exhibiting two or more of the following characteristics shall qualify as nuisances and be subject to abatement under section 11-58:
  - ~~(1) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests;~~
  - ~~(2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;~~
  - ~~(3) A point of collection for pools or ponds of water;~~
  - ~~(4) A point of concentration of gasoline, oil or other flammable or explosive materials; or~~
  - ~~(5) So located that there is danger of the vehicle's falling or turning over;~~
  - ~~(6) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass, or other materials; or~~
  - ~~(7) Used as a cover for or the location of illicit activity.~~~~
- ~~(b) Any residential lot may have no more than one vehicle that exhibits one of the criteria listed in the definition of the term "junked motor vehicle" provided the vehicle doesn't otherwise violate this section.~~

~~(Prior Code, § 11-31; Ord. of 02-10-1992; Ord. of 9-14-1998; Ord. of 7-10-2006, § 2(11-31))~~

~~**Secs. 11-32—11-35. Reserved.**~~

**Sec. 11-26 Definitions**

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

*Abandoned motor vehicle.* As defined in G.S. 160A-303 as written or subsequently amended, a motor vehicle that:

- (a) Has been left upon a street or highway in violation of a law or ordinance prohibiting parking; or
- (b) Is left on property owned or operated by the Town for longer than 24 hours without the consent of the Town; or
- (c) Is left on private property without the consent of the owner or occupant or lessee thereof for longer than two hours; or
- (d) 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.

*Aesthetic nuisance vehicle.* A junked motor vehicle on public or private property that has been determined by authorizing officials of the police or planning departments to be so offensive to the sight as to damage the community, neighborhood, or general area appearance. In making the determination, the authorizing official must find that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such findings 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. Factors that may be considered are protection of property values, promotion of tourism, indirect protection of health and safety, preservation of the character, and integrity of the community, or promotion of the comfort, happiness, and emotional stability of area residents, provided that this definition shall not apply to any motor vehicle that is used on a regular basis for business or personal use nor shall it apply to the removal or disposal of a motor vehicle kept or stored at a lawfully established bona fide "auto graveyard" or "junkyard" as defined in G.S. 136-143.

*Antique motor vehicle.* A motor vehicle but not a reproduction thereof, manufactured more than 25 years prior to the current year and which, because of discontinued production and limited availability, is considered to be a model or make of significant value to collectors or exhibitors and which has been maintained in or restored, or will be maintained in or restored to a condition which is substantially in conformity with the manufacturer's specifications and appearance, and is listed for ad valorem taxes in Orange County.

*Authorized official.* The supervisory employee of the police and/or planning office designated to authorize the removal of vehicles under the provisions of this article.

*Junked motor vehicle.* As defined in G.S. 160A-303 as written or subsequently amended, a motor vehicle that does not display a current license plate lawfully upon that vehicle and:

- (a) Is partially dismantled or wrecked; or
- (b) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
- (c) Is more than five years old and appears to be worth less than \$500.

*Motor vehicle or vehicle.* As defined in G.S. 160A-303 as written or subsequently amended, all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

*Nuisance vehicle.* A motor vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, or unlawful, including a vehicle found to be any of the following:

- (a) A breeding ground or harbor for mosquitoes, other insects, rats, or other pests; or
- (b) A point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- (c) A point of collection of pools or ponds of water; or

- (d) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
- (e) One that has areas of confinement that cannot be operated from the inside, such as trunks, hoods, and the like; or
- (f) So situated or located that there is a danger of it falling or turning over; or
- (g) One that is a point of collection of garbage, food waste, animal waste, or any other matter that is rotten or likely to decay; or
- (h) One that has sharp parts which are jagged or contain sharp edges of metal or glass; or
- (i) Any other vehicle specifically declared a health and safety hazard or a public nuisance by the Governing Body.

Tow. As used in this article, the word tow in any of its forms shall mean removing a vehicle by any means including towing and storing the vehicle.

#### **Sec. 11-27 Abandoned, Nuisance, and Aesthetic Nuisance Vehicles Unlawful; Towing Authorized; Responsibility for Costs**

- (a) Abandoned vehicles. It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle to abandon the motor vehicle on public or private property within the Town's municipal boundaries for such time and under such circumstances as to cause the vehicle to appear to have been abandoned.
- (b) Nuisance vehicles. It shall be unlawful for the registered owner or person entitled to possession of a motor 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.
- (c) Aesthetic nuisance vehicles. It shall be unlawful for the registered owner or person entitled to possession of a motor 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 an aesthetic nuisance vehicle.
- (d) Towing authorized. Upon investigation, the authorizing officials may determine and declare that a motor vehicle is abandoned, a nuisance vehicle or aesthetic nuisance vehicle and order the vehicle towed.
- (e) Owner responsible for removal costs. If an abandoned, nuisance, or aesthetic nuisance vehicle is removed by or at the direction of the Town, the owner shall pay all costs incidental to the removal and storage of such vehicle and incident to locating the owner thereof.

#### **Sec. 11-28 Administration**

- (a) Responsibility of the Town.
  - (1) The code enforcement officer shall be responsible for the administration and enforcement of this article. The authorizing official of the police department shall be responsible for administering the towing and disposition of vehicles determined to be "abandoned" on the public streets, rights of way, and highways within the Town, and property owned by the Town. The code enforcement officer and/or planning department may be responsible for determining which vehicles are nuisance or aesthetic nuisance vehicles and shall be responsible for towing and disposing of abandoned, nuisance, and aesthetic nuisance vehicles located on private property. The Town may, on an annual basis, contract with private tow truck operators or towing businesses to tow, store, and dispose of abandoned, nuisance and aesthetic nuisance vehicles in accordance with this article and applicable state law.
  - (2) Nothing in this article shall be construed to limit the legal authority or powers of the code enforcement officer in enforcing any other laws or otherwise carrying out their duties.

- (b) Right to inspect vehicles on private property. Authorized officials shall have the right, upon presentation of proper credentials and identification, to enter any premises within the jurisdiction of this article during daylight hours to determine if any vehicle is a health or safety hazard or is distracting from the aesthetics of the area.

**Sec. 11-29 Removal of Abandoned, Nuisance, and Aesthetic Nuisance Vehicles; Pre-Towing Notice Requirements**

- (a) Pre-towing notice not required. Except as set forth in subsection (d) below, an abandoned motor vehicle may be towed by or at the direction of the Town without pre-towing notice if the abandoned motor vehicle has a valid license plate and registration or if the last registered owner is known to the Town, provided post-towing notice is thereafter given as set forth in section 26-88.5.
- (b) Pre-towing notice required. Except as set forth in subsection (d) below, an abandoned motor vehicle without a valid license plate or registration, or for which the Town does not know the last registered owner, nuisance and aesthetic nuisance vehicles, shall be towed only after notice to the owner or person entitled to possession of the vehicle. Notice shall be given by affixing notice on the windshield or some other conspicuous place on the vehicle. The notice shall state that the vehicle will be removed by the Town on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time and that a civil penalty may be imposed. Additionally, in the case of a nuisance and aesthetic nuisance motor vehicle, if the names and mailing addresses of the owners of the vehicle or the real property upon which it is located can be ascertained in the exercise of reasonable diligence, the notice shall also be given to both by first-class mail. The person who mails notices shall retain a written record to show the names and addresses to which mailed, and the date mailed.
- (c) Pre-towing appeal. If the owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is a nuisance or aesthetic nuisance vehicle, such appeal shall be made within thirty (30) days of the date of the pre-towing notice to the Planning Director as hearing officer. The Planning Director shall have ten days to issue a decision. Further proceedings to remove the vehicle and to impose the penalties provided in section 26-88.11 shall be stayed until the appeal is heard and decided.
- (d) Pre-towing notice exception for certain abandoned and nuisance vehicles.
- (1) If an authorized official finds that an abandoned motor vehicle on public streets impedes the flow of traffic or otherwise jeopardizes the public welfare so that immediate removal is necessary, that vehicle may be removed without any pre-towing notice. Such findings shall be entered by the authorized official in the appropriate daily records. Circumstances justifying the immediate removal of motor vehicles include vehicles:
- a. Obstructing traffic;
  - b. Parked in violation of an ordinance prohibiting or restricting parking;
  - c. Parked in a no stopping or standing zone;
  - d. Parked in loading zones;
  - e. Parked in bus zones; or
  - f. Parked in violation of temporary parking restrictions imposed by the Town.
- (2) Abandoned vehicles and nuisance vehicles on other public or Town property may be removed without pre-towing notice only in those circumstances where the authorized official finds, and enters such findings in appropriate records, a special need for prompt action to maintain the public health, safety, and welfare. By way of illustration and not of limitation such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

- (e) Indemnification. When an abandoned, nuisance, or aesthetic nuisance motor vehicle is removed from private property at the request of the owner, lessee, or occupant of the premises, the person at whose request such vehicle is removed may be required to pay or otherwise indemnify the Town for any loss, costs, expense, or liability incurred by the Town by reason of the towing, storage, sale, or other disposal of such vehicle.

#### **Sec. 11-30 Removal of Vehicle; Post-Towing Notice Requirements**

- (a) Content of post-towing notice. Any abandoned motor vehicle or any vehicle which has been determined to be a nuisance or aesthetic nuisance vehicle, may be removed to a storage garage or area by the Town or a towing business contracting to perform such services for the Town. The authorizing official shall, immediately after removing any abandoned, nuisance, or aesthetic nuisance vehicle, notify the last known registered owner of the vehicle, such notice to include the following:
- (1) A 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 of the vehicle as described in section 26-88.6(a).
- (b) Notice. This notice shall be mailed to the owner's last known address.
- (c) Notice for registered vehicles. If the vehicle is registered in the state, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the owner within 72 hours of the removal of the vehicle.
- (d) Notice for unregistered abandoned, nuisance, and aesthetic nuisance vehicles. Whenever an abandoned motor vehicle, nuisance vehicle, or aesthetic nuisance vehicle is removed and such vehicle has no valid registration or license plate, the authorizing official shall make reasonable efforts, including the checking of the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information as set forth in subsections (a)(1) through (a)(5) above.
- (e) Compliance with state statutes. All post- towing notices shall comply with the provisions of G.S. 20-219.11, as written or subsequently amended, applicable to towing of a vehicle with a valid registration plate or registration.

#### **Sec. 11-31 Right to Hearing; Right to Recover Vehicle; Unauthorized Removal Unlawful**

- (a) Probable cause hearing. After towing of an abandoned, nuisance, or aesthetic nuisance vehicle, the owner or other person entitled to possession may request in writing a hearing to determine if probable cause existed for removing the vehicle. The request must be filed with the magistrate in the county where the vehicle was towed. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. 20-219.11. Recovery of vehicle. At any time after towing of an abandoned, nuisance, or aesthetic nuisance motor vehicle, the owner may obtain possession of the motor vehicle by paying the fee for towing and storage or by posting bond in accordance with G.S. 20-219.12.
- (b) Removal unlawful. 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 article unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

#### **Sec. 11-32 Sale and Disposition of Vehicle**

- (a) Consent of owner. With the consent of the registered owner, the Town or tow truck operator may dispose of any vehicle without holding it for any prescribed period of time.
- (b) Sale of vehicle. The towing business under contract with the Town shall hold an abandoned, nuisance or aesthetic nuisance motor vehicle for a period of at least thirty (30) days. During this time the owner may claim it by exhibiting proof of ownership to the towing business and by paying the incident costs of towing and storage. Thereafter, any abandoned, junked or aesthetic junked motor vehicle which is not claimed by the owner may be disposed of by the towing business having custody of the vehicle. Disposition of such a vehicle shall be carried out in accordance with G.S. 44A, Article 1, Possessory Liens on Personal Property.

#### **Sec. 11-33 Disposition of Proceeds of Sale**

The proceeds of the sale of an abandoned, nuisance, or aesthetic nuisance motor vehicle shall be as set forth in G.S. 44A-5 as written or hereafter amended:

- (a) Payment of reasonable expenses incurred in connection with the sale, including but not limited to reasonable storage expenses after giving notice of sale;
- (b) Payment of towing costs and costs incurred in connection with learning the identity of the vehicle's owner or the owner of the real estate on which a nuisance vehicle is located; and
- (c) Any surplus shall be paid to the person entitled thereto, but when such person cannot be found, this surplus shall be paid to the Clerk of Superior Court of Orange County to be held by the clerk for the person entitled thereto.

#### **Sec. 11-34 Immunity**

Neither the Town nor any person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned, nuisance, or aesthetic nuisance vehicle for disposing of such vehicle as contemplated by this article.

#### **Sec. 11-35 Exceptions**

Nothing in this article shall apply to any motor vehicle, that is:

- (a) In a fully enclosed building;
- (b) On the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary for the operation of such business enterprise;
- (c) Located in a lawfully established bona fide "auto graveyard" or "junkyard" as defined in G.S. 136-143 in accordance with "Junkyard Control Act" G.S. 136-141 et seq.; or
- (d) In an appropriate storage place or depository maintained in a lawful place and manner by the Town; or
- (e) An antique motor vehicle as defined by G.S. 105-330.9, in process of restoration; or
- (f) A vehicle that is being repaired or restored, is listed for ad valorem taxes in Orange County, and is under a cover manufactured for automobiles or trucks. No more than one such vehicle under an automobile/truck cover shall be permitted per lot and not to exceed 180 days.

#### **Sec. 11-36 Penalty**

- (a) *Civil penalty.* Any violation of sections 26-88.1 to 26-88.10 of this article shall subject the registered owner of the motor vehicle or the landowner to a civil penalty in the amount of \$100. No penalty shall be imposed if the owner removes the motor vehicle from the property within seven days of the date the pre-towing notice has been given by the Town pursuant to section 26-88.4. If the owner does not remove the motor vehicle from the property within seven days of the pre-towing notice, the penalty may be imposed for each day the vehicle was permitted to remain on the property commencing with the date the pre-towing notice was given and terminating on the date of removal of the motor vehicle, each day's violation constituting a separate offense.
- (b) *Recovery of penalty.* The penalty may be recovered by the Town in a civil action in the nature of debt if the owner does not pay the penalty within the prescribed period of time after he has been issued a citation.
- (c) *Citation.* The owner shall be issued a written citation by delivery in person or mailed by certified or registered mail. The civil penalty must be paid by the owner within 72 hours of receipt of written citation.
- (d) *No crime.* Violation of this article shall not constitute a crime.
- (e) *Article cumulative.* Procedures set forth in this article shall be in addition to any other remedies that may exist under law including ordinances for the abatement of public nuisance.

#### **Secs 11-37 – 11-55 Reserved**