

# *Town of Fairview*

## **Abandoned and Junk Vehicle Ordinance**

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## **Table of Contents**

### Section

#### ***General Provisions***

- 1.1 Definitions

#### ***Violations; Removal and Disposal***

- 2.1 Abandoned vehicle unlawful; removal authorized
- 2.2 Nuisance vehicle unlawful; removal authorized
- 2.3 Junked motor vehicle regulated; removal authorized
- 2.4 Removal of abandoned, nuisance or junked motor vehicles; pre-towing notice requirements
- 2.5 Exceptions to prior notice requirement
- 2.6 Removal of vehicles; post-towing notice requirements
- 2.7 Right to probable cause hearing before sale or final disposition of vehicle
- 2.8 Redemption of vehicle during proceedings
- 2.9 Sale and disposition of unclaimed vehicle
- 2.10 Conditions on removal of vehicles from private property
- 2.11 Protection against criminal or civil liability
- 2.12 Exceptions
- 2.13 Unlawful removal of impounded vehicle
- 2.14 Removal fees and charges

#### ***Administration and Enforcement***

- 3.1 Administration
- 3.2 Changes in state law
- 3.3 Civil penalties

## **GENERAL PROVISIONS**

### **1.1 DEFINITIONS.**

For the purpose of the Town of Fairview Abandoned and Junk Vehicle Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONED VEHICLE.** As authorized and defined in G.S. 160A-303, an **ABANDONED MOTOR VEHICLE** is one that:

- (1) Is left upon a public street or highway in violation of a law or ordinance prohibiting parking;
- (2) Is left on a public street or highway for longer than seven days;
- (3) Is left on property owned or operated by the town for longer than 24 hours; and/or
- (4) Is left on private property without the consent of the owner, occupant or lessee thereof for longer than two hours.

**AUTHORIZING OFFICIAL.** The Town Zoning Enforcement Officer is designated to authorize the removal of vehicles under the provisions of this ordinance.

**JUNKED MOTOR VEHICLE.** As authorized and defined in G.S. '160A-303.2, the term **JUNKED MOTOR VEHICLE** means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in a manner in which it originally was intended to move; and/or
- (3) Is more than five years old and appears to be worth less than \$500. (*Amended 11/16/09*)

**MOTOR VEHICLE** or **VEHICLE.** All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**NUISANCE VEHICLE.** A 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 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 as evidenced by odor;

- (5) Having areas of confinement which cannot be operated from the inside, such as trunks, hoods and the like;
- (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 putrescible matter of any kind; or
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; and/or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Town Council.

## ***VIOLATIONS; REMOVAL AND DISPOSAL***

### **2.1 ABANDONED VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.**

- (A) It shall be unlawful for the registered owner or person entitled to possession of a vehicle to cause or allow the vehicle to be abandoned as the term is defined in Section 1.1.
- (B) Upon investigation, proper authorizing officials of the Town may determine that a vehicle is an abandoned vehicle and order the vehicle removed. Penalty, see Section 3.3.

### **2.2 NUISANCE VEHICLE UNLAWFUL; REMOVAL AUTHORIZED.**

- (A) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle, or for the owner, lessee or occupant of the real property upon which the vehicle is located to leave or allow the vehicle to remain on the property after it has been declared a nuisance vehicle.
- (B) Upon investigation, the Zoning Enforcement Officer may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined in Section 1.1, and order the vehicle removed. Penalty, see Section 3.3.

### **2.3 JUNKED MOTOR VEHICLE REGULATED; REMOVAL AUTHORIZED.**

- (A) It shall be unlawful for the registered owner or person entitled to possession of a junked motor vehicle, or for the owner, lessee or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.
- (B) It shall be unlawful to have more than one junked motor vehicle, as defined herein, on the premises of public or private property. The single, permitted junked motor vehicle shall strictly comply with the location and concealment requirements of this section.
- (C) Subject to the provisions of division (D) below, upon investigation, the Zoning Enforcement Officer may order the removal of a junked motor vehicle, as defined herein, after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. The 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 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.

(D) Permitted concealment or enclosure of junked motor vehicle:

(1) One junked motor vehicle, in its entirety, can be located in the rear yard, as defined by the Town's Land Use Ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering. The Zoning Enforcement Officer has the authority to determine whether any junked motor vehicle is adequately concealed as required by this provision. The covering must remain in good repair and must not be allowed to deteriorate.

(2) In cases of more than one junked motor vehicle, other junked motor vehicle(s) must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permits and which has been constructed in accordance with all zoning and building code regulations. Penalty, see 3.3.

#### **2.4 REMOVAL OF ABANDONED, NUISANCE OR JUNKED MOTOR VEHICLES; PRE-TOWING NOTICE REQUIREMENTS.**

(A) Except as set forth in 2.5, an abandoned, nuisance or junked vehicle which is to be removed shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In the case of a nuisance vehicle or a junked motor 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 notices shall retain a written record to show the name(s) and address(es) to which mailed, and the date mailed. If the names and addresses cannot be ascertained or if the vehicle to be removed is an abandoned motor vehicle, notice shall be given by affixing on the windshield or some other conspicuous place on the vehicle a notice indicating that the vehicle will be removed by the town on a specified date, but no sooner than seven days after the notice is affixed. The notice shall state that the vehicle will be removed by the town on a specified date, no sooner that seven days after the notice is affixed or mailed, unless the vehicle is moved by the owner or legal possessor prior to that time.

(B) With respect to abandoned vehicles on private property, nuisance vehicles and junked motor vehicles to which notice is required to be given, if the registered owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is abandoned or a nuisance vehicle, or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, the appeal shall be made to the Town Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

## **2.5 EXCEPTIONS TO PRIOR NOTICE REQUIREMENT.**

- (A) The requirement that notice be given prior to the removal of an abandoned, nuisance or junked motor 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 obstructions or to otherwise maintain and protect the public safety and welfare.
- (B) The findings shall, in all cases, be entered by the authorizing official in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:
  - (1) For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of the vehicles may be warranted when they are:
    - (a) Obstructing traffic;
    - (b) Parked in violation of an ordinance prohibiting or restricting parking;
    - (c) Parked in a no-stopping or standing zone;
    - (d) Parked in loading zones;
    - (e) Parked in bus zones; and/or
    - (f) Parked in violation of temporary parking restrictions imposed under code sections.
  - (2) With respect to abandoned or nuisance vehicles left on town-owned property other than the streets and highways, and on private property, the 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, these circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

## **2.6 REMOVAL OF VEHICLES; POST-TOWING NOTICE REQUIREMENTS.**

- (A) Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the town, be removed to a storage garage or area by the tow truck operator or towing business contracted to perform these services for the town. Whenever a vehicle in violation of this ordinance is removed, the authorizing town official shall immediately notify the last known registered owner of the vehicle, and the notice is 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 must follow to redeem the vehicle; and
  - (5) The procedure the owner must follow to request a probable cause hearing on the removal.
- (B) The town shall attempt to give notice to the vehicle owner by telephone. However, whether or not the owner is reached by telephone, written notice, including the information set forth in divisions (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 or her agent.

(C) If the vehicle is registered in the state, notice shall be given within 24 hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within 72 hours from the removal of the vehicle.

(D) Whenever an abandoned, nuisance or junked motor vehicle is removed, and the vehicle has no valid registration or registration plates, the authorizing official shall make reasonable efforts, including checking the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him or her of the information set forth in divisions (A)(1) through (5) above.

## **2.7 RIGHT TO PROBABLE CAUSE HEARING BEFORE SALE OR FINAL DISPOSITION OF VEHICLE.**

After the removal of an abandoned vehicle, nuisance vehicle or junked motor 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. A request for hearing must be filed in writing with the county magistrate designated by the chief district court judge to receive the hearing requests. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with the provisions of G.S. § 160A-303, as amended.

## **2.8 REDEMPTION OF VEHICLE DURING PROCEEDINGS.**

At any stage in the proceedings, including before the probable cause hearing, the owner may obtain possession of the removed vehicle by paying the towing fee, including any storage charges, or by posting a bond for double the amount of the fees and charges to the tow truck operator or towing business having custody of the removed vehicle. Upon regaining possession of a vehicle, the owner or person entitled to the possession of the vehicle shall not allow or engage in further violations of this Ordinance.

## **2.9 SALE AND DISPOSITION OF UNCLAIMED VEHICLE.**

Any abandoned, nuisance or junked motor vehicle which is not claimed by the owner or other party entitled to possession will be disposed of by the tow truck operator or towing business having custody of the vehicle. Disposition of the vehicle shall be carried out in coordination with the town and in accordance with G.S. § Chapter 44A, Article 1, being G.S. §§ 44A-1 *et seq.*

## **2.10 CONDITIONS ON REMOVAL OF VEHICLES FROM PRIVATE PROPERTY.**

As a general policy, the town will not remove a vehicle from private property if the owner, occupant or lessee of the property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the town

from private property without a written request of the owner, occupant or lessee, except in those cases where a vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Zoning Enforcement Officer.

## **2.11 PROTECTION AGAINST CRIMINAL OR CIVIL LIABILITY.**

No person shall 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 motor vehicle for disposing of the vehicle as provided in this ordinance.

## **2.12 EXCEPTIONS.**

Nothing in this ordinance shall apply to any vehicle:

- (A) Which is located in a bona fide automobile graveyard or junkyard, as defined in G.S. § 136-143, in accordance with the Junkyard Control Act, the same being G.S. §§ 136-141 *et seq.*;
- (B) Which is in an enclosed building;
- (C) Which is 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; and/or
- (D) Which is in an appropriate storage place or depository maintained in a lawful place and manner by the town.
- (E) That is used on a regular basis for business or personal use.

## **2.13 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 town any vehicle which has been impounded pursuant to the provisions of this code unless and until all towing and impoundment fees which are due, or bond in lieu of the fees, have been paid. Penalty, see 3.3.

## **2.14 REMOVAL FEES AND CHARGES.**

The tow service or towing contractor shall be solely responsible for collecting any fees charged by the towing contractor under any contract with the town for the towing, removal, storage and/or disposal of a motor vehicle pursuant to this ordinance, except the fees must be approved by the Town Council, and fees in excess of those approved by the Town Council may not be collected under any towing contract with the town.

## **2.15 INDEMNIFICATION (Amended 3/12/07 by State Statute)**

***In accordance with N.C. General Statute 160A-303.2(a2) any person requesting the removal of a junked or abandoned motor vehicle from private property shall be required to indemnify the Town of Fairview against any loss, expense, or liability incurred because of the removal, storage, or sale thereof of said vehicle.***

**ADMINISTRATION AND ENFORCEMENT**

**3.1 ADMINISTRATION.**

- (A) The duly appointed Town Zoning Enforcement Officer shall be responsible for the administration and enforcement of this ordinance. The Town Zoning Enforcement Officer shall be responsible for administering the removal and disposition of vehicles determined to be abandoned on the public streets and highways within the town, and on property owned by the town.
- (B) The Zoning Enforcement Officer shall be responsible for administering the removal and disposition of abandoned, nuisance or junked motor vehicles located on private property.
- (C) The Town may, on an annual basis, contract with private tow truck operators or towing businesses to remove, store and dispose of abandoned vehicles, nuisance vehicles and junked motor vehicles in compliance with this ordinance and applicable state laws.
- (D) Nothing in this ordinance shall be construed to limit the legal authority or powers of other Town officials in enforcing other laws or in otherwise carrying out their duties.
- (E) This Ordinance shall be enforced through complaints officially filed in writing with the Town. Furthermore, the Town may investigate alleged violations of this Ordinance at its own volition without a complaint having first been filed.

**3.2 CHANGES IN STATE LAW.**

Should G.S. §§ 160A-193, 160A-303, 160A-303.2 or any other section of the State General Statutes incorporated by reference or otherwise referred to in this ordinance be changed or amended, or should the statutes require or mandate a different procedure or change or impose new, different or additional requirements, this ordinance shall be deemed to have been amended without further action to have complied with the new, additional or amended requirements.

**3.3 CIVIL PENALTIES.**

- (A) Any violation of the provisions of this ordinance or a failure to comply with any of its requirements shall also constitute issuance of a civil penalty. Each day's continuing violation shall be a separate and distinct offense and shall subject the offender to any civil citations hereby established:

Warning Citation	Within 7 days
First citation      7 day violation period, each day is a separate offense	\$ 50.00
Second citation      7 day violation period, each day is a separate offense	100.00
Third citation      7 day violation period, each day is a separate offense	200.00

- (B) Any person violating this ordinance shall be issued a written citation of the violation, which may be issued by any law enforcement officer, the Zoning Enforcement Officer, or any other office as is charged from time to time by the Town Council with the enforcement of this ordinance. If the offender fails to pay the citation within seven (7) days from its issuance to the Town of Fairview, the costs associated with the citation may be recovered by the town in a civil action in the nature of debt.
- (C) Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the administrator of this ordinance or his/ her designee to the Board of Adjustment within thirty (30) days following the date of issuance of the Notice of Violation. Upon review by the Board of Adjustment violations may be affirmed, modified, or revoked. In the absence of an appeal the decision of the zoning administrator or his/ her designee shall be final.
- (D) Once the Zoning Administrator has exhausted a reasonable means to remedy the violation this ordinance may also be enforced through equitable actions issued by a court of competent jurisdiction or an appointed official, including injunction and order of abatement or any other remedy permitted under this ordinance or at law or equity. (G.S. 160-175)
- (E) This ordinance may be enforced by any one, all or a combination of the remedies authorized in this section.