

CHAPTER 93: CEMETERIES

Section

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§ 93.01 DEED FOR LOT.

All persons desiring to purchase a lot in the town cemetery shall apply to the Town Clerk, who upon payment of the fixed price for each lot shall cause a deed or other instrument of receipt therefor to be given the purchaser.

(1973 Code, § 9.36)

§ 93.02 SUPERINTENDENT.

It shall be the duty of the Board of Commissioners of the town to appoint some suitable person as Superintendent of the cemetery, who shall serve at the will of the Board. The Superintendent shall have the powers and duties as shall be conferred upon him or her by this section, and/or any ordinance, resolution, or order of the Board at any time hereafter adopted or made. The Superintendent shall have charge of the upkeep, protection, and preservation of the cemetery. He or she shall supervise the

digging of all graves, the interment and disinterment of bodies, and the erection of monuments and markers; supervise the planting of any and all shrubbery, trees, and flowers, and make provision for the entrance and exit of persons and vehicles to and from the cemetery; provided, however, the Superintendent shall not contract any debt or expend any money without first having obtained the consent and approval of the Board of Commissioners.

(1973 Code, § 9.37)

§ 93.03 CEMETERY USE.

No person shall be interred or disinterred therein without lawful authority and permission first had and obtained. All graves shall be at least four feet in depth, and all graves shall be dug under the supervision of the Superintendent.

(1973 Code, § 9.38) Penalty, see § 10.99

§ 93.04 PLANTINGS.

No person shall plant or set any tree, shrub, flower, grass, or other plant of any kind in the cemetery, except with the approval of and under the supervision of the Superintendent.

(1973 Code, § 9.39) Penalty, see § 10.99

§ 93.05 FAMILY MONUMENT.

Only one central or family monument shall be allowed on a family lot. Markers shall be laid flush with the ground and shall not exceed two feet in length and one foot in width, and shall be placed at the end of the grave farthest from the monument. No coping, fencing, hedging, grave mounds, borders, or curb of any kind shall be allowed on any burial lot.

(1973 Code, § 9.40) Penalty, see § 10.99

§ 93.06 PRUNING OR CUTTING OF TREES AND SHRUBBERY.

The pruning or cutting of all trees and shrubbery is hereby prohibited unless done under the immediate supervision of the Superintendent.

(1973 Code, § 9.41) Penalty, see § 10.99

§ 93.07 LANDSCAPING.

All grading, landscaping, and improvements of every kind shall be made or done by the town only.

(1973 Code, § 9.42) Penalty, see § 10.99

§ 93.08 STRUCTURES.

No mausoleum, tomb, building, or other structure of any kind shall be erected on any lot within the cemetery, or within any extension of the cemetery. Mausoleums and tombs may be constructed on lots which may be designated on the plat and plan of the cemetery from time to time by the Board of Commissioners as lots to be used exclusively for mausoleums and tombs. Should any mausoleum, monument, or tomb at any time become unsafe, unsightly, or in need of repair or resetting, the Superintendent shall so notify the owner of the lot, or any person having an interest in the lot, and shall request that person to make the needed repairs under his or her supervision, and if that person shall fail to make the repairs within 30 days thereafter, the Board of Commissioners may order the repairs to be made, or remove the same from the lot as the Board may elect.

(1973 Code, § 9.43) Penalty, see § 10.99

§ 93.09 TRANSFER OF LOTS.

No person who shall purchase any lot in the cemetery from the town shall thereafter convey or alien the same to any other person, except upon the written permission of the Board of Commissioners, nor in any event for a greater consideration than that paid for the same lot by the grantor.

(1973 Code, § 9.44) Penalty, see § 10.99

§ 93.10 CONDUCT.

No person shall disturb the quiet, repose, and good order of the cemetery, nor shall any person deface, remove, disturb, injure, or destroy any tree, plant, or shrub therein except in the manner herein provided. Trespassing within the cemetery is hereby prohibited, and no person shall commit any immoral act therein under penalty of the law herein prescribed.

(1973 Code, § 9.45) Penalty, see § 10.99

§ 93.11 VEHICLES.

Vehicles shall be driven only upon the roadways within the cemetery and at a rate of speed not in excess of 15 mph. No vehicles shall enter the cemetery except for the purpose of attending funerals, visiting graves, or other lawful mission.

(1973 Code, § 9.46) Penalty, see § 10.99

§ 93.12 CLEANLINESS.

No person shall deposit any rubbish, filth, waste, or other unclean or unsightly substance in the cemetery, and all materials carried within the cemetery and not used in the erection of monuments,

markers, or other lawful structures authorized herein, shall be promptly removed therefrom by the owner of the lot upon which the monument, marker, or structure shall be located.

(1973 Code, § 9.47) Penalty, see § 10.99

§ 93.13 COVENANTS; GENERAL REGULATIONS.

All lots within the cemetery, and within any extension of the cemetery at any time hereafter made, whether owned by the town or by any other person or persons, shall be subject to and regulated and controlled by the provisions of this chapter; and in all deeds of conveyance by the town to any person or persons for any lot, the following provisions shall be included therein as a covenant running with the land: "This conveyance is made subject to an ordinance adopting rules and regulations for the control of the Cemetery and providing penalties in relation thereto duly of record upon the minute of the proceedings of the Board of Commissioners of the Town, and the grantee herein, his heirs and assigns agree that upon the breach of any of its provisions, the title to said property shall revert to the Town."

(1973 Code, § 9.48)

§ 93.14 LOT CHARGES.

The cost of lots in the municipal cemetery for residents of the town shall be set by the Board of Commissioners.

(Ord. passed 2-7-1984)

§ 93.15 BURIAL REGULATED.

(A) It shall be unlawful for any person to bury any human being on any lot or premises within the corporate limits, except within an approved cemetery and in accordance with all applicable laws and regulations.

(B) No person shall dig any grave, put up any gravestone or board or make any erections, or dig up any sod on any private burial lot, except under the direction or by the consent of the owner thereof.

(1973 Code, § 9.50) Penalty, see § 10.99

§ 93.16 DAMAGE TO GRAVESTONES AND THE LIKE PROHIBITED.

No person shall remove the stakes from a burial lot or any board, gravestone, or other monument which may have been erected at any grave, nor deface, injure, or destroy any board, gravestone, or monument in any manner.

(1973 Code, § 9.51) Penalty, see § 10.99

AN ORDINANCE REPEALING TITLE IX, CHAPTER 94 ENTITLED
"ANIMALS AND FOWL" OF THE TOWN OF BAILEY
MUNICIPAL CODE AND ENACTING A NEW TITLE IX, CHAPTER 94

WHEREAS, the Town of Bailey has an adopted municipal code containing regulations pertaining to animal control; and

WHEREAS, the town council of the Town of Bailey finds that the existing regulations of animals is outdated and ineffective; and

WHEREAS, the North Carolina Legislature has given municipalities the power to enact ordinances regulating domestic animals.

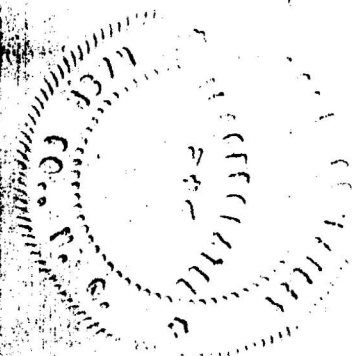
NOW, THEREFORE BE IT ORDAINED, by the Town Council of the Town of Bailey, that the regulations contained in Title IX, Chapter 94 entitled "Animals and Fowl" are hereby repealed and that the attached regulations are hereby adopted and shall be indexed in the town code under Title IX, Chapter 94 and shall be titled "Animals".

Adopted this 13 day of September 2005.

Robert C. Frayser, Sr.
Mayor

Attest:

Bucky Smoot
Town Clerk





CHAPTER 94: ANIMALS AND FOWL

- 94.01 Declaration of nuisances
- 94.02 Definitions
- 94.03 Enforcement
- 94.04 Keeping of animals prohibited
- 94.05 Disposal of Dog waste
- 94.06 Bird sanctuary established
- 94.07 Leash Law
- 94.08 Penalty

Sec. 94.01 Declaration of nuisances

- (a) The keeping, maintenance, or allowance of any animal not confined to the property owner's property either by outside proper pen enclosure, chain, rope, or any other substance that will confine the animal or animals to the owner's property is hereby declared to be a public nuisance and shall be abated as provided in this chapter.
- (b) The keeping or maintenance of any animal or animals which by prolonged and habitual barking, howling, meowing, baying or whining cause serious annoyance to neighboring residents and interferes with the reasonable use and enjoyment of the premises occupied by such residents, or with the reasonable use and enjoyment of the public streets, sidewalks or other public areas, is hereby declared to be a public nuisance and shall be abated as provided in this chapter.
- (c) The keeping of any vicious animal or animals having dangerous or destructive propensities is hereby declared a public nuisance and shall be abated as provided for in this chapter.
- (d) The keeping of more than four (4) animals over four (4) months old is hereby declared a public nuisance due to the noise, smell, and unsanitary conditions to the neighboring citizens and shall be abated as provided in this chapter.

Sec. 94.02 Definitions

- (a) Animal means every living creature, domestic or non-domestic. The term "animal" does not apply to humans.
- (b) At large means any animal that is off the property of its owner or keeper and not under physical restraint.
- (c) Dangerous or Destructive Propensities Shall mean any animal which constitutes a physical threat to humans or other animals or destroys the property of other citizens.



- (d) Exposed to rabies means an animal that has been bitten by, or been in the presence of, any animal known or suspected to have been infected by rabies.
- (e) Inside Pet means any pet that is kept inside for feeding, sleeping and natural body functions.
- (f) Keeper means a person having custody of an animal or who keeps or harbors an animal or who knowingly permits an animal to remain on or about any premises occupied or controlled by such person.
- (g) Proper Enclosure shall mean a building or other structure from which an animal cannot escape, or an outside area enclosed by a fence at least six (6) feet in height secured to the ground in a manner so that an animal cannot escape.
- (h) Nuisance shall mean any animal or group of animals that:
 - 1. Damages, soils or defiles private or public property.
 - 2. Interferes with, molests or attacks persons or other animals.
 - 3. Is repeatedly at large.
 - 4. Is believed to have been exposed to rabies.
 - 5. Is a female in heat not confined in a proper enclosure.
 - 6. Causes unsanitary, dangerous or offensive conditions including fouling of the air by odors.
 - 7. Chases, snaps at, harasses or impedes pedestrians, bicyclists or vehicles.
 - 8. Habitually barks, howls, meows, bays, or whines causing annoyance to residents.
 - 9. By virtue of number or type is offensive or dangerous to the public health, safety or welfare including, but not limited to, the keeping of more than four (4) animals over four (4) months old.
 - 10. Is diseased or dangerous to the public health
 - 11. Creates any other undesirable action.
- (i) *Owner* means a person having the right of property in an animal.
- (j) *Person* means any individual, corporation, partnership, organization or Institution commonly recognized by law as a unit.
- (k) *Stray* means any domestic animal not under restraint and found off the property of its owner or keeper.
- (l) *Vicious Animal* means an animal that constitutes a physical threat to humans or other domestic animals.

Sec. 94.03 Enforcement

- (a) All dogs and cats must be vaccinated for rabies. It is the owner's responsibility to vaccinate all of the animals that he/she owns. If the owner cannot show proof of current vaccination, he/she will be fined in accordance with the penalty clause of this ordinance.
- (b) All stray animals, with or without a vaccination tag will be picked by the Nash County Animal Control.



- (c) Every female animal while in heat, shall be confined in a building or secure enclosure in such manner that she will not be in contact with another animal, nor create a nuisance by attracting other animals; provided this section shall not be construed to prohibit the intentional breeding of animals within an enclosed area not on the premises of the owner of an animal being bred.
- (d) Complaints. All complaints must be directed to the police department. Any person found in violation of this ordinance shall be given one warning documented by the Chief of police. After the first warning, the owner of the property where the animal is kept will be issued a citation for violating this ordinance with the penalties in effect at the time of the violation. Complaints of a non-violent nature will be dealt with by a 10 day warning; complaints of a violent nature will be dealt with immediately.
- (e) Abatement. Being warned and being issued a citation for failure to comply with the ordinance, the Chief of Police shall proceed to have the animal or animals picked up and taken to the Nash County animal shelter. The owner of the animal or animals will be issued a notice stating that the animals or animals have been picked up and they have 48 hours to respond to respond or retrieve their animal from the animal shelter.
- (f) Impoundment. If the animal or animals in question are picked up and taken to the nearest animal shelter, it shall be the responsibility of the owner of the animal to go the animal shelter and pay any and all fines the shelter may charge to release the animal or animals. All animals impounded will be taken to the Nash County Animal Shelter.

Penalty, see 94.08

Sec.94.04 Keeping of animals prohibited

It shall be unlawful for any person, firm or corporation to keep any hog, pig, horse, cow, fowl, or other domestic farm animal within the town. Penalty, see Sec. 94.08

Sec. 94.0 Disposal of Dog Waste

It shall be the responsibility of a dog's keeper to properly remove and dispose of their dog's feces from any public or private property (other than property owned by such owner or custodian). Penalty, see Sec. 94.08



Sec. 94.06 Bird Sanctuary Established

- (a) The territory within the corporate limits of the town is hereby declared a bird sanctuary*
- (b) This section does not protect any birds classed as pests under G.S. 113-300.2, and the Structural Pest Control Act of North Carolina of 1955 (G.S. 106-65.22 et seq.) or the North Carolina Pesticide Law of 1971 (G.S. 143-434 et seq.).

***State Law Reference:**

Establishment of birds sanctuaries authorized, G.S. 160A-188

Sec. 94.07 Leash Law:

All dogs must be on a leash when being walked off the owner's property. Penalty
Sec. 94.08

Sec 94.08 Penalty

Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to Sec. 10.99 - General Provisions

Adopted this the 13th of September 2005.

Attest:

Becky Smith
Town Clerk

Robert C. Franjer, Sr.
Mayor



CHAPTER 94: ANIMALS AND FOWL

Section

General Provisions

- 94.01 Animals at large
- 94.02 Pig pens

Dogs and Cats

- 94.15 Impoundment
- 94.16 Redemption of impounded dogs and cats; disposition of unredeemed dogs or cats
- 94.17 Citation of owner or keeper in lieu of impoundment
- 94.18 Inoculation, registration, and tagging of dogs
- 94.19 Running at large prohibited
- 94.20 Female dogs in heat prohibited at large
- 94.21 Vicious dogs at large prohibited
- 94.22 Disturbing the peace

- 94.99 Penalty

Cross-reference:

Dogs and cats running loose, see § 130.03

GENERAL PROVISIONS

§ 94.01 ANIMALS AT LARGE.

(A) No horse, goat, cattle, or other animals, including dogs, shall be permitted to run at large within the town limits.

(B) All animals caught running at large shall be impounded by the Nash County animal control officers pursuant to the Nash County animal control ordinance, which ordinance is adopted by reference and incorporated herein.

(1973 Code, § 11.8) Penalty, see § 94.99

§ 94.02 PIG PENS.

No person shall maintain a pig pen or other enclosure for pigs inside the town limits.
(1973 Code, § 11.10) Penalty, see § 94.99

DOGS AND CATS**§ 94.15 IMPOUNDMENT.**

(A) *Impoundment authorized.* Except as otherwise provided in § 94.17, any dog or cat found in the town that has not been inoculated, registered, and tagged as required by this chapter, or is otherwise in violation of this chapter, shall be impounded by the police for a period of three days.

(B) *Obstruction or interference with impoundment.* It shall be unlawful for any person to obstruct or interfere with, in any way, the impoundment of any dog or cat found in violation of the provisions of this chapter. It shall further be unlawful for any person to release or attempt to release any dog or cat which has been impounded.

(C) *Impoundment fees.* A charge of \$25 shall be made for the impoundment of any dog or cat pursuant to the provisions of this chapter; and an additional sum of \$1.50 per day shall be charged for the feeding and care of the dog or cat.
Penalty, see § 94.99

§ 94.16 REDEMPTION OF IMPOUNDED DOGS AND CATS; DISPOSITION OF UNREDEEMED DOGS OR CATS.

The owner or keeper of any dog or cat impounded under the provisions of this chapter shall have the right to redeem the dog or cat within a period of three days from the impoundment thereof, upon the payment of all fees charged against the dog or cat. If the dog or cat be not redeemed at the end of the three-day period, the dog or cat may be either sold or humanely put to death.

§ 94.17 CITATION OF OWNER OR KEEPER IN LIEU OF IMPOUNDMENT.

(A) *Authorized.* In lieu of impoundment, the Police Department is hereby empowered to issue citations to any owner or keeper of a dog or cat who has violated any of the provisions of this chapter.

(B) *Delivery; contents.* The citation shall be delivered in person to the owner or keeper by the police. If the violator cannot be readily found, the citation shall be mailed, certified mail, return receipt requested, to the person so charged at his or her last known address. The citation shall direct the violator to appear at the Office of the Collector of Revenue for the town on or before a specified date and hour, which date and hour of appearance shall not be less than 72 hours after the citation has been delivered to the violator by the police, or, if delivery is by mail, not less than 96 hours after the citation has been deposited with the United States Postal Service for delivery to the violator.

(C) *Warning notice upon failure to respond.* If any owner or keeper of a dog or cat who has violated any provision of this chapter does not appear in response to the citation on or before the day and hour specified in the citation, he or she shall be mailed a notice by the Police Department informing him or her of the violation and warning him or her that, if he or she does not appear within five days from the date of mailing of the notice, a complaint against him or her will be filed and a warrant of arrest issued.

(D) *Arrest warrant upon failure to respond following warning notice.* Any owner or keeper of a dog or cat who does not appear in response to the citation and five-day notice described above shall have a complaint filed against him or her and a warrant issued for his or her arrest.

§ 94.18 INOCULATION, REGISTRATION, AND TAGGING OF DOGS.

(A) *Generally.* It shall be unlawful for any person to keep any dog within the town that has not been inoculated, registered, and tagged as required by this chapter.

(B) *Registration; frequency of inoculation.* Every dog kept within the town shall be inoculated against hydrophobia under the supervision of the County Health Department every 12 months, or every three years if inoculated with a three-year vaccine approved by the County Health Department. Every dog so inoculated shall be registered and its owner shall be issued a certificate of inoculation bearing the registration number.

(C) *Tag to be worn by dog.* The registration tag issued with the certificate of inoculation shall be securely attached to the dog's collar and shall be worn by the dog at all times.
Penalty, see § 94.99

§ 94.19 RUNNING AT LARGE PROHIBITED.

(A) It shall be unlawful for any dogs to be running at large on the streets or sidewalks of the Town of Bailey, unless under the control of the owner or a member of his or her immediate family, either by leash and collar, chain, or otherwise.

(B) It is hereby declared the duty of the Police Department to notify the owner of any dog found running at large on the streets or sidewalks to place same under proper control or confinement.
(1973 Code, § 11.9)

(C) The Police Department shall impound any dog or cat found running at large and, unless redeemed by the owner as provided in § 94.16, the dog or cat may, after three days impoundment, be either sold or humanely put to death. Reasonable effort shall be made to notify the owner of the animal, as shown on the collar or other identification, of any impounded dog or cat at least 24 hours in advance of any sale or extermination. For the purpose of this division, the phrase "to run at large" shall be deemed to mean the presence of any dog or cat on any property, public or private, not owned by the dog or cat's owner or keeper, unless the dog or cat is held in control by a leash held by a person sufficiently strong to hold the dog or cat in control at all times.

Penalty, see § 94.99

§ 94.20 FEMALE DOGS IN HEAT PROHIBITED AT LARGE.

It shall be unlawful for any person who owns or keeps a female dog to allow that dog to run at large while in heat. In addition, female dogs shall, at all times during the period of estrous, be confined to houses or pens.

Penalty, see § 94.99

§ 94.21 VICIOUS DOGS AT LARGE PROHIBITED.

It shall be unlawful for any person owning or keeping a vicious dog to allow the same to run at large within the city at any time.

Penalty, see § 94.99

§ 94.22 DISTURBING THE PEACE.

It shall be unlawful for any person to own or keep a dog that habitually or repeatedly barks in a manner or to an extent that it disturbs the peace and is a public nuisance.

Penalty, see § 94.99

§ 94.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) The owner of any dog who shall knowingly suffer or permit his or her dog to run at large on the streets or sidewalks in violation of § 94.19(A) and (B) shall be guilty of a misdemeanor, punishable upon conviction by a fine not exceeding \$50 or imprisonment not exceeding 30 days, as provided by G.S. § 14-4.

(1973 Code, § 11.9(c))

(C) Any owner or keeper of any dog or cat to whom a citation is issued shall pay to the Collector of Revenue of the town a civil penalty in the amount of \$25 per violation.

CHAPTER 95

ABANDONED, NUISANCE AND JUNKED VEHICLES

The police department and the department of public works shall be responsible for the administration and enforcement of this division. 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. Any police officer shall have authority to enforce the provisions of this division with regard to such abandoned vehicles. The department of public works shall be responsible for administering the removal and disposition of "abandoned," "nuisance" or "junked 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 and junked motor vehicles in compliance with this division and applicable North Carolina law. Nothing in this division shall be construed to limit the legal authority or powers of officers of the police department and the fire department in enforcing other laws or in otherwise carrying out their duties.

Sec. 95.02 Definitions

The following words and phrases when used in this division shall have the meaning indicated unless the context clearly requires otherwise.

Abandoned vehicle means a motor vehicle that is:

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

Classic motor vehicle means a motor vehicle that is in high demand for restoration purposes and when restored sells for a higher price than it did when it was new.

Enforcement officer means the supervisory employee of the department of public works designated to enforce the provisions of this division.

Junked motor vehicle means a motor vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (3) Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100.00).



Motor vehicle or vehicle means all machines designed or intended to travel over land by self-propulsion or while attached to self-propelled vehicle.

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

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or
- (2) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
- (3) A point of collection of pools or ponds of water; or
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or
- (5) So situated or located that there is a danger of it falling or turning over; or
- (6) One which is a point of collection of garbage, food waste, animals waste, or any other rotten or putrescible matter of any kind; or
- (7) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (8) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the town board.

Tow means to remove a vehicle by any means and includes towing and storing the vehicle.

Towing fee means the fee charged for towing and storage of a vehicle.

Sec. 95.03 Enforcement officer's right of entry.

The enforcement officer or his designee shall have the right, upon presentation of credentials identifying such person as an enforcement officer of the town, to enter any premises within the corporate limits of the town for the purpose of administering and enforcing the provisions of this division.

Sec. 95.04 Abandoned vehicle unlawful; removal authorized

- (a) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be an abandoned vehicle as the term is defined herein.
- (b) Upon investigation, the enforcement officer or a police officer may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

Sec. 95.05 Nuisance vehicle 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 enforcement officer may determine and declare that a vehicle is a nuisance vehicle as defined above, and order the vehicle removed.

Sec. 95.06 Junked motor vehicle regulated; removal authorized

- (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 such vehicle to remain on the property after the vehicle has been ordered removed.
- (b) Upon investigation, the enforcement officer may order the removal of a junked motor vehicle after finding in writing that the aesthetic benefits of removing the vehicles outweigh the burdens imposed on the owner or person entitled to possession of the vehicle, and the owner, lessee, or occupant of the real property upon which the vehicle is located. Such finding shall be based on a balancing of the monetary loss of the aforesaid owner(s) or apparent owner(s) 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 protection of public health and safety;
 - (4) Preservation of the character and integrity of the community; and
 - (5) Promotion of the happiness and emotional stability of area residents.

Sec. 95.07 Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements

Except as set forth in section 95.08 below, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record to show the name(s) and address (es) to which mailed, and the date mailed. If such 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 under authority of this division. 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.

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 outweighs the burdens, such appeal shall be made to the town board. In the event of an appeal further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

Notice of appeal must be made to the town board in writing within seven (7) days after receipt of the notice or the affixing of the notice to the vehicle. The town board shall send a notice of hearing to the owner setting the time and place for the hearing. The notice of hearing shall inform the owner of:

- (1) The specific grounds for the classification of the vehicle as an abandoned, junked, or nuisance vehicle under this division;
- (2) The schedule of towing fees and storage charges;
- (3) The rules and regulations for the hearing;
- (4) The opportunity to present evidence in order to show cause why the vehicle should not be removed in accordance with this division; and
- (5) The right to have counsel present at the hearing.

The Mayor or his designee shall serve as the hearing officer and conduct the hearing in accordance with the procedures stated in this section. The hearing officer shall issue a written decision within five (5) days of the hearing stating his conclusion concerning whether the vehicle was in violation of this division and the reasons and evidence upon which the conclusion has been based. A copy of the decision shall be mailed by first class mail to the registered owner or person entitled to possession of the vehicle.

Sec. 95.08 Exceptions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance, or junked motor vehicle may, as determined by the enforcement officer, 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. Such findings shall, in all cases, be entered by the enforcement officer or police officer in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include;

- (1) *Vehicles abandoned on the streets.* For vehicles left on the public streets and highways, the town hereby determines that immediate removal of such vehicles may be warranted when they are:
 - 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 a loading zones;
 - e. Parked in bus zones;
 - f. Parked in violation of temporary parking restrictions imposed under code sections.
- (2) *Other abandoned or nuisance vehicles.* With respect to abandoned or nuisance vehicles left on town-owned property other than the streets and highways, and on private property, such vehicles may be removed without



giving prior notice only in those circumstances where the enforcement office 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 vehicles blocking or obstructing ingress and 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.

Sec. 95.09 Removal of vehicles; post-towing notice requirements.

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 contracted to perform such services for the town. Whenever such a vehicle is removed, the enforcement officer or the police officer directing removal shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) The description of the removal 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.

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 subsections (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 agent.

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

Whenever an abandoned, nuisance or junked motor vehicle is removed, and such vehicle has no valid registration plates, the enforcement officer or the police officer shall make reasonable efforts including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (1) through (5) above.

Sec. 95.10 Right to probable cause hearing before sale or final disposition of vehicle.

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 in the county where the vehicle was towed designated by the chief district court judge to receive such request. The magistrate will set the hearing within seventy-two (72) hours of receipt of the



request, and the hearing will be conducted in accordance with the provisions of G.S. 20-219.11 as amended.

Sec. 95.11 Redemption of vehicle during proceedings.

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 such fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this division.

Sec. 95.12 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 Article 1 Chapter 44A of the North Carolina General Statutes.

Sec. 95.13 Conditions on removal of vehicles from private property.

As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of such 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 enforcement officer. The town may require any person requesting the removal of an abandoned, nuisance, or junked motor vehicle from private property to indemnify the town against any loss, expense or liability incurred because of the removal, storage or sale thereof.

Sec. 95.14 Protection against criminal or civil 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 or junked motor vehicle, for disposing of such vehicle as provided in this division.

Sec. 95.15 Exceptions.

(a) This division shall not apply to any vehicle:

- (1) 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.;
- (2) Which is in an enclosed building;
- (3) 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 if the vehicle is stored on the property in such a manner that it is screened from view by a fence or vegetation screen;



- (4) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town; or
 - (5) Which is used on a regular basis for business or personal use.
- (b) This division shall not apply to classic motor vehicles as defined in section provided the following conditions are complied with;
- (1) The vehicle owner possesses a valid exemption permit issued by the enforcement officer. The permit shall be issued for a six-month period and may be renewed every six (6) months providing restoration progress continues to be carried on. The total permit period shall not exceed twenty-four (24) months.
 - (2) The vehicle shall be on property owned by or occupied by the vehicle owner.
 - (3) The area around and under the vehicle shall be kept free of weeds, trash and other debris

Sec. 95.16 Unlawful removal of impounded vehicle.

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

Sec. 95.16 Penalties, remedies.

The violation of any of the provisions of this chapter shall be punishable as provided in chapter 10 section 10.99 of this code.

