

# COMMON COUNCIL



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*I, Kari J. Van Diest, Deputy Clerk of the Common Council, hereby certify on this 21<sup>st</sup> day of August, 2014, that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 12<sup>th</sup> day of August 2014.*

## **AN ORDINANCE TO ADOPT SECTIONS 14-169 OF THE WINCHESTER CITY CODE PERTAINING TO ABANDONED VEHICLES**

**WHEREAS**, Winchester Police Department recognizes that current ordinance 14-169 is not in compliance with Virginia law; and

**WHEREAS**, it is the belief of WPD that abandoned vehicles should be removed as quickly as possible to keep the City of Winchester safe and clear of unwanted debris; and

**WHEREAS**, implementation of the proposed changes will bring the City into compliance with State law and make removal and disposal of abandoned vehicles easier for the police and the citizenry; and

**WHEREAS**, Common Council for the City of Winchester believes that the implementation of such changes will be of benefit to the citizens of the City of Winchester.

**NOW therefore be it ORDAINED** that Section 14-169 of the Winchester City Code is hereby adopted as follows:

### **ARTICLE VIII. ABANDONED VEHICLES**

#### **SECTION 14-139. DEFINITIONS.**

For the purpose of this article, the following words and phrases shall have the meanings ascribed to them by this section:

**Abandoned motor vehicle means a motor vehicle, trailer, or semitrailer or part thereof that:**

- 1. Is inoperable and ~~Is left unattended on public property for more than (48) hours; or in violation of a state law or local ordinance, or~~**
- 2. Has remained illegally on public property for a period of more than forty-eight (48) hours; or ~~Has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property, or~~**
- 3. Has remained without consent on private property, including but not limited to any commercial parking place, motor vehicle storage facility or establishment for the service, repair,**

~~maintenance or sale of motor vehicles, whether or not such vehicle was brought onto or left at such property with or without the consent of the owner or person in control of the property, for more than forty eight (48) hours. **Is left unattended on the shoulder of a primary highway.**~~

~~*Demolisher* means any person whose business is to convert a motor vehicle, trailer or semitrailer into processed scrap or scrap metal or otherwise to wreck or dismantle such vehicles. (Ord. of 2-14-78)~~

**“Scrap metal processor” means any person who is engaged in the business of processing motor vehicles into scrap for remelting purposes who, from a fixed location, utilizes machinery and equipment for processing and manufacturing ferrous and nonferrous metallic scrap into prepared grades, and whose principal product is metallic scrap.**

“Vehicle removal certificate” means a transferable document issued by the Department for any abandoned motor vehicle that authorizes the removal and destruction of the vehicle.

**Cross reference**—Open storage of inoperable vehicles in certain zoning districts, §16-25.

**State Law References**—Authority of city to adopt ordinance similar to this article, Code of Virginia, §46.2-1201. See also, §46.2-1213, 46.2-1217; Similar provisions, Code of Virginia, §46.2-1200.

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#### **SECTION 14-140. ABANDONED MOTOR VEHICLES PROHIBITED, AUTHORITY TO IMPOUND; PENALTY**

The City may take into custody any abandoned motor vehicle. In such connection, the City may employ its own personnel, equipment and facilities or hire persons, equipment and facilities or firms or corporations ~~who~~**that** may be independent contractors for the purpose of removing, preserving, ~~and~~storing, **and selling at public auction** abandoned motor vehicles. (Ord. of 2-14-78) 46.2-1200.1.

**No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in §46.2-1200. In any prosecution for a violation of this section, proof that the defendant was, at the time that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable presumption that the owner was the person who committed the violation. Such presumption, however, shall not arise if the owner of the vehicle provided notice to the Department, as provided in §46.2-604, that he had sold or otherwise transferred the ownership of the vehicle.**

**A summons for a violation of this section shall be executed by mailing a copy of the summons by first-class mail to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the person fails to appear on the date of return set out in the summons, a new summons shall be issued and delivered to the sheriff of the county, city, or town for service on the accused personally. If the person so served then fails to appear on the date of return set out in the summons, proceedings for contempt shall be instituted.**

**Any person convicted of a violation of this section shall be subject to a civil penalty of no more than \$500. If any person fails to pay any such penalty, his privilege to drive a motor vehicle on the highways of the Commonwealth shall be suspended as provided in §46.2-395. All penalties collected under this section shall be paid into the state treasury to be credited to the Literary Fund as provided in §46.2-114.**

Similar provision, Code of Virginia 46.2-1200.1

State Law Reference—Similar provisions, Code of Virginia, §46.2-1200.1.

#### SECTION 14-141. NOTICE OF IMPOUNDMENT

- ~~(a) When an abandoned motor vehicle is taken into custody pursuant to this article, the Chief of Police shall notify, within fifteen (15) days thereof, by registered or certified mail, return receipt requested, the owner of record of the vehicle and all persons having security interests therein of record, that the vehicle has been taken into custody. The notice shall describe the year, make, model and serial number of the vehicle, set forth the location of the facility where the vehicle is being held, inform the owner and any persons having security interests in their right to reclaim the vehicle within three (3) weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or persons having security interests to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all persons having any security interests of all right, title and interest in the vehicle and consent to the sale of this vehicle at public auction.~~
- ~~(b) If records of the state division of motor vehicles contain no address for the owner or no address of any person shown by such records to have a security interest, or if the identity and address of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section as to any person who cannot be notified pursuant to the provisions of this section. Any such notice shall be within the requirements prescribed for notice by mail, and shall have the same contents required for a notice by mail.~~
- ~~(c) The consequences and the fact of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section (Ord. of 2-14-78)~~
- (a) When an abandoned motor vehicle is taken into custody, the city or city's agent shall initiate with the DMV, in a manner prescribed by the Commissioner, a search for the owner and/or lienholder of record of the vehicle, requesting the name and address of the owner of record of the motor vehicle and all persons having security interests in the motor vehicle on record in the office of the DMV, describing, if ascertainable, the motor vehicle by year, make, model, and vehicle identification number. A local government agency with a written agreement with the DMV shall be exempt from paying a \$25 fee to the DMV.**

**The Department shall check: (i) its own records, (ii) the records of a nationally recognized crime database, and (iii) records of a nationally recognized motor vehicle title database for owner and lienholder information. If a vehicle has been reported as stolen, the Department shall notify the appropriate law-enforcement agency of that fact. If a vehicle has been found to have been titled in another jurisdiction, the Department shall notify the applicant of that jurisdiction. In cases of motor vehicles titled in other jurisdictions, the Commissioner shall issue certificates of title on proof satisfactory to the Commissioner that the persons required to be notified by registered or certified mail have received actual notice fully containing the information required by this section.**

- (b) If the DMV confirms owner or lienholder information, the DMV shall notify the owner, at the last known address of record, and lienholder, at the last known address of record, of the notice of interest in their vehicle, by certified mail, return receipt requested, and advise them to reclaim and remove the vehicle within 15 days, or if the vehicle is a manufactured home or a mobile home, 120 days, from the date of notice. Such notice, when sent in accordance with these requirements, shall be sufficient regardless of whether or not it was ever received. Following the notice required in the**

**subsection, if the motor vehicle remains unclaimed, the owner and all persons having security interests in the motor vehicle shall have waived all right, title, and interest in the motor vehicle.**

**Whenever a vehicle is shown by the Department's records to be owned by a person who has indicated that he is on active military duty or service, the Department shall notify the requestor of such information. Any person having an interest in such vehicle under the provisions of this article shall comply with the provisions of the federal Service members Civil Rights Act (50 U.S.C. app. 501 et seq.)**

- (c) **If records of the Department contain no address for the owner or no address of any person shown by the Department's records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, the person in possession of the abandoned motor vehicle shall obtain from the Department in a manner prescribed by the Commissioner, a Vehicle Removal Certificate. The vehicle may be sold or transferred to a licensee or a scrap metal processor, as defined in §46.2-1600.**  
State Law Reference—Similar provisions, Code of Virginia, §46.2-1202 and 46.2-1202.1.

#### **SECTION 14-142. SALE.**

- (a) If an abandoned motor vehicle has not been reclaimed as provided for in §14-141 (state code 46.2-1202), the City or its authorized agent shall, notwithstanding the provisions of §46.2-617 of the Code of Virginia, sell the vehicle at public auction. **For purposes of this article, the term "public auction," when conducted by any county, city or town, shall include an Internet sale by auction.** The purchaser of the motor vehicle shall take title thereto free and clear of all liens and claims of ownership of others, shall receive a sales receipt at the auction ~~from the sale~~, and shall be entitled to **apply to and receive from the DMV**, upon application therefor pursuant to §46.2-603 of the Code of Virginia, a certificate of title and registration card therefor. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in such case, no further titling of the vehicle is necessary; **however, such demolisher shall provide the DMV acceptable documentation indicating that the vehicle has been demolished.**
- (b) From the proceeds of the sale of an abandoned motor vehicle, the City or its authorized agent shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle which resulted from placing it in custody, and all notice and publication costs incurred pursuant to §14-141. Any remainder from the proceeds of such sale shall be held for the owner of the abandoned motor vehicle or any persons having security interests therein, as their interests may appear, for ~~ninety (90)~~ **(60)** days, and then shall be deposited into the city treasury. (Ord. of 2-14-78)

State Law Reference—Similar provisions, Code of Virginia, §46.2-1203.

#### **SECTION 14-143. VEHICLES ABANDONED IN GARAGES.**

- (a) ~~Any motor vehicle, trailer, semitrailer or part thereof left for more than ten (10) days in a garage operated for commercial purposes, after notice by registered or certified mail, return receipt requested, to the owner to pick up the vehicle, or for more than ten (10) days after the period when, pursuant to contract, the vehicle was to remain on the premises, shall be deemed an abandoned motor vehicle, and may be reported by the garage keeper to the Chief of Police. All abandoned motor vehicles left in the garages may be taken into custody by the City in accordance with §14-140, and shall be subject to the notice and sale provisions contained in §§14-141 and 14-142; provided that, if such vehicle is reclaimed in~~

~~accordance with §14-141, the person reclaiming such vehicle shall, in addition to the other charges required to be paid, pay the charges of the garage keeper, if any; and provided further that, if such vehicle is sold pursuant to §14-142, the garage keeper's shall be entitled to none of the excess of the proceeds of sale.~~

~~(b) Except as otherwise provided in the article, nothing herein shall be construed to limit or restrict any rights conferred upon any person under §§43-32 through 43-36 of the Code of Virginia~~

**Ordinance No. 2014-25**

**ADOPTED by the Common Council of the City of Winchester on the 12<sup>th</sup> of August, 2014.**

*Witness my hand and the seal of the City of Winchester, Virginia.*

*Kari J. Van Diest, CMC  
Deputy Clerk of the Common Council*