

**Village of Wesley Chapel, NC
ORDINANCE NUMBER 2015-04**

**AN ORDINANCE AFFECTING THE REGULATION OF
ABANDONED, NUISANCE AND JUNKED VEHICLES
THE VILLAGE OF WESLEY CHAPEL**

WHEREAS, Article 8 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-174, et seq., delegates to municipalities the authority to exercise the general Sheriff's power; and

WHEREAS, Article 15 of Chapter 160A of the North Carolina General Statutes, N.C.G.S. 160A-303, et seq., authorizes municipalities to regulate, remove and dispose of Abandoned and Junked Vehicles;

WHEREAS, N.C.G.S. 160A-193 authorizes municipalities to summarily remedy, abate or remove public health nuisances; and

WHEREAS, the Village Council of the Village of Wesley Chapel finds that it is in the public interest to enact an Ordinance to provide more specificity as to the requirements for regulating Abandoned, Junked and Nuisance Vehicles; and

WHEREAS, the Village Council of the Village of Wesley Chapel, after due notice, conducted a public hearing on the 9th day of March 2015, upon the question of enacting an ordinance in this respect.

THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF WESLEY CHAPEL, NORTH CAROLINA:

PART ONE. That an Ordinance of the Village of Wesley Chapel, entitled "Abandoned, Junked and Nuisance Vehicles" is hereby enacted to read as follows:

"ABANDONED, JUNKED AND NUISANCE VEHICLES

Section 1. Administration.

The Sheriff's Department and the Code Administrator of the Village shall be responsible for the administration and enforcement of this Ordinance. 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 within the Village, and on property owned by the Village. The Code Administrator shall be responsible for administering the removal and disposal of "abandoned", "nuisance" and "junked" motor vehicles located on private property. The Village 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. Nothing in this Ordinance shall be construed to limit the legal authority or powers of officers of the Sheriff's Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

State law reference—Village authority for removal and disposal of junked and abandoned motor vehicles, G.S. 160A-303 as amended. Village authority for regulation of abandonment of junked motor vehicles, G.S. 160A-303.2 as amended.

Section 2. Definitions.

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

(a) Abandoned vehicle: As authorized and defined in G.S. 160A-303, an abandoned 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 upon a public street or highway for longer than seven (7) days; or
- (3) Is left upon property owned or operated by the Village for longer than twenty-four (24) hours; or
- (4) Is left upon private property without the consent of the owner, occupant, or lessee thereof for longer than two (2) hours.

(b) Authorized Official: The supervisory employee of the Sheriff's Department or the Village Code Administrator, respectively, designated to order the removal of vehicles under the provisions of this Ordinance.

(c) Motor vehicle or vehicle: All machines designed or intended to travel over land or water 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 vehicle 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 move 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 five hundred dollars (\$500.00).

(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 which exceeds eight (8) inches in height; or
- (3) In a condition allowing the collection of pools or ponds of water; or
- (4) A concentration of quantities of gasoline, oil, or other flammable or explosive materials as evidenced by odor; or
- (5) An area of confinement which cannot be operated from the inside, such as, but not limited to, trunks or hoods; or
- (6) So situated or located that there is a danger of it falling or turning over; or
- (7) A collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind; or
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of

- metal or glass;
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Village 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, the authorized officials of the Village 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 Village Code Administrator 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 private property. A single, permitted junked motor vehicle must strictly comply with the location and concealment requirements of this Ordinance.
- (c) It shall be unlawful for the 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 location requirements or the concealment requirements of this Ordinance.
- (d) Subject to the provisions of subsection (e), the Village Code Administrator may order the removal of a junked motor vehicle found in violation of this Ordinance to a storage garage or area. No such vehicle shall be removed from private property without the written request of the owner, lessee, or occupant of the premises unless the Code Administrator finds in writing that the aesthetic benefits of removing the vehicle outweigh the 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 the area residents.

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

(1) One junked motor vehicle, in its entirety, may be located in the rear yard, as defined in the 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 Code Administrator 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 Zoning Ordinance.

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

(a) Except as set forth in Section 7 below, an abandoned, nuisance, or junked motor 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 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 to whom and 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 Village 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 Village on a specified date, no sooner than seven days after the notice is mailed or affixed, 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 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 Board of Adjustment in writing, heard at the next regularly scheduled meeting of the Board of Adjustment, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

Section 7. Exceptions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance, or junked motor vehicle may, as determined by the authorized 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 authorized 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 Village Council hereby determines that the 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.

(b) Other abandoned or nuisance vehicles. With respect to abandoned or nuisance vehicles left on Village-owned property other than the streets or highways, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the authorized 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 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 Village, be removed to a storage garage or area by a tow truck operator or towing business contracted to perform such services for the Village. Whenever such a vehicle is removed, the authorized Village official shall immediately notify the last known registered owner of the vehicle with 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 Village shall attempt to give notice to the vehicle owner by telephone; however, whether or not the owner is reached by telephone, written notice, indicating 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 authorized Village 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 the 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, 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 fees, 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 Village and in accordance with Article 1 of Chapter 44A of the North Carolina General Statutes.

Section 12. Conditions on removal of vehicles from private property.

As a general policy, the Village 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 Village from private property without a written request of the owner, occupant or lessee, except in those cases where the vehicle is a nuisance vehicle or is a junked motor vehicle which has been ordered removed by the Village Code Administrator. The Village may require any person requesting the removal of an abandoned, nuisance, or junked motor vehicle from private property to indemnify the Village 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 Ordinance shall apply to any vehicle: (1) which is located in a bona fide "automobile 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, or (4) which is in an appropriate storage place or depository maintained in a lawful place and manner by the Village.

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 Village, any vehicle which has been impounded pursuant to the provision of this Ordinance 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.

Nothing in this Ordinance, nor any of its provisions, shall be construed to impair or limit in any way the power of the Village to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise, nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. 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, as set forth in the General Penalties; Enforcement of Ordinances; Continuing Violations Ordinance of the Village of Wesley Chapel.”

PART TWO. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

PART THREE. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.

PART FOUR. The enactment of this ordinance shall in no way affect the running of any amortization provisions or enforcement actions, or otherwise cure any existing violations.

PART FIVE. This ordinance shall be in full force and effect from and after the date of its adoption.

Adopted this 9th day of March, 2015.

Brad Horvath, Mayor

ATTEST:

Approved as to form:

Cheryl Bennett, Village Clerk

George Sistrunk, Village Attorney