

LOCAL GOVERNMENT LAW BULLETIN

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ABANDONED AND JUNKED MOTOR VEHICLES

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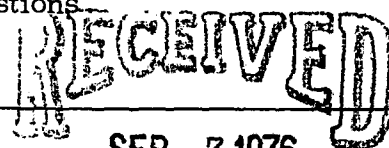
The accumulation of junked and abandoned automobiles presents a problem for many North Carolina communities. Rusting hulks can be health or safety hazards as well as eyesores. This bulletin explores some of the legal alternatives available to counties that want to do something about this problem.

North Carolina law provides two primary procedures for removing and disposing of junked vehicles. G.S. 20-137.6 et seq. provides a way to remove vehicles from public and private property, but it does not permit the removal of vehicles from private property if the owner objects (G.S. 20-137.9). Counties may initiate a voluntary program without adopting an ordinance. A thorough discussion of the operation of a voluntary program together with sample forms is included in the booklet The Junk Car From Field to Foundry: A Guide for Solving a Community Problem (Tennessee Valley Authority: Knoxville, Tenn., rev. ed., July 1974). Information and assistance is also available from the Community Assistance Division of the North Carolina Department of Natural and Economic Resources.

Counties that want compulsory authority to remove junked or abandoned vehicles must use the authority in G.S. 153A-132 et seq. (Cities have similar authority under G.S. 160A-303 et seq.) The following draft ordinance is designed as a county ordinance. Cities may utilize it by changing the references from county to city. Explanatory comments are enclosed in brackets.

SAMPLE ORDINANCE

This sample ordinance governing the removal of junked and abandoned automobiles is based on a draft circulated at the County Attorneys' Conference at the Institute of Government, February 20-21, 1976. I am indebted to those at the conference for many helpful suggestions.



**An Ordinance Providing for the Removal of Abandoned and Junked
Motor Vehicles on Public Grounds and Private Property Within
the County's Ordinance-Making Jurisdiction and on
County-Owned Property Wherever Located**

Declaration of Purpose. Abandoned and junked motor vehicles constitute a hazard to the health and welfare of the people of the county in that such vehicles can harbor noxious diseases, furnish shelter and breeding places for vermin, and present physical dangers to the safety and well-being of children and other citizens. It is therefore in the public interest that the present accumulation of abandoned and derelict motor vehicles be eliminated and that future abandonment of such vehicles be prevented.

[The language of this section is patterned on a finding of facts by the General Assembly, codified in G.S. 137.6, with respect to "abandoned and derelict motor vehicles." Counties adopting an abandoned motor vehicle ordinance may wish to preface it with a statement of purpose similar to this one in order to provide additional legal support for determining when a motor vehicle constitutes the kind of health or safety hazard described in § 4(c) of this sample ordinance.]

§ 1. Definitions. -- (a) "Motor vehicle" includes any machine designed or intended to travel over land or water by self-propulsion or while attached to a self-propelled vehicle.

[The definition of motor vehicle taken from G.S. 153A-132(b) is broad and would appear to include automobiles, boats, airplanes, snowmobiles, motor homes, trailers, mobile homes, farm equipment, and farm implements.]

- (1) An "abandoned motor vehicle" is one that:
 - (a) Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking; or
 - (b) Is left for longer than 24 hours on property owned or operated by the county; or
 - (c) Is left for longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
 - (d) Is left for longer than seven days on public grounds.

- (2) A "junked motor vehicle" is an abandoned motor vehicle that also:
 - (a) Is partially dismantled or wrecked; or
 - (b) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
 - (c) Is more than five years old and appears to be worth less than \$100 (one hundred dollars); or
 - (d) Does not display a current license plate.

[These definitions are taken from G.S. 153A-132(b).]

(b) "Tag" means any type of label or ticket of suitable material

affixed to an abandoned or junked motor vehicle advising the owner or person in possession of the vehicle that it has been declared an abandoned or junked vehicle and will be proceeded against pursuant to this ordinance.

§ 2. Removal of Abandoned Motor Vehicles. -- (a) The county may remove to a storage garage or area an abandoned vehicle found to be (1) left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking on such grounds or property; (2) left for longer than 24 hours on property owned or operated by the county; or (3) left for longer than seven days on public grounds.

(b) The county may remove an abandoned motor vehicle from private property only with the written approval of the owner, lessee, or occupant of the premises.

[These provisions are adapted from G.S. 153A-132(c) but distinguish between abandoned vehicles and junked vehicles. Abandoned vehicles may be removed either from public, county-owned property or from private property with the consent of the person in possession of the property. Junked motor vehicles that are health or safety hazards may, in the instance set out in § 4(c) below, be removed from private property without the consent of the person in possession of the property where the car is located.]

When an abandoned motor vehicle is removed as provided for in subsection (a), the county shall promptly give written notice of the removal to the registered owner at his last known address according to the latest registration certificate or certificate of title on file with the appropriate State Division of Motor Vehicles. The notice shall inform the owner of the possible sale or other disposition that may be made of the vehicle under this ordinance. The owner may regain possession of the vehicle by paying to the county all reasonable costs incidental to the removal and storage of the vehicle. If the vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, the county need not give notice to the vehicle's registered owner.

[This paragraph follows the language of 153A-132(c). The language referring to the "appropriate State Division of Motor Vehicles" anticipates that not all abandoned vehicles will necessarily be registered in North Carolina.

The county's exemption from giving notice is well supported not only by the express provisions of G.S. 153A-132 but also by the provisions of Chapter 20, Article 3, Part 3, which make registration and display of a registration plate incumbent upon a vehicle's owner. Criminal penalties for altering vehicle identification numbers are provided in Chapter 20, Article 3, Part 8.

Some types of vehicles, like tractors and farm equipment, are exempt from registration by statute, e.g. G.S. 20-51, and therefore need not display a current license plate. Acting under this ordinance against a "motor vehicle" [as defined under § 1, and G.S. 153A-132(b)] that is

either expressly exempt from registration or is one that would not be registered with the Division of Motor Vehicles but might be registered with another agency like the Wildlife Resources Commission (pursuant to Chapter 75A for boats) or the county (pursuant to G.S. 153A-138 for mobile homes, house trailers and similar vehicular equipment) might be held unreasonable by a court. In such a case the county may want either (1) to find other ways to identify a vehicle's owner and notify him of its possible sale or disposition under the ordinance or (2) to limit the application of the ordinance to vehicles required to be registered with the Department of Motor Vehicles. If this latter approach is followed, then perhaps a more limited definition of "motor vehicle" than that in § 1 should be considered.]

§ 3. Disposal of Abandoned Motor Vehicles. -- After holding an abandoned motor vehicle for 30 days after the day the vehicle is removed, the county may sell or dispose of it as provided in this subsection.

If the vehicle appears to be worth less than \$100 (one hundred dollars), the county may dispose of it as a junked motor vehicle as provided by § 5 of this ordinance.

If the vehicle appears to be worth \$100 (one hundred dollars) or more, it shall be sold at public auction. The county shall give 20 days' written notice of the sale to the registered owner at his last known address, to each holder of a lien of record against the vehicle, and to the Division of Motor Vehicles. Any person having an interest in the vehicle may redeem it at any time before the sale by paying all costs accrued to date. The proceeds of the sale shall be paid to the county finance officer, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens, in that order.

The remainder of the proceeds of sale, if any, shall be paid over to the registered owner, or held by the county for 60 days if the registered owner cannot be located with reasonable diligence. If the owner does not claim the remainder of the proceeds within 60 days after the day of the sale, the funds shall be deposited in the county's general fund and owner's rights in the vehicle are extinguished.

[This section follows the language of G.S. 153A-132(d) .]

§ 4. Removal of Junked Motor Vehicles. -- The county may remove to a storage garage or area a junked motor vehicle

(a) that is (1) left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking, (2) left for longer than 24 hours on property owned or operated by the county, or (3) left for longer than seven days on public grounds, or

(b) that is left for longer than two hours on private property without the written consent of the owner, lessee, or occupant of the premises.

(c) The county may remove a junked motor vehicle to a storage garage or area without the consent of the owner, occupant, or lessee of the property when the vehicle is a health or safety hazard.

[This provision adopts the wording of G.S. 153A-132(c) but adds a definition of "health or safety hazard" below.]

A junked or other motor vehicle may be declared a health or safety hazard when it is found to be

- (1) a breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests; or
- (2) a point of heavy growth of weeds or other noxious vegetation over eight inches in height; or
- (3) a point of collection for pools or ponds of water; or
- (4) a point of concentration of gasoline, oil, or other flammable or explosive materials; or
- (5) so located that there is a danger of the vehicle falling or turning over; or
- (6) 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.

[In place of numbers (1) through (6) above, the standards in G.S. 20-137.6 may be used:

A junked motor vehicle is a health or safety hazard when it is found to (1) harbor noxious diseases, or (2) furnish shelter and breeding places for vermin, or (3) present physical dangers to the safety and well-being of children and other citizens.]

Appropriate county officers and employees have a right, upon presentation of proper credentials to enter on any premises within the county's ordinance-making jurisdiction at any reasonable hour in order to determine if any vehicles are health or safety hazards.

[This is taken from G.S. 153A-132(c). Search may be made with an administrative search warrant pursuant to G.S. 15-27.2.]

(d) When a junked or other motor vehicle is found to be a health or safety hazard, the county authority responsible for the removal of such vehicles shall notify the owner of the property upon which the vehicle is located at the address as shown by the records of the County Tax Office that the vehicle is a health or safety hazard and will be removed after fifteen (15) days from the posting of the notice and disposed of as provided in § 5. Notice shall be made by registered mail and by affixing a tag to the motor vehicle in such a way that it will be conspicuous. Within the fifteen-day period the owner, occupant or lessee of the property may appeal the finding that the vehicle is a health or safety hazard to the Board of Commissioners. The filing of an appeal shall stay removal proceedings until the board of Commissioners acts on the appeal.

[G.S. 153A-132(c) confers the powers to determine a health or safety hazard on the Board of Commissioners. The procedure differs from the one set forth in G.S. 153A-132(c) in requiring that (1) notice of the county's intention to remove and dispose of a junked or other motor vehicle

without permission of the owner, occupant or lessee of the premises and (2) an opportunity for a hearing before the Board of Commissioners be given before the vehicle is removed. This due process provision is not required by the statute, but some counties may want to adopt it. In addition to the statutory provision for notice by registered mail, the ordinance requires that actual notice be given to the property owner by affixing a tag to the vehicle. This tagging provision is similar to that provided in G.S. 20-137.10.]

(e) The board of commissioners may delegate the authority to enforce this ordinance to any appropriate county officers or employees.

§ 5. Disposal of Junked Motor Vehicles. -- After holding a junked motor vehicle for 15 days (or 15 days after the county has served notice of its intention to remove and dispose of the vehicle as provided for in § 4(d)), the county may destroy (or remove and destroy) a junked motor vehicle or sell it at private sale as junk. Within 15 days after final disposition of a junked motor vehicle, the county shall notify the Division of Motor Vehicles that the vehicle has been determined to be a junked motor vehicle and has been disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined. The proceeds of the sale of a junked motor vehicle shall be paid to the county finance officer, who shall pay to the appropriate officers or persons the cost of removal, storage, investigation, sale, and liens, in that order. The remainder of the proceeds of sale, if any, shall be held by the county for 30 days and paid to the registered owner upon demand. If the owner does not claim the remainder of the proceeds within 30 days after the day the vehicle is disposed of, the funds shall be disposed in the county's general fund, and the owner's rights in the vehicle are extinguished.

[Follows G.S. 153A-132(e) .]

If a junked motor vehicle does not display a current license plate and the vehicle identification numbers have been removed or defaced so as to be illegible, the county may dispose of it under this section. The county may destroy the vehicle or sell it at private sale (without regard to value), after having held the vehicle for 48 hours. The proceeds shall be placed in the county's general fund.

[Follows G.S. 153A-132(f) .]

§ 6. No Liability. -- No person nor any county may be held to answer in a civil or criminal action to any owner or other person legally entitled to the possession of an abandoned, junked, lost, or stolen motor vehicle for disposing of the vehicle as provided in this ordinance.

[This exemption is provided by state law. The language of the ordinance merely follows G.S. 153A-132(g) .]

§ 7. Exceptions. -- This ordinance does not apply to any vehicle in an enclosed building, to any vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is

necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county .

[Follows G.S. 153A-132(h) .]

§ 8. Severability. -- If any provision of this ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

[The draft ordinance purposely omits any provision that makes abandoning or junking a motor vehicle a misdemeanor pursuant to G.S. 153A-123 or G.S. 14-4. The statutory provision (G.S. 153A-132 et seq.) appears to establish an in rem proceeding against the vehicle itself rather than a personal action against those who abandon or junk motor vehicles. Counties may add a misdemeanor provision or criminal penalty if they wish. This ordinance also avoids assessing the costs of removal against the property on which the vehicle is found as they would be if the vehicle were treated as a nuisance or other unlawful condition and abated pursuant to G.S. 153A-123.]