

Post-Towing Hearing Before Magistrate

Statutory cite: G.S. 20-219.9 to -219.14

Purpose

Due process requires a person whose car has been towed to have a quick court hearing to determine whether probable cause existed for the towing.

To whom law applies

Applies to towing under the direction of a law enforcement officer.

Does not apply to: Seizure of vehicle as evidence in a criminal proceeding;
 Seizure under statutory forfeiture provisions;
 Levy under writ of execution; or

 Towing under a city or county ordinance for abandoned vehicles when the city or county collects the towing fees (rather than the tower). In that situation the city or county ordinance must specify a procedure for contesting the towing. But does apply to towing when city or county contracts with private towers who collect the fees.
 [G.S. 160A-303; 153A-132]

Pre-hearing procedure

Owner or any other person entitled to claim possession (such as lessee or secured party) may request in writing a hearing to determine if probable cause exists for the towing.

- Request to be filed in county where the vehicle was towed. If more than one magistrate's office, the motion must be filed in the warrant-issuing office in the county seat or in any other office designated by chief judge to receive requests.

- Magistrate must set hearing within 72 hours of receiving request.

- Magistrate must notify the owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing (the law enforcement officer) of the time and place of the hearing. Notification should be done by a method to reach party before hearing, which may mean by phone. .

Hearing procedure

Person authorizing towing and tower may submit evidence by affidavit instead of personally appearing at hearing.

The issue for the magistrate is whether or not probable cause existed for the towing.

Specific statutes under which towing by law enforcement occurs.

G.S. 20-161, which prohibits

- parking a vehicle or leaving a vehicle standing upon the paved or main-traveled portion of any highway outside city limits unless the vehicle is disabled.
- parking vehicle upon the shoulder of a public highway outside the city limits unless the vehicle can be clearly seen by approaching drivers from a distance of 200 feet in both directions and does not obstruct the normal movement of traffic.

Officer may have vehicle towed immediately if the vehicle is parked in violation of one of above provisions and if the vehicle is interfering with the regular flow of traffic or otherwise constitutes a hazard.

Officer may have vehicle towed that is parked on right-of-way of highway for period of 48 hours or more.

G.S. §§ 153A-132 and 160A-303 authorize cities and counties to adopt ordinances authorizing towing of abandoned or junked vehicles.

An abandoned vehicle is one

- left on public grounds or county or city owned property in violation of law or an ordinance prohibiting parking;
- left on property owned by city or county for longer than 24 hours;
- left for longer than 2 hours on private property without consent of owner, occupant or lessee, or
- left on public grounds for longer than 7 days.

In other towing situations, officer should indicate to the magistrate the statutory procedure under which he or she had the vehicle towed. Then magistrate must determine whether probable cause exists to tow under that statute.

Magistrate's judgment

If the magistrate finds probable cause, the magistrate orders that tower's lien continues. The tower has a lien under G.S. Chapter 44A and then begins enforcement under that statute.

If the magistrate finds no probable cause, the magistrate orders that the tower's lien is extinguished; the tower must give possession of the car to the plaintiff; and the agency whose law-enforcement officer ordered towing, must compensate tower.

Either party may appeal the magistrate's decision to district court. [G.S. 20-219.11(f)]

There are no court costs attached to this proceeding.

