



CITY OF DURHAM | NORTH CAROLINA

July 16, 2015

TO: Thomas J. Bonfield, City Manager

THROUGH: W. Bowman Ferguson

FROM: Jose L. Lopez, Chief of Police

SUBJECT: Revisions to City Code and fee schedule: Towing Regulations

EXECUTIVE SUMMARY

The North Carolina Supreme Court issued an opinion on June 12, 2014 that the Town of Chapel Hill exceeded its authority by adopting a maximum fee schedule for nonconsensual tows from private lots and prohibiting towing companies from charging credit card fees. *King v. Town of Chapel Hill*, 758 S.E.2d 364 (2014).

In light of this decision, the Town of Chapel Hill has repealed its nonconsensual towing fee schedule that applies to private lots. Similar to the Town of Chapel Hill, the Durham City Council adopted a schedule of fees setting a maximum amount that can be charged for nonconsensual tows from private lots in 2002. The nonconsensual tow fees were amended in 2012. Such fees are codified in the fee schedule.

The Police Department, on the advice of the City Attorney's Office, recommends that Council bring its City Code (towing ordinance provisions), and Fee Schedule into compliance with the above referenced Supreme Court decision.

RECOMMENDATION

The Police Department recommends that Council approve an Ordinance Repealing the Schedule of Nonconsensual Towing Fees From Private Lots, and adopt an Ordinance Amending City Code Provisions Regarding Nonconsensual Tows. The revisions are as follows:

- Part 12-105 of the fee schedule entitled "*Schedule of Other Nonconsensual Tow Fees: (Private Property Towing Fees Not Initiated by Police Department)*" is repealed.
- Durham City Code Sections 50-390 and 50-391 are rewritten in their entirety to comply and comport with recent legal changes, and a minor clerical revision is made to Sec. 50-392.
- The revised Section 50-390(a) deletes language that requires tower to report certain nonconsensual tows within 30 minutes. N.C. Gen. Stat. § 20-219.20 now requires the tow truck operator to report certain nonconsensual tows to a local law enforcement agency.
- Section 50-391 is amended by deleting the reference to fee cap for nonconsensual tows from private lots.

BACKGROUND

The City through the Council enacted provisions authorizing maximum fees for towing vehicles in 2002. Resolution # 8949 and former Code Section 50-391 enacted in 2002. The Council amended Section 50-391 and adopted a new maximum fee schedule for nonconsensual tows from private lots in 2012. Code Section 50-391 and Ordinance #14379.

The North Carolina Supreme Court issued an opinion on June 12, 2014 that the Town of Chapel Hill exceeded its authority by adopting a maximum fee schedule for nonconsensual tows from private lots. *Id.* Like the Town of Chapel Hill, Durham's fee schedule regulates nonconsensual tow fees when a vehicle is removed from a private lot. Therefore, this agenda item requests council to adopt the attached Ordinances for the purpose of bringing Durham's Code provisions and fee schedule into conformity with the above referenced Supreme Court decision.

The fee schedule Ordinance (attached) repeals Durham's authority to regulate nonconsensual towing fees from private lots. Presently, the Durham police department is not enforcing the maximum fee schedule for nonconsensual tows from private lots.

ISSUES/ANALYSIS

The primary reason for the revisions is to bring the City Code and Fee Schedule into compliance with the North Carolina Supreme Court decision referenced above.

ALTERNATIVES

If the City chooses not to make the above revisions, then the City Attorney's Office advises that City's Fee Schedule that caps the amount a tow truck operator can charge a vehicle owner or operator for a nonconsensual tow from private property could be invalidated by a trial court.

FINANCIAL IMPACT

None.

SDBE SUMMARY

The City's SDBE Ordinance is not applicable to this item.

Attachment:

Applicable Ordinances amending the Durham City Code and Fee schedule.