

Ordinance Amendment

Town of Cary, NC

- 1. Article IV is hereby added to Chapter 20 of the Code of Ordinances, Town of Cary, North Carolina, as follows:**

Article IV—Towing from private parking lots

20-150 Purpose and Intent.

- (a) The town council of the Town of Cary has a significant governmental interest in protecting the health, safety, and welfare of the general public and preserving the public order.
- (b) N.C.G.S. 160A-174 allows a municipality by ordinance to define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of the public, and the peace and dignity of the municipality.
- (c) Some practices related to the non-consensual towing of motor vehicles from parking lots located on private property have exposed the public or members of the towing industry to harm. Non-consensual towing can leave unknowing drivers without means of transportation and can lead to altercations between vehicle owners and towing personnel.
- (d) The Cary Town Council desires to minimize and control the harmful and adverse effects resulting from the non-consensual towing of motor vehicles from parking lots located on private property, while also protecting lot owners' and lessees' property rights by ensuring that parking is available to those lawfully present on the property.

20-151 Applicability.

- (a) The provisions of this Article apply to any private property used for residential or non-residential purposes, upon which a private parking lot is located.
- (b) Notwithstanding the foregoing, this Article does not apply to the towing, removal, or immobilization of a motor vehicle (i) if the motor vehicle obstructs adequate ingress and egress to, from, or within a private parking lot; (ii) if the motor vehicle has been abandoned on private property without the consent of the private property; or (iii) if the motor vehicle is being removed pursuant to the direction of a law enforcement officer or otherwise in accordance with the provisions of this Code or state law.

20-152 Definitions.

- (a) "Motor vehicle" shall have the definition provided in G.S. 20-4.01.
- (b) "Private parking lot" means a lot, garage, or other parking facility not owned or leased by the Town or another governmental entity.
- (c) "Towing or storage service" means any person or other entity, whether licensed or not, that engages in or who owns or operates a business which engages, in whole or in part, in the towing or removal of motor vehicles for compensation.

20-153 Notice required.

(a) No motor vehicle may be towed from a private parking lot unless such towing meets the requirements of G.S 20-219.2 and:

- (1) One or more signs meeting at least one of the following requirements is posted as follows:
 - a. a sign prominently placed at each entrance allowing vehicular access to the private parking (“Entrance Sign”); or
 - b. if there are no curb or access barriers, at least one sign posted for every 50 feet of the frontage of the private parking lot to a public street (“Frontage Sign”); or
 - c. a sign posted at each parking space from which an unauthorized motor vehicle could be towed, removed, or immobilized (“Parking Space Sign”).
- (2) The posted sign(s) complies with the following.
 - a. Entrance or Frontage Signs shall be at least 24 inches by 24 inches in size, and shall not exceed six square feet.
 - b. Parking Space Signs shall be at least 12 inches by 18 inches in size, and shall not exceed six square feet.
 - c. All signs required by this Ordinance shall be permanently installed with the bottom of the sign not less than four feet above ground level, and not more than five feet above ground level. Pedestrian safety shall be taken into consideration when locating freestanding signs.
- (3) The sign(s) required by this Ordinance shall clearly display the following:
 - a. The words “tow-away,” “tow-away zone,” or “towing enforced,” or similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.
 - b. Indication that parking by unauthorized motor vehicles is prohibited by a phrase such as “private parking,” “leased parking,” “no parking,” “parking for customers only,” “parking for residents only,” or a similar phrase. This phrase shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and the background shall be on a contrasting background.
 1. If parking by unauthorized motor vehicles is prohibited on a 24-hour per day basis, then that prohibition shall be posted, and state the days of the week and hours of the day during which that prohibition is in effect.
 2. If parking by unauthorized motor vehicles is not prohibited on a 24-hour basis, then the days of the week and hours of the day during which parking is prohibited shall be posted.
 - c. If motor vehicles are subject to immediate towing when the motor vehicle operator steps off the property, whether the operator conducts business on the property or not, then the signs required by this Ordinance shall include the language “If you leave this property, your vehicle is subject to being towed. This includes patrons who are frequenting business on this property” or similar language which conveys the message that even if a business on the

property was or will be frequented, if the operator leaves the property, the vehicle may be towed. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

- d. The name and telephone number of the towing and storage service at which a person available to release the motor vehicle that has been towed, removed, or immobilized may be contacted. The name and telephone number shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.
- e. Language such as “If a tow has been initiated but the vehicle has not been removed from the parking lot, the vehicle must be released upon payment of a release fee” or similar. This message shall be formed by letters that are not less than one and one-half (1 1/2) inches high, and shall be on a contrasting background.

20-154 Report to police department required.

Any towing service that engages in a tow subject to this Article must, within 15 minutes of removing the motor vehicle from the private property, report to the Cary Police Department by telephone communication the fact that a motor vehicle was towed. The tow service must also provide the police department with (i) a description of the motor vehicle including make, color, and license tag number; (ii) the location from where the motor vehicle was towed; and (iii) the location of the storage lot where the motor vehicle is intended to be held.

20-155 Response time; towing receipt required; methods of payment.

- (a) The towing or storage service shall maintain a telephone number for the purpose of receiving calls from the owners or operators of towed motor vehicles. Calls to the telephone number (i) shall be immediately answered by a person; or (ii) a call back shall be initiated, by a person, within 30 minutes of a message being left on voice mail or answering machine type device. A person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle within two hours of a request for release being made during a phone call or by voice mail or answering machine message; unless (i) the request for release is made between the hours of 12:00 a.m. and 6:00 a.m. and (ii) the motor vehicle was towed more than two hours before the request for release was made, in which case a person with the authority and ability to release the motor vehicle shall respond to the location of the vehicle at or before 8:00 a.m.
- (b) The towing or storage service shall provide a receipt for each payment at the time the payment is made. Each receipt shall be legible and shall contain the following information:
 - (1) The name, address, and telephone number of the towing service.
 - (2) Sufficient information to allow the employee who towed the motor vehicle to be identified.
 - (3) A total fee with a breakdown of towing and storage fees.

- (4) A clear and accurate reason for the towing and the date and time of the towing. Receipts shall not use descriptions that might cause individuals to associate private property towing with municipal action.
- (c) The towing or storage service shall accept as payment for any fees related to towing regulated by this Ordinance (i) cash; and (ii) either MasterCard or Visa; and (iii) one other nationally recognized credit or debit card (such as MasterCard, Visa, American Express, Discover, or JCB).

20-156 Release prior to tow; retrieval of personal property.

- (a) Any tow service that has initiated a tow subject to this Ordinance by, at a minimum, positioning a tow truck or wrecker in preparation for securing the motor vehicle to the tow truck by a hook, chain, cable, or similar device, but has not removed the motor vehicle from the private parking lot, must upon request of the motor vehicle operator, release the motor vehicle upon payment of a release fee.
- (b) Any towing or storage service subject to this Article shall, upon request of the motor vehicle owner or operator, permit the motor vehicle owner, operator, or designee to have access to the motor vehicle for the purpose of retrieving personal property from the motor vehicle.

20-157 Regulations for tow storage lots.

- (a) The tow storage lot shall be located within 15 miles of the parking lot from which the motor vehicle is towed.
- (b) 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. Tow storage lots shall be secured and lighted in such a manner as to keep the motor vehicle safe from break-ins or damage while in storage. The storage yard shall be fenced and have surface lighting sufficient for transacting nighttime business.

20-158 Violations; Responsible party.

Failure to conduct a tow in compliance with the requirements of this Article IV is a violation of this Article IV. In addition, it is a violation of this Article IV to:

- (a) conduct a non-consensual tow from a private parking lot that is not properly posted pursuant to Section 20-153;
- (b) to engage a towing company to conduct non-consensual towing from a private parking lot if the private parking lot is not properly posted pursuant to Section 20-153; or
- (c) to engage a towing company that does not meet the requirements of this Article IV to conduct non-consensual towing from a private parking lot.

Any person or towing company who conducts a non-consensual tow in violation of this Article IV, and any person who engages a towing company in violation of this Article IV, may be charged with violation of this Article IV. A person shall be deemed to have engaged a towing company if that person owns, manages, or operates any private parking lot, or portion thereof, from which a towing company performs non-consensual tows.

20-159 Penalties.

(a) Civil penalty. Violation of this Article IV shall subject the offender(s) to a civil penalty in the amount of \$100.00. In the event there is more than one violation within any one-year period, then the civil penalty shall be increased for each additional violation over one during such period, as follows.

Second offense within one year: \$250.00

Third offense within one year: \$500.00

Fourth offense within one year: \$750.00

Fifth and any subsequent offense within one year: \$1,000.00

- (1) Once the one year period has run from the "first violation," the next violation shall be considered to be a first violation for the purposes of establishing a new one year period.
- (2) Violators shall pay any issued penalty within 72 hours of the issue date and time. The town attorney, or designee, is authorized to file suit on behalf of the town to collect any unpaid citations, and the police chief, or designee, is authorized to verify and sign complaints on behalf of the town in such suits. A police officer may issue a citation for violations of this article.
- (3) Appeal of a civil penalty amount may be made to the Town Manager or designee within 30 calendar days from the date of issuance by filing an appeal stating with specificity the grounds for the appeal and the reasons the penalty should be reduced or abated. In considering the appeal, the penalty or fine, the Town Manager or designee may consider the following:
 - a. the gravity of the violation;
 - b. any action taken by the violator to correct the violation;
 - c. the cost of the action to correct the violation; and
 - d. any previous violations committed by the violator, on the same or different site.

(b) Remedies. This article may also be enforced through equitable remedies issued by a court of competent jurisdiction.

(c) Criminal penalty. In addition to, or in lieu of, such civil penalties or other remedies, violation of this article shall constitute a misdemeanor.

2. The Town Council hereby directs that a supplement to the Town Code of Ordinances shall be prepared and printed reflecting these amendments.

Adopted: February 23, 2017

Effective: _____