

(jtj 2.13.09)
First Reading: 1-12-09
Second Reading: 2-09-09
Third Reading: 3-9-09

AN ORDINANCE TO REPEAL THE EXISTING "ABANDONED VEHICLES" ORDINANCE OF THE TOWN OF FELTON AND TO REPLACE IT WITH A NEW ORDINANCE RELATING TO ABANDONED VEHICLES

BE IT HEREBY ENACTED BY THE TOWN COUNCIL OF THE TOWN OF FELTON, A MAJORITY THEREOF CONCURRING IN COUNCIL DULY MET THAT Article I, Title 2 Of The Town Code (Being An Ordinance "Relating To Abandoned, Wrecked, Junked, Or Dismantled Vehicles; Prohibiting The Storage, Repair, Or Dismantling Thereof On Public Or Private Property; Declaring The Same To Be A Nuisance; Providing For The Abatement Of Such Nuisances; And Providing Penalties For The Violation Of This Ordinance") Be And Hereby Is Repealed, And That A New Article I, Title 2 (Being "An Ordinance Relating To Abandoned Vehicles; Prohibiting The Storage, Repair, Or Dismantling Thereof On Public Or Private Property; Declaring The Same To Be A Nuisance; Providing For The Abatement Of Such Nuisances; And Providing Penalties For The Violation Of This Ordinance") be and hereby is adopted as follows:

Article I, Title 2

AN ORDINANCE RELATING TO ABANDONED VEHICLES; PROHIBITING THE STORAGE, REPAIR, OR DISMANTLING THEREOF ON PUBLIC OR PRIVATE PROPERTY; DECLARING THE SAME TO BE A NUISANCE; PROVIDING FOR THE ABATEMENT OF SUCH NUISANCES; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

Section 1. Purpose.

The purpose of this chapter is to eliminate abandoned vehicles which tend to impede traffic in the streets or interfere with the enjoyment of, and reduce the value of, private property, to invite plundering, to create fire hazards and other safety and health hazards to children as well as to adults, to interfere with the comfort and well being of the public and to create, extend and aggravate urban blight.

Section 2. Definitions. For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"Abandoned Vehicle" is any vehicle which:

(a) is inoperable, dismantled, wrecked, or junked; or from which major components have been removed; or is in such a state of disrepair as to be incapable of being operated in the manner for which it is designed; or which displays expired registration plates which are at least 30 days expired or which displays no registration plates; or which displays conditions reasonably indicating abandonment (e.g. broken windows, flat tires, vandalized interior or exterior), *and*

(b) Is left:

(i) *on public property* longer than 24 hours; provided however, that the following vehicles left on public property shall not be considered abandoned for purposes of this ordinance:

(A) vehicles and equipment used or to be used in the construction, operation or maintenance of public utility facilities and which are left in a manner which does not interfere with the normal movement of traffic; and

(B) vehicles whose owners have properly parked and locked them and have notified the Felton Police that the owner desires to leave the vehicle so parked and secured for a period not to exceed 30 days; except that if during such period the vehicle is no longer secured, or, in the opinion of the Felton Police, has become a danger to the public, then the vehicle shall be subject to the provisions of this ordinance.

(ii) *on private property without the consent of the owner* longer than 24 hours;

(iii) *on private property with the consent of the owner* longer than 15 days; provided however, that no vehicle on private property with the consent of the owner of the property shall be deemed abandoned solely because it displays expired registration plates or no registration plates.

“Person” is any person, firm, partnership, limited partnership, limited liability partnership (“LLP”), association, limited liability company (“LLC”), corporation, company or artificial business entity organization of any kind.

“Private property” is any real property within the Town which is privately owned and which is not defined as public property herein.

“Public property” is any real property in the Town which is owned by a governmental body and includes buildings, parking lots, parks, streets, alleys, sidewalks, rights-of-way, easements and other similar property.

“Town” is the Town of Felton.

“Vehicle” shall mean a machine propelled by power other than human power designated to travel along the ground by use of wheels, treads, runners or slides, and transport persons or property or pull machinery and shall include, without limitation, automobile,

van, bus, recreational vehicle ("RV"), truck, trailer, motor cycle, tractor, buggy and wagon.

Section 3. Abandoned Vehicles Prohibited And Declared A Public Nuisance

(a) It shall be unlawful for any person to maintain, place, leave, or allow any abandoned vehicle in the Town except as provided in Section 4.

(b) Any abandoned vehicle in the Town is hereby declared to be a public nuisance subject to abatement according to the provisions of this ordinance. The temporary or intermittent movement or removal of such vehicle shall not be deemed to interrupt the running of the time periods set out herein.

Section 4. Exceptions.

(a) This ordinance shall not apply to:

(1) any vehicle parked or stored by the Town of Felton on public property;

(2) any vehicle enclosed within a building or fence on private property in such a manner that it is not visible from without such enclosure. Covering the vehicle with a tarp or similar device shall not satisfy the requirements of this section; *provided however*, that the use of a commercially-manufactured and properly fitting automobile cover, in good condition, which securely covers the entire automobile but for the bottom part of the tires and the undercarriage, shall be permitted.

(3) any vehicle held in connection with a business enterprise lawfully licensed by the appropriate governmental agency for the servicing and repair of such vehicles and operated on property in an appropriate zoning district under the Town zoning ordinance.

(4) any vehicle located on private property with the permission of the property owner where the owner of the vehicle has, for reasonable cause shown, obtained written authority from the Felton Police to exceed the time limits herein set out (such extension of time not to exceed 30 additional days); such vehicle shall be deemed in violation immediately upon the expiration of the stated extension period. Nothing herein shall excuse non-compliance with other Town ordinances regulating the parking and/or storage of vehicles on public or private property in the Town.

Section 5. Order for Removal.

(a) **On Public Property** – Upon the discovery of a vehicle on any public property concerning which vehicle there are reasonable grounds to believe it to be an abandoned vehicle, the Felton Police shall post a notice at some conspicuous place on the vehicle, ordering that such vehicle be removed by a stated time and date (such time and date to be not less than 12 hours nor more than 48 hours following the posting of such notice). If the vehicle is not removed within the

time period designated by such notice, the abandoned vehicle shall be removed as hereinafter provided.

(b) **On Private Property Without The Consent of the Property Owner** -- In the event that a vehicle is abandoned on private property without the consent of the owner or occupant thereof, at the complaint of the property owner or occupant, such vehicle may be caused to be removed by the Felton Police as hereinafter provided, except that the posting required in subsection (a) of this section may be omitted.

(c) **On Private Property With The Consent of the Property Owner** -- If an abandoned vehicle is on private property with the consent of the owner or occupant thereof, or if an abandoned vehicle is owned by the owner or occupant of the private property where the vehicle is located, the Felton Police may enter upon the property where such vehicle is located to ascertain its ownership and to post a notice at some conspicuous place on the vehicle, ordering that such vehicle be removed by a stated time and date (such time and date to be not less than 10 days nor more than 30 days following the posting of such notice). In addition, the Felton Police shall promptly provide written notice to the owner of the abandoned vehicle and to the owner of the property upon which it is located, by hand delivery or by certified mail sent to the owners' last known addresses, ordering the owner of the abandoned vehicle to remove such vehicle by a specified date which shall not be less than 10 days nor more than 30 days from the date the vehicle was posted. (If notice is hand-delivered, it shall be sufficient to deliver such written notice to an adult person residing within the residence of the addressee). If the vehicle is not removed within the stated time limit, it shall be removed as hereinafter provided.

(d) **Form of Notice and Order.** Any Notice and Removal Orders required in this section shall contain the following information:

- (1) A description of the vehicle, including the make, year, model, color and registration number if known;
- (2) The location of such vehicle;
- (3) The date and time the Order was affixed to the vehicle;
- (4) An Order for removal by a specified date and time (not less than 12 hours of posting an abandoned vehicle on public property and not less than 10 days of posting an abandoned vehicle on private property)
- (5) That upon failure to comply with the order for removal, the Felton Police Department shall remove or cause to be removed such vehicle,
- (6) That, in the case of an abandoned vehicle on private property, the owner of the vehicle and/or the owner or occupant of the property upon which the vehicle is located may request a hearing before the Town Manager by filing a written request for a hearing at the Town Manager's Office within five days subsequent to the order of removal being affixed to the vehicle. Such hearing shall be held as soon as is reasonably possible, but in no event more than four business days after the written notice is received at the Town Manager's Office.

Section 6. Removal of Vehicles.

If a violation of this ordinance is not remedied within the time set forth in the order as outlined herein, or within 72 hours following a hearing at which the Town Manager determines that a violation does exist, the Felton Police Department is hereby authorized to remove or have removed such vehicle from the premises. Except for the Felton Police Department and Town employees working in concert with the Felton Police Department, such vehicles shall be removed only by wreckers or towing services duly licensed by the State of Delaware. It shall be unlawful for any person to interfere with, hinder, or refuse to allow the Felton Town Police Department and/or any person acting in concert with or at the direction of the Felton Police Department, to enter upon private property for the purpose of removing a vehicle under the provisions of this ordinance.

Section 7. Notice of Removal.

Within five days of the removal of such vehicle, the Felton Police Department shall give written notice by certified mail, return receipt requested, to the registered owner of the vehicle, if known, to any known lien holders, and also to the owner or occupant of the private property from which the vehicle was removed, that the vehicle has been impounded and stored for violation of this ordinance and that the vehicle is subject to the Delaware Garageman's Lien Statute. The notice shall give the location of where the vehicle is stored and the costs being incurred for removal and storage.

Section 8. Rights of Persons Taking Possession.

Any person who tows, removes, stores, or keeps a vehicle at the direction of the Felton Police Department acting under the provisions of this ordinance shall, from the time of taking possession thereof, be entitled to all rights, remedies and authority as provided under the Delaware Garageman's Lien Statute, 25 Del. C. Chapter 39 as it may be amended from time to time hereafter or any future corresponding provision of law. In exercising such rights, remedies, and authority, such persons shall be governed, in all respects, by the terms of that statute.

Section 9. Liability for Towing and Storage Expenses.

In the event that the Town should be or become liable for all or any portion of the expenses incurred in the removal and storage of such vehicle, the Town may recover the same from the owner of the vehicle and/or the owner of the private property from which it was removed in an action for debt, and/or the Town may add that amount to the tax bill of the person owning the private property from which the vehicle was removed. If the occupant of the private property from which the vehicle was removed is not the owner of the private property, the occupant shall be primarily responsible. The Town shall not seek to recover from the owner of the private property until it has reasonably exhausted all efforts to recover from the occupant, but this shall not prohibit the Town from joining both the property owner and occupant in one action for debt.

Section 10. Penalty.

Any person knowingly causing or permitting a nuisance to exist in violation of this ordinance shall, upon conviction, forfeit and pay a fine of not more than \$100.00 plus costs of prosecution. Each day following the expiration of the time limit for removal shall constitute a separate offense.

Section 11. Rights and Authority In Addition To Other Rights and Authority

The rights and authority conferred by this ordinance shall be in addition to, and not in lieu or limitation of, any other rights or authority possessed by any public officer or property owner with respect to abandoned vehicles.

SYNOPSIS

This ordinance repeals the Town's existing abandoned automobile ordinance and enacts a new abandoned vehicle ordinance in its place. The new ordinance more closely tracks the state statute on abandoned vehicles and deals with three situations: Abandoned vehicles on public property, abandoned vehicles on private property without the consent of the property owner; and abandoned vehicles on private property with the consent of the property owner. Where the vehicle is on public property or on private property with the consent of the property owner, the vehicle must be posted with a notice and order to remove the vehicle within a stated time (not less than 12 hours for a vehicle on public property and not less than 10 days for a vehicle on private property with the consent of the property owner). Additionally, where the vehicle is on private property with the consent of the property owner, the notice and order must be hand-delivered or mailed (certified mail) to the owner of the vehicle and the owner of the property.

In the situation where the vehicle is on private property with the consent of the owner of the property, either the property owner or the owner of the vehicle (or both) may appeal the notice and order of removal to the Town Manager within 5 days of the date the vehicle was posted.

In the event the vehicle is not removed within the time specified in the notice (or within 72 hours of the Town Manager's decision in case of an appeal), the Felton Town Police may remove, or cause to have removed, such vehicle by a licensed towing company which shall be entitled to retain possession of the vehicle pursuant to the Delaware "Garageman's Lien" statute.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Felton at a duly-noticed and convened meeting at which a quorum was present on March 9th, 2009.

So Certifies:

Attest: Sarah Ferguson

Town Clerk

D. L. Bacon

Mayor

This shall certify that the title and synopsis of the foregoing ordinance was posted in three public places in the Town (including the Town Hall) on March 10th, 2009.
Town Hall, Post office, Felton Bank

3/10/09

Date

Sarah Ferguson

Town Clerk