

An Ordinance to Regulate Abandoned, Nuisance, and Junked Vehicles

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 Montgomery County; and

WHEREAS, a public hearing was noticed and duly held on Tuesday, November 1, 2005, 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 staff, Montgomery County has determined that the aesthetic and appearance regulations set forth herein are necessary and beneficial to Montgomery County 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 Montgomery County pursuant to North Carolina General State Statutes 153A-132 and 153A-132.2,

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Montgomery County that:

Section 101. Administration

(a) The Montgomery County Inspections Department shall be responsible for the administration and enforcement of this article. Said officer shall be responsible for administering the removal and disposition of “abandoned,” “nuisance,” or “junked” vehicles located on private property. The Sheriff’s Department shall be responsible for administering the removal and disposition of vehicles determined to be “abandoned” on the public streets and highways of the County, and on property owned by the County.

(b) The County 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 vehicles in compliance with this article and applicable state laws.

(c) Nothing in this article shall be construed to limit the legal authority and/or powers of officers of the County in enforcing other laws and/or in otherwise carrying out their duties.

Section 101.5. Jurisdiction

The regulations contained herein as provided in N.C.G.S. 153A-121 shall govern all territory within Montgomery County, North Carolina, outside of the incorporated jurisdiction of any municipality. The municipality may authorize the provisions of this Ordinance to be applicable to the territory within the municipality by the adoption of a resolution by the governing body.

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) An abandoned vehicle is defined as a motor vehicle that:
 - (1) is left upon the right-of-way of a public street or highway in violation of a law or ordinance prohibiting parking; or
 - (2) is left on the right of way of a public street or highway for longer than seven (7) days; or
 - (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.

- (b) A junked motor vehicle is defined as a motor vehicle that does not display a current license plate lawfully upon that vehicle and:
 - (1) is partially damaged or wrecked; or
 - (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).

- (c) 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; 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 of pools or ponds of water; or
 - (4) A point of concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
 - (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; or

- (6) So situated or located that there is a danger of it falling or turning over; or
 - (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrefied matter of any kind; or
 - (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 Board of County Commissioners.
- (d) 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.

Section 103. 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, the Montgomery County Inspection Officer may determine that a vehicle is abandoned and order the vehicle removed.
- (c) A written assessment must be provided to the County Manager itemizing the findings prior to any action being taken.

Section 104. Nuisance and junked vehicles regulated; 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 on the property after which the vehicle has been ordered to be removed.
- (b) Upon investigation, the County Inspections Officers may order the removal of a junked 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 105. Pre-towing notice requirements for removal of abandoned, nuisance, or junked vehicles.

- (a) Except as set forth in Section 107 below, an abandoned, nuisance, or junked vehicle that is to be removed shall be towed only after notice 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. The notice shall state that the County will remove the vehicle on a specified date, no sooner than twenty-one (21) 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 to show the name(s) and address(es) to which mailed and the date mailed.
- (b) With respect to abandoned vehicles on private property, nuisance vehicles and junked 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, a nuisance vehicle or in the case of a junked vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the Board of Adjustment in writing prior to the applicable date of abatement and heard at the earliest regularly scheduled meeting of the Board of Adjustment.

Section 106. Exception to prior notice requirement.

The requirement that written notice be given prior to removal of an abandoned, nuisance, or junked vehicle may, as determined by the Montgomery County Inspections Officers, 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 Montgomery County Inspections Officers in the appropriate daily records. Circumstances justifying the removal of vehicles without prior notice include:

- (a) Vehicles abandoned on streets or highways. For vehicles left 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) Other abandoned or nuisance vehicles. With respect to abandoned 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 107. Removal of vehicles post-towing notice requirements.

- (a) Any abandoned, nuisance, or junked vehicle which has been ordered and removed may, as directed by the County, be removed to a storage garage or any other designated storage area by the tow truck operator or towing business contracting 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 in writing, 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) The County 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 Section 107(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.
- (c) If the vehicle is registered in North Carolina, notice shall be given within twenty-four (24) hours. If the vehicle is not registered in North Carolina, notice shall be given to the registered owner within seventy-two (72) hours from the removal of the vehicle.
- (d) Whenever an abandoned, nuisance, or junked vehicle is removed, and such vehicle has no valid registration or registration plates, the Montgomery County Code Enforcement officer shall make reasonable efforts, including checking the vehicle identification number to determine the last known registered owner of the vehicle and to notify the owner of the information set forth in Section 107(a) (1) through (5).

Section 108. Owner's responsibility for cost.

If an abandoned, nuisance, or junked vehicle is removed by or at the direction of the Montgomery County Inspections Officers, the owner shall pay all reasonable costs incurred as a result of the removal and storage of such vehicle.

Section 109. Right to probable cause hearing before sale or final disposition of vehicle.

After the removal of an abandoned vehicle, nuisance vehicle, 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. A request for hearing shall be filed in writing within thirty (30) days of the post-towing notification. Such request for hearing shall be filed with the Montgomery County Manager's Office and County Magistrate 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 110. Redemption of vehicle during proceedings.

- (a) At any stage in the proceedings, including before the probable cause hearing, the owner(s) may obtain possession of the removed vehicle by paying the towing fee, including any storage charges and administrative fees, or by posting a bond for double the amount of such fees and charges due as a result of the abatement. 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.
- (b) In the event that the vehicle has been declared a violation of Sections 103 and 104, the owner(s) of the vehicle or person(s) entitled to possession, prior to regaining possession, shall submit in writing his or her plan to insure the violation is not repeated and obtain the approval of the appropriate official of the County, who shall examine the plan for compliance with this article.

Section 111. 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 by the tow truck operator, towing business, or County having custody of the vehicle. Disposition of such a vehicle shall be carried out in coordination with the County and in accordance with North Carolina General Statutes.

Section 112. Conditions on removal of vehicles from private property.

As a general policy, the County will not remove a vehicle from private property if the owner, occupant, or lessee of such property could have the vehicle removed under applicable state law procedures. In no case will a vehicle be removed by the County from private property without a written request by the owner, occupant, or lessee, except in those cases in which a vehicle is a nuisance vehicle or is a junked vehicle that has been ordered removed by the County Manager, Inspections Officer or designee (s). The County may require any persons requesting the removal of an abandoned, nuisance, or junked vehicle from private property to indemnify the County against any loss, expense, or liability incurred due to the removal, storage, or sale.

Section 113. 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 vehicle, for disposing of such vehicle as provided in this article.

Section 114. Exceptions

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.,” or

- (b) is in an enclosed shelter, building, or under a carport that has received no previous complaints;
- (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; or
- (d) is in an appropriate storage place or depository maintained in a lawful place and manner by the County;

Section 115. 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 towing, impoundment, and administrative fees have been paid, or bond in lieu of such fees, has been posted.

Section 116. Right of entry.

For the purpose of enforcing the provisions of this article, the Montgomery County Inspections Officers or his designee(s) may at all times during regular business hours, Saturdays, and legal holidays excepted, enter upon any premises within the County's jurisdiction, other than within any building actually occupied for a residence, for the purpose of determining whether or not the provisions of this article are being violated or for the purpose of determining whether or not any notice by the County requiring the abatement of the nuisance has been complied with.

Section 117. 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 118. 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 119. Enforcement of Ordinance

- (a) Whenever in this ordinance any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor or whenever in the ordinance the doing of any act is required or the failure to do such act is declared to be unlawful, the violation of any such provision of this ordinance shall be a Class 3 misdemeanor punished by a fine not exceeding \$500 or by imprisonment for a term not exceeding 30 days. Each day that any violation of this ordinance continues shall constitute a separate offense.
- (b) In addition to or in lieu of the penalty provision set forth above, the violator may be subject to civil penalties and/or equitable remedies as permitted under state law, some of which are set out in NCGS 153A-123. (Attachment #1).


- (c) Any act constituting a violation of the provisions of the Ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$50 for each separate offense. If the offender fails to pay this penalty within ten days after being notified of a violation, the penalty may be recovered by the County in a civil action in the nature of debt. Each day that any violation continues after notification exists shall be considered a separate offense for purposes of the penalties and remedies specified in this ordinance.

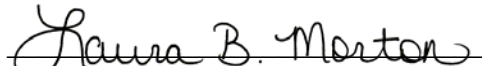
Section 120. Effective Date

This Ordinance shall take effect and be enforced as of November 29, 2005.

This ordinance amended July 18, 2006.




William D. Maness Chairman,
Montgomery County
Board of County Commissioners


Laura B. Morton, Clerk to the Board

Attachment #1
North Carolina General Statute 153A-123

153A-123. Enforcement of ordinances.

(a) A county may provide for fines and penalties for violation of its ordinances and may secure injunctions and abatement orders to further insure compliance with its ordinances, as provided by this section.

(b) Unless the board of commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4.

(c) An ordinance may provide that violation subjects the offender to a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

(c1) An ordinance may provide for the recovery of a civil penalty by the county for violation of the fire prevention code of the State Building Code as authorized under G.S. 143-139.

(d) An ordinance may provide that it may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such a case, the General Court of Justice has jurisdiction to issue any order that may be appropriate, and it is not a defense to the county's application for equitable relief that there is an adequate remedy at law.

(e) An ordinance that makes unlawful a condition existing upon or use made of real property may provide that it may be enforced by injunction and order of abatement, and the General Court of Justice has jurisdiction to issue such an order. When a violation of such an ordinance occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's and material man's lien, for the costs of executing the order. The defendant may

secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the clerk of superior court in an amount approved by the judge before whom the matter was heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within the time fixed by the judge. Cancellation of an order of abatement does not suspend or cancel an injunction issued in conjunction with the order.

(f) Subject to the express terms of the ordinance, a county ordinance may be enforced by any one or more of the remedies authorized by this section.

(g) A county ordinance may provide, when appropriate, that each day's continuing violation is a separate and distinct offense. (1973, c. 822, s. 1; 1985, c. 764, s. 34; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1993, c. 329, s. 5.)