

CHAPTER 91: PUBLIC HEALTH NUISANCES
Adopted 2011 (Updated 2013)

Section

General Provisions

- 91.01 Conditions constituting a public nuisance
- 91.02 Investigation and determination of conditions
- 91.03 Notice of public nuisance
- 91.04 Owner may request hearing
- 91.05 Abatement by town
- 91.06 Costs of removal by owner; lien

Nuisance/Junked Vehicle Regulations

- 91.10 Intent
- 91.11 Definitions
- 91.12 Administration
- 91.13 Abandoned vehicle unlawful; removal authorized
- 91.14 Nuisance vehicle unlawful; removal authorized
- 91.15 Junked motor vehicle regulated; removal authorized
- 91.16 Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements; appeals
- 91.17 Exceptions to prior notice requirement
- 91.18 Removal of vehicles; post-towing notice requirements
- 91.19 Right to probable cause hearing before sale or final disposition of vehicle
- 91.20 Redemption of vehicle during proceedings
- 91.21 Sale and disposition of unclaimed vehicle
- 91.22 Conditions on removal of vehicles from private property
- 91.23 Protection against criminal or civil liability
- 91.24 Exceptions
- 91.25 Unlawful removal of impounded vehicle

- 91.99 Penalty

Bogue - General Regulations
GENERAL PROVISIONS

§ 91.01 CONDITIONS CONSTITUTING A PUBLIC NUISANCE.

The existence of any of the following conditions on any lot, parcel of land or street right-of-way within the corporate limits of the Town of Bogue is hereby declared to be dangerous and prejudicial to the public health or safety and to constitute a public nuisance:

(A) The uncontrolled growth of weeds or grass to a height in excess of 24 inches causing or threatening to cause a hazard detrimental to the public health or safety. In order to be detrimental to the public health or safety, the uncontrolled growth must be located less than 100 feet from any abutting street, less than 100 feet from any adjoining property line (if a structure is located on an adjoining property) or less than 50 feet from any occupied dwelling;

(B) Any accumulation of rubbish, trash or junk causing or threatening to cause a fire hazard, the accumulation of stagnant water or the inhabitation therein of rats, mice, snakes or vermin of any kind which is or may become dangerous or prejudicial to the public health;

(C) Any accumulation of animal or vegetable matter that is offensive by virtue of odors or vapors or by inhabitation therein of rats, mice, snakes or vermin which is or may be dangerous or prejudicial to the public health;

(D) Any placement or accumulation of topsoil, dirt, debris, trash or other materials on or within street rights-of-way, swales or drainage ditches within public or town rights-of-way, which block the flow of drainage or surface waters or cause the accumulation of stagnant water, thereby tending to either cause flooding of adjoining properties, substantial saturation of the soils and the elevation of ground water, or the accumulation of stagnant water, resulting in or tending to cause the breeding of mosquitos, the failure of septic tank systems, and the flooding of streets, driveways and yards, so that the same becomes dangerous or prejudicial to the public health; and

(E) Any condition detrimental to the public health which violates the rules and regulations of the Carteret County Health Department.

(F) *Open storage.*

(1) *Definition.* For the purposes of this section, **OPEN STORAGE** means the placement in an unenclosed area in a residential zoning district for a continuous period in excess of 24 hours of an item which is not customarily used or stored outside and/or which is not made of a material that is resistant to damage or deterioration from exposure to the outside environment; or a motor vehicle, recreational vehicle or trailer that is operative and does not have a valid state registration.

(2) (a) Open storage in a residential district shall not be permitted in the front yard, in a carport, or an unenclosed front porch, driveway, or any open and unenclosed area visible from any public right-of-way.

(b) Open storage in the back yard of any residential lot shall be screened from adjacent properties by a six-foot high, solid wooden screening fence or by a landscaping screen wall consisting of shrubs which at maturity will reach a height of six feet.
(Ord. passed 10-15-1996; Am. Ord. passed 10-21-2013) Penalty, see § 91.99

§ 91.02 INVESTIGATION AND DETERMINATION OF CONDITIONS.

The Mayor as to the conditions set forth in divisions (A), (B), (C) and (E) of § 91.01 above, or the Street Commissioner or Zoning Officer with regard to the conditions set forth in division (D) of § 91.01 above, upon notice from any person or upon the Mayor, Zoning Officer, or Street Commissioner's own investigation of the existence of any of the conditions described in § 91.01 above, shall determine whether, in fact, conditions exist which constitute a public nuisance as set forth in § 91.01.
(Ord. passed 10-15-1996)

§ 91.03 NOTICE OF PUBLIC NUISANCE.

Upon a determination that conditions constituting a public nuisance exist, the appropriate official in § 91.02 above shall notify, by certified mail, the owner, occupant or person in possession of the premises in question or believed to have caused the condition, or the conditions constituting the public nuisance and shall order the prompt abatement thereof within 14 days from the receipt of the written notice.
(Ord. passed 10-15-1996)

§ 91.04 OWNER MAY REQUEST HEARING.

Within seven days from receipt of the notice provided for in § 91.03 above, the owner, occupant or person believed to have caused the conditions may request a hearing before the appropriate official designated in § 91.02 above. The official shall fix a time for a hearing and the initial abatement order shall be temporarily suspended pending the hearing. At the hearing, the individual affected by the order shall be given the opportunity to present evidence to refute the findings which supported the initial abatement order. Upon completion of the hearing, the official shall consider the evidence and shall either revoke the initial order, issue a final order which differs from the initial order or reinstitute the initial order as a final abatement order.
(Ord. passed 10-15-1996)

§ 91.05 ABATEMENT BY TOWN.

(A) Upon the occurrence of either of the following conditions, the appropriate official designated in § 91.02 shall cause the condition to be removed or otherwise corrected by having employees or agents of the town to go on or near the premises and remove or otherwise abate the nuisance under the official's supervision:

(1) A hearing is requested and held under § 91.04 above, resulting in either a final order with modifications or the reinstatement of the initial order as a final order, and the order is not complied with; or

(2) No hearing is requested or held, and the person having been ordered to abate the public nuisance fails, neglects or refuses to abate or remove the conditions constituting the nuisance within 14 days from receipt of the order.

(B) Any person who has been finally ordered to abate a public nuisance may within the time allowed by this chapter request the town in writing to remove the condition, the costs of which shall be paid by the person making the request.
(Ord. passed 10-15-1996) Penalty, see § 91.99

§ 91.06 COSTS OF REMOVAL BY OWNER; LIEN.

(A) The actual costs incurred by the town in removing or otherwise remedying a public nuisance shall be charged to the owner of the lot or parcel of land on which the public nuisance exists or adjoins the lot or land on which the person causing the nuisance owns, and it shall be the duty of the Town Clerk to mail a statement of charges to the owner or other person in possession of the premises with instructions that the charges are due and payable within 30 days from receipt thereof.

(B) In the event charges for removal or abatement of the public nuisance are not paid within 30 days after receipt of a statement of charges as provided for in this section, the charges shall become a lien upon the land or premises where the public nuisance existed or from which the public nuisance adjoined or originated, and shall be collected as unpaid taxes, as provided in G.S. § 160A-193.
(Ord. passed 10-15-1996) Penalty, see § 91.99

NUISANCE/JUNKED VEHICLE REGULATIONS

§ 91.10 INTENT.

It shall be the intent of this article to promote and enhance the aesthetic appearance of the town and to protect the property values throughout the town. It is further the intent of this article to promote and enhance the attractiveness of the town thoroughfares and residential streets, which present public visibility to visitors and to passersby of the town by controlling and regulating abandoned and junked vehicles. It is further the intent of this article to protect the general public health, safety, and welfare of all residents from the location of abandoned, nuisance, or junked motor vehicles within the town.
(Ord. passed 6-10-2008)

§ 91.11 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABANDONED VEHICLE. As authorized and defined in G.S. § 160A-303, an abandoned motor vehicle is a motor vehicle which:

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

AUTHORIZING OFFICIAL. The Town Planner, or their designee, is designated to authorize the removal of vehicles under the provisions of this article.

JUNKED MOTOR VEHICLE. As authorized and defined in G.S. § 160A-303.2, the term **JUNKED MOTOR VEHICLE** means a vehicle that does not display a current license plate 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 originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than \$100.

MOTOR VEHICLE or **VEHICLE**. As authorized and defined in G.S. 160A-303, the term motor vehicle means all machines designed or intended to travel over land or water by self propulsion or while attached to any self-propelled vehicle.

NUISANCE VEHICLE. A vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, and including a vehicle found to be:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests;
 - (2) A point of heavy growth of weeds or other noxious vegetation;
 - (3) A point of collection of pools or ponds of water;
 - (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor;
 - (5) One which has areas of confinement, such as trunks, hoods, and the like, which cannot be operated from inside the area of confinement;
 - (6) One so situated or located that there is a danger of it falling or turning over; or
 - (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; or
 - (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass.
- (Ord. passed 6-10-2008)

§ 91.12 ADMINISTRATION.

The Planning Department for the Town of Bogue shall be responsible for the administration and enforcement of this article.
(Ord. passed 6-10-2008)

§ 91.13 ABANDONED VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.

(A) Upon investigation, proper authorizing officials of the town may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(B) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow such vehicle to be abandoned as the term is defined herein.
(Ord. passed 6-10-2008)

§ 91.14 NUISANCE VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.

(A) Upon investigation, the proper authorizing official of the town may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.

(B) 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.
(Ord. passed 6-10-2008)

§ 91.15 JUNKED MOTOR VEHICLE REGULATED; REMOVAL AUTHORIZED.

(A) Upon investigation, the town planner may order the removal of a junked motor vehicle as defined in this article after finding in writing that the public health and safety concerns 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 apparent owner against the corresponding gain to the public by promoting or enhancing the public health and safety.

(1) The following, among other relevant factors, may be considered:

- (a) Protection of property values; or
- (b) Preservation of the character and integrity of the community.

(2) Provided, however, no vehicle that is used on a regular basis for business or personal use shall be removed or disposed of pursuant to this division.

(B) 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.
(Ord. passed 6-10-2008)

§ 91.16 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS; APPEALS.

(A) Except as set forth in this section, 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 certified mail. Reasonable diligence shall include notification to the registered owner of the vehicle at his last known address according to the latest registration certificate or certificate of title on file with the State Department of Motor Vehicles; notice to the owner of real property as recorded in the Carteret County Registry of Deeds; notice to the owner, lessee or occupant as contained in the records of the town. 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 on a specific date (no sooner than seven days after the notice is affixed). The notice shall state that the vehicle will be removed by the town on 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.

(B) Appeals. The registered owner or person entitled to possessing a vehicle which has been determined to be an abandoned vehicle on private property, nuisance vehicle or junked motor vehicle who has received a notice pursuant to this section that the vehicle will be removed may appeal the determination. In the case of notice for removal of a junked motor vehicle where the determination has been made that the public health and safety benefits of removing the vehicle outweigh the burdens on the private property owner, in accordance with this section, the registered owner or person entitled to possession of the junked motor vehicle may appeal that determination. Any appeal shall be made within ten days upon receipt of the notice for removal of the vehicle. All appeals shall be made to the board of commissioners in writing. Appeals held pursuant to this section shall be conducted by the board of commissioners within 45 days after the receipt of a request for a hearing, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.
(Ord. passed 6-10-2008)

§ 91.17 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.

Circumstances justifying the removal of vehicles without prior notice include:

(A) *Vehicles abandoned on the public streets.* For vehicles left on the public streets and highways, the police department or town manager hereby determines that immediate removal of such vehicles may be warranted when they are:

- (1) Obstructing traffic;
- (2) Parking in violation of an ordinance prohibiting or restricting parking;
- (3) Parked in a no-stopping or standing zone;
- (4) Parked in loading zones; or
- (5) Parked in bus zones.

(B) *Nuisance vehicles and abandoned vehicles on private property.* These vehicles may be removed without giving prior notice 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 or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, or vehicles causing damage to public or private property.

(C) *Vehicles left on private property.* A vehicle may be removed that has been left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours and the owner, occupant or lessee has complied with this article, or in those circumstances where there is a finding of 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 authorized official in the appropriate daily records.
(Ord. passed 6-10-2008)

§ 91.18 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.

(A) Any abandoned, nuisance or junked vehicle which has been ordered removed may, as directed by the proper authorizing official of the town, be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the town. Whenever such a vehicle is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) The description of the removed 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.

(B) 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 above, shall also be mailed to the registered owner's last known address, unless the notice is waived in writing by the vehicle owner or his or her agent.

(C) 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 of the removal of the vehicle.

(D) Whenever an abandoned, nuisance or junked motor vehicle is removed and such vehicle has no valid registration or registration plates, the authorizing town 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 above.
(Ord. passed 6-10-2008)

§ 91.19 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 accordance with the provisions of G.S. Article 7A of Chapter 20, as amended.
(Ord. passed 6-10-2008)

§ 91.20 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 article.
(Ord. passed 6-10-2008)

§ 91.21 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 vehicle shall be carried out in accordance with G.S. Article 1 of Chapter 44A.
(Ord. passed 6-10-2008)

§ 91.22 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.

Except as provided in this section, 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 laws. 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 town pursuant to this section. The town shall 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.

(Ord. passed 6-10-2008)

§ 91.23 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.

Any person who removes a vehicle pursuant to this article shall not be held liable for damages for the removal of the vehicle to the owner, lien holder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(Ord. passed 6-10-2008)

§ 91.24 EXCEPTIONS.

Nothing in this subchapter shall apply to any vehicle:

(A) Which is located in a bone fide “automobile graveyard” or “junkyard” as defined in G.S. § 136-143, *et seq.* and §§ 160A-303.1 and 160A-303.2;

(B) Which is in an enclosed building;

(C) 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; or

(D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.

(E) Which is commonly utilized in the normal course of operation of a legally created and recognized Bona Fide Farm as defined within the Zoning Ordinance.

(Ord. passed 6-10-2008)

§ 91.25 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 code unless and until all towing and impoundment fees which are due, or bond in lieu of such fees, have been paid.

(Ord. passed 6-10-2008)

§ 91.99 PENALTY.

(A) Any willful violation of this chapter shall constitute a misdemeanor punishable as provided in G.S. § 14-4. Additionally, any violation shall be punishable by a civil penalty in the sum of \$25 per day for each day the violation continues. A citation for the civil penalty shall be issued by the Mayor and shall be paid within 72 hours of issuance. Each and every day that a violator continues in violation shall be a separate and distinct offense.

(B) In addition to the civil or criminal penalties, the town may enforce this chapter through an injunction, order of abatement or other equitable or legal remedy available under North Carolina law and particularly G.S. § 160A-175.

(Ord. passed 10-15-1996)

