

ORDINANCE NO. 0-2019-01

ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE TOWN OF RED OAK TO INCLUDE PROVISIONS FOR THE ABATEMENT OF PUBLIC NUISANCES

WHEREAS, the Mayor and Town Council of Red Oak take the responsibility of protecting the health, safety, morals, convenience, order, prosperity and general welfare of the people within the Town to be one of the most important responsibilities of their positions

WHEREAS, the Planning Board has determined that the existing Town ordinances related to Section 10 – General Provisions Article 10-3 Purpose to be revised to include; Nuisances

NOW, THEREFORE, BE IT HEREBY ORDAINED by the Town Council of the Town of Red Oak that the Code of Ordinances is amended as follows:

1. The following section of Article 10-3 will include as part of its text;

Chapter 10- Nuisances and all that is described and prohibited as such under NCGS 160A-174a, 193, 303.2

Chapter 10 – Nuisances

Article 1. - IN GENERAL

Sec. 10.1 – Described; Prohibited

- (1)** Anything that causes offensive odor or that causes injury or damage to the health or life of any other person or anything that interferes with the peaceful enjoyment of one’s property is hereby declared a nuisance.
- (2)** Abandoned houses and buildings can cause a blight on a neighborhood; can cause entrapment or injury or become a breeding ground for mosquitos, insects, rats or other pests are deemed a public health nuisance. Bona fide farm buildings are exempt from this regulation.
- (3)** Citizens may file a nuisance complaint form located on the Town of Red Oak website or by requesting a form from the Town Clerk. Complete and accurate information must be provided in order for the authorizing official to make a determination of the nuisance violation.

- (4) It shall be unlawful for any person to create a nuisance on a lot owned or occupied by them or to allow a nuisance to remain on a lot owned or occupied by them.
- (5) The Town Council has found it necessary and desirable to promote or enhance:
- (a) The quality of **rural** attractiveness and the aesthetic appearance of the Town;
 - (b) The protection of property values throughout the Town;
 - (c) The preservation of the livability and attractiveness of neighborhoods;
 - (d) The promotion of tourism, **festivals**, and other opportunities for economic development for the Town;
 - (e) The attractiveness of the Town's thoroughfares and commercial roads which present the primary, public visibility to visitors and passers-by of the Town; and
 - (f) The promotion of the comfort, happiness, and emotional stability of occupants of property in the vicinity of nuisances, junked, or neglected motor vehicles as defined in this Chapter.

Section 10.2 – Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned: left without needed protection, upkeep or repair, left by the owner(s) and allowed to fall in to a state of disrepair, vacant and uninhabitable.

Abate / Abatement: To cause the violation on a property to cease by removal of nuisance materials, vehicles, etc.

Authorizing Official: The Town Manager, or their assigns, designated to authorize the abatement of nuisances or removal of vehicles under the provisions of this Chapter.

Building Materials: Lumber, brick, stone carpet, plumbing materials, plaster, concrete, roofing, floor coverings, gutters or other materials or substances suitable for or commonly used in the construction or repair of houses, commercial buildings and other structures, driveways, fences, decks, landings, patios, porches or carports.

Building Rubbish: Rubbish from construction, remodeling, and repair operations on houses, commercial buildings, and other structures, including but not limited to stones, brick, plaster, lumber, concrete, and waste parts occasioned by installations and replacements.

Chronic Violator: As defined in N.C.G.S Section 160A.200.1(d) is any person who owns property whereupon, in the previous calendar year, the Town gave notice of violation at least three times under any provision of this Chapter.

Combustible Refuse: Refuse, capable of incineration or burning, such as garbage, paper, rags, boxes and wood.

Dwelling: A building or portion of a building providing complete and permanent living facilities, including cooking and bathing facilities.

Garbage: Animal and vegetable refuse resulting from the handling, preparation, cooking, and consumption of food, including a minimum amount of liquid necessary incident thereto.

Harmful Insects: Mosquitoes, ticks, fleas and flies and other arthropods which can be living transporters and transmitters of a causative agent of a disease.

Junk: Any furniture, appliances, machinery, equipment, building fixture, automotive parts, tires, or other similar items which is either in a wholly or partially rusted, wrecked, dismantled, or inoperative condition.

Litter: Any discarded manmade materials, including, but not limited to, garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, or motor vehicle part, solid waste materials, industrial materials and hazardous waste, or discarded material in any form resulting from domestic, industrial, commercial, medical or agricultural operations.

Noxious: Injurious to physical or mental health and capable of causing harm. **Noxious Vegetation:** Plants that cause dermatitis through direct or indirect contact or plants that cause internal poisoning if eaten or ingested including but not limited to poison sumac, poison ivy or poison oak.

Nuisance: Any condition that is dangerous or prejudicial to the public health or public safety.

Odor: The property of a substance or that creates a distinctive and unpleasant smell. A noxious odor is one is injurious to physical or mental health and capable of causing physical harm, or negatively impacts the livability of surrounding properties or persons. **Open Place:** A yard area, a vacant lot; a deck, landing, patio, porch or carport not totally enclosed by a roof, walls, screens or glass windows; or the parkway between the sidewalk and the street curb or pavement edge. The term does not include lands zoned for agriculture, wildlife sanctuary, or research farm.

Weed: Any undesired, uncultivated plant.

White Goods: Residential appliances limited to washing machines, clothes dryers, stoves, ranges, ovens, refrigerators, freezers, dishwashers, and water heaters.

Yard Waste: Grass, weeds, leaves, tree trimmings, plants, shrubbery pruning, and such other similar materials which are generated in the maintenance of yards and gardens.

Sec. 10.3 – Nuisances Prohibited; Enumeration

Any of the following enumerated and described conditions occurring in an open place, or on public or private property is hereby found, deemed, and declared to constitute a detriment, danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town of Red Oak and is found, deemed, and declared to be public nuisances wherever the same may exist and the creation, maintenance, or failure to abate any nuisances is hereby declared unlawful. Every such nuisance shall be abated pursuant to the abatement procedures as provided in Sections 10-4 through 10-7 of this Chapter.

- (1) The accumulation and existence of stagnant water, trash, debris, junk, or other noxious vegetation or material upon any lot or part thereof within the corporate limits of the Town of Red Oak.
- (2) Any place of dense growth of weeds or grasses, other than ornamental grasses, Over 18 inches in height.
- (3) The storage outside of any building or dwelling in a place accessible to children of any abandoned, unattended or discarded icebox, refrigerator or any other container of any kind which has an airtight door, or lock which may not be released from opening from the inside of such icebox, refrigerator, or container.
- (4) Any condition which creates or provides a breeding ground or harbor for rodents, Insects or pests.
- (5) A collection point or ponding of stagnant water with conditions causing, or likely to cause, mosquitoes or other harmful insects to breed.
- (6) Any concentration of combustible refuse.
- (7) Any concentration of building materials or building rubbish which are not suitable for building construction, alteration, or repair, or any concentration of building materials which becomes a focal point for any other nuisance enumerated in this Chapter.
- (8) Any concentration of collection of garbage, animal waste, yard waste, or any rotten or putrescible matter of any kind which is not maintained for collection. Nothing in this Section shall be construed to prevent the generally accepted use of a properly maintained compost pile sited in the side or rear yard area being used for fertilizer for lawns and gardens or other agricultural or horticultural purposes, unless such concentration becomes a focal point for any other nuisance enumerated in this Chapter.
- (9) Household or office furniture, any household fixtures, white goods or appliances, metal products of any kind and similar items not designed to withstand the elements or for outdoor use. This subsection shall not prevent:
 - (a) The use of household furniture on a totally enclosed porch having roof, walls, screens, or glass windows; or
 - (b) The use of furniture in good condition which is designed for outdoor use such as a patio or lawn furniture on porches or landings or in yard areas or other open places.
- (10) Any other condition specifically declared to be a danger to the public health, safety, morals, and general welfare of the inhabitants of the Town of Red Oak and a public nuisance by the Town Council.

Sec. 10-4. – Notice of Nuisance; Abatement Procedures

It shall be the duty of any owner, lessee or occupant of any lot or land to maintain said lot or land in such a condition that none of the nuisances enumerated in Section 10.3 of this Chapter are allowed to exist or persist on public or private property, or in an open place. When any enumerated nuisance is reported, found **or alleged** to exist on any property or open place, the following procedure(s) shall be followed:

- (1) The Authorizing Official shall notify the owner of the premises where the alleged **Nuisance is located by First Class mail.**
 - (a) The **letter must list** conditions identified in the **Notice of Potential Violation as identified by Code Section**
 - (b) The property owner must contact the Town Clerk within 10 days of the date of the initial letter to discuss the potential nuisance violation
 - (c) **Failure to respond within ten days will result in a second notice issued by Certified Mail advising that the Town** Authorizing Official **may** assess civil penalties and administrative fees of one hundred dollars (\$100.00) per day for violation of the Nuisance Code provisions; and
 - (d) The Authorizing Official **can** assess civil penalties and administrative fee of two hundred fifty dollars (\$250.00), per day, **after the** third and subsequent notice of violation of the Nuisance Code provisions occurring within twelve (12) months of the first such notice of violation, and
 - (e) Unless the public nuisance is abated within **thirty (30)** calendar days from the mailing of the **second** notice, the Authorizing Official will initiate the **process** to abate the conditions constituting a nuisance; and
 - (f) The cost of abatement, including an administrative fee of one hundred seventy-five dollars (\$175.00), also including the cost, if any, to reseed areas which were formerly **declared a** nuisance.

Sec. 10-5. – Right to Enter Property; Appeal

- (1) The Authorizing Official **or lawful designee** is hereby given full power and authority to enter upon the premises involved for the purposes of abating the nuisance found to exist.
- (2) **After the (30) day period** specified in Section 10-4(1)(d), the owner of the property where the nuisance exists may appeal the findings of the Authorizing Official made

pursuant to Section 10.4(1)(a) by giving written notice of the appeal to the Authorizing Official. The appeal will stay the abatement of the nuisance by the Authorizing Official until a final determination by the Town Council. In the event no appeal is taken, the Authorizing Official may proceed to abate the nuisance.

- (3) Town Council, in the event that an appeal is taken, may, after hearing all interested persons and reviewing the findings of the Authorizing Official, reverse the findings made pursuant to Section 10-4(1)(a); but if the Town Council shall determine that the findings of the Authorizing Official made pursuant to this Chapter are correct, it shall adopt an ordinance specifically declaring the condition existing on the property to be a danger and hazard to the health, safety, morals, and general welfare of the inhabitants of the Town and a public nuisance and directing the Authorizing Official to cause the conditions to be abated.

Sec. 10-6. - Abatement by Town

If the person upon whom the notice provided for in this article is served fails, neglects or refuses to correct the nuisance cited pursuant to Section 10-4 within **thirty (30)** days after receipt of such notice, or if no person can be found in the Town who either is or claims to be the owner of such lot or land or who either represents or claims to represent such owner, the Authorizing Official may cause such nuisance to be abated.

Sec. 10-7. - Recovery of Town's cost of abatement

- (1) The expense of the action to abate a nuisance shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred.
- (2) The expense of the action is also a lien on any other real property owned by the person in default within the Town limits or within one mile of the Town limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

Sec. 10-8 – Annual Notice to Chronic Violators

- (1) Pursuant to N.C.G.S 160A-200.1, the Town of **Red Oak** shall notify a chronic violator of this Chapter that, if the violator's property is found to be in violation of this Chapter, the Town shall, without further notice in the calendar year, take action to remedy the violation, and the expense shall become a lien upon the property.

- (2) This annual notice shall be sent registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.

Sec. 10-9. – Management of Grass Clippings and Vegetative Matter

(1) In no case shall grass clippings, vegetative material, and/or vegetative debris be washed, swept, or blown off into surface waters, stormwater drains, ditches, conveyances, watercourses, water bodies, wetlands, sidewalks or streets. Any material that is accidentally so deposited shall be immediately removed to the maximum extent possible.

(2) Any person or company found in violation of said ordinance will first be issued a warning to immediately cease the violation by an authorized law enforcement officer. Any person or company found in violation of said ordinance a second time will be issued a civil citation in the amount of one hundred dollars (\$100.00) by an authorized law enforcement officer. Any person or company found in violation of said ordinance a third time will be issued a civil citation in the amount of two hundred fifty dollars (\$250.00) by an authorized law enforcement officer. Due to the nature of such violations, a notice of violation is not required to be mailed to or issued to the violator and no additional time is required to be given. In addition to remedies provided herein, any violation of the terms of this section shall subject the violator to the penalties and remedies, as set forth in the **Red Oak** Code of Ordinances.

Sec. 10-10 – Time Limits for Abatement

Pursuant to N.C.G.S Sections 1.49 and 1.51, abatement of violations of this Chapter is subject to the following time limits:

- (1) Five years from the time that the facts constituting a violation become known to the Town Council, agent or employee of the Town.
- (2) Seven years from the time that a violation is visible from a public right-of-way or is in plain view from a place to which the public is invited.
- (3) These time limits do not apply to the remedy of conditions that are actually injurious or dangerous to the public health and safety.

Sec. 10.11 – 10.24 Reserved

Article II – ABANDONED, JUNKED, AND NEGLECTED MOTOR VEHICLES

Sec. 10-25 – Definitions

Abandoned Motor Vehicle: As authorized and defined in G.S. Section 160A-303, is a vehicle that:

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

Authorizing Official: The Town Administrator/Clerk, or their assigns, designated to authorize the abatement of nuisances or removal of vehicles under the provisions of this Chapter.

Classic Car: A classic car is motor vehicle that is at least 20 years old and has been restored, is being restored, or operates in the manner in which it was originally intended.

Driveway: A vehicular access from a public or private street to a property or properties constructed of materials intended for vehicular traffic, such as asphalt, concrete, gravel or similar materials.

Junked Motor Vehicle: As authorized and defined in GS Section 160A-303.b2 means a vehicle that:

- (a) Is partially dismantled or wrecked; or
- (b) Cannot be self-propelled or moved in the manner in which it was intended to move; or
- (c) Is more than five years old and worth less than \$500, or;
- (d) Does not display a current license plate; or
- (e) Is not exempt from this Chapter as specified in Section 10.40.

Motor Vehicle: As defined in GS Section 160A-303.b means all machines designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

Neglected Motor Vehicle: A motor vehicle on public or private property that is determined and declared to be a public nuisance, and unlawful, including a vehicle:

- (a) That does not leave the property upon which it is situated for 60 consecutive days; or

(b) Not parked or stored within a substantially enclosed structure, such as a carport or garage; or is not covered by a UV protective covering that is intact and in good condition designed specifically for the motor vehicle; or,

(c) Not parked within a driveway or delineated parking area specifically designed for vehicular parking.

Nuisance Motor Vehicle: A motor vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

(a) A breeding ground or harbor for mosquitos, 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 which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc; or

(f) So situated or located that there is a danger of it falling or turning over; or

(g) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible material of any kind; or

(h) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

(i) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Council.

Sec. 10-26 – Administration

(1) The **Nash County Sherriff's Department** shall be the Authorizing Official 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.

(2) The Town **Administrator/Clerk**, or designee, shall be the Authorizing Official responsible for administering the removal and disposition of abandoned, nuisance, junked, or neglected motor vehicles located on private property. 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, neglected motor vehicles, and junked motor vehicles in compliance with this article and applicable state laws. Nothing in this article 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.

Sec. 10-27 – Abandoned Motor Vehicle

(1) It shall be unlawful for the registered owner or person entitled to the possession of a motor vehicle to cause or allow such motor vehicle to be abandoned.

(2) Upon investigation, proper Authorizing Official of the Town may determine that a motor vehicle meets the definition of an abandoned motor vehicle and order the vehicle removed.

Sec. 10-28 – Nuisance Motor Vehicle Unlawful; Removal Authorized

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

(2) Upon investigation, the Authorizing Official may determine that a motor vehicle is a health and safety hazard meeting the definition of a Nuisance Motor Vehicle, declare that the motor vehicle is a health or safety hazard, and order the motor vehicle removed.

(3) Abatement of a nuisance motor vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

Sec. 10-29 – Junked Motor Vehicle Regulated; Removal Authorized

(1) 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 motor vehicle has been ordered removed.

(2) It shall be unlawful to have a junked motor vehicle on the premises of public or private property.

(3) Upon investigation, the Authorizing Official may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the motor vehicle outweigh the burdens imposed on the private property owner. Such 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. The following among other relevant factors may be considered:

a) Protection of property values; or

b) Promotion of tourism or other economic development opportunities; or

c) Indirect protection of public health and safety; or

d) Preservation of the character and integrity of the community; or

e) Promotion of the comfort, happiness, and emotional stability of area residents.

(4) Abatement of a junked motor vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

Sec. 10-30 – Neglected Motor Vehicle Regulated; Removal Authorized

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

(2) It shall be unlawful to have a neglected motor vehicle on the premises of public or private property.

(3) Upon investigation, the Authorizing Official may order the removal of a Neglected Motor Vehicle after finding in writing that the aesthetic benefits of removing the motor vehicle outweigh the burdens imposed on the private property. Such 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. The following among other relevant factors may be considered:

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

(4) Abatement of a neglected vehicle violation shall follow the procedures outlined in Sections 10-4 through 10-7 of this Chapter.

Sec. 10-31 – Removal; Pre-Towing Notice Requirement

(1) Except as set forth in Section 10-33, an abandoned, nuisance, junked, or neglected motor vehicle shall be towed only after notice to the registered owner or person entitled to possession of the motor vehicle. In the case of a nuisance, junked, or neglected motor vehicle, if the name and mailing address of the registered owner or person entitled to the possession of the vehicle or 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. The person who mails the notice shall retain a written record to show the name and address to which mailed and the date mailed. If such names and addresses cannot be ascertained or if the motor 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 motor vehicle a notice indicating that the motor vehicle will be removed by the Town on a specified date, no sooner than

seven days after the notice is affixed. The notice shall state that the motor vehicle will be removed by the Town on a specified date, no sooner than **ten** days after the notice is affixed or mailed, unless the motor vehicle is moved by the owner or legal possessor prior to that time.

- (3) With respect to abandoned motor vehicles on private property, nuisance, junked, or neglected motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the motor vehicle but chooses to appeal the determination that the motor vehicle is abandoned, a nuisance, or in the case of junked or neglected motor vehicle that the aesthetic benefits of removing the motor vehicle outweigh the burdens, such appeal shall be made to the Town Council in writing, heard at the next regularly scheduled meeting of the Town Council, and further proceedings to remove the motor vehicle shall be stayed until the appeal is heard and decided.

Sec. 10-32 – Exceptions to Prior Notice Requirement

(1) The requirement that notice be given prior to the removal of an abandoned, nuisance, junked, or neglected motor vehicle may, as determined by the Authorizing Official, be omitted in 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. Such findings shall, in all cases, be entered by the Authorizing Official in the appropriate daily records. Circumstances justifying the removal of motor vehicles without prior notice include:

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

- (i) Obstructing traffic; or
- (ii) Parked in violation of an ordinance prohibiting or restricting parking;

(4) Other abandoned or nuisance motor vehicles: With respect to abandoned or nuisance motor vehicles left on city-owned property other than streets and highways and on private property, such motor 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. By way of illustration and not of limitation, such circumstances include motor vehicles blocking or obstructing ingress or egress to businesses and residences, motor vehicles parked in such a location or manner to pose a traffic hazard, and motor vehicles causing damage to public or private property.

Sec. 10-33 – Removal of Motor Vehicle; Post-Towing Notice Requirements

- (1) Any abandoned, nuisance, junked, or neglected motor vehicle 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 such services for the Town. Whenever such a motor vehicle is removed, the Town shall immediately notify the last known registered owner of the motor vehicle, such notice to include the following:
 - (a) The description of the removed motor vehicle; and
 - (b) The location where the motor vehicle is stored; and
 - (c) The violation with which the owner is charged, if any; and
 - (d) The procedure the owner must follow to redeem the motor vehicle; and
 - (e) The procedure the owner must follow to request a probable cause hearing on the removal.
- (2) The Town shall attempt to give notice to the motor vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, including the information set for in subsections (1) (a) through (1) (e) of this section, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the motor vehicle owner or their agent.
- (3) If the motor vehicle is registered in the State of North Carolina, notice shall be given within twenty-four hours. If the motor vehicle is not registered in the State of North Carolina, notice shall be given to the registered owner within seventy-two hours from the removal of the motor vehicle.
- (4) Whenever an abandoned, nuisance, junked, or neglected motor vehicle is removed and such motor vehicle has no valid registration or registration plates, the Authorizing Official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the motor vehicle and notify them of the information as set forth in subsections (1) (a) through (1) (e) of this section.

Sec. 10-34 – Right to Hearing before Sale or Final Disposition of Motor Vehicle

After removal of an abandoned, nuisance, junked or neglected motor vehicle, the owner or any other person entitled to the possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the motor vehicle. A request for hearing must be filed in writing with the County Magistrate designated by the Chief District Court Judge to receive such hearing requests. The County Magistrate will set the hearing within seventy-two hours of the receipt of the request, and the hearing will be conducted in accordance with the provisions of N.C.G.S Section 20-222.

Sec. 10-35 – Redemption of Vehicle during Proceedings

At any stage of the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed motor vehicle by paying a towing fee, including any storage charges, or by posting a bond for double the amount of such fees and charges to the tow truck operator or towing business having custody of the removed motor vehicle. Upon regaining possession of a motor vehicle, the owner or person entitled to the possession of the motor vehicle shall not allow or engage in further violation of this article.

Sec. 10-36 – Sale and Disposition of Unclaimed Motor Vehicle

Any abandoned, nuisance, junked, or neglected motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the Town or tow truck operator or towing business having custody of the motor vehicle. Disposition of such a motor vehicle shall be carried out in coordination with the Town and in accordance with N.C.G.S. Chapter 44A, Article 1.

Sec. 10-37 – Conditions on Removal of Vehicle from Private Property

As a general policy, the Town will not remove a motor vehicle from private property if the owner, occupant, or lessee of such property could have the motor vehicle removed under applicable state law procedures. In no case will a motor 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 motor vehicle is a nuisance, junked, or neglected motor vehicle which has been ordered removed by the Authorizing Official. The Town may require any person requesting the removal of an abandoned, nuisance, junked, or neglected motor vehicle from private property to indemnify the Town against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

Sec. 10-38 – Protection against Liability

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance, junked, or neglected motor vehicle for disposing of such motor vehicle as provided for in this article.

Sec. 10-39 – Unlawful Removal of an Impounded Vehicle

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

Sec. 10-40 – Exceptions

Nothing in this article shall apply to any motor vehicle:

- (1) Which is located in a bona fide automobile graveyard or junkyard as defined in N.C.G.S Section 136-143, in accordance with the Junkyard Control Act, N.C.G.S Section 136.141 et seq; or
- (2) Which is in an enclosed building; or
- (3) Which is on the premises of a business enterprise being operated in a lawful place and manner if the motor vehicle is necessary to the operation of the enterprise; or
- (4) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the Town; or
- (5) Meeting the definition of a Classic Car as defined in this article. If a motor vehicle meeting the definition of a Classic Car is in the process of being restored to its original condition, the Classic Car must be covered with a UV protective cover designed specifically for the motor vehicle or within an enclosed structure when work on the motor vehicle is not active. Proof of active restoration efforts must be provided if requested by the Authorizing Official.

This Ordinance shall be effective upon its date of adoption by the Town Council this the _____ day of _____, 2019

Levell Langley, Mayor

Attest: Tracy Shearin, Town Clerk

