

Town of Badin Ordinance 05-4

AN ORDINANCE AMENDING ORDINANCE 91-3 PROVIDING FOR THE REMOVAL AND DISPOSITION OF ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES

WHEREAS, the Town Council of the Town of Badin is authorized by the G.S. 160A-193, G.S. 160A-303 and G.S. 160A-303.2 to regulate, restrain or prohibit abandoned, nuisance and junked motor vehicles on public and private property within the Town's ordinance-making jurisdiction; and

WHEREAS, the Town Council of the Town of Badin finds it necessary and desirable to promote or enhance:

- (1) The quality of urban attractiveness and aesthetic appearance of the Town,
- (2) The protection of property values throughout the Town,
- (3) The preservation of the livability and attractiveness of neighborhoods,
- (4) The promotion of tourism, conventions, and other opportunities for economic development for the Town,
- (5) The attractiveness of the Town's thoroughfares and commercial roads which present the primary, public visibility to visitors and to passers-by of the Town, and

(6) The promotion of the comfort, happiness, and emotional stability of occupants of property in the vicinity of junked motor vehicles;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Badin, North Carolina:

Section 1. Administration.

The police department and Town Manager of the Town shall be responsible for the administration and enforcement of this chapter. The police department 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. The Town Manager shall be responsible for administering the removal and disposition of “abandoned”, “nuisance” or “junked motor vehicles” located on private property. 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 chapter and applicable state laws. Nothing in this chapter shall be construed to limit the legal authority or powers of officers of the Town's police department and fire department in enforcing other laws or in otherwise carrying out their duties.

Section 2. Definitions.

For purpose of this chapter, certain words and terms are defined as herein indicated:

(a) 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; or

(2) Is left on a public street or highway for longer than seven (7) days; or

(3) Is left on property owned or operated by the Town for longer than twenty-four (24) hours; or

(4) Is left on private property without the consent of the owner, occupant or lessee thereof, for longer than two (2) hours.

(b) Authorizing official. The supervisory employee of the police department or the Town Manager, respectively, designated to authorize the removal of vehicles under the provisions of this chapter.

(c) Motor vehicle or vehicle. All machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

(d) Junked motor vehicle. As authorized and defined in G.S. 160A-303.2 the term, junked motor vehicles means a vehicle that does not display a current license plate lawfully upon that vehicle and that:

(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; or

(3) Is more than five (5) years old and appears to be worth less than one hundred dollars (\$100).

(e) 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; 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) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc., 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 putrescible 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 and a public nuisance by the Town Council.

Section 3. 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 such vehicle to be abandoned as the term is defined herein.

(b) Upon investigation, proper authorizing officials of the Town may determine that a

vehicle is an abandoned vehicle and order the vehicle removed.

Section 4. 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 Town Manager may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle as defined above, and order the vehicle removed.

Section 5. Junked Motor Vehicle regulated; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to the 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. Single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this section.

(c) It shall be unlawful for any owner, person entitled to the 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 fail to comply with the locational requirements or the concealment requirements of this section.

(d) Subject to the provisions of subsection (e), upon investigation, the Town Manager may order the removal of a junked motor vehicle as defined in this chapter after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such findings 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.

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

(1) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the Town Zoning Ordinance, provided the Junked Motor Vehicle is entirely concealed from public view from a public street and/or abutting premises by an acceptable covering for not more than sixty (60) calendar days. Junked Motor Vehicles kept on the premises more than sixty (60) calendar days shall be kept inside a completely enclosed building. The Town Manager 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) Any one or more Junked Motor Vehicles kept for a period exceeding sixty (60) calendar days shall be kept within a completely enclosed building, as defined in the Town Zoning Ordinance.

Section 6. Removal of abandoned, nuisance or junked motor vehicles pre-towing notice requirements.

Except as set forth in Section 7 below, 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, 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. If such 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 city on a specified date, no sooner than seven (7) 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 than seven days after the notice is affixed or mailed, unless the vehicle is moved by the legal owner or legal possessor prior to that time.

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, a nuisance vehicle or in the case of a junked motor vehicle that the aesthetic benefits of removing the vehicle outweigh the burdens, such appeal shall be made to the Town Council in writing, heard at the next regularly scheduled meeting of the Town Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

Section 7. Exceptions to prior notice requirements.

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. Such 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:

(a) Vehicles abandoned on the streets. For vehicles left on the public streets and highways, the Town Council hereby determines that immediate removal of such vehicles may be warranted when they are:

(1) Obstructing traffic,

(2) Parked in violation of an ordinance prohibiting or restricting parking,

(3) Parked in a no-stopping or standing zone,

(4) Parked in loading zones,

(5) Parked in bus zones, or

(6) Parked in violation of temporary parking restrictions imposed under code sections.

(b) Other abandoned or nuisance vehicles. With respect to abandoned or nuisance

vehicles left on Town 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 and 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 8. Removal of vehicles; post-towing notice requirements.

Any abandoned, nuisance or junked motor vehicle which has been ordered removed may, as directed by the Town, to be removed to a storage garage or area by the tow truck operator or towing business contracting to perform such services for the Town. Whenever such a vehicle is removed, the authorizing Town official shall immediately notify the last known registered owner of the vehicle, 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 must follow to redeem the vehicle; and

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

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 subsections (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.

If the vehicle is registered in North Carolina, notice shall be given within twenty-four (24) hours. If the vehicle is not registered in the state, notice shall be given to the registered owner within seventy-two (72) hours from the removal of the vehicle.

Whenever an abandoned, nuisance or junked motor vehicle is removed and such vehicle has no valid registration or registration plates, the authorizing city 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 of this information set forth in subsections (1) through (5) above.

Section 9. 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 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 such hearing requests. The magistrate will 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 G.S. 20-219.11, et al, as amended.

Section 10. 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 such 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.

Section 11. 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 such a vehicle shall be carried out in coordination with the city and in accordance with Article I of Chapter 44A of the North Carolina General Statutes.

Section 12. 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 such 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 Town Manager. The Town may require any person requesting the removal of an abandoned, nuisance or junked motor vehicle from private property to indemnify the Town against any loss, expense or liability incurred because of the removal, storage, or sale thereof.

Section 13. 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 such vehicle as provided in this chapter.

Section 14. Exceptions.

Nothing in this chapter shall apply to any vehicle: (1) which is located in a bona fide "automatic graveyard" or "junkyard" as defined in N. C. G.S. 136-143, in accordance with the "Junkyard Control Act," N. C. G.S. 136-141, et seq.; (2) which is in an enclosed building; (3) 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; or (4) which is an appropriate storage place or depository maintained in a lawful place and manner by the Town.

Section 15. 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 city 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 such fees, have been paid.

Section 16 Alternative Remedies.

In addition to the remedies provided for herein, any violation of the terms of this Ordinance shall subject the violator to the penalties and remedies, either criminal or civil or both, as set forth in Ordinance 05-7 of the Town of Badin.

An ordinances or amendments in conflict with this ordinance are hereby repealed to the extent of such conflict.

This Ordinance shall become effective upon its adoption by the Town Council of the Town of Badin, North Carolina. Duly passed this 12th day of April, 2005.