

FORSYTH COUNTY
BOARD OF COMMISSIONERS

**BRIEFING
DRAFT**

MEETING DATE: NOVEMBER 1, 2018

AGENDA ITEM NUMBER: 10

SUBJECT: ORDINANCE REVISING CHAPTER 11 OF THE FORSYTH COUNTY CODE ENTITLED, "DISPOSITION OF ABANDONED AND JUNKED MOTOR VEHICLES" (FORSYTH COUNTY ATTORNEY'S OFFICE)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:

SUMMARY OF INFORMATION:

ATTACHMENTS: YES NO

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

Chapter 11

DISPOSITION OF ABANDONED AND JUNKED MOTOR VEHICLES*

*State Law References: County authority concerning abandoned and junked motor vehicles, G.S. 153A-132; regulation of abandonment of junked motor vehicles, G.S. 153A-132.2.

Sec. 11-1. Definitions; applicability.

(a) *Declaration of purpose.* Abandoned and junked motor vehicles constitute a hazard to the health and welfare of the people of Forsyth County in that such vehicles furnish shelter and breeding places for stinging insects and rats 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 junked vehicles be eliminated and that the future abandonment of such vehicles be prevented.

(b) *Definitions.* For the purpose of this chapter, the following terms shall have the meanings ascribed to them in this subsection:

(1) *Abandoned vehicle or abandoned motor vehicle:* A vehicle shall be deemed to have been abandoned in the following circumstances:

- 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 twenty-four (24) hours on property owned or operated by the county; or
- c. Is left for longer than two (2) hours on private property without the consent of the owner, occupant, or lessee of the property; or
- d. Is left for longer than seven (7) days on public grounds.

(2) *Junked vehicle or junked motor vehicle:* A junked motor vehicle is an abandoned motor vehicle (as defined above) that also.

- a. Is partially dismantled or wrecked; or
- b. Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- c. Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100.00); or
- d. Does not display a current license plate.

(3) *Vehicle or motor vehicle:* The term "vehicle or motor vehicle" shall include any machine designed or intended to travel over land or water by self-propulsion or while attached to a self-

propelled vehicle.

- (4) *Tag:* Any type of notice affixed to an abandoned or junked motor vehicle advising the owner or person in possession that the same has been declared an abandoned or junked vehicle and will be treated as such. The tag must be of sufficient size as to be easily discernible and contain such information as may be necessary to advise the owner or person in possession of the vehicle of the violation of this chapter.

(c) *Applicability.* Nothing in this chapter shall be construed to apply to any vehicle in an enclosed building or 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 such business enterprise, including any vehicle lawfully located on premises being lawfully used in conducting an active junkyard, automobile graveyard or garage business, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the county.

(Ord. No. 3-77, 5-16-77)

Sec. 11-2. Criteria for determining when motor vehicles are health or safety hazards.

A motor vehicle is a health or safety hazard when it is found to be:

- (a)
- (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 (8) 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.
- (b) Is left upon privately owned property for more than thirty (30) days; and
- (c) Is in one or more of the conditions set forth in (a) through (d) of section 11-1(b)(2).

Such vehicles may be disposed of without the consent of the owner or any other person in accordance with the procedures set forth in this chapter.

(Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 7, 10-28-85)

Sec. 11-3. Health or safety hazards unlawful.

It is hereby declared to be unlawful for any person to cause or allow a motor vehicle to become a health or safety hazard as defined in section 11-2. Each day of violation shall constitute a separate offense. (Ord. No. 3-77, 5-16-77)

Sec. 11-3.1. Violations and penalties.

If any person shall violate this ordinance or chapter or any provision thereof, he shall be guilty of a class 3 misdemeanor and shall be fined not more than five hundred dollars (\$500.00). (Ord. No. 6-91, § 1, 5-28-91; Ord. No. 2-92, §§ 3, 4, 4-13-92; Ord. No. 3-95, §§ 1, 2, 7-10-95)

Sec. 11-4. Removal of vehicles abandoned or junked on streets or public grounds.

Any vehicle abandoned or junked on the public streets, highways or public grounds within the county may be removed therefrom for safekeeping by or under the direction of a law enforcement officer or the abandoned vehicles officer to a storage garage or area. (Ord. No. 3-77, 5-16-77)

Sec. 11-5. Removal of vehicles abandoned or junked on private property.

Any vehicle abandoned or junked on privately owned property within the county may be removed therefrom for safekeeping by or under the direction of a law enforcement officer or the abandoned vehicles officer to a storage garage or area; provided, that no such vehicle shall be removed from privately owned premises without the written request of the owner, lessee or occupant of the premises on which the vehicle is located unless the vehicle has become a health or safety hazard in accordance with section 11-2 of this chapter. When a vehicle is removed from privately owned property at the request of a person, the person at whose request such vehicle is removed shall indemnify the county against any loss or expense incurred by reason of removal, storage or sale thereof. Authorized county officers and employees have a right, upon presentation of proper credentials, to properly enter on any premises within the county ordinance-making jurisdiction at any reasonable hour in order to determine if any motor vehicles are in violation of this chapter. Entry and inspection shall be in accordance with section 1-10 of the Code. (Ord. No. 3-77, 5-16-77)

Sec. 11-6. Notice of removal.

No vehicle shall be removed under this chapter until it has been left for longer than twelve (12) hours.

When an abandoned or junked motor vehicle is removed, notice shall be given to the owner as required by G.S. 20-219.11 (a) and (b), as revised or as successor statutes may provide. A copy of said notice shall also be delivered to the occupant of the premises where the vehicle was located. (Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 1, 10-28-85)

Sec. 11-7. Cost of removal, storage and other expenses to be borne by owner; owner may reclaim his vehicle.

All reasonable costs and expenses incurred by the county in connection with the removal, storage, location of the owner or efforts to locate the owner shall be paid by the owner. The owner of any such

abandoned or junked and removed motor vehicle may reclaim his vehicle during the applicable retention periods prescribed in section 11-8 by exhibiting proof of ownership to the abandoned vehicles officer and paying to the county all reasonable costs incidental to the removal and storage of the vehicle and administrative expenses. The owner may also obtain possession of the vehicle by posting a bond in the form approved by the county attorney for the costs, fees and expenses due, pending a final determination. (Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 2, 10-28-85)

Sec. 11-7.1. Right to hearing before sale or final disposition of vehicle.

Before the sale or disposition of an unclaimed abandoned motor vehicle or the disposition of an unclaimed junked vehicle, the abandoned vehicles officer shall send notice by registered or certified letter to the last registered owner of the vehicle at his last-known address of right to a hearing before the final disposition of such vehicle. Notice shall be given in the manner prescribed in section 11-6 and may be included in the notice of removal.

If the registered owner or other interested party desires a hearing, such person must inform the abandoned vehicles officer of his desire by registered letter within seven (7) days after receipt of the notice.

If an individual requests a hearing, then a statement shall be sent to the individual stating the time and place for the hearing, which shall be within seventy-two (72) hours of receiving the request. In addition, the statement shall inform the owner of the specific grounds for the classification of the vehicle as an abandoned and/or junked motor vehicle under Chapter 11 of the Forsyth County Code, of the rules and regulations for the hearing, of the opportunity to present evidence in order to show cause why the sale or disposition of the vehicle should not occur in accordance with section 11-8 or section 11-9, and of the right to have counsel present at the hearing.

The Forsyth County Environmental **Affairs Assistance and Protection Advisory Board** shall serve as the hearing officer [RDT1], shall conduct the hearing in accordance with the procedures stated in this section, and shall prepare a written report within three (3) days of the hearing stating its conclusion concerning whether the vehicle was in violation of Chapter 11 of the Forsyth County Code and the reasons and evidence upon which the conclusion has been based.

The written report of the hearing officer shall determine that the abandoned vehicles officer shall either proceed to dispose of the vehicle in accordance with section 11-8 or section 11-9 or to immediately return the vehicle to the registered owner. If the hearing officer determines that the vehicle was not in violation of Chapter 11 of the Forsyth County Code and must be immediately returned to the registered owner, then the registered owner shall not be charged with the cost of removal or other expenses required in section 11-7.

The original report of the hearing officer shall be filed in the office of the abandoned vehicles division and shall be available for public inspection. A copy of the written report shall be mailed to the registered owner. The owner of the vehicle may appeal to the District Court of Forsyth County by filing a written notice of appeal with the clerk of superior court within ten (10) days from the date of receipt of the written report of the hearing officer by the owner.

(Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 3, 10-28-85)

Sec. 11-8. Disposal of abandoned and junked motor vehicles.

Subject to the right of a prior hearing as set forth in section 11-7.1, the abandoned vehicles officer (who is acting on behalf of the county) may sell or dispose of the vehicle as provided herein.

- (a) *Private sale.* Sale by private sale may be made in any manner that is commercially reasonable. The sale may not be made until notice is given to the commissioner of motor vehicles pursuant to G.S. 20-114 (c). Not less than thirty (30) days prior to the date of the proposed private sale, the county shall cause notice to be mailed, as provided in subsection (b) hereof, to the person having legal title to the property, if reasonably ascertainable, and to each secured party or other person claiming an interest in the property who is actually known to the county or can be reasonably ascertained. Notices provided pursuant to section 11-6 hereof shall be sufficient for these purposes if such notices contain the information required in the notice of sale. The lienor shall not purchase, directly or indirectly, the property at private sale and such a sale to the lienor shall be voidable.
- (b) *Public sale.* If an owner, any secured party, or other person with an interest in the property notifies the abandoned vehicles officer in writing prior to the date upon which the sale by private sale is proposed to be made that public sale is requested, sale by private sale shall not be made. After written request for public sale is received, notice of public sale must be given as if no notice of sale by private sale had been given, as follows:
 - (1) Not less than twenty (20) days prior to sale by public sale the county:
 - a. Shall notify the commissioner of motor vehicles as provided in G.S. 20-114(c); and shall cause notice to be mailed to the person having legal title to the property if reasonably ascertainable, and to each secured party or other person claiming an interest in the property who is actually known or can be reasonably ascertained, provided that notices provided pursuant to section 11-6 hereof shall be sufficient for these purposes if such notices contain the information required by the notice of sale; and
 - b. Shall advertise the sale by posting a copy of the notice of sale at the county courthouse door where the sale is to be held; and shall publish notice of sale once a week for two (2) consecutive weeks in a newspaper of general circulation in the county, the date of the last publication being not less than five (5) days prior to the sale.
 - (2) A public sale must be held on a day other than Sunday and between the hours of 10:00 a.m. and 4:00 p.m.
- (c) *Notice of sale.* The notice of sale shall include:
 - (1) The name and address of the county;

- (2) The name of the person having legal title to the property if such person can be reasonably ascertained;
- (3) A description of the property;
- (4) The amount due for which the disposition of the vehicle is claimed;
- (5) The place of the sale;
- (6) If a private sale, the date upon which the sale is proposed to be made; or if a public sale, the date and hour when the sale is to be held.

(Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 4, 10-28-85)

Sec. 11-9. Proceeds of sale.

The proceeds of sale shall be applied as follows:

- (1) Reasonable expenses incurred in connection with the sale, including but not limited to reasonable storage and boarding expenses after giving notice of sale;
- (2) Amounts specified in section 11-7.
- (3) Any surplus shall be paid to the person entitled thereto; but when such person cannot be found, then to the clerk of superior court of the county for the persons entitled thereto.

(Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 4, 10-28-85)

Sec. 11-10. Reserved.

~~Editors Note: Ord. No. 8-85, § 5, adopted Oct. 28, 1985, repealed § 11-10, which pertained to disposal of vehicles without plates or identification numbers, as derived from Ord. No. 3-77, adopted May 16, 1977.~~

Sec. 11-11. Disposal of vehicle with owner's consent.

With the consent of the owner of the vehicle, any motor vehicle may be removed and disposed of as a junked motor vehicle regardless of the value, condition or age of such vehicle.

(Ord. No. 3-77, 5-16-77; Ord. No. 8-85, § 6, 10-28-85)

Sec. 11-12. Alternative method of taking possession.

Notwithstanding any other provision of this chapter to the contrary, the abandoned vehicles officer may, in lieu of taking actual physical possession of an abandoned motor vehicle or junked motor vehicle, take constructive possession of said vehicle on the premises by placing thereon a notice, which shall state that the vehicle is in possession of the abandoned vehicles officer, the date that possession was effectuated and that possession was effectuated pursuant to this chapter. This notice may be made a part of the "tag" as defined in section 11-1(b)(4). "Holding" or "possession" shall be deemed to begin when constructive possession is taken pursuant to this section.

(Ord. No. 3-77, 5-16-77)

Sec. 11-13. Protection against criminal or civil liability.

No person or the county shall be held to answer in any civil or criminal action to the owner, lienholder or other person, legally entitled to the possession of any abandoned, junked, lost or stolen vehicle, for disposing of such vehicle as provided in this chapter.

(Ord. No. 3-77, 5-16-77)

Sec. 11-14. Severability.

~~It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this chapter are severable, and if any phrase, clause, sentence, paragraph or section of this chapter shall be declared unconstitutional or invalid by a judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this chapter.~~

~~(Ord. of 3-77, 5-16-77)~~

Sec. 11-15. Abandoned vehicles officer and department designated.

The director of the Forsyth County Environmental Affairs Assistance and Protection Department shall be the abandoned vehicles officer and shall carry out all functions of that office created by this chapter either personally or by and through his authorized personnel.

(Ord. No. 3-77, 5-16-77)