

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

ABANDONED AND JUNKED MOTOR VEHICLE ORDINANCE

ARTICLE I. AUTHORITY AND PURPOSE

This Ordinance is enacted pursuant to the powers granted to Watauga County by North Carolina General Statute §153A-121, 132, 132.2 and §20, Article 7A. The purpose of this Ordinance is to protect the health, safety, natural scenic beauty, and property values of Watauga County from potential adverse effects caused by the proliferation and improper disposal of junked or abandoned motor vehicles.

ARTICLE II. JURISDICTION

Pursuant to NCGS 153A-122, this Ordinance shall apply to all areas of unincorporated Watauga County which are not within the corporate limits of any municipalities. All municipalities and their respective corporate limits shall be exempted from the ordinance, unless they choose to adopt this ordinance or some form thereof.

ARTICLE III. ADMINISTRATION

Watauga County Sheriff's Department is responsible for the administration and enforcement of the provisions of this Ordinance.

ARTICLE IV. DEFINITIONS

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

A. Abandoned vehicle means a vehicle that is left:

1. Upon a public street or highway in violation of a law or ordinance prohibiting parking; or
2. On a public street or highway for longer than seven (7) days; or
3. On property owned or operated by the County for longer than 24 hours; or

4. On private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

B. Enforcement Officer - A deputy employed by the Watauga County Sheriff's Department as appointed by the Watauga County Sheriff whose duties primarily are the enforcement of this ordinance.

C. Farming means activities related or incidental to production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

D. Junked motor vehicle means a vehicle that does not lawfully display a current license plate and:

1. Is partially dismantled or wrecked;  
or
2. Cannot be self-propelled or moved in the manner in which it originally was intended to move.

E. Motor vehicle or vehicle means all machines designed or intended to travel over land (or water) by self-propulsion or while attached to any self-propelled vehicle.

F. Nuisance vehicle means a vehicle on public or private property that is determined and declared to be unlawful and a health or safety hazard, a public nuisance, including a vehicle found to be:

1. A breeding ground, nest or harbor for mosquitoes, other insects, rats or other pests; or
2. A point of collection of pools or ponds of water; or
3. A point of concentration of quantities of gasoline, oil or other flammable, toxic or explosive materials; or
4. One which has areas of confinement which cannot be opened or operated from the inside of the area of confinement, such as trunks, hoods, etc.; or

5. So situated or located that there is a danger of it falling, dislodging or turning over; or
6. One which is a point of collection of refuse, trash, garbage, food, waste, animal waste, or any other rotten or decaying matter of any kind; or
7. One which has parts which are jagged or contain sharp edges of metal, plastic or glass; or
8. Any other vehicle specifically declared health and safety hazard and a public nuisance by the Enforcement Officer.

G. Vector means any organism that carries disease-causing micro-organisms from one host to another (e.g. rats, mosquitoes, etc.).

#### ARTICLE V. ABANDONED VEHICLE UNLAWFUL; REMOVAL AUTHORIZED

A. It shall be unlawful for any registered owner or person controlling or entitled to possession of a motor vehicle and for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave or not remove the vehicle from the property after it has been declared an abandoned vehicle.

B. Upon investigation, the Enforcement Officer may declare a vehicle to be an abandoned vehicle and order the vehicle removed. Notice of any determination made by the Solid Waste Enforcement Officer may be combined with any other notices allowed under this ordinance and shall be provided to any known registered owner or person entitled to possession of the motor vehicle and any known owner, lessee or occupant of the real property, by first class mail. In situations where a name and address are unknown, notice shall be given by affixation for seven (7) days on the windshield of or some other conspicuous place on the vehicle.

#### ARTICLE VI. NUISANCE VEHICLES UNLAWFUL; REMOVAL AUTHORIZED

A. It shall be unlawful for the registered owner or person controlling or entitled to possession of a motor vehicle and for the owner, lessee or occupant of the real property upon which the

vehicle is located to leave or not remove the vehicle from the property after it has been declared a nuisance vehicle.

B. Upon reasonable cause to believe that there is a health or safety hazard or a nuisance vehicle as defined herein, the Enforcement Officer, or his designee, may so declare, and upon not less than ten (10) days' notice to the owner of the vehicle and occupant and owner of the property on which said condition exists is located, the Enforcement Officer shall determine whether or not such nuisance does, in fact, exist. If the Enforcement Officer makes a determination that a health or safety hazard or public nuisance exists, he shall enter and serve upon the owner and occupant an order to remove, abate or remedy the nuisance within a reasonable period of time, but not more than (90) days. In situations where the name and address are unknown, notices shall be given by affixation for seven (7) days on the windshield of or some other conspicuous place on the vehicle.

Such order may be appealed by the owner or occupant to the Board of Commissioners as provided in Article VIII, Section A.(5) of this ordinance.

Upon failure of the owner or occupant of the property or of the person responsible for such vehicle to remove, abate or remedy the health or safety hazard or nuisance within the period the Officer has allowed, and upon no appeal to the Board of Commissioners or a final decision of the Board of Commissioners, the Enforcement Officer may remove, abate or remedy the nuisance as provided in the order and charge the cost thereof to the owners of the vehicle and property and to the occupant of the property. If such expense is not paid by such owners or occupant, it shall be a lien upon the land or on premises where the public health or safety hazard or nuisance existed and shall be collected as unpaid taxes.

#### ARTICLE VII. JUNKED MOTOR VEHICLES REGULATED; REMOVAL AUTHORIZED

A. With the permission of the owner, lessee or occupant of the real property, up to five (5) junked motor vehicles can be located, placed or stored on the property, but only upon strict compliance with the following requirements:

1. The vehicle(s) must be entirely concealed from view from public streets and from adjacent premises (A canvas, cloth or polyethylene covering shall be deemed acceptable. Tattered, torn coverings or coverings in a state of disrepair

shall not be an acceptable covering); and

2. The vehicle(s) must not be located closer than 10 feet from the adjacent property lines or road.

The Enforcement Officer has the authority to determine whether a permitted junked motor vehicle complies with this Article.

B. All other junked vehicles and parts of vehicles shall be kept in a garage or building structure that provides a complete enclosure so that they cannot be seen from a public street or from adjacent property. For purposes of this Article, a garage or building structure means either an enclosed building structure erected pursuant to the lawful issuance of any required building permit and which has been constructed in accordance with all applicable laws and regulations. A carport shall not be treated as an acceptable garage or enclosure under this Article.

C. It shall be a violation of this Ordinance for the registered owner or person controlling or entitled to the possession of a junked motor vehicle to place, store, leave or allow it to remain on any property in violation of this ordinance or to allow it to remain on any property after the vehicle has been ordered removed from that property.

D. It shall be a violation of this Ordinance 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 or not to remove the vehicle from the property after the vehicle has been ordered removed.

#### ARTICLE VIII. ENFORCEMENT PROVISIONS

A. Enforcement; penalties for violation of article.

(1.) Notice of violation. The Enforcement Officer may issue a notice of violation to any person who fails to comply with any provision of this Ordinance. The notice of violation shall contain a description of the violation, the date of inspection, a description of the action necessary for correction of the violation and the date that compliance is required. The notice shall also specify the amount of civil penalty to be imposed, and when payment is due. The notice shall be hand delivered or mailed by certified or registered mail, return receipt requested, to the person or persons alleged to be in non-compliance. The Enforcement Officer shall sign a statement for his file of the date, time and manner of delivery. The failure to comply with the notice of violation by

taking corrective action may result in any of the civil, equitable or criminal remedies set forth in this section.

(2.) Civil penalties and remedies. Civil remedies and penalties are as follows:

- (a.) Pursuant to G.S. 153A-123(a), any person violating any provision of this Ordinance is subject to a civil penalty in the amount of \$100.00. Each day said condition continues to exist shall constitute a separate and distinct violation.
- (b.) Pursuant to G.S. 153A-123(c), the county may file a civil action to recover the civil penalty provided for in subsection (b)(1) of this section, if the offender does not pay the penalty within the prescribed period as set forth in the notice of violation.
- (c.) Pursuant to G.S. 153A-123(d), the county may seek any appropriate equitable relief that it deems necessary to ensure the health, safety and welfare of the citizens or the natural resources of the county.
- (d.) Pursuant to G.S. 153A-123(a), the county may seek an injunction when, in the judgment of the Enforcement Officer, the non-compliance or violation is creating an imminent hazard to the health, safety and welfare of the public.

(3.) Criminal penalty. Any person convicted of violating any provisions of this Ordinance is guilty of a Class 3 misdemeanor, subject to a fine not to exceed five hundred dollars (\$500.00), and punishable in accordance with NCGS 153A-123 and NCGS 14-4.

(4.) Waiver of enforcement. Waiver of enforcement by the county of any provision of this Ordinance shall not prejudice the enforcement of remaining portions of this Ordinance.

(5.) Appeal. Any person who receives a notice of violation may, within ten (10) business days of the day the notice was

received, submit a written appeal to the Board of County Commissioners. The appeal notice shall specifically state the reasons for the appeal with a copy of the notice of violation attached thereto. The County Manager shall schedule a hearing, for the next regular Board of County Commissioners' meeting, and notify the appellant, and the Board of County Commissioners shall render a decision upholding, denying or modifying the notice of violation. Accrual and imposition of the civil penalties shall be stayed pending the decision. However, there will be no stay for equitable remedies available to the County. If the decision of the Enforcement Officer is affirmed, accrual and imposition shall resume.

(6.) Appeals of Board Actions. Every decision of the Board shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the date the decision is approved in the Board's minutes. Appeals not received within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this ordinance during the pendency of an appeal from the decision of the Board of Commissioners upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

The Board of Commissioners may consider hardship as basis for extending the period for compliance up to six (6) months. In no case shall the Board indefinitely excuse compliance. An extension may be granted upon the appellant meeting two (2) of the four (4) following criteria:

1. appellant is at least sixty-five (65) years of age;
2. health problems documented by appellant's medical record which substantially affect the appellant's ability to comply with the ordinance;
3. severe weather that prevents appellant from complying within the original time frame;
4. taxable income below fifty percent (50%) of the County's current median income, as determined by the US Department of Housing and Urban Development, documented by appellant's latest tax return.

(7.) Enforcement Provisions. The Watauga County Sheriff's Department shall enforce this ordinance. The Enforcement Officer may call upon other agencies as necessary to assist in enforcement of this ordinance.

In addition, whenever the Enforcement Officer receives a proper, non-anonymous, written, complaint alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted (including, in his or her discretion, any appropriate informal measures deemed helpful toward procuring compliance with this Ordinance). The Enforcement Officer shall inform the complainant in writing what actions have been or will be taken.

This ordinance may also be enforced by any remedy provided in N.C.G.S. §153A-123, including, but not limited to, all appropriate equitable remedies provided in N.C.G.S. §153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in N.C.G.S. §153A-123(e).

#### ARTICLE IX. REMOVAL AND TOWING PROCEDURES.

A. Removal by County. Any junked or abandoned motor vehicle found to be in violation of this Ordinance may be moved by the County to a storage garage or area. The County may require any person requesting the removal of a junked or abandoned motor vehicle from private property to indemnify the County against any loss, expense, or liability incurred because of the removal, storage, or sale thereof upon demand by the County.

#### B. Notice to owner.

1. When any junked or abandoned motor vehicle is removed, if such vehicle has a valid registration plate or registration, the County shall immediately send a written notice to the last known address of the last known registered owner(s) of the vehicle of the following:

- (a) A description of the vehicle;
- (b) The place where the vehicle is stored;
- (c) The violation with which the owner is charged, if any;
- (d) The procedure the owner must follow to have the vehicle returned to him; and



- (e) The procedure the owner must follow to request a probable cause hearing on the removal.

2. If the vehicle has a North Carolina registration plate or registration, notice to the owner shall be attempted within twenty-four (24) hours; if the vehicle is not registered in this state, notice to the owner shall be attempted within seventy-two (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 any last known address unless he or his agent waives this notice in writing.

3. Whenever a vehicle with no valid registration plate or if the registration is removed, the County 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 (1). Unless the owner has otherwise been given notice, it is presumed that the County has not made reasonable efforts, as required under this section, unless notice that the vehicle would be removed was posted on the windshield or some other conspicuous place at least seven (7) days before the removal actually occurred; except, no pre-removal notice need be given if the vehicle impeded the flow of traffic or otherwise jeopardized the public welfare so that immediate removal was necessary.

C. Release on bond. The County may release the vehicle to the owner at any time after removal; upon the owner posting an adequate bond to cover all costs and fees or paying in cash the sum of all costs and fees related to the removal and storage.

D. Final disposal. Failure of the owner of the vehicle to pay all costs and fees related to the removal of the vehicle within thirty (30) days of the removal shall entitle the County to sell the vehicle to enforce the removal and storage lien, as provided in N.C.G.S. sections 44A-4 through 44A-6, except that no hearing in addition to the probable cause hearing is required. If no one purchases the vehicle, and if the value of the vehicle is less than the amount of the lien, the County may destroy it.

E. Liability. Neither the County nor any person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of or claiming an interest in any abandoned, junk, lost, or stolen motor vehicle for disposing of the vehicle, or for the proceeds therefrom.

F. Post-Towing Hearing Available.

- 1. Pursuant to NCGS 20-219.11, 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 removal. The request shall be filed with the magistrate of the county where the vehicle was towed. The magistrate shall set the hearing within seventy-two (72) hours of his receiving the request.

2. The owner, the person who requested the hearing (if someone other than the owner) the party towing the vehicle and the County shall be notified of the time and place of the hearing.

3. The owner, the towing party, the County and any other interested party may present evidence at the hearing. The County and the towing party may submit an affidavit in lieu of appearing personally, but the affidavit does not preclude that person from also testifying.

4. The only issue at the hearing is whether or not probable cause existed for the removal. If the magistrate finds that probable cause did exist, the removal lien continues. If the magistrate finds that probable cause did not exist, the removal lien is extinguished.

5. Any aggrieved party may appeal the magistrate's decision to the District Court for Watauga County.

#### ARTICLE X. EXCEPTIONS

Nothing in this article shall apply to any vehicle:

A. In an enclosed building or to any vehicle legally upon the premises of garage, a junkyard or automobile graveyard pursuant to the County's Ordinance to regulating junkyards and automobile graveyards; or

B. In an enclosed building; or

C. Used in farming.

D. Which is part of actions and/or operations undertaken by Watauga County.

#### ARTICLE XI. CHANGES IN STATE LAW

Should N.C.G.S. §153A-132 and N.C.G.S. §153A-132.2 or any section of the General Statutes of North Carolina incorporated herein by reference or otherwise referred to herein be changed or amended, or should such statutes require or mandate a different procedure or change or impose new, different or additional requirements, then,

in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

ARTICLE XII. SEVERABILITY

If any Section, subsection, sentence, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

ARTICLE XIII. CONFLICTS WITH OTHER ORDINANCES

Whenever the provisions of this ordinance and any other ordinance impose overlapping or contradictory regulations, the ordinance which is more restrictive or imposes higher standards or requirements shall be controlling.

ARTICLE XIV. EFFECTIVE DATE

This ordinance as amended shall become effective on the 1st day of July, 2006.

ADOPTED this the 27th day of June, 2006.

BOARD OF COMMISSIONERS FOR THE  
COUNTY OF WATAUGA

ATTEST:

by: \_\_\_\_\_  
James Deal, Jr., Chairman

\_\_\_\_\_  
Anita J. Fogle, Clerk to the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony di Santi, County Attorney