

**Ordinance # \_\_\_\_\_**

**An Ordinance to Regulate Abandoned, Nuisance, and Junked Vehicles**

**In \_\_\_\_\_ County, NC**

**WHEREAS**, the protection of the public welfare includes “aesthetic” and “appearance” values and protection of derivative human values related to the visual environment; and

**WHEREAS**, certain aesthetic regulations are necessary and in the public interest in order to prevent land uses which are inharmonious or incongruent with the existing visual character of areas within the jurisdiction of The County of \_\_\_\_\_; and

**WHEREAS**, a public hearing was noticed and duly held on \_\_\_\_\_ wherein public comment was received; and

**WHEREAS**, based upon the public input and comments received at the public hearing and based upon the considerable study of this matter by the Board of County Commissioners and planning staff, The County of \_\_\_\_\_ has determined that the aesthetic and appearance regulations set forth herein are necessary and beneficial to The County of \_\_\_\_\_ and its citizens in that such regulations will protect property values, promote tourism, at least indirectly protect public health and safety, preserve the character and integrity of neighborhoods and the general community, and promote the comfort, happiness, and emotional stability and general welfare of all citizens; and

**WHEREAS**, the authority to enact such regulations is granted to the County of \_\_\_\_\_ pursuant to North Carolina General State Statutes 153A-132 and 153-132.2,

**NOW, THEREFORE, BE IT ORDAINED** by the Board of Commissioners of \_\_\_\_\_ that:

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## **ARTICLE I INTRODUCTION**

### **Section 101. Title**

This Ordinance shall be known and may be cited as the \_\_\_\_\_ County Ordinance to Regulate Abandoned, Nuisance, and Junked Vehicles.

### **Section 102. Definitions**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this article, except where the context clearly indicates a different meaning:

- a) Motor Vehicle: "Motor vehicle" includes any machine designed or intended to travel over land or water by self-propulsion or while attached to self-propelled vehicle.
- b) An abandoned vehicle is defined as a motor vehicle that:
  - (1) Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
  - (2) Is left for longer than seven (7) days on public grounds.
  - (3) Is left on property owned or operated by the county for longer than twenty-four (24) hours; or
  - (4) Is left on private property without the written consent of the owner occupant or lessee thereof, for longer than two (2) hours.
- c) A junked motor vehicle is defined as a motor vehicle that:
  - (1) Is partially damaged dismantled or wrecked
  - (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
  - (3) Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100); or
  - (4) Does not display a current license plate.
- d) A nuisance vehicle is defined as a motor vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:
  - (1) A breeding ground or harbor for mosquitoes, other insects, rats, or other pests;
  - (2) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height;
  - (3) A point of collection of pools or ponds of water;

- (4) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials;
  - (5) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass, or other rigid materials;
  - (6) So situated or located that there is a danger of it falling or turning over;
  - (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrefied matter of any kind;
  - (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
  - (9) Any other vehicle specifically declared a health and safety hazard by the County Manager or his designee(s).
- e) Open places mean areas of properties or portions thereof that are open to the exterior, including building openings, such as carports, or porches, and any other exterior portions of properties ordinarily exposed to the outside and/or public view, including front, side, and rear yards.
- f) A garage is a state licensed business that is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles, and that is not used to store in open places on that property more than two (2) vehicles that are not capable of being driven under their own power and are not being restored to operable condition. This term includes the terms "service station" and "body shop".

## **ARTICLE II**

### **Enforcement and Regulations**

#### **Section 201. Administration**

- a) The county manager or his designee(s), the sheriff's department, county code enforcement officer, and the county health department, shall be responsible for the administration and enforcement of this article. Said designee shall be responsible for administering the removal and disposition of abandoned, nuisance, or junked vehicles located on public grounds, county-owned property, roads, and private property within the incorporated and unincorporated areas of the county.
- b) The county may contract with private tow truck operators or towing businesses to remove, store, and dispose of abandoned, nuisance, and junked vehicles in compliance with this article and applicable state laws.
- c) Nothing in this article shall be construed to limit the legal authority or powers of officers or the employees of the county in enforcing other laws or in otherwise carrying out their duties.

**Section 202. Abandoned vehicles unlawful; removal authorized.**

- a) It shall be unlawful for the registered owner or person(s) entitled to possession of a vehicle to cause or allow such a vehicle to be abandoned;
- b) Upon investigation by properly authorized officials of the county, if a vehicle is found to be abandoned in violation of an ordinance adopted pursuant to this section, the official may order the vehicle to be removed.

**Section 203. Nuisance and junked vehicles unlawful; removal authorized.**

- a) It shall be unlawful for the registered owner or person(s) entitled to the possession of a nuisance or junked vehicle, or for the owner, lessee, or occupant of the real property upon which a nuisance or junked vehicle is located to leave or allow the vehicle to remain in an open place upon the property, except as allowed under the definition of a garage in Section 102- f.
- b) It shall be unlawful for the owner or person(s) as named in Section 203-a to leave or allow the vehicle to remain on the property after the vehicle has been ordered to be removed.
- c) A county may remove to a storage garage or area any nuisance or junked motor vehicle found to be in violation of an Ordinance adopted pursuant to this section. A vehicle may not be removed from private property, however, without the written request of the owner, lessee, or occupant of the premises unless the county manager or his designee(s) has declared the vehicle to be a health or safety hazard.
- d) For the purpose of determining whether or not the provisions of this article are being violated, enforcing the provisions of this article, or for determining whether or not any notice by the county requiring the abatement of the nuisance has been complied with, the county manager or his designee(s), have a right, upon presentation of proper credentials, to enter on any premises within the county ordinance-making jurisdiction at any reasonable hour except on legal holidays. These premises shall not include within any building actually occupied for a residence.
- e) Upon investigation, the county manager or his designee(s) may order the removal of a junked or nuisance vehicle as defined in this article after finding in writing that the aesthetic benefits of removing the vehicle outweigh the financial burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood, or area appearance. The following among other relevant factors may be considered:
  - (1) Protection of property values;
  - (2) Promotion of tourism and other economic development opportunities;
  - (3) Indirect protection of public health and safety;

- (4) Preservation of the character and integrity of the community; and
- (5) Promotion of the comfort, happiness, and emotional stability of area residents.

#### **Section 204. Exceptions to Ordinance**

Nothing in this article shall apply to any vehicle which:

- a) Is located in a bona fide “automobile graveyard” or “junkyard” as defined in North Carolina General Statutes, in accordance with the “Junkyard Control Act.,” and in accordance with the rules in the \_\_\_\_\_ County Automobile Graveyard and/or Junkyard Ordinance.
- b) Is in an enclosed building;
- c) is on the premise of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise (see definition of garage in Section 102-f.); or
- d) Is used on a regular basis for business or personal use; or
- e) Is in an appropriate storage place or depository maintained in a lawful place and manner by the county.

#### **Section 205. Pre-towing notice requirements for removal of abandoned, nuisance, or junked vehicles.**

- (a) Before an abandoned, nuisance, or junked motor vehicle is removed, the county shall give notice to the owner as required by G.S. 20-219.11(a) and (b) (see Appendix A). Except as set forth in Section 206 below, an abandoned, nuisance, or junked vehicle that is to be removed shall be towed only after notice is given to the registered owner or person(s) entitled to possession of the vehicle. Notice shall be given by affixing a notice on the windshield or some other conspicuous place on the vehicle, if possible, as determined by the county employee, and the vehicle’s registered owner or property owner is sent a letter of notice designating the violation. The notice shall state that the county will remove the vehicle on a specified date, no sooner than seven (7) days after the notice is affixed or mailed, unless the owner or legal possessor moves the vehicle prior to that time. In the case of a nuisance vehicle or a junked vehicle, if the names and mailing addresses of the registered owner or person entitled to the possession of the vehicle, or the owner, lessee, or occupant of the real property upon which the vehicle is located can be ascertained in the exercise of reasonable diligence, the notice shall be given by first class mail. The person who mails the notice(s) shall retain a written record of the name(s) and address(es) to which the notice was mailed and the date mailed.
- (b) If the registered owner or person entitled to possession of an abandoned vehicle on private property, or a nuisance or junked vehicle located within

the jurisdiction of this Ordinance does not remove the vehicle but chooses to appeal the county's findings, an appeal shall be made to the County Magistrate prior to the applicable date of abatement. The county shall cease all further action to remove the vehicle from the property during the appeals process.

### **Section 206. Exception to prior notice requirement.**

The requirement that notice be given prior to removal of an abandoned, nuisance, or junked vehicle may, as determined by the authorizing official, be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstruction or to otherwise maintain and protect the public safety and welfare. Such findings shall, in all cases, be entered by the authorized official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:

- (a) For vehicles abandoned on the public streets and highways, the Board of County Commissioners hereby determines that immediate removal of such vehicles may be warranted when they are obstructing traffic.
- (b) With respect to abandoned, junked, or nuisance vehicles left on county-owned property other than the streets and highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorizing official finds a special need for prompt action to protect and maintain the public health, safety, and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses or residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

### **Section 207. Post-towing notice requirements.**

- a) Any abandoned, nuisance, or junked vehicle which has been ordered removed may, as directed by the county, be removed to a storage garage or area by the towing business contracted to perform such services for the county. Whenever such a vehicle is removed, the authorizing county official shall immediately notify the last known registered owner of the vehicle or person entitled to the possession of the vehicle if known, or owner, lessee, or occupant of the of real property upon which the vehicle is located such notice to include the following:
  - (1) The description of the removed vehicle;
  - (2) The location where the vehicle is stored;
  - (3) The violation with which the owner is charged, if any;
  - (4) The procedure the owner shall follow to redeem the vehicle; and
  - (5) The procedure the owner shall follow to request a probable cause hearing on the removal.

- b) If the vehicle has a North Carolina registration plate or registration, the county shall give notice to the owner within 24 hours. If the vehicle is not registered in this State, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, written notice, including the information set forth in Section 207-a (1) through (5) above, shall also be mailed to the registered owner's last known address, unless this notice is waived in writing by the vehicle owner or his agent.

**Section 208. Owner's responsibility for cost.**

If an abandoned, nuisance, or junked vehicle is removed by or at the direction of the authorizing official, the owner shall pay all reasonable costs incurred in the removal and storage of such vehicle plus administrative fees and fines. Appendix B, Fee Schedule, contains a list of these fees, subject to change without prior notice.

**Section 209. Right to probable cause hearing before sale or final disposition of vehicle.**

After the removal of an abandoned, nuisance, or junked vehicle the owner or any other person entitled to possession is entitled to a hearing for the purpose of determining if probable cause existed for removing the vehicle. In accordance with NC Statute 20-219.11-c, a written request for hearing shall be filed within thirty (30) days of the post-towing notification. Such request for hearing shall be filed with the County Magistrate Office designated by the chief district court judge to receive such hearing requests. The magistrate shall set the hearing within seventy-two (72) hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of N.C.G.S. 20-222 as amended.

**Section 210. Redemption of vehicle during proceedings.**

After a vehicle has been declared in violation of Sections 202 or 203 of this Ordinance by an authorized agent of the county and has been removed, at any stage in the proceedings, including before the probable cause hearing, the owner(s) of the vehicle or person(s) entitled to possession may regain possession of the removed vehicle by paying the fees due as a result of the abatement as listed in Appendix B, Fee Schedule. Upon regaining possession of a vehicle, the owner(s) or person(s) entitled to the possession of a vehicle shall not allow or engage in further violations of this ordinance.

**Section 211. Unlawful removal of impounded vehicle.**

It shall be unlawful for any person to remove or attempt to remove from any storage facility designated by the county any vehicle which has been impounded pursuant to the provisions of this article unless and until all fees as listed in Appendix B, Fee Schedule, have been paid.

**Section 212. Sale and disposition of unclaimed vehicle.**

Any abandoned, nuisance, or junked vehicle which is not claimed by the owner or other party entitled to possession within thirty (30) days of official post-towing notification will be disposed of as authorized by the county. Disposition of such a vehicle shall be carried out in coordination with the county and in accordance with North Carolina General Statutes.

**Section 213. Protection against criminal or civil liability.**

No person nor any county may be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, nuisance, or junked vehicle, as authorized under Section 202 or Section 203, above, for removal, storage, sale, or disposal of such vehicle as provided in this ordinance.

**ARTICLE III**

**Penalties, Articles Cumulative, Separability, Effective Date**

**Section 301. Penalties**

Any person violating the provisions of this ordinance shall be subject to civil penalties and actions. This person shall be the registered owner or person entitled to possession of a vehicle declared abandoned, nuisance, or junked as authorized under this ordinance. Each vehicle in violation shall constitute a separate offence. No penalty shall be assessed prior to notice of the violation.

- a) The county may secure injunctions, abatement orders, and other appropriate equitable remedies to further insure compliance as provided in this ordinance and by State Statutes 153A-132 and 153A-132.2.
- b) A violation of this ordinance shall be a misdemeanor and in addition to, or lieu of, remedies authorized in subsection a, above, shall be punishable by a fine not to exceed \$\_\_\_ or imprisonment of not more than \_\_\_\_ days.
- c) For every day a person is in violation of this Ordinance, it may be considered a separate offense. If the violator does not pay such a penalty

within thirty (30) days of notification of this assessment by written citation the county may recover the penalty in civil action in the nature of debt. The violator may contest said penalty in the court of appropriate jurisdiction.

**Section 302. Article cumulative.**

Procedures set forth in this article shall be in addition to any other remedies that may exist under law or ordinance to the abatement of public nuisances.

**Section 303. Separability.**

Should any section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or part thereof other than the part so declared to be unconstitutional or invalid.

**Section 304. Effective Date.**

This Ordinance shall take effect and be enforced as of \_\_\_\_\_.

## Appendix A

### N.C. General Statute 20-219.11

#### § 20-219.11. Notice and probable cause hearing.

A. Whenever a vehicle with a valid registration plate or registration is towed as provided in G.S. 20-219.10, the authorizing person shall immediately notify the last known registered owner of the vehicle of the following:

- 1) A description of the vehicle;
- 2) The place where the vehicle is stored;
- 3) The violation with which the owner is charged, if any;
- 4) The procedure the owner must follow to have the vehicle returned to him; and
- 5) The procedure the owner must follow to request a probable cause hearing on the towing.

If the vehicle has a North Carolina registration plate or registration, notice shall be given to the owner within 24 hours; if the vehicle is not registered in this State, notice shall be given to the owner within 72 hours. This notice shall, if feasible, be given by telephone. Whether or not the owner is reached by telephone, notice shall be mailed to his last known address unless he or his agent waives this notice in writing.

B. Whenever a vehicle with neither a valid registration plate nor registration is towed as provided in G.S. 20-219.10, the authorizing person shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information listed in subsection (a). Unless the owner has otherwise been given notice, it is presumed that the authorizing person has not made reasonable efforts, as required under this subsection, unless notice that the vehicle would be towed was posted on the windshield or some other conspicuous place at least seven days before the towing actually occurred; except, no pre-towing notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate towing was necessary.

C. The owner or any other person entitled to claim possession of the vehicle may request in writing a hearing to determine if probable cause existed for the towing. The request shall be filed with the magistrate in the county where the vehicle was towed. If there is more than one magistrate's office in that county, the request may be filed with the magistrate in the warrant-issuing office in the county seat or in any other office designated to receive requests by the chief district court judge. The magistrate shall set the hearing within 72 hours of his receiving the request. The owner, the person who requested the hearing if someone other than the owner, the tower, and the person who authorized the towing shall be notified of the time and place of the hearing.

- D. The owner, the tower, the person who authorized the towing, and any other interested parties may present evidence at the hearing. The person authorizing the towing and the tower may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.
- E. The only issue at this hearing is whether or not probable cause existed for the towing. If the magistrate finds that probable cause did exist, the tower's lien continues. If the magistrate finds that probable cause did not exist, the tower's lien is extinguished.
- F. Any aggrieved party may appeal the magistrate's decision to district court. (1983, c. 420, s. 2.)

## **Appendix B**

### County Fee Schedule

The county shall disclose all fines and fees in administration of this Ordinance.  
(Fees subject to change)

Fines

Towing Fees

Storage Fees

Administrative Fees

## Attachment 1

### Sample Finding in Violation Notice (Pre-Towing Document)

Date

Address

An authorized agent of \_\_\_\_\_ County has found a violation(s) to An Ordinance to Regulate Abandoned, Nuisance, and Junked Vehicles in \_\_\_\_\_ County on property believed to be in your possession (or, regarding to a vehicle registered in your name) at this address:\_\_\_\_\_. The vehicle is ordered to be removed on \_\_\_\_\_ (date) unless the owner or legal possessor prior to that date removes it from this location.

This vehicle is declared an (abandoned, nuisance, junked) vehicle because of the following reason(s):

The junked or abandoned vehicle has been found to have an adverse affect on:

- Property values;
- Promotion of tourism and other economic development opportunities;
- Public health and safety;
- The character and integrity of the community;
- The comfort, happiness, and emotional stability of area residents.

In addition, if this vehicle is located on private property, it has been found to be a health or safety hazard (a nuisance) for these reasons:

- A breeding ground or harbor for mosquitoes, other insects, rats, or other pests;
- A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height;
- A point of collection of pools or ponds of water;
- A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials;
- A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass, or other rigid materials;
- So situated or located that there is a danger of it falling or turning over;
- One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrefied matter of any kind;
- One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or

- Any other vehicle specifically declared a health and safety hazard by the County Manager of his designee(s).

Please contact the County \_\_\_\_\_ Office or County Magistrate's Office within \_\_\_\_ days for information on preventing removal of the vehicle, or to retrieve this vehicle from storage after towing, or to learn procedures for appealing this decision.

Phone Numbers

Office Hours

## Attachment 2

### Sample Post-Towing Notice

Date

Address

Due to the finding of a violation(s) to An Ordinance to Regulate Abandoned, Nuisance, and Junked Vehicles in \_\_\_\_\_ County, a vehicle(s) registered in your name or located on property in your possession has been removed to a storage area designated by the County.

This document must include:

- ❑ The description of the removed vehicle;
- ❑ The location where the vehicle is stored;
- ❑ The violation with which the owner is charged, if any;
- ❑ The procedure the owner shall follow to redeem the vehicle; and
- ❑ The procedure the owner shall follow to request a probable cause hearing on the removal. Ex: The owner of this vehicle has thirty (30) days from the date of this letter to file a written request for a probable cause hearing with the County Magistrate. After that date the county has the right to sell or dispose of any vehicles that have not been retrieved or that are not in process of appeal.

Phone Numbers

Office Hours