Town of Dumfries
Council Meeting

Meeting Date: December 11, 2012

Agenda Item# XIII - C

AGENDA ITEM FORM

TYPE OF AGENDA ITEM:

☐ CONSENT AGENDA
☐ PRESENTATION
☑ ACTION ITEM
☐ TOWN MANAGER & STAFF COMMENTS
☑ PUBLIC HEARING
  ☑ Duly Advertised

PURPOSE OF ITEM:

☐ INFORMATION ONLY
☐ DISCUSSION ONLY
☑ DISCUSSION AND/OR DECISION
  ☑ Introduction ☐ Resolution
  ☐ Ordinance ☐ Grant/MOU
  ☑ By Motion ☐ Bylaws
  ☐ Certificate

PRESENTER: Robert E. Forker, Jr.

PRESENTER TITLE: Chief of Police

AGENDA ITEM:

Public Hearing for the Introduction of an amendment to Chapter 62 of the Town Code to allow the regulation of private property towing by private tow companies

BACKGROUND / SUMMARY:

A review of the Town Code shows there is no Town Ordinance regulating the towing of vehicles from private property by private tow companies. Virginia State Law (46.2-1232) allows localities to regulate this matter. In addition, the Town Council's appointed Towing Advisory Board met on October 17, 2012 to review this amendment to the Town Code. Town Council directed staff to move forward with a public hearing at their November 27 meeting.

ATTACHMENTS:

Staff Action Summary
Public Hearing Notice
Proposed Amendment to Chapter 62

REQUESTED ACTION:

Motion to introduce the amendment to Chapter 62 for adoption on January 8, 2013

FOR MORE INFORMATION, CONTACT: Name: Robert E. Forker, Jr.

Phone#: 703.221.1111 E-mail: rforker@dumfriesva.gov

FOR USE DURING MEETING **VOTE:** ☐ PASSED ☐ NOT PASSED

Y	N		Y	N		Y	N	
☐	☐	Brewer	☐	☐	Foreman	☐	☐	Forrester
☐	☐	Reynolds	☐	☐	Toney	☐	☐	Washington
☐	☐	Wood						

DUMFRIES, VIRGINIA
Virginia's Oldest Continuously Chartered Town
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17755 Main Street
Dumfries, Virginia 22026-2386
Tel: 703-221-3400 / Fax: 703-221-3544
www.dumfriesva.gov

November 1, 2012

TO: Dumfries Town Council

FROM: Robert E. Forker, Jr.
Chief of Police

THRU: Daniel E. Taber
Town Manager

RE: Amend the Town Code to Permit the Enforcement of Private Parking Restrictions

I **Current Situation** is as follows:

A. Existing Town Code - There currently are no provisions in the Town of Dumfries Code which allow for the enforcement of private parking restrictions and towing from private property. Town records show that on June 22, 2010, the Town Council was asked to approve for a public hearing, Chapter 62, regulating towing on private property. This request was in the form of a written memorandum and it appears it never was presented to the Town Council.

B. Proposed Amendments to the Town's Code – A summary of the proposed amendment to Town Code, Chapter 62 is attached. These proposed changes were presented to the Towing Advisory Committee on October 17, 2012, which approved the changes unanimously with one member absent.

C. Public Hearing Held – The public hearing will be held December 11, 2012

D. Council Action Requested – Amend the Dumfries Town Code, Section 62 to include enforcement/towing of vehicles from private parking by private tow companies.

II **Issues** in order of importance are:

A. Legal– Would the recommended amendments satisfy the need of the objective, enforceable standards?

B. Policy/Service Levels – How will this impact current Town policies, service levels, and current community expectations and standards?

C. Timing – When would the amendments become effective?

D. Fiscal Impact – Are there any fiscal impacts resulting from the adoption of the proposed amendments?

III Alternatives in order of feasibility are:

A. Amend the Town Code Chapter 62 to allow for the towing of vehicles by privately owned tow companies from private property.

1. Legal - The Town Attorney has reviewed the new ordinance and finds it meets the criteria of Virginia Law.

2. Policy/Service Levels - Adopting the new ordinance will allow for enforcement of parking violations on private property by allowing private tow companies to remove the vehicles.

3. Timing – The amendments would become effective upon adoption.

4. Fiscal Impact – This ordinance will have no fiscal impact on the Town or Town services.

B. Take No Action:

1. Legal – Should the new ordinance to the Town Code not be adopted, private tow companies would follow the rules and regulations under the Virginia State Code.

2. Policy/Service Levels – There would be no change in current policy

3. Timing – There are no timing issues which would result from taking no action.

4. Fiscal Impact – There is no fiscal impact

IV Recommendation – The Town Council concur with Alternative A and approve the attached resolution.

NOTICE OF PUBLIC HEARING

BY THE TOWN COUNCIL

OF THE TOWN OF DUMFRIES, VIRGINIA ON

December 11, 2012 AT 7:00 PM

The Town Council of the Town of Dumfries hereby gives notice of a Public Hearing to consider an amendment to the Code of the Town of Dumfries specifically to amend Chapter 62 by adding Article IV, Parking Enforcement of Private Parking Restrictions, Sections 62-300 - 62-310.

All supporting material is available for public inspection at the Office of the Town Clerk at 17755 Main Street, Dumfries, Virginia 22026 between the hours of 8:30 AM and 5:00 PM; M-F. The public hearing is being held in a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility or needing to discuss accommodation of a disability should contact the Town Clerk at 703-221-3400 or dhobgood@dumfriesva.gov, during normal working hours.

BY GERALD FOREMAN, MAYOR
TOWN OF DUMFRIES, VIRGINIA

Instruction to Publisher: Run this notice one time on December 5, 2012

AT A MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON JANUARY 8, 2013, AT 7:00 P. M., IN THE COUNCIL CHAMBERS, LOCATED AT 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY _____, AND SECONDED BY _____, THE FOLLOWING ORDINANCE WAS ADOPTED BY THE FOLLOWING VOTE:

Charles C. Brewer, _____;
Gerald M. Foreman, II, _____;
Kristin W. Forrester, _____;
Helen D. Reynolds, _____;
Willie J. Toney, _____;
Gwendolyn P. Washington, ____;
Derrick R. Wood, ____;

ORDINANCE TO AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA, AS AMENDED, BY AMENDING CHAPTER 62, ARTICLE IV, SECTION 62-300 TO 62-310 RELATED TO ENFORCEMENT OF PRIVATE PARKING RESTRICTIONS

WHEREAS, there are currently not provisions in the Town Code which allows for enforcement of private property parking restrictions; and

WHEREAS, per State Code 46.2 -1233.2, the Town Council established a Towing Advisory Board that participated in reviewing the proposed amendments and recommends approval by the Town Council to Chapter 62, Section 62-300 through 62-310; and

WHEREAS, the Town Council authorized a public hearing on this matter, duly advertised for the purpose, was held on December 11, 2012 and all interested citizens were heard.

THEREFORE BE IT ORDAINED by the Dumfries Town Council on this 8th day of January 2013 that the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by adding Chapter 62, Section 62-300 through 62-310, and is reenacted as follows:

CHAPTER 62 TRAFFIC AND VEHICLES

DIVISION 4. ENFORCEMENT OF PRIVATE PARKING RESTRICTIONS

Sec. 62-300. Applicability of article.

(a) This article is enacted pursuant to Code of Virginia, §§ 46.2-1231, 1232 and 1233, as amended, for the purposes of regulating the towing and storage/impound of trespassing vehicles, without the consent of the owners of such vehicles, by private property owners, their contractors, employees and agents, towing companies, their contractors, employees and agents, and to provide charges for the towing and storage/impound of these vehicles.
(b) The provisions of this article shall not apply to police, fire or public health vehicles or where a vehicle, because of a wreck or other emergency, is parked or left temporarily on the property of another.

Sec. 62-301. Definitions.

An *owner* shall mean an owner, or lessee, or operator, manager or agent having parking facilities accessible to the public and offering parking to its customers, clientele, residents, lessees, or guests, who intends to enforce parking restrictions by the use of towing firms.

Sec. 62-302. Signs required on property.

(a) Each owner who intends to tow vehicles from parking spaces located on or within privately owned land or property shall post at each point of ingress to the parking area clearly legible signs containing the following wording:

PRIVATE
PARKING
(UNIVERSAL TOWING SYMBOL)
TOWING
ENFORCED
by (Name of Establishment)
Call Prince William County Dispatch (703-792-6500) for location and information
concerning return of vehicle

(b) The signs required by subsection 13-497(a) shall be at least 12 inches in width and 24 inches in height. The universal towing symbol shall be at least three inches in height. Lettering in the top four lines of text shall be at least one and one-half inches in height and all other lines of text at least one-half inch in height. The face of the sign shall be composed of high intensity reflectorized sheeting or like material. All signs shall comply with the zoning ordinance.

(c) It shall be unlawful for any towing firm or operator to tow or otherwise move a vehicle from any parking space on privately owned land or property within the town without the consent of the vehicle's owner unless such land or such property is properly signed in accordance with this section. The towing and recovery operator must also obtain and retain photographs or other documentary evidence substantiating the reason for the removal of the vehicle. For purposes of this article, no towing firm or operator may be an authorized agent of a property owner.

(d) For purposes of this section, the term "parking space" shall mean a designated off-street area which is available and usable for the parking of one motor vehicle.

(e) This section is not intended to prohibit owners, towing firms or operators from towing vehicles from areas not designated or set aside as parking spaces. Whenever vehicles interfere with the free ingress, egress, or movement on any premises outside of parking spaces, such as driveway or parking area without the permission of the property owner, such vehicles may be towed even if the property has not been properly signed. However, it shall be unlawful for any towing firm or operator to tow such a vehicle unless a police officer, owner or authorized agent of the property owner authorizes the removal of such vehicle.

(f) The towing firm shall be required to maintain the information required in subsection (c) above in a manner that is accessible to duly constituted law enforcement officers at all times.

Sec. 62-303. Business license requirement.

(a) For Police initiated towing services- No tow truck company or operator shall remove any vehicle from public or private property unless the tow truck company possesses a valid Town of Dumfries business license, possess a (Board of Towing and Recovery Operators (BTRO) license for both the driver and tow truck operator and must have a storage lot to be located within 5 miles of the Town limits and the Commonwealth of Virginia;

(b) For towing services initiated by private citizens- No tow truck company shall remove any vehicle from public or private property unless the tow truck company possesses a valid Prince William County or Town of Dumfries business license, possess a Board of Towing Recovery Operators (BTRO) license for both the driver and tow truck operator;

(c) All tow trucks operated by a tow truck company shall display the name, address and telephone number of the owner thereof on both sides of the tow truck on permanently mounted signs or painted directly on the body of the truck in contrasting letters large enough to be readily legible, but in no case less than three inches in height. It shall be unlawful to operate a tow truck displaying an incorrect name, address, or telephone number and the BTRO license number for the driver and tow truck operator;

(d) The Dumfries Chief of Police or his designee and the Zoning Administrator or his designee may inspect the tow lots to ensure compliance.

Sec. 62-304. Police to be notified of removal of vehicle.

(a) Within 30 minutes of the vehicle being removed from the property by a towing company, the tow truck operator shall notify the Prince William County Public Safety Communications of the following information:

a. Name, address and telephone number of the towing firm and of the person or persons making the call;
b. State license plate number and vehicle identification number of the vehicle towed;
c. Year, color, make and model of the vehicle towed;
d. Date and time of towing;
e. Address or location from which vehicle was towed;
f. Address or location where vehicle is stored;
g. The name and telephone number of a person associated with the towing firm who can verify any of the above information;
h. The BTRO license number of the tow truck driver and the tow truck operator;
i. The tow truck operator shall supply police communications with pertinent information about the towing company, including name, address, telephone number, insurance company, contact person and reason for the tow;
j. It shall be unlawful to fail to report such tow as required by this section and violation of the reporting requirement set forth herein shall constitute a traffic infraction punishable by a fine of not more than $100.00. Such failure to report shall limit the amount which may be charged to one day of storage and safe keeping.

State law references: Authority for above section, Code of Virginia, § 46.2-1231.

Sec. 62-305. Vehicle storage.

(a) All towing companies engaged in the business of towing vehicles from private property without the consent of the vehicle owner, shall have an appropriately zoned, fenced-in secured lot for storage/impound of vehicles towed pursuant to this article.

(b) All vehicles towed under this article must be taken to and stored in such approved lot immediately after being towed.

(c) All towing companies shall post signs at their main place of business and at any other location where towed vehicles may be reclaimed conspicuously indicating (a) the maximum charges allowed by this chapter for all their fees for towing, recovery, and storage services and (b) complaints about towing services can be addressed to the Town of Dumfries Police Department and the Virginia Board of Towing and Recovery Operators. Charges in excess of those posted

shall not be collectable from any motor vehicle owner whose vehicle is towed, recovered or stored without his consent.

(d) All towing companies shall allow vehicle owners, custodians or agents access to their vehicle, whether or not it has been or will be released, for the purpose of the removal of personal items during the towing company's normal business hours. For the purposes of this section, personal property shall not include any parts of the vehicle or property physically attached to the vehicle. However, any child restraint device in or attached to the vehicle shall be immediately released to the owner or agent upon request.

State law references: Similar provisions, Code of Virginia, §§ 46.2-1231, 46.2-1233 and 46.2-1233.1.

Sec. 62-306. Charges for towing and storage of vehicles.

Except as otherwise provided for in this article, no towing company owner, employee, agent or operator shall charge any amount in excess of or in addition to those included in this section.

(a) *Maximum towing charges.*

a. $125.00 to tow a vehicle having a gross vehicle weight of less than 10,001 pounds.

b. $175.00 to tow a vehicle having a gross vehicle weight of between 10,001 pounds and 26,000 pounds.

c. $300.00 to tow a vehicle having a gross vehicle weight of 26,001 pounds or more.

d. When the towed vehicle is a combination vehicle the towing company may charge an additional fee of up to $50.00.

(b) *Maximum storage/impound charges.*

a. No towing company owner, employee, agent or operator shall assess any storage/impound charge for the initial 24 hours of storage/impound.

b. A storage/impound charge up to $50.00 per 24-hour period thereafter may be assessed for any vehicle.

c. When a combination vehicle is stored the above storage/impound charges may be charged for each vehicle which was on the ground when the combination was towed.

d. Delays caused by storage/impound yard personnel shall not be included when computing storage/impound charges.

e. An administrative fee of up to $50.00 for each vehicle may be charged after a vehicle has been stored for more than 72 hours.

f. A storage/impound charge up to $70.00 per Unit per 24-hour period thereafter may be assessed for any vehicle exceeding 26,001 pounds.

(c) A release fee not to exceed $35.00 may be assessed for the release of any vehicle stored under this section if the owner of the vehicle requests the release between the hours of 6:01 p.m. and 7:59 a.m. or on a weekend or holiday.

(d) Notwithstanding the foregoing provisions, if the owner of the vehicle is present and offers to remove or is in the process of removing the vehicle from the premises before it is completely removed from the parking space, the vehicle shall not be towed, but the owner of the vehicle shall be liable for a reasonable fee not to exceed $50.00, in lieu of towing. In the event an owner refuses to pay the $50.00 fee the towing operator shall continue with the tow.

(e) In all cases where a fee is paid, the tow truck company must provide the vehicle owner with a receipt that bears the complete name, address and telephone number of the tow truck company. Such receipt shall list all charges assessed in the towing storage/impound and release of said vehicle.

(f) The maximum charges permitted by this ordinance shall be reviewed from time to time. If as a result of such review it is determined that the charges permitted by this article are in need of adjustment, such adjustment shall be made in a timely manner.

State law references: Authority for above section, Code of Virginia, § 46.2-1233.

Sec. 62-307. Tow firms operator's log.

Towing firm operators shall keep a log of all vehicles towed pursuant to this article that includes all information set forth in section 62-304 of this article and the amount charged for each tow made pursuant to this article. Such log shall be available for inspection by the police department and any owner or custodian of the vehicle towed by a towing firm during normal business hours of the towing firm.

Sec. 62-308. Prohibited acts.

(a) It shall be unlawful to, without the consent of the owner of the towed vehicle to tow or cause to be towed, or otherwise move or cause to be moved any vehicle more than 5 miles from the Town limits, without the consent of the owner of the vehicle.
(b) Block the movement of any vehicle, other than when on the property of the tow truck company, to prevent the movement thereof by its owner or custodian who has appeared and indicated a desire to move the vehicle and desires to move the vehicle.
(c) Assess any charge or fee in excess of, or in addition to, those authorized by this article.
(d) Tow or otherwise remove any vehicle under this section using any tow vehicle not specifically manufactured for the purpose of towing vehicles in a legally prescribed manner.
(e) Prohibit the owner of any vehicle from inspecting said vehicle prior to the actual payment of any assessed fees.

Sec. 62-309. Violations in general.

Unless otherwise stated, any person violating any provision of this article shall be subject to a fine of not more than $500.00.

Sec. 62-310. Severability.

If any of the articles, sections, paragraphs, sentences, clauses or phrases of this chapter shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the chapter in its entirety, or any of the remaining articles, sections, paragraphs, sentences, clauses and phrases.

BY ORDER OF COUNCIL

_____
Gerald M. Foreman, Mayor

ATTEST:

_____
Dawn Hobgood, Town Clerk