

ORDINANCE 23-226

**AN ORDINANCE AMENDING THE REGULATION OF PUBLIC NUISANCES
IN THE TOWN OF FAIRMONT**

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general police power; and

WHEREAS, Article 15 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-303, et seq., authorizes municipalities to regulate, remove and dispose of Abandoned and Junked Vehicles; and

WHEREAS, N.C.G.S. 160A-193 authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

WHEREAS, the Board of Commissioners of the Town of Fairmont finds that it is in the public interest to amend the Abandoned Nuisance Vehicles Ordinance as it pertains to regulating Abandoned, Junked and Nuisance vehicles; in the Town; and

WHEREAS, the Board of Commissioners of the Town of Fairmont, after due notice, conducted a public hearing on the 21st day of March 2023 upon the question of amending this ordinance in this respect.

THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF FAIRMONT, NORTH CAROLINA:

PART ONE. That an Ordinance entitled Chapter 91: Nuisances, Sections 91.20 through 91.32, are hereby amended and adding Sections 91.33 through 91.37 of the Code of Ordinances of the Town of Fairmont, North Carolina, is hereby rewritten in its entirety to read as follows:

“CHAPTER 91. ABANDONED, JUNKED AND NUISANCE VEHICLES

91.20 DEFINITIONS.

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

ABANDONED MOTOR VEHICLE. A motor vehicle 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 seven days; or is determined by Law Enforcement to be a hazard to the motoring public;
- (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 two hours.

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

JUNK MOTOR VEHICLE. Authorized and defined in G.S. § 160A-303.2, a vehicle that does not display a current license plate and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five years old and appears to be worth less than \$500.00

MOTOR VEHICLE OR VEHICLE. 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 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 any one or more of the following:

- (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 eight 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 other rotten matter of any kind;
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; and/or
- (9) Any other vehicle specifically declared a health and safety hazard and public nuisance by the Town Council.

91.21 ADMINISTRATION.

(A) The Police Department and the Code Administrator shall be responsible for the administration and enforcement of this chapter. 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. The Code Administrator shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property within the town. The town may contract with private tow 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.

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

91.22 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. §§ 136-141 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 manner if the vehicle is necessary to the operation of the enterprise; and
- (D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

91.23 ABANDONMENT UNLAWFUL; REMOVAL AUTHORIZED.

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

91.24 NUISANCE UNLAWFUL; REMOVAL AUTHORIZED.

- (A) 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.
- (B) Upon investigation, the town's Code Administrator may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, as defined above, and order the vehicle removed.

91.25 REGULATIONS; REMOVAL; CONCEALMENT.

- (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 one junked motor vehicle on the premises of public or private property. A single permitted junked motor vehicle must strictly comply with the location and concealment requirements of this chapter.
- (C) It shall be unlawful for any owner, persons 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 requirements or concealment requirements of this chapter.

- (D) Subject to the provisions of division (C) above, upon investigation, the town's Code Administrator may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The findings shall be based on the 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:
- (1) Protection of property values;
 - (2) Promotion of tourism and other economic development opportunities;
 - (3) Indirect protecting of public health and safety;
 - (4) Preservation of the character and integrity of the community; and
 - (5) Promotion of the comfort, happiness, and emotional stability of area residents.
- (E) The permitted concealment or enclosure of a junked motor vehicle shall be as follows:
- (1) One junked motor vehicle, in its entirety, can be located in the rear yard, as defined in the Zoning Ordinance, if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.
 - (2) Any junked motor vehicle must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a lawful 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.
- (F) The town's Code Administrator has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate. The covering or enclosure must be compatible with the preamble hereof and the zoning ordinance.

91.26 REMOVAL; PRE-TOWING NOTICE REQUIREMENTS.

- (A) (1) Except as set forth in subsection 91.27, 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. In the case of a nuisance vehicle or junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to possession of the vehicle or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained with 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 names and addresses to which mailed and the date mailed.

- (2) If the names and addresses cannot be ascertained or 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 specified date no sooner than seven days from the date the notice is affixed.
 - (3) The notice shall state that the vehicle will be removed by the town on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.
- (B) 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 does not remove the vehicle, but chooses to appeal the determination that the vehicle is abandoned, 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 to the Board of Adjustment, in writing, heard at the next regularly scheduled meeting, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

91.27 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. 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 vehicles abandoned on the streets. For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of such vehicles may be warranted when they are:
- (1) Obstructing traffic;
 - (2) Parked in violation of an ordinance prohibiting or restricting parking;
 - (3) Parked in a no stopping or standing zone;
 - (4) Parked in loading zones;
 - (5) Parked in bus zones; or
 - (6) Parked in violation of temporary parking restrictions imposed under code sections.
- (B) With respect to abandoned or nuisance vehicles left on town-owned property other than the streets and highways and on private property, the 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, the 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.

91.28 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

- (A) Any abandoned, nuisance or junked 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 vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, the 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.
- (B) 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 (A)(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.
- (C) If the vehicle is registered in the state, notice shall be given within 24 hours from the removal of the vehicle. 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.
- (D) 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 (A)(1) through (5) above.

91.29 APPEAL FROM A WARNING/NOTICE OF VIOLATION.

An appeal from a warning citation shall be taken within ten (10) days from the date of issue of said warning citation by filing with the Town Clerk and with the Board of Adjustment, a notice of appeal which shall specify the grounds upon which the appeal is based. The Board of Adjustment in considering appeals of warning citations shall have power only in the manner of administrative review and interpretation where it is alleged that the enforcement official has made an error in the application of this ordinance, in the factual situation as it relates to the application of an ordinance or both.

91.30 PROBABLE CAUSE HEARING BEFORE SALE OR DISPOSITION.

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. A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive the hearing requests. 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.

91.31 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 the fees and charges to the tow truck operator or towing business having custody of the removed vehicle.
- (B) Upon regaining possession of a vehicles, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this chapter.

91.32 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 such a vehicle shall be carried out in coordination with the town and in accordance with G.S. § 44A-1 et seq.

91.33 CONDITIONS ON REMOVAL 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. 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 Code Administrator.
- (B) The town may require any persons requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the town against any loss, expenses or liability incurred because of the removal, storage, or sale thereof.

91.34 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.

- (A) 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 any abandoned, lost, or stolen motor vehicle, for disposing of the vehicle, as provided in this chapter.
- (B) Any person who removes a vehicle, pursuant to this chapter, shall not be held liable for damages for removal of the vehicle to the owner, lienholder or other person legally entitled to possession.

91.35 UNLAWFUL; REMOVAL OF IMPOUNDED VEHICLE.

It shall be unlawful for any persons 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 chapter unless and until all towing and impoundment fees which are due, or bond in lieu of the fees, have been paid.

91.36 GENERAL PENALTIES.

1. An act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of FIFTY DOLLARS (\$50.00), which includes administrative fees. Each day any single violation continues shall be a separate violation. A violation of this ordinance shall not constitute a misdemeanor pursuant to N.C.G.S. 14-4. If the offender fails to correct this violation by the prescribed deadline after being notified of said violation, the penalty may be recovered in a civil action in the nature of a debt.

2. In addition to the civil penalties set out above, any provision of this ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.

3. In addition to the civil penalties set out above, the provisions of this ordinance may be enforced by injunction and order of abatement by the General Court of Justice. When a violation of these provisions occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65, in particular.

4. Upon failure of the violator to obey the Notice of Violation/Warning Citation, a Notice of Civil Citation may be issued by the enforcement official, either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the County or obtained from the violator at the time of issuance of the Notice of Violation/Warning Citation. The violator shall be deemed to have been served upon the mailing of said Notice of Civil Citation. The Notice of Civil Citation shall direct the violator to appear in person at the Town Hall to pay the penalty within (15) fifteen days of the date of the Civil Citation, or alternatively to pay the citation by mail. The violation for which the penalty is issued must have been corrected by the time the penalty is paid, otherwise further penalties shall accrue. Penalties accrue from the date initially imposed in the Notice of Civil Citation and will continue without further notice, for each day the offense continues, until the prohibited activity is corrected, ceased, or abated. The Town may institute a civil action in the North Carolina General Court of Justice for the collection of the penalty, attorney fees, interest, court costs, and other such relief as permitted by law.

91.37 PROCEDURE IS ALTERNATIVE

The procedure set forth in this ordinance shall be in addition to any other remedies that may now or hereafter exist under law for the abatement of public nuisances.”

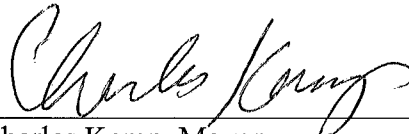
PART TWO. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

PART THREE. If any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

PART FOUR. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

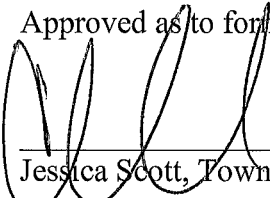
PART FIVE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 21st day of March 2023.

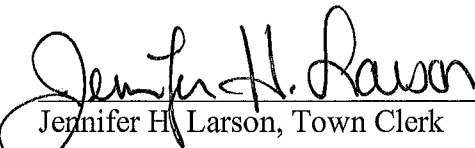


Charles Kemp, Mayor

ATTEST:

Approved as to form:


Jessica Scott, Town Attorney



Jennifer H. Larson, Town Clerk

