

Staff Report for Town Council



Meeting Date: February 23, 2017

Ordinance Amendment Chapter 20 of the Cary Code of Ordinances, Towing from Private Lots

Purpose: Consideration of an Ordinance Amendment of the Town of Cary, North Carolina amending Chapter 20 of the Cary Code of Ordinances, Licenses and Business Regulations, to add a new Article IV, Towing From Private Parking Lots

Prepared by: Steve Wilkins, Police

Speaker: Captain Steve Wilkins, Police Department

Executive Summary: The non-consensual towing of privately owned vehicles has long been a source of contention between vehicle owners, towing companies, and private property owners within the Town of Cary. Non-consensual towing can leave unknowing drivers without a means of transportation and can lead to altercations between vehicle owners and towing personnel. The police department is frequently asked to respond when such disputes occur, but police authority is limited by the civil nature of private towing. The Town of Cary has a significant governmental interest in protecting the health, safety, and welfare of the general public, and in preserving the public order. The Town desires to minimize and control the harmful and adverse effects resulting from non-consensual towing while also protecting lot owners' and lessees' property rights. As such, staff proposes an ordinance regarding portions of non-consensual towing that are within the Town's authority to regulate. This proposed ordinance specifically excludes any effort to regulate fee schedules in compliance with North Carolina case law.

Recommendation: Council approve the ordinance amendment of Chapter 20 of the Cary Code of Ordinances, Licenses and Business Regulations to add a new Article IV, Towing from Private Parking Lots.

Background: The practice of non-consensual towing has for many years been a source of civil disturbance complaints for the Cary Police Department. Non-consensual towing is defined as the act of towing vehicles improperly parked or trespassing on private property, at the request of the property owner or their authorized agent, without the prior consent or authorization of the owner or operator of the vehicle.

A recent analysis of Cary's most active tow companies revealed 148 requests for police services regarding non-consensual tows since 2010. Common topics of discourse discovered and documented by police have included arguments over the justification for towing vehicles, unfounded reports of stolen vehicles, arguments over cash-only payment requirements, delayed vehicle access by owners wishing to collect personal belongings, the slow or delayed release of vehicles by tow companies, claims of unreasonable fees, and complaints of rude or confrontational behavior by towing business personnel towards vehicle owners. In most of these cases the police department is unable to provide an immediate conflict resolution. Officers respond with an obligation to prevent physical fighting, but a resolution of the dispute itself is typically not a matter of criminal law. The towing and release of vehicles is largely a civil matter that falls outside of an officer's subject matter jurisdiction. As such, officers can provide only a recommendation that the involved parties pursue and settle their differences in civil court.

With the hope of reducing these types of disturbances and clarifying what types of non-consensual towing practices should or should not be acceptable within the Town of Cary, the Cary Police Department conducted a review of North Carolina General Statutes related to

non-consensual towing, a review of applicable case law, and a review of the policies of other surrounding local governments. Police consulted with the Legal Department to identify and discuss the need and legality of enacting a relevant ordinance and specifically which portions of the non-consensual towing business may or may not be regulated based on statute and case law.

Subsequently, two public meetings were held at the Cary Police Department. Sixty-two tow companies advertising themselves as providers of towing service to the Cary area were identified and invited by letter to attend and discuss non-consensual towing issues with police staff. The meetings took place on 11/30/2015 and 12/8/2015. Attendance included owners or representatives from:

- MAS Towing,
- Imperial Towing,
- Cricket Towing,
- Peak Towing,
- Coltland Towing,
- Cary Towing,
- Brace Towing,
- One Direct Towing,
- Savage Towing,
- Unlimited Recovery,
- Raleigh Cary Towing,
- Nick's Towing and Roadside Assistance.

Topics of discussion included property signage requirements, methods of payment, storage lot location requirements, business response to vehicle owners, property retrieval from vehicles, storage conditions, police notification of towing, civil penalties for ordinance violations, and fee schedules. All in attendance were provided the opportunity to speak on topics of interest to their business and to provide comment on interventions they believed to be reasonable or unreasonable. Input provided from these two meetings was documented and presented for discussion with the Town's Legal Department along with information obtained from a review of relevant case law and the existing ordinances of other municipalities. We found both the Town of Chapel Hill and the City of Raleigh already address variations of the same towing topics Cary staff determined to be of greatest relevance for our ordinance recommendation. Staff recommends the attached ordinance be added to Chapter 20 of the Cary Code of Ordinances, License and Business Regulations. The regulatory items addressed by our proposed ordinance include:

- Signage requirements
- Notification of non-consensual towing activity by tow operators to police
- Response time by tow companies to vehicle owners for the release of vehicles and property
- Receipt requirements
- Minimum method of payment requirements
- Pre-towing release of vehicles and property
- Storage lot location and storage conditions

- Penalties for non-compliance with the proposed ordinance

Discussion: The proposed non-consensual towing ordinance strives to maintain the peace and dignity of Cary by establishing regulations to proactively protect the welfare of vehicle owners, private land and parking lot owners and lessees, and tow company owners and operators. This ordinance intends to address the concerns of unknowing drivers being left without a means of transportation, reduce the likelihood of altercations between vehicle owners and towing personnel, and to protect the property rights of lot owners and lessees by ensuring that parking is available to those lawfully present on private property. As such, the ordinance applies to all private parking lots within Cary's enforcement jurisdiction. The proposed ordinance does not conflict with existing laws and ordinances regarding the removal of vehicles by police or town officials in other lawful circumstances.

This ordinance is offered to address actual problems, concerns, and experiences realized at the local level and made known to the Police Department regarding non-consensual towing in Cary.

A general summary of the proposed ordinance amendment to Chapter 20 of the Cary Code of Ordinances, Licenses and Business Regulations, Article IV, Towing from Private Lots is as follows:

Under proposed **Section 20-153 Notice required**, all non-consensual towing must meet the requirements of G.S. 20-219.2 and specific signage regulations as listed in the new ordinance. This section of the new ordinance addresses minimum signage location requirements to ensure motorists using any posted parking area have ample opportunity to observe parking restrictions and towing information for their location. The ordinance addresses physical sign specifications in compliance with current Town of Cary appearance standards. The ordinance also addresses sign content specifications to ensure motorists have every opportunity to receive the message as intended by the property owner or lessee. Contact information for the specific tow company associated with the location must be clearly posted along with language to address the release of vehicles on-site once a tow has been initiated.

Section 20-154 Report to police department required is intended to prevent unfounded claims of stolen vehicles to police. Tow companies will be required to notify the police department of their non-consensual towing activities and provide police with a description of any vehicles towed including make, color, and license plate number. Tow companies must provide the location from which a vehicle has been towed and the location of the storage lot where the vehicle will be held. Affected vehicle owners who call the police department wishing to file a motor vehicle larceny report will be provided with the appropriate towing company contact information.

Section 20-155 Response time; towing receipt required; methods of payment addresses several important aspects of vehicle recovery for those who have been subject to a non-consensual tow. The response time portion of this section is intended to establish a reasonable procedure through which vehicle owners might contact the towing company. Towing business engaged in non-consensual towing practice will be required to maintain a

telephone number to receive calls from vehicle owners. Calls must be answered by a person; or a call-back shall be initiated by a person within 30 minutes of a message being left on the company's voice mail or answering machine. A person with the authority and ability to release a towed vehicle must respond to the storage location within two hours of a release request with one exception: For release requests received between midnight and 6:00 am, vehicles may be held in storage until 8:00 am if the release request is received more than two hours after the tow. This exception is intended to relieve tow company owners and operators from late-night requests for a vehicle release when the call is not received within a relevant time of the towing.

Receipts for payment will be required of tow company owners and operators under the new ordinance at the time a release payment is made. Receipts must be legible and must contain certain information specific to the tow. Receipts must show the name, address, and phone number of the tow company, provide identifying employee information, and show a description of the fees associated with the tow. A reason for the tow must be listed along with the towing date and time. Receipts shall not contain descriptions that might mislead individuals to associate the tow with any municipal action.

A minimum method of payment criteria is established by the new ordinance such that tow companies will be required to accept payments of cash or credit card. Acceptable credit cards must include either MasterCard or Visa, and one other nationally recognized credit or debit card such as MasterCard, Visa, American Express, Discover, or JCB (Japan Credit Bureau). There are currently no method of payment requirements for non-consensual tows, and many tow companies will accept only cash payments before releasing vehicles to their owners or drivers. With the popularity of credit cards and other non-cash forms of payment in modern business, staff believes it is unreasonable to expect vehicle owners should have large sums of cash on hand for such significant and unexpected expenses. A vehicle owner's inability to pay cash, oftentimes late at night, can and has resulted in unnecessary retrieval delays, transportation emergencies, and additional storage fees.

Cary's proposed ordinance amendment does not provide regulation over any charges or fee schedules set by towing companies for the non-consensual towing of vehicles. The ordinance also provides no restrictions on additional fees tow companies may charge for the processing of credit card payments. The question of whether or not municipalities may regulate fees and fee schedules for non-consensual tows was settled in June 2014 by the North Carolina Supreme Court in the case [George King vs. Town of Chapel Hill](#). In that case the court determined that the regulation of non-consensual towing fee schedules by municipal ordinance is not lawful.

Section 20-156 Release prior to tow; retrieval of personal property addresses two types of complaints police have received from vehicle owners in the past. Under the new ordinance any tow service that has initiated a non-consensual tow by positioning a tow truck, connecting a hook, chain, cable, or other device, but has not yet removed the vehicle from the private parking lot must release that vehicle upon the request of the vehicle operator upon payment of a release fee. Vehicle owners and operators must also be allowed to have access to towed motor vehicles for the purpose of retrieving personal property during any towing or storage activity subject to this ordinance.

Section 20-157 Regulations for tow storage lots regulates storage lot location, signage, and security. Vehicles towed under this ordinance may be towed to a storage lot that is no more than 15 miles from the parking lot from which the motor vehicle is towed. Tow storage lots shall be clearly signed in accordance with all applicable local and state requirements, stating the name, address, and telephone number of the tow storage lot. Lots must be secured and lighted in such a manner as to keep towed vehicles safe from break-ins or damage while in storage. Lots must also be fenced and have lighting sufficient for transacting nighttime business.

Violations of this ordinance are addressed in **Section 20-158 Violations; Responsible party**. Any person or tow company who conducts a non-consensual tow in violation of this Article, and any person who engages a towing company in violation of this Article may be charged with a violation of the Article. A violation shall subject the offender(s) to a civil penalty of \$100. If more than one violation occurs within any one-year period, the civil penalty shall increase to \$250 for a second offense, \$500 for a third offense, \$750 for a fourth offense, and \$1000 for any fifth and subsequent offense within one year. Penalties must be paid within 72 hours, and appeals of the civil penalty may be made within 30 calendar days of the violation date of issuance. In addition to, or in lieu of, such civil penalties and other remedies, the violation of this article shall constitute a criminal misdemeanor.

Fiscal Impact: No fiscal impact is anticipated.

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History:

02/23/17 Town Council APPROVED

Chief Godwin and Captain Wilkins presented staff's report.

Robinson asked what happens if a person locks their purse in the car, will they be allowed to retrieve the item to make payment on the tow. Wilkins stated the tow company has to allow access to items within the vehicle.

Wilkins stated that if the tow was conducted in Cary, then the towing company would have to follow our ordinance. He also clarified that if the vehicle was towed illegally, then the tow company would be charged. Our Police Department can only charge towers with criminal or. Town Attorney Chris Simpson confirmed, after George's question about additional charges, that the ordinance will enforce what is allowed by the statute.

Frantz stated that he receives a lot of complaints about this, especially in downtown. The drivers usually don't realize they are parking in a tow away zone. Now the lots will have the appropriate signage. Another issue is that owners are not allowing people to park in their lot even when their business is closed. He commended staff on this ordinance change and looks forward to seeing its effects in the community.

Frantz moved to approve staff's recommendation: The ordinance amendment of Chapter 20 of the Cary Code of Ordinances, Licenses, and Business Requirements to add a new Article IV, Towing from Private Parking Lots, effective June 1, 2017.