

## **ARTICLE 11. IMMOBILIZATION AND IMPOUNDMENT OF MOTOR VEHICLES**

### **ARTICLE 11-1 PURPOSE**

It is the purpose of this ordinance to protect the public health and safety and to provide for additional penalties and enforcement procedures for scofflaw's who habitually violate the parking regulations of the Town of Bennington.

### **ARTICLE 11-2 AUTHORIZATION**

By Authority of Section 302(a) of the Bennington Town Charter and of Title 24 V.S.A., Chapter 61, Section 2291 and 23 V.S.A., Chapter 19, Section 1752 and 1753, municipalities are enabled to regulate parking and to set penalties. This is a civil ordinance.

### **ARTICLE 11-3 IMMOBILIZATION OF VEHICLE**

Any unattended motor vehicle found parked at any time upon any public highway or parking lot owned or leased by the Town of Bennington, the owner of which has four (4) or more unpaid parking violations, may be immobilized by an officer or member of the Bennington Police Department in such a manner as to prevent its operation. Notice must be sent by certified mail to the owner listed by the Department of Motor Vehicle at least fifteen (15) days prior to impoundment. No vehicle shall be immobilized by any means other than a device or other mechanism which will cause no damage to the vehicle unless it is moved while such device or mechanism is in place. When calculating the number of parking tickets outstanding by an individual, all prior unpaid tickets shall be considered in determining the number of tickets necessary to bring about application of the immobilization device.

### **ARTICLE 11-4 NOTICE TO OWNER**

It shall be the duty of the officer or member of the Bennington Police Department immobilizing such motor vehicle to inform, as soon as practicable, the owner of an immobilized vehicle of the nature and circumstances of the prior unpaid parking violations on account of which such vehicle was immobilized. At the time of immobilization, the officer or member shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual that such vehicle has been immobilized and that any attempt to move such vehicle may result in damage to such vehicle.

### **ARTICLE 11-5 RELEASE OF VEHICLE**

The owner of such immobilized vehicle, or other duly authorized person, shall be permitted to secure the release of the vehicle upon:

- (a) The payment of all outstanding fines; and
- (b) The payment of a booting fee of fifty dollars (\$50.00) for such immobilization.
- (c) The payment of any towing charges.

#### **ARTICLE 11-6 TOWING OF VEHICLE**

In the event the owner of the immobilized vehicle fails to make the payments required in Section 11-5 above within a period of twenty-four (24) hours from the time of such immobilization, the Police Department shall cause said vehicle to be towed away as provided for in **ARTICLE 10-5.11**.

#### **ARTICLE 11-7 TAMPERING WITH IMMOBILIZATION**

It shall be unlawful for any unauthorized person to deface, injure, tamper with, open, break, destroy or remove the immobilizer, impair the usefulness thereof or attempt to do any of these acts.

#### **ARTICLE 11-8 POST-SEIZURE HEARINGS FOR IMMOBILIZED OR IMPOUNDED VEHICLES**

As to any vehicle immobilized or impounded pursuant to this chapter by or at the request of the Town of Bennington, its agents or employees, a person who has a legal entitlement to possession of the vehicle has a right to a seizure administrative hearing to determine whether there was probable cause to immobilize or impound the vehicle. Such person must file a written demand, on forms provided for such a hearing, at the Town of Bennington Police Department within ten (10) days after such person has received notice that such vehicle has been immobilized or impounded.

#### **ARTICLE 11-9 CONDUCT OF HEARING**

- (a) A hearing shall be conducted before a Hearing Officer within forty-eight (48) hours of receipt of a written demand therefore from the person seeking the hearing unless such person waives the right to a speedy hearing. Saturdays, Sundays and Town holidays are excluded from the calculation of the forty-eight-hour period. The sole issue before the Hearing Officer shall be whether there was probable cause to immobilize or impound the vehicle in question.
- (b) The Hearing Officer shall be the Town Manager, Assistant Town Manager or an individual designated by the Town Manager to be the Hearing Officer.

(c) "Probable cause to immobilize or impound" shall mean such a state of facts as would lead a person of ordinary care and prudence to believe that the owner of the vehicle has four or more unpaid parking violations in the Town of Bennington, and that a notice of such unpaid parking violations was sent by certified mail to the owner at least fifteen days before such vehicle was immobilized or impounded.

(d) The Hearing Officer 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 of possession of the vehicle. The Police Department shall carry the burden of establishing that there was probable cause to immobilize or impound the vehicle in question. At the conclusion of the hearing, the Hearing Officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the vehicle (if not the person requesting the hearing). The Hearing Officer's decision in no way affects any civil proceeding in connection with the immobilization or impoundment in question, and that any civil charges involved in such proceeding may only be challenged in the appropriate court. The decision of the Hearing Officer is final. Failure of the registered or legal owner or his agent, to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

#### **ARTICLE 11-10 DECISIONS OF THE HEARING OFFICERS AND THEIR EFFECT**

The Hearing Officer shall only determine that as to the vehicle in question either there was probable cause to immobilize or impound the vehicle or there was no such probable cause. In the event that the Hearing Officer determines that there was no probable cause, the Hearing Officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the vehicle and the Police Department. Upon receipt of the possessor's copy of such certificate, the police shall release the vehicle to its possessor. Upon a finding of no probable cause, any immobilization, towing and storage fees shall be paid by the town. If the possessor fails to present such certificate to the police having custody of the vehicle within twenty-four (24) hours of its receipt, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

#### **ARTICLE 11-11 SEVERABILITY**

This ordinance and the various parts, sentences, sections and clauses thereof, are hereby declared to be severable. If any part, sentence, section or clause is adjudged invalid, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

THIS ORDINANCE IS HEREBY ADOPTED by the Select Board of the Town of Bennington on this \_\_\_\_\_ Day of \_\_\_\_\_, 19\_\_\_\_, and shall unless a petition is filed as provided by law, become effective upon the expiration of sixty (60) days after said date of adoption.

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Lodie Colvin, Chair

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Howard Sinnott, Vice Chair

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Sharyn Brush

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Ronal P. Hall

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Richard B. Montondo

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Patrick Kinney

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Salvatore Santarcangelo