

ARTICLE 12 – NUISANCE AND JUNK VEHICLES

[Replaces Code of Ordinance Chapter 6, Article II - Nuisances]

12.01 PURPOSE AND APPLICABILITY

The following provisions are enacted to define, prohibit, regulate, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of the residents within the City of Eden's planning jurisdiction in accordance with G.S. § 160A-174, 160A-193, 160A-303.

12.02 WEEDS, WILD GROWTH, RUBBISH

A. CONDITIONS CONSTITUTING PUBLIC NUISANCES.

It is hereby found that there are within City's Planning Jurisdiction of the City the following enumerated and described conditions and the same are hereby found, deemed and declared to constitute public nuisances wherever the conditions may exist and the creation, maintenance, or failure to abate such public nuisances is hereby declared unlawful:

1. The uncontrolled growth of noxious weeds, noxious weeds and grass or noxious weeds and other vegetation to a height in excess of twelve (12) inches on the entire parcel of any property or right-of-way area along the frontage of a parcel that is or has been developed except any portion of the property that has been proven to be in use for any current, permitted agricultural operation.
2. The accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes or vermin of any kind.
3. The collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind in an open space.
4. The accumulation of rubbish, trash, junk or combustible items, causing or threatening to cause the accumulation of stagnant water or causing or threatening to cause the inhabitation therein of mosquitos, harmful insects, rats, mice, snakes or vermin of any kind.
5. The open storage of any ice box, refrigerator, stove, water heater, freezer, other similar large appliances, glass, scrap building materials, building rubbish, debris or similar items.
6. The obstruction of public streets, highways or alleys.
7. The accumulation of dead trees, fallen sections of tree trunks, tree limbs or tree stumps not removed within thirty (30) days after it has acquired a situs on the property. This shall not apply to accumulations of less than two cubic yards or to natural accumulations on never developed parcels of land when such parcels are larger than two (2) acres and such natural accumulation is not within fifty (50) feet of adjoining developed property.
8. Conditions which block, hinder, or obstruct in any way the natural flow of branches, streams, creeks, surface waters, ditches, or drains. Conditions that cause obstructions in stream channels or the floodways of streams that may impede the passage of water during rain events whether such obstructions are natural or man-made. The actions of the city to abate these obstructions shall not create nor increase the responsibility of the city for the cleaning or maintenance of the stream, or for flooding of the stream. In addition, actions by the city to clear obstructions from a stream shall not create in the city any ownership

- in the stream, obligation to control the stream, or affect any otherwise existing private property right, or entitlement regarding the stream.
9. Swimming pools that cause or threaten to cause the accumulation of stagnant water or cause or threaten to cause the inhabitancy therein of mosquitoes, harmful insects, rates, mice, snakes or vermin.
 10. Conditions that injure or cause discomfort to the community at large, endanger life, generate disease, have a detrimental effect on the public health, safety and welfare.

B. NOTICE OF FINDINGS AND ORDER OF ABATEMENT

1. If the Administrator finds that conditions constituting a public nuisance exist on a parcel of real property, the Administrator shall issue a written notice of findings and an order of abatement to the owner of the property and any other party in interest which shall:
 - a. Set out what conditions the Administrator has found existing on such property that constitute a public nuisance; and
 - b. Which shall order the abatement of such conditions within fifteen (15) days of the date of the notice of findings and order of abatement. When the term "owner" is used in this division, "owner" shall include the owner and any party having a legal or equitable interest in such property.
2. The owner of the subject property shall be notified by personal delivery of the notice or by certified mail. If such owner cannot be personally served or refuses to accept the notice by mail of the violation, then the notice shall be posted on the property in a place visible from the public street, highway or alley. If the name of the owner cannot be ascertained then the notice shall be served on any person in possession of the subject property, or if there is no person in possession of the property, by posting the notice on the subject property. If any such property is owned by a corporation, the notice shall be served upon the registered agent or, in the absence thereof, notice shall be served upon the corporation.
3. Any notice required to be posted may be posted by the Administrator or his/her designee.
4. If the owner, having been ordered to abate such a public nuisance, fails, neglects, or refuses to abate or remove the condition constituting the nuisance within fifteen (15) days from the date of said order, the Administrator shall cause said condition to be removed or otherwise remedied by having employees of the City or private contractor to go upon said premises and remove or otherwise abate such nuisance. Any person who has been ordered to abate a public nuisance may within the time allowed by this section request the City in writing to remove such condition, the cost of which shall be paid by the person making such request.

C. ANNUAL NOTICE TO CHRONIC VIOLATORS OF PUBLIC NUISANCE OR OVERGROWN VEGETATION

1. The City may notify a chronic violator of this article that, if the violator's property is found to be in violation of this Article, the City shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes.
2. The notice shall be sent by certified mail. When service is attempted by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten (10) days after the mailing. If

- service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected.
3. For purposes of this section, a chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance.

D. CITY MAY PROCEED WITH CRIMINAL ACTION

The procedure set forth in this Article shall be in addition to any other remedies that exist under law for the abatement of public nuisances, and this Article shall not prevent the city from proceeding in a criminal action against any person violating the provisions of this division as provided in G.S. § 14-4.

E. APPEALS

See *Article 3 – Development and Administrative Review Procedures for Appeals of Administrator’s Decision.*

12.03 NUISANCE VEHICLES

A. DEFINITIONS

See *Article 14 – Definitions.*

B. ENFORCEMENT

1. The Administrator shall notify the owner of the premises upon which a nuisance vehicle is found that the owner of said premises is in violation of this division.
2. The owner shall be notified by certified mail or by personal services as by law provided, which notification shall be in writing and shall contain:
 - a. A brief statement of why the vehicle is a nuisance, citing the appropriate subsection or subsections of this division.
 - b. A statement that the keeping of such vehicle on the owner's premises is unlawful.
 - c. A request that the owner of the premises voluntarily remove, abate or remedy the nuisance within 30 days of the mailing or service of the notice.
 - d. A statement advising the owner that if the nuisance vehicle is not removed, abated or remedied, the city will take appropriate legal action to remove, abate or remedy the nuisance and that the expense of such action shall be paid by the owner of the premises, and if not paid, the expense shall be a lien upon the premises.
3. If the owner of the premises fails to voluntarily remove, abate or remedy the nuisance within the 30-day period provided for in Subsection 1, the Administrator shall conduct a hearing to determine if the owner of the premises should be ordered to remove, abate or remedy the nuisance and shall give the owner of the premises written notice of hearing by certified mail or personal service as by law provided, which notice of hearing shall be in writing and shall contain:
 - a. A brief statement describing the vehicle and stating why it is a nuisance vehicle including a citation of the appropriate subsection or subsections of this division together with a brief description of the premises upon which it is located.

- b. A statement that a hearing will be held before the Administrator at a designated place, date and time which date shall be not less than 15 days or more than 30 days from the date of the mailing or service of the notice of hearing.
 - c. A statement that the owner has a right to appear at the hearing, be represented by counsel and offer evidence in the enforcement proceeding.
 4. Within five (5) days of the conclusion of the hearing, the Administrator shall enter a written order in the enforcement proceeding which order shall either:
 - a. Contain a finding that the vehicle is not a nuisance vehicle; or
 - b. Order the owner to remove, abate or remedy the nuisance within 30 days following the date of the service of the order upon the owner by certified mail or personal service as by law provided.
 5. In the event the owner fails to remove, abate or remedy the nuisance as ordered, the Administrator shall notify the City Council of the owner's failure or refusal to comply with the order to remove, abate or remedy said nuisance.
 6. Upon receipt of the Administrator's notice that an owner has failed to remove, abate or remedy a nuisance vehicle, the City Council may direct that any appropriate legal action or proceeding be initiated to remove, abate or remedy the nuisance.

C. CREATION OF LIEN

In the event the city takes action to remove, abate or remedy the nuisance, the expense of the action shall be paid by the person in default in failing to remove, abate or remedy the nuisance, and, if not paid, the said expenses shall be a lien upon the land or premises where the nuisance occurred and shall be collected as unpaid taxes.

12.04 ABANDONED AND JUNKED VEHICLES

A. ADMINISTRATION.

1. The Police Department shall be responsible for the administration and enforcement of the removal and disposition of abandoned and junked motor vehicles located on public streets or highways.
2. The Planning and Inspections Department shall be responsible for the administration and enforcement of the removal and disposition of abandoned and junked motor vehicles located on any other property owned or operated by the city or on private property.

B. DEFINITIONS.

See *Article 14 – Definitions.*

C. VEHICLES EXEMPT FROM SECTION.

1. Any vehicle in an enclosed building;
2. Any vehicle on the premises of a business enterprise being operated in a lawful place and manner when the vehicle is necessary to the operation of such business enterprise; or
3. Any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city.

D. ABANDONMENT OF VEHICLE PROHIBITED

It shall be unlawful for a person to abandon a motor vehicle on the public streets or on public or private property within the ordinance making jurisdiction of the city. Any junked or abandoned vehicle found to be in violation of this section may be removed to a storage garage or area.

E. KEEPING ON PRIVATE PROPERTY PROHIBITED WITHOUT CONSENT OF THE OWNER, LESSEE OR OCCUPANT OF THE PREMISES.

It shall be unlawful for any person to keep a junked or abandoned vehicle on private property within the City without the consent of the owner, lessee or occupant of the premises.

F. REMOVAL FROM PRIVATE PROPERTY AT REQUEST OF OWNER, OCCUPANT OR LESSEE.

1. Any junked or abandoned motor vehicle found to be in violation of Section E may be removed to a storage garage or area, but no such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the Administrator has declared such vehicle to be a health or safety hazard.
2. Any person requesting the removal of a junked or abandoned motor vehicle from private property shall indemnify the city against any loss, expense, or liability incurred because of the removal, storage, or sale thereof.

G. REMOVAL OF ABANDONED OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.

1. Except as set forth in Section G.2 below, an abandoned 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 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 city on a specified date (no sooner than seven days after the notice is affixed). The notice shall state that the vehicle will be removed by the city 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.
2. With respect to abandoned vehicles on private property and junked motor vehicles to which prior 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 an abandoned or junked motor vehicle, such appeal shall be made to the City Council in writing, heard at the next regularly scheduled meeting of the City Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided. The determination of the City Council may be appealed. The appeal shall be made within ten days of the determination by the City Council and shall be to the District Court of Rockingham County.

H. EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.

The requirement that notice be given prior to the removal of an abandoned or junked motor vehicle may, as determined by the Administrator, 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 authorizing official 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 City Council 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 loading zones,
 - e. Parked in bus zones, or
 - f. Parked in violation of temporary parking restrictions imposed under code sections.
2. Other abandoned vehicles. With respect to abandoned vehicles left on City-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 authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include 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.

I. REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

1. Any abandoned or junked motor vehicle which has been ordered removed may, as directed by the City, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the city. Whenever such a vehicle is removed, the authorizing city official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:
 - a. The description of the removed vehicle;
 - b. The location where the vehicle is stored;
 - c. The violation with which the owner is charged, if any;
 - d. The procedure the owner must follow to request a probable cause hearing on the removal.
2. The City 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 Sections I.1.a through I.1.d 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.
3. If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of this vehicle.
4. Whenever an abandoned or junked vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing city 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 of the information set forth in Sections I.1.a through I.1.d above.

J. RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

After the removal of an abandoned 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 of district court judge to receive such 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, as amended. Any aggrieved party may appeal the magistrate's decision to district court.

K. 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 with the City. 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.

L. SCHEDULE OF TOWING FEES.

The fees for towing shall be as set out in the schedule of towing fees, a copy of which shall be maintained by the Planning and Inspections Department.

M. SCHEDULE OF STORAGE FEES.

The fees for storage shall be as set out in the schedule of storage fees, a copy of which shall be maintained by the Planning and Inspections Department.

N. COLLECTION OF FEES.

The City shall be responsible for collecting towing and storage fees for a vehicle found to be in violation of this division.

O. CREATION OF LIENS; ENFORCEMENT.

1. The towing and storage charges provided for in Section L & M shall be a lien upon the vehicle.
2. The charges for which the lien is claimed under this section may be enforced by a sale of the vehicle if the owner fails to claim the vehicle and pay the charges within thirty (30) days following the expiration of the time within which an appeal could have been taken or within thirty (30) days following a final determination of the matter on appeal whichever date occurs first. If the lien is enforced by a sale of the vehicle, the procedure shall be as provided by G.S. §§ 44A-4, 44A-5 and 44A-6 where the property upon which the lien is claimed is a motor vehicle, provided that if no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the vehicle may be destroyed.

P. ADDITIONAL REMEDIES AVAILABLE.

In addition to the enforcement procedures provided for in this division, the city may initiate any appropriate action or proceedings to prevent, restrain, correct or abate the violation of this division.

12.05 REMOVAL AND DISPOSITION OF JUNKED MOTOR VEHICLES

A. ADMINISTRATION

The Planning and Inspections Department shall be responsible for the administration and enforcement of this section. The city may contract with private tow truck operators or towing businesses to remove to a designated storage garage or area junked motor vehicles in compliance with this section and applicable state laws. Nothing in this section shall be construed to limit the legal authority or powers of the Planning and Inspections Department, officers of the Police Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

B. DEFINITIONS

See Article 14 – Definitions.

C. JUNKED MOTOR VEHICLES REGULATED; REMOVAL AUTHORIZED.

1. It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle, or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
2. It shall be unlawful to have more than one junked motor vehicle, as defined herein, on the premises of public or private property. Single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.
3. It shall be unlawful for any owner, 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 fail to comply with the locational requirements or the concealment requirements of this section.
4. Subject to the provisions of subsection C.5, upon investigation, the Administrator may order the removal of a junked motor vehicle as defined in this section after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the owner or person entitled to possession against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following among other relevant factors may be considered:
 - a. Protection of property values;
 - b. Promotion of tourism and other economic development opportunities;
 - c. Indirect protection of public health and safety;
 - d. Preservation of the character and integrity of the community; and
 - e. Promotion of the comfort, happiness and emotional stability of area residents.
5. Permitted concealment of enclosure of junked motor vehicle:
 - a. One junked motor vehicle, in its entirety, can be located in the rear yard as defined by this ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.
 - b. The Administrator has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering or enclosure must be compatible with the objectives stated in this Article.

D. REMOVAL OF JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.

1. A junked vehicle which is to be removed pursuant to Section C above shall be towed only after notice to the registered owner or person entitled to possession of the 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, 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 city on a specified date (no sooner than seven days after the notice is affixed. The notice shall state that the vehicle will be removed by the city 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.
2. If the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is a junked motor vehicle, such appeal shall be made to the City Council in writing, heard at the next regularly scheduled meeting of the City Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided. The determination of the City Council may be appealed. The appeal shall be made within ten days of the determination by the City Council and shall be to the District Court of Rockingham County.

E. REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

1. Any junked motor vehicle which has been ordered removed may, as directed by the City, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the city. Whenever such a vehicle is removed, the authorizing city official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:
 - a. The description of the removed vehicle;
 - b. The location where the vehicle is stored;
 - c. The violation with which the owner is charged, if any;
 - d. The procedure the owner must follow to request a probable cause hearing on the removal.
2. The city 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 Section E.1.a through E.1.d 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.
3. If the vehicle is registered in North Carolina, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of this vehicle.
4. Whenever an abandoned or junked vehicle is removed, and such vehicle has no valid registration or registration plates, the authorizing city 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 of the information set forth in Section E.1.a through E.1.d above.

F. RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.

After the removal of an abandoned 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 to receive such 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, as amended. Any aggrieved party may appeal the magistrate's decision to district court.

G. 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 with the City. 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.

H. SCHEDULE OF TOWING FEES.

The fees for towing shall be set out in the schedule of towing fees, a copy of which shall be maintained by the Planning and Inspections Department.

I. SCHEDULE OF STORAGE FEES.

The fees for storage shall be as set out in the schedule of storage fees, a copy of which shall be maintained by the Planning and Inspections Department.

J. COLLECTION OF FEES.

The City shall be responsible for collecting towing and storage fees for a vehicle found to be in violation of this division.

K. CREATION OF LIENS; ENFORCEMENT.

1. The towing and storage charges provided for in Sections H & I shall be a lien upon the vehicle.
2. The charges for which the lien is claimed under this section may be enforced by a sale of the vehicle if the owner fails to claim the vehicle and pay the charges within 30 days following the expiration of the time within which an appeal could have been taken or within 30 days following a final determination of the matter on appeal whichever date occurs first. If the lien is enforced by a sale of the vehicle, the procedure shall be as provided by G.S. §§ 44A-4, 44A-5 and 44A-6 where the property upon which the lien is claimed is a motor vehicle, provided that if no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the lien, the vehicle may be destroyed.

L. VEHICLES EXEMPT FROM SECTIONS.

No motor vehicle that is used on a regular basis for business or personal use shall be removed or disposed of pursuant to Sections A through L above.

M. ADDITIONAL REMEDIES AVAILABLE.

In addition to the enforcement procedures provided for in this division, the city may initiate any appropriate action or proceedings to prevent, restrain, correct or abate the violation of this division.