

**TOWN OF EMPIRE
Clear Creek County, Colorado
Ordinance 255**

**JUNK, ADANDONED VEHICLE AND PARKING ORDINANCE
FOR THE TOWN OF EMPIRE, COLORADO**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF
EMPIRE, COLORADO, THAT ORDINANCE 255 BE ENACTED AS FOLLOWS:**

ARTICLE I – GENERAL PROVISIONS

Section 1. Title

This Ordinance shall be known and may be cited as “The Empire Junk, Abandoned Vehicle and Parking Ordinance”

Secion 2. Intent

This ordinance is enacted for the purpose of defining and regulating junk vehicles, abandoned vehicles and parking violations for the Town of Empire, in order to protect the health, safety, and welfare of the community, and for the purpose of providing for appropriate punishment when these regulations are not adhered to.

Section 3. General Prohibition and Penalties; No imprisonment for all violations

1. No person shall violate the provisions of this Ordinance, nor shall any person, with intent to promote or facilitate the commission of an offense, aid, abet or advise another person in planning or committing a violation of this Ordinance.
2. All violations of this Ordinance shall be deemed to be noncriminal and shall not be punished by imprisonment.
3. Any person who violates any provision of this Ordinance shall be punished by a fine in an amount not to exceed two thousand six hundred fifty dollars (\$2,650.00) per offense.
4. Each and every day, or portion thereof, that this Ordinance is violated, or permitted to be violated, shall be a separate offense, and such offenses shall be prosecuted accordingly.
5. Violations of this Ordinance shall be written into the Empire Municipal Court.
5. **Civil Remedies**- In case of any violation, failure or omission hereunder, the Town of Empire or any person affected by such violation, failure or omission may, in addition to other remedies provided by law, initiate a civil action for injunction, mandamus, abatement or other appropriate relief to prevent, enjoin, abate or remove such violation, failure or omission, and in addition initiate an action for a money demand to recover any lawful costs or charges incurred in abating the violation.

Section 4. Procedures for all noncriminal violations

All violations will prosecuted in accordance with the Colorado Municipal Court Rules of Procedure.

Section 5. Definitions

1. "Abandoned Vehicle" means:
2. Any vehicle left unattended on private property for a period of seventy- two (72) hours or longer without the consent of the owner or lessee of such property or his or her legally authorized agent;
3. Any vehicle left unattended on public property, including any portion of a street, highway or right-of-way open to the general use of the public within the Town limits, for a period of seventy-two (72) hours or longer unless the owner or driver has conspicuously affixed thereto a dated notice indicating his or her intention to return or has otherwise notified the Empire Police Department of his or her intention to remove the same within seventy-two (72) hours;
4. Any motor vehicle stored in an impound lot at the request of its owner or the owner's agent or the Empire Police Department and not removed from the impound lot according to the agreement with the owner or agent or within seventy-two (72) hours of the time the Empire Police Department notifies the owner or agent that the vehicle is available for release upon payment of any applicable charges or fees. If the Empire Police Department requested the storage, the provisions governing public tows contained in this Ordinance apply as of the time of abandonment, and the Empire Police Department shall be deemed the responsible law enforcement agency.
5. "Junk Vehicle" means any vehicle not able to lawfully travel, under its own power, on public streets and highways in the State of Colorado. A vehicle shall be presumed to be a junk vehicle if any of the following conditions are met;
 - 5.1 No current license plate or registration is displayed on such vehicle; or
 - 5.2 The vehicle or parts thereof, is placed upon jacks, blocks, chains or other supports not necessary for normal operation of such vehicle; or
 - 5.3 There is an absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon the streets and highways.
6. "Private Property" means any real property which is not public property.
7. "Public Property" means any real property having its title, ownership, use or possession held by the Town, federal government, State, or any county, municipality or governmental entity of this State.
8. "Public Tow" means any tow of an abandoned or junk vehicle requested by a law enforcement agency.
9. "Recreational Vehicle" means a vehicle designed to be used primarily as temporary living quarters for recreational, camping, travel or seasonal use that either has its own motor power or is mounted on or towed by another vehicle. Recreational vehicles shall also include any boat on a boat trailer, a snowmobile, a camping trailer, a fifth wheel trailer, a motor home, a travel trailer, a truck camper and ATV.

ARTICLE II
ENFORCEMENT

1. No person shall store or keep any junk vehicle or abandon any vehicle upon public or private property. Any officer of the Empire Police Department or authorized code enforcement officer who finds a vehicle which he or she has reasonable grounds to believe is a junk vehicle or an abandoned vehicle shall require such motor vehicle to be removed by the owner, operator or possessor thereof, or may cause the same to be removed and placed in storage in any impound lot designated or maintained by the Empire Police Department.
2. Any person charged or appointed to enforce this Ordinance may make such inspections as may be necessary so as to enforce this Ordinance, and shall have the authority to enter any premises outside a building at all reasonable times, in order to make a thorough examination of the premises and to cause all junk and abandoned vehicles to be abated or removed as provided herein.

ARTICLE III
OFFENSES

Section 1. JUNK VEHICLES PROHIBITED

1. It shall be unlawful for any person to store or keep any junk vehicle or parts thereof on public property. The Town is authorized to tow any junk vehicle or parts thereof on public property to a storage yard designated by the Town.
 - 1.1 Prior to towing, a warning notice shall be securely affixed to a conspicuous location on the vehicle, or parts, indicating that the vehicle, or parts, is believed to be a junk vehicle in violation of this section, the reason for such belief, that if the vehicle, or parts, is not moved within 72 hours from the date of the notice, a citation will be issued, the vehicle, or parts, is subject to towing, that towing, and storage charges must be paid prior to recovery of the vehicle, or parts. Directions to contact the Empire Chief of Police regarding the vehicle, or parts, will be on the notice. Each day's violation shall constitute a separate offense.
 - 2.1 Any junk vehicle tow shall be performed in accordance with Colorado Revised Statute § 42-4-1801, et seq.
2. It shall be unlawful for any person to store or keep any junk vehicle or parts thereof on private property, except as provided herein. Each private property owner shall be allowed to have not more than two junk vehicles if they are:
 - 2.1 Completely concealed within a non-transparent covering which is maintained in good conditions at all times, (earth tones are encouraged); or
 - 2.2 Fully enclosed in a garage or other building; or
 - 2.3 On the premises of and undertaken in connection with a duly licensed business in conformity with all zoning requirements of the Town of Empire.
3. In the event of the storage or keeping of any junk vehicle or parts thereof on private property, the persons responsible for such violations shall include the owner of the vehicle or parts thereof, the owner of the property where the same is stored and/or the person in charge or in control of the property whether as an owner, tenant or occupant.
 - 3.1 Notice shall be personally served or sent by certified mail, return receipt requested, to the

owner, and tenant or occupant of the property where the vehicle or parts thereof are stored. Such notice shall demand the removal of the same within ten days from the date of personal service or mailing.

- 3.2 The notice shall indicate that failure to remove the vehicle or parts thereof will result in the towing or removal of such vehicle with expenses being assessed against the owner and/or his property.
- 3.3 Upon the failure, neglect or refusal of any owner, tenant or occupant so notified, to properly dispose of such vehicle or parts thereof within the time limits set forth in said notice, the Town is authorized and empowered to tow the vehicle at the expense of such owner, tenant or occupant, pursuant to Colorado Revised Statute § 42-4-1801, et seq.
- 3.4 Should any vehicle or part thereof be towed or removed, the Town shall notify the owner, and tenant, or occupant of such property by certified mail, or by posting in a conspicuous location on the property, of the expense for such towing or removal. Such expenses shall be paid within thirty days after mailing or posting of such notice, and if payments are not made, the Town may assess these costs, plus all costs of collection, against the real property in question. Such costs of collection shall include a reasonable attorneys fee. The assessment shall constitute a perpetual first and prior lien on the real property involved. The Town Clerk shall certify to the County Treasurer the assessments which are not paid within thirty days after date of assessment.
- 3.5 A summons and complaint may be issued in Municipal Court to any owner, tenant or occupant of any premises for failure or refusal to remove any junk vehicle or parts thereof whenever the same is in violation of this section.
- 3.6 It shall be an affirmative defense to a prosecution under this section that the owner, tenant or occupant of the real property on which the junk vehicle is located did not authorize or consent to the placement of the vehicle on the said property and notified the Town within five days of the vehicles placement seeking the vehicle's removal. This defense does not apply to any party responsible for the placement of the vehicle at that location, nor to the owner of said vehicle.

Section 2. ABANDONING VEHICLE PROHIBITED

1. It shall be unlawful for any person to abandon any vehicle upon a street, highway, right-of-way or any other public property, or upon any private property without the express consent of the owner or person in lawful charge of such private property.
2. Any police officer or authorized code enforcement officer who finds a vehicle which he or she has reasonable grounds to believe has been abandoned shall require such vehicle to be removed by the owner, operator or possessor thereof, or may cause the same to be removed and placed in storage in any impound lot designated or maintained by the Empire Police Department.
 - 2.1 Prior to towing, a warning notice shall be securely affixed to a conspicuous location on the vehicle indicating that the vehicle is believed to be an abandoned vehicle in violation of this section, the reason for such belief, that if the vehicle is not moved within 72 hours from the date of the notice, a citation will be issued, the vehicle is subject to towing, that towing, and storage charges must be paid prior to recovery of the vehicle. Directions to contact the Empire Chief of Police regarding the vehicle will be on the notice. Each day's violation shall constitute a separate offense.
3. Whenever any police officer finds a vehicle, attended or unattended, standing upon any portion of a street, alley or highway, or right-of-way generally open to the use of the public in such a manner as to constitute an obstruction to the safe passage of traffic or proper highway maintenance, such

officer is authorized to cause the vehicle to be moved to eliminate any such obstruction; and neither the officer nor anyone acting under his or her direction shall be liable for any damage to such vehicle occasioned by such removal.

Section 3. PROCEDURE FOR DISPOSAL OF JUNK AND ABANDONED VEHICLES

1. Public Tow

The Town is authorized and empowered to remove and tow, at an owner's, tenant's or occupant's expense, a junk or abandoned vehicle as defined by this Ordinance, pursuant to Colorado Revised Statute § 42-4-1801 et seq..

2. Report of abandoned or junk vehicle.

2.1 As soon as possible, but in no event later than ten (10) working days after having an abandoned or junk vehicle towed, the Empire Police Department, or responsible code enforcement officer, shall file a report with the Colorado Department of Revenue by first class or certified mail or personal delivery, or by internet communication, pursuant to Colorado Revised Statute § 42-4-1804. A copy of the report shall also be filed with the Town Clerk.

2.2 The report shall contain the following information:

2.2.1 The fact of possession, including the date possession was taken, the location of storage of the abandoned or junk vehicle and the location from which it was towed, the identity of the responsible law enforcement agency, and the business address, telephone number, name and signature of a representative from the Empire Police Department; and

2.2.2 If applicable, the identity of the towing operator possessing the abandoned or junk vehicle, together with his or her business address and telephone number and the carrier number assigned by the Public Utilities Commission; and

2.2.3 A description of the abandoned or junk vehicle, including the make, model, color and year, the number, issuing state, and expiration date of the license plate, the vehicle identification number and a list of the names and addresses of any known drivers.

3. The Empire Police Department or responsible code enforcement officer, upon receipt of the report from the Colorado Department of Revenue required by Section 42-4-1804(2), C.R.S., shall determine from all available information and after reasonable inquiry whether or not the abandoned or junk vehicle has been reported stolen and, if so reported, shall recover and secure the vehicle, notify its rightful owner and terminate the abandonment proceedings under this Article. The Empire Police Department shall have the right to recover from the owner its reasonable costs to recover and secure the vehicle.

4. The Empire Police Department, or responsible code enforcement officer, within ten (10) working days of the receipt of the report from the Colorado Department of Revenue required by Section 42-4-1804(2), C.R.S., shall notify by certified mail the owner of record, if ascertained, and any lien holder, if ascertained, of the fact of such report and the claim, if any, of a lien under Section 42-4-1806, C.R.S., and shall send a copy of such notice to the operator. The notice shall contain information that the identified vehicle has been reported abandoned to the Department of Revenue, the location of the vehicle and the location from which it was towed, and that, unless claimed within thirty (30) calendar days from the date the notice was sent as determined from the postmark on the notice, the vehicle is subject to sale. Such notice shall also inform the owner of record of his or her opportunity to request a hearing concerning the legality of the towing of the vehicle by filing a written request for the same with the Town Clerk. Such request

shall be made in writing to the Clerk's office within twenty (20) days of the date of the certified notice sent by the Empire Police Department or responsible code enforcement officer. Such hearing shall be conducted by the Municipal Judge pursuant to the provisions of Sub-Section 4, below. In the event it is determined by the Municipal Judge that the vehicle was inappropriately towed, all towing charges and storage fees assessed against the vehicle shall be forgiven and/or paid by the Town.

- 4.1. Whenever, pursuant to the terms of this section, a vehicle has been towed and stored for a period of 30 days and either
 - 4.1.1 No claim of ownership has been made, or
 - 4.1.2 A claim has been made, but the individual making a claim or other responsible party has failed to make payments as called for in Section 3, 3.4 of Article III of this Ordinance 255, the Empire Police Department may dispose of such vehicle as provided herein.
- 4.2 The Empire Police Department shall cause notice to be given to all persons known to have an interest in the vehicle, including the owner of record and any lien holder as shown by the records of the Department of Revenue. Said notice shall be personally served or sent by certified mail, return receipt requested, addressed to the last known address of the business or residence of the person to be notified. The notice shall contain
 - 4.2.1 An itemized statement of the amount due to the Town for removal of and storage of the vehicle, showing the amount due at the time of notice. The amounts due shall include all charges set forth in Article III, Section 3 (3.4) including storage charges incurred to the date of the notice
 - 4.2.2 A description of the vehicle
 - 4.2.3 A demand that the amount due the Town as stated in the notice, and further charges as shall accrue, shall be paid, and the right to possession of the vehicle shall be established to the satisfaction of the Empire Police Department, on or before a date mentioned being no less than 10 days from the delivery of the notice if it is personally delivered, or from the date of certification of the letter, and the statement that unless the amount so due to the Town is paid and the right to possession of the vehicle is established to the satisfaction of the Empire Police Department within the time specified, the vehicle will be disposed of as per Colorado Revised Statute § 42-4-1801 et seq.

5. Request for Hearing

- 5.1 A hearing shall be conducted before the Empire Municipal Judge or his or her designated representative by the next scheduled Municipal Court date after receipt of written demand therefor from the person seeking the hearing unless such person waives the right to a speedy hearing. The Municipal Judge's designated representative shall be someone other than the person who directed the impounding and storage of the vehicle. The sole issue before the Municipal Judge shall be the legality of the impoundment of the vehicle, including whether there was probable cause to impound the vehicle in question. *Probable cause to impound* shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the vehicle.
- 5.2 The Municipal Judge shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the vehicle. The Empire Police Department, or responsible code enforcement officer, shall carry the burden of establishing that there was probable cause to impound the vehicle in question. At the conclusion of the hearing, the Municipal Judge shall issue his or her decision. A copy of

such decision, or a summary thereof, shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The Municipal Judge's decision in no way affects any criminal proceeding in connection with the impound in question, and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the Municipal Judge is final. Failure of the registered or legal owner, or his or her agent, to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

6. Liens Upon Towed Vehicles Whenever an operator recovers, removes or stores a vehicle upon instructions in writing from the owner of record thereof or any other legally authorized person in control of such vehicle, from the owner or lessee of real property upon which a vehicle is illegally parked or his or her agent, or from the Empire Police Department, such operator shall have a possessory lien upon such vehicle and its attached accessories or equipment for all costs of recovery, towing and storage. The priority, perfection, sale and foreclosure of the operator's lien shall be in accordance with the provisions of Sections 42-4-1806 through 42-4-1808 and/or 42-4-2105 through 42-4-2107, C.R.S., as applicable, unless the terms thereof are specifically amended herein.
7. Sale-Procedure-Disposition of Proceeds The Empire Police Department will follow Colorado Revised Statute §§ 42-4-1805,1809 for sale and disposition of proceeds of a towed vehicle.

SECTION 4. PARKING

1. Parking on public streets is limited to 72 consecutive hours unless otherwise posted, except under the following conditions;
 - 1.1 Personnel vehicles may be parked on public streets directly adjacent to dwelling occupied by the owner of the vehicle. This exemption does not apply to R. V's, boats or trailers.
2. Any vehicle left on a public street, not adjacent to the owners house, more than 72 hours will be considered abandoned.
3. R. V's, boats and trailers will be considered abandon if left on a public street more than 72 hours, even if the street is adjacent to the residence of the owner.
4. All vehicles cited for parking violations must be moved off all public streets within the Town limits.
5. Parking violations may be cited into the Empire Municipal Court.

INTRODUCED, READ AND PASSED ON FIRST READING at a Regular Meeting of the Board of Trustees of the Town of Empire, Colorado, held on the 11th day of December, 2018

PUBLIC HEARING held on the 15th day of January, 2019.

PASSED, ADOPTED AND APPROVED, on second reading and following public hearing, by the Board of Trustees of the Town of Empire, Colorado, on the 15th day of January, 2019.


Mayor

ATTESTED AND CERTIFIED:



Town Clerk

APPROVED AS TO FORM:



Town Attorney