



Office of the Attorney General of Guam

590 S. Marine Corps Drive, Suite 901 ♦ Tamuning, GU 96913
Phone: 671.475.3324 ♦ Fax: 671.477-4703 ♦ Email: ag@oaguam.org ♦ www.oaguam.org

Hon. Leevin Taitano Camacho
Attorney General of Guam

RECEIVED

DEC 16 2021

MAYORS' COUNCIL
OF GUAM

December 10, 2021

INFORMATION AND GUIDANCE

Ref: MC 21-0578

TO: Executive Director, Mayors' Council of Guam

FROM: Deputy Attorney General, Solicitor Division *u*

SUBJECT: Removal of Abandoned/Junk Vehicles from Public Property

This is to memorialize and follow up on our previous discussion regarding the Mayors' Council of Guam's (Mayors' Council or MCOG) September 24, 2021 memorandum to the Attorney General seeking legal guidance about the MCOG's abandoned vehicle program.

This letter addresses the authority of the Mayors' Council to remove abandoned vehicles from public property.¹ In offering advice about removing abandoned vehicles from public land, we answer in part three of the four questions the Mayors' Council posed in its September 24th memorandum.² These questions pertain to the removal of abandoned or unworking vehicles from public easements and narrow roads where such vehicles may impede traffic.

The Guam Legislature has defined the powers and duties of mayors, which includes the authority to initiate programs to clean-up and remove public nuisances and debris. 5 GCA § 40112(c). Relevant to the issue of abandoned vehicles, 20 GCA § 10101 defines a nuisance as anything that interferes with enjoying property or that obstructs the free passage on or use of any street or highway "in the customary manner." Title 20 GCA § 10102 further defines a public nuisance

¹ The AG's Office can consult with the MCOG at a later time about the non-consensual, involuntary removal of vehicles from *private* property if the Mayors' Council was to pursue this avenue, given that such action may implicate federal constitutional rights and potential liability of the Mayors' Council, including personal liability, under 42 U.S.C. § 1983.

² The MCOG question as to whether it may cite homeowners for "health violations" for vehicles left on public easements is not addressed here, as we believe consultation with the Department of Public Health and Social Services would be a more appropriate course of action at this juncture.

*12/15/21
WD
12-16-21*

as anything that has this effect while at the same time influencing a community or neighborhood. Courts in California and Washington state have upheld local statutes that categorized abandoned vehicles as public nuisances. *See, e.g., City of Costa Mesa v. Soffer*, 11 Cal. App. 4th 378 (1992); *Wendt v. County of Yakima*, CY-92-3037-JBH, 1993 WL 29160 (E.D. Wash. Jan. 15, 1993).

We believe that under Guam law, depending upon the circumstances, abandoned vehicles on public rights-of-way and roadways may also be considered public nuisances. As such, these vehicles would fall within the powers of mayors to clean up and remove under their general authority in 5 GCA § 40112(c). There is, however, the following Guam statute that sets out a procedure to remedy this problem and as such will govern and confine the extent of your powers.

Title 16 GCA § 3606(a) prohibits anyone from abandoning a vehicle on a public right-of-way or on public property. Subsection (b) articulates the consequences for violating this provision, which involve specific removal requirements as well as temporary and perhaps even permanent forfeiture of the vehicle. Subsection (b) states that “any peace officer” may seek to enforce the statute by removing or ordering the removal of the vehicle from public property. By law a mayor is a “peace officer” empowered to “assist in the maintenance of law and order in his district,” 5 GCA § 40112(h), and therefore is authorized to enforce and initiate the removal procedures in 16 GCA § 3606(b).

Section 3606(b) further dictates how peace officers may enforce the abandoned vehicle provision. If a car is parked for twenty-four (24) hours or more from midnight Sunday through Friday, or for forty-eight (48) hours or more during the weekend, a peace officer may remove the vehicle or order a licensed garage man to remove the vehicle. The peace officer thereafter may have the vehicle stored in a “police parking area,” a garage, or a “licensed public garage”.

At this juncture, mayors will need to coordinate with the Director of Revenue & Taxation. Within five days of the car being stored, the DRT Director must notify, using certified mail, the owner or owner of record that the government has removed and stored the vehicle. 16 GCA § 3606(c)(1). This person will have ten (10) days to reclaim the vehicle.

Two consequences result if the owner does not reclaim the vehicle. Both follow after the Director of Revenue & Taxation appraises the vehicle. *Id.* at § 3606(d). If the vehicle has a value less than one hundred dollars (\$100), the Director may sell it to any licensed junk dealer without having to conduct a public sale. *Id.* If the vehicle is worth more than one hundred dollars (\$100), the Director may sell it at a public auction after advertising the event in a Guam newspaper with general circulation.

Information and Guidance

Re: Removal of Abandoned/Junk Vehicles from Public Property

Ref: MC 21-0578

Page 3 of 3

Id. The owner will have six months to claim any balance after accounting for towing and storage charges. *Id.*

The foregoing is the procedure that the Mayors' Council must follow to enforce the abandoned vehicles statute. In our discussion, you indicated that the Department of Public Works may be planning to take the lead in this effort, a move that the Mayors' Council would support. In addition, we understand from media reports that the government may be exploring the possibility of securing a government impound lot that potentially could be used for the Section 3606(b) process. Both these developments bode well for further progress in addressing the problem of abandoned vehicles, and we stand ready to assist the Mayors' Council and other agencies involved in these efforts.


KARL P. ESPALDON
Deputy Attorney General

Enclosure

cc: Director, Department of Public Works
Director, Department of Revenue and Taxation
Chief of Police, Guam Police Department

16 GCA VEHICLES
CH. 3 GENERAL PROVISIONS

inspection and approval or any required decalcomania or other identification with reference to inspection status.

(b) No person shall display or cause or permit to be displayed upon any vehicle any required decalcomania or other identification with reference to inspection status, knowing the same to be fictitious or issued for another vehicle or issued without an inspection having been made.

SOURCE: GC § 23150, enacted by P.L. 4-062.

§ 3606. Abandoned Vehicles: Removal: Sale.

(a) No person shall abandon a vehicle in a public right-of-way, or upon public property or upon private property without the expressed or implied consent of the owner or person in lawful possession or control of such private property.

(b) Any peace officer, or employee authorized in writing by the Director of the Department of Public Works, who finds that a vehicle has been parked for more than twenty-four (24) hours during the period beginning at 12 o'clock midnight Sunday through 12 o'clock midnight Friday, or for more than forty-eight (48) hours from 12 o'clock midnight Friday through 12 o'clock midnight Sunday, shall remove or order a licensed garage man to remove the vehicle from the public or private property. Such vehicle shall be stored in either a police parking area, a garage, or a licensed public garage.

(c) (1) Within five (5) days after an abandoned vehicle has been removed and stored, the Director of Revenue and Taxation shall send a notice by certified mail of the removal and storage to the owner or legal owner, if any, as shown in the records of the Department of Revenue and Taxation.

(2) The owner or legal owner shall have ten (10) days after the mailing of the notice to reclaim such vehicle upon payment of all accrued towing and storage charges.

(d) If such vehicle is not reclaimed within the ten (10) day period provided in Subsection (c) of this Section, the Director of Revenue and Taxation or his authorized representative shall appraise the vehicle.

16 GCA VEHICLES
CH. 3 GENERAL PROVISIONS

(1) If the vehicle is appraised at a value of One Hundred Dollars (\$100) or less, the Director of Revenue and Taxation may sell such vehicle to any licensed junk dealer without the necessity of public sale.

(2) Any such sale shall be for junk or salvage purposes only, and not for further registration and operation as a vehicle.

(3) If the vehicle is appraised at a value exceeding One Hundred Dollars (\$100), the Director of Revenue and Taxation may sell such vehicle at public sale after giving ten (10) days notice of the sale in a newspaper of general circulation in Guam.

(4) The proceeds of each sale shall be deposited in the Abandoned Vehicle and Streetlight Fund.

(5) Any balance, after deduction for the cost of sale, towing and storage charges, shall be paid to the owner or legal owner of such vehicle, provided a claim is made therefor within six (6) months after the sale.

(e) A violation of this Section shall be additionally punished by a fine of One Hundred Dollars (\$100.00), payable to the Public Rights-Of-Way Account of the Territorial Highway Fund.

(f) It shall be a new violation for each thirty (30) day period the owner fails to lawfully dispose of the vehicle.

SOURCE: GC § 23151, enacted by P.L. 6-056 as amended by P.L. 12-155 (July 10, 1974) and P.L. 16-111:II:14 (Oct. 7, 1982). Subsection (b) amended by P.L. 32-028:3 (May 10, 2013). Subsection (e) added by P.L. 32-028:4 (May 10, 2013).

2015 NOTE: Subitem designations were added in subsections (c) and (d), and subsection (f) added to adhere to the Compiler's alpha-numeric scheme pursuant to authority granted by 1 GCA § 1606.

§ 3607. Applicability of Article for Government of Guam Owned Vehicles.

All provisions of this Article apply to vehicles owned by the government of Guam.

SOURCE: Added by P.L. 29-099:2 (July 22, 2008).