ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES, ENTITLED "JUNKED, WRECKED, STOLEN, ABANDONED PROPERTY" TO PROHIBIT ACCUMULATION AND STORAGE OF ABANDONED PROPERTY AND PROVIDING FOR THE REMOVAL OF ABANDONED PROPERTY BY THE CITY; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of North Miami ("City") is desirous of updating its codes and regulations to facilitate the enforcement thereof and enhance the health, safety, and welfare of the community; and

WHEREAS, the City Council finds and determines that the accumulation of junk, derelict, abandoned property as well as the storage or maintenance of junk within the City requires reasonable and effective controls to protect the public health and safety of the community; and

WHEREAS, the City Council finds that there is a need to address violations in a quick and expeditious manner while affording due process to property owners in order to serve the community; and

WHEREAS, after hearing input from the community at a public workshop on code enforcement held on January 22, 2014, the City Council desires to amend Chapter 10 of the City Code of Ordinances in its entirety to provide for abandoned property standards, violations, expeditious remedies and due process; and

WHEREAS, the Mayor and City Council of the City of North Miami have determined that the proposed amendments to Chapter 10 of the Code of Ordinances are in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

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Section 1. **Amendment to City Code.** Chapter 10 of the City Code of Ordinances entitled "Junked, Wrecked, Stolen, Abandoned Property" is amended to read as follows:

* * * * *

Chapter 10 - JUNKED, WRECKED, STOLEN, ABANDONED PROPERTY

ARTICLE I. IN GENERAL

Sec. 10-1. 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:

Abandoned property means:

(1) any article which lacks evidence of ownership.

(2) any article that has less than nominal salvage value.

(3) any article not in sufficient repair to perform its intended function.

(4) any article exhibiting physical damage incurred to the property in a collision or other incident that has not been repaired.

(5) any article which is derelict and has been left unprotected from the elements, as exhibited by growth of vegetation, direct exposure to the elements, or vandalism.

Abandoned vehicle means:

(1) any vehicle located on public property that does not have displayed thereon a valid unexpired license plate, decal or registration.

(2) any vehicle or part thereof that is left on public property continuously without being moved for a period of twenty-four (24) hours or more.

(3) any vehicle located on public property illegally or in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or other vehicular traffic on a public right-of-way, street or highway.

(4) any vehicle or part thereof that has remained on private property without the consent of the owner or person in control of such private property, for a continuous period of twenty-four (24) hours or more.

(5) any vehicle which is inoperable or cannot move under its own power due to defective or missing parts.

Derelict or junk property means inoperative, dilapidated, abandoned as further defined in this section or wrecked materials or parts thereof, including but not limited to automobiles, trucks, tractors, wagons, boats and other kinds of vehicles, scrap materials, scrap building material, scrap contractors' equipment, tanks, casks, containers, cans, barrels, boxes, drums, piping, bottles, glass, old iron, machinery, rags, paper, excelsior, hair, household appliances or furniture, tree clippings other than for immediate pickup, and any other kind of scrap or waste material.

Code Compliance Inspector means the designated employee of the code compliance division responsible for enforcement of the provisions of this chapter or the city code of ordinances.

Private property means all property that is not included in the definition of public property.

Public property means lands and improvements owned by the federal government, the state, the county or municipalities lying within the county and includes buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property.

Sec. 10-2. Provisions supplemental and cumulative.

The rights, powers and procedures set forth in this chapter shall be supplemental to and cumulative to the rights, powers and procedures set forth elsewhere in this Code, the general law and any amendment thereto.

Sec. 10-~~1~~3. ~~Seizure by police.~~ Authority of police to seize.

The police department is hereby authorized and directed to seize and reduce to the possession of the police department any lost, captured, abandoned, stolen or wrecked property which may be found upon any of the public streets and highways of the city and to store such property as provided herein.

Sec. 10-~~2~~4. Storage.

The city shall keep and maintain adequate storage such as safes, storage rooms, a storage garage or warehouse where the property seized under the provisions of this article shall be stored and kept for a period of at least forty-five (45) days from the date of such seizure.

Sec. 10-~~3~~5. Notice to owner; redemption.

During the period of forty-five (45) days provided in section 10-~~2~~4 ~~hereof~~, the police department shall make every effort to notify the owner of any such property that the ~~same~~ property is being retained under the provisions of this article, and shall throughout such period of forty-five (45) days permit the owner to regain possession thereof upon proof of ownership and upon payment of the storage charges and costs connected with the seizure and storage of such property.

Sec. 10-~~4~~6. Lien for storage and keeping.

The costs and charges for storage and keeping of all property seized pursuant to this article shall constitute a lien in favor of the city against such property.

Sec. 10-~~5~~7. Sale of unclaimed property.

After the expiration of the period of forty-five (45) days provided in section 10-~~2~~4, the chief of police shall publish in a newspaper of general circulation a description of vehicles and other unclaimed property, together with the date of seizure or taking possession thereof, and shall give notice that ~~sell~~ any ~~such~~ property not claimed or reduced to possession by the owner thereof,

within thirty (30) days from date of publication shall be sold at a public sale, ~~after advertising in a newspaper of general circulation in the city at least one (1) time ten (10) days prior to such sale. Such publication may be made before the termination of such forty-five day period, for a sale thereafter~~ at such place and in such manner prescribed by the chief of police.

Sec. 10-~~6~~8. Disposition of proceeds of sale.

~~(a) Out of the proceeds of the sale of any such property, costs and storage shall be first paid and any balance remaining shall be retained by the city in a special fund in the possession of the city for a period of six (6) months, in order to enable the owner of the property to prove ownership of any property so sold. When such ownership is proved, such surplus funds shall be paid to the owner.~~

~~(b) After the expiration of six (6) months, as provided in this section, any sums arising from the sale of property in accordance with the provisions of this article which are unclaimed by the owner shall be transferred to the general fund of the city.~~

The proceeds of any sale of unclaimed property so made after deducting the costs of storage, advertising, and other expenses incident to the selling of unclaimed property, shall be turned over to the general fund of the city.

ARTICLE II. DERELICT OR JUNK PROPERTY

~~**Sec. 10-16. Definitions.**~~

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

~~*Abandoned property* means any article of personalty which lacks evidence of ownership and which may also exhibit one (1) or more of the characteristics in section 10-18.~~

~~*Derelict or junk property* means inoperative, dilapidated, abandoned as further defined in this section or wrecked materials or parts thereof, including but not limited to automobiles, trucks, tractors, wagons, boats and other kinds of vehicles, scrap materials, scrap building material, scrap contractors' equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, old iron, machinery, rags, paper, excelsior, hair, household appliances or furniture, tree clippings other than for immediate pickup, and any other kind of scrap or waste material.~~

~~*Enforcement officer* means a police officer or any other officer or representative of the city designated by law, charter, ordinance or resolution of the city council to enforce the provisions of this article.~~

~~*Private property* means all land and improvements not owned by one (1) of the jurisdictions identified above, and lying within city limits.~~

~~*Public property* means lands and improvements owned by the federal government, the state, the county or municipalities lying within the county and includes buildings, grounds, parks, playgrounds, streets, sidewalks, parkways, rights-of-way and other similar property.~~

~~**Sec. 10-17. Provisions supplemental and cumulative.**~~

~~The rights, powers and procedures set forth in this article shall be supplemental to and cumulative to the rights, powers and procedures set forth elsewhere in this Code and the general law and any amendment thereto.~~

~~**Sec. 10-18. Characteristics of junk and derelict property.**~~

~~When originating a code violation report or responding to a complaint relative to junk or derelict property, the code enforcement officer shall refer to the following characteristics to make a determination that a violation exists:~~

~~(1) The article has less than nominal salvage value;~~

~~(2) The article is not in sufficient repair to perform its intended function.~~

~~(3) The article is a motor vehicle on public property and a current license tag, decal or registration is absent or expired;~~

~~(4) The article exhibits physical damage incurred to the property in a collision or other incident that has not been repaired;~~

~~(5) The article is derelict and has been left unprotected from the elements, as exhibited by growth of vegetation about the personalty, direct exposure to the elements, the positioning of the personalty in other than an upright or operable manner, or vandalism; or~~

~~(6) The length of time the personalty has remained in its present location. A vehicle may be considered abandoned if parked or stored on the public right-of-way for a period exceeding forty-eight (48) hours, other than in a designated parking area.~~

Sec. 10-~~1~~9. Storage prohibited; exceptions.

(a) *Prohibited storage.* No person shall keep, store~~,~~ or allow to remain on any residential property ~~zoned residential~~ within the city any abandoned, derelict or junk property~~. No person shall keep, store, or allow to remain on any property zoned residential or commercial within the city any derelict or junk property, which is visible, at ground level, from a street or other public or private property~~, except as allowed in subsection (b) or (c) of this section. Abandoned, derelict or ~~J~~junk property which would be visible at ground level from a street, ~~or other~~ public or private property, or waterway, but for the concealment of such junk property by the use of plastics, fabrics or other materials to form a tent, curtain, partition or similar makeshift structure or device, shall be subject to the same restriction that is applicable to junk property which is so visible; provided, however, that nothing in this section shall prohibit the use upon motor vehicles of commonly used car covers which are maintained in good repair.

(b) *Residential property exceptions.* This section shall not apply to vehicles which are classified as antiques; provided, however, that any antique car on private property not having a current valid license plate shall be either in a garage or carport or covered with a form-fitting car cover with clips or drawstrings.

(~~b~~c) *Commercial property exceptions*. A commercially zoned establishment may keep visible, at ground level, from a street or other private or public property, for a period not to exceed thirty (30) days, one (1) piece of machinery, one (1) vehicle, or one (1) boat while being repaired, painted, or otherwise put into operative condition by the owner or occupant of the premises.

~~(c) Except as provided in subsection (d) of this on, a residential property owner or renter repair or otherwise put into operative condition one (1) automobile for a period not to exceed thirty (30) calendar days, if all the following conditions and requirements are met:~~

~~(1) He can show proof of ownership for the automobile being repaired.~~

~~(2) The repair of the automobile does not generate excessive noise or hazardous fumes, gases, or odors.~~

~~(3) The repair activity takes place only between the hours of 8:00 a.m. and 10:00 p.m., on Monday through Friday, and 9:00 a.m. to 10:00 p.m. on Saturday and Sunday.~~

~~(4) While under repair the automobile shall not be parked in the front yard unless the side yard and the rear yard are not accessible. Except when being then and there used in repair work being done on the vehicle, vehicle parts and tools used thereon for the repair of vehicles shall be properly stored and concealed from view from a street or other public or private property. The doors, trunks, and hoods of vehicles under repair shall be kept closed when not then and there undergoing active repair thereon. Access to any vehicle under repair shall be controlled so as to prevent injury to other persons.~~

~~(5) The period of thirty (30) calendar days shall not be exceeded in any one-year period of time and shall consist of the total number of days or parts thereof for which any vehicle is in an inoperative condition at the premises. No more than two (2) of the property owner or renter's vehicles shall be authorized to accrue up to thirty (30) days of inoperative status for each vehicle in any one-year period; provided, however, that if any one (1) vehicle exceeds the thirty-day limit, no other vehicle shall be authorized to be kept in an inoperable condition under this section. This provision shall be construed so as to facilitate enforcement against repeat offenses under chapter 2, article III, division 5 pertaining to special magistrates.~~

~~(6) The work undertaken at the premises to repair or otherwise put the vehicle into operative condition shall be of a minor nature only and major repairs shall not be authorized by this section at the premises. The term "major repair" includes but is not limited to any work by which the vehicle engine or transmission is removed or lifted from the vehicle for repair at a location at the premises which is visible from a street or other public or private property, and body work consisting of painting or refinishing more than ten (10) percent of the surface area of the vehicle, and any other similarly extensive work, but does not include change of tires, replacement of batteries, change of oil, replacement of brakes, engine tune-up or other similarly non-extensive work.~~

~~(7) No commercial activity concerning the repair of automobiles shall be conducted at the premises.~~

~~(8) The vehicle owner files an affidavit with the community planning and development director, in a form approved by the city attorney, certifying that while inoperable such vehicle shall be kept on the premises for a period of time not to exceed the thirty-day time limit provided by subsection (c) of this section, and that the purpose of keeping the~~

~~vehicle on the premises during such time period shall be solely to enable the vehicle to be repaired and placed into operable condition during such time period.~~

(d) ~~Notwithstanding any other provision of this section, in lieu of the thirty-day period provided above in subsection (c) of this section, a period of only ten (10) days shall be allowed in the R-1, residential estate district.~~

Minor repair of automobiles in residential districts. Major automobile repair is not permitted in residential districts. However, in residential zoning districts, a property owner or tenant may repair or otherwise put into operative condition an automobile on his/her property, only if all of the following requirements are met:

(1) The property owner or tenant of the relevant property owns the automobile being repaired; and

(2) The repair activity takes place only during daylight hours; and

(3) While under repair the automobile shall not be parked in front of the principal building on the property unless the side yard and/or rear yard are not accessible; and

(4) The work shall be limited to minor repairs only. The term "minor repair" includes any work which is completed within twenty-four (24) hours including but not limited to, change of tires and replacement of batteries, ~~change of oil, and replacement of brakes~~. Any other work including work wherein the vehicle engine or transmission is removed or lifted from the vehicle for repair or replacement, where the vehicle is placed on blocks with the tires removed or involves the use of heavy equipment is prohibited.

(5) No commercial activity concerning the repair of automobiles shall be conducted on residential property.

Sec. 10-~~20~~10. Storage of junk and derelict articles in M-1, industrial districts.

For the protection of the public's health, safety and welfare, storage of junk and derelict articles in the M-1, industrial districts shall be permitted, only as long as such articles are in an enclosed structure, as a fenced-in area, or in an area not readily accessible to the general public.

Sec. 10-~~21~~11. Removal from ~~public~~ property.

(a) Whenever the ~~enforcement officer of the city~~ code compliance inspector ascertains that ~~an article of~~ derelict, junk, or abandoned property is present on public or private property within the city limits which does not fall under the exceptions outlined in section 10-~~1~~9, the officer shall cause a notice to be placed upon such article in the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) is unlawfully upon property known as (setting forth brief description of location) in violation of (setting ordinance violation), and must be removed within ten (10) days from the date of this notice. A request for a hearing before the special magistrate by the owner or any person interested in the attached must be made in writing to: (setting forth address for hearing requests) before the expiration of the (10) ten-day period, otherwise such property shall be presumed to be derelict, junk, or abandoned property and will be removed and destroyed by order of the

city. Dated this: (setting forth the date of posting of notice). Signed: (setting forth name, title, address, and telephone number of the ~~enforcement officer~~ code compliance inspector).

Such notice shall not be less than eight (8) inches by ten (10) inches and shall be sufficiently weatherproof to withstand normal exposure to the elements. In addition to posting, the ~~enforcement officer~~ code compliance inspector shall make a reasonable effort to ascertain the name and address of the owner of the real property upon which the derelict, junk, or abandoned property is located, and if such is reasonably available to the ~~enforcement officer~~ code compliance inspector, shall mail a copy of such notice to the owner on or before the date of posting by certified or registered mail with a five-day return receipt requested. If the notice is returned undelivered by the United States Post Office, official action to abate such violation shall be continued to a date not less than ten (10) days from the date of such return.

(b) A public hearing prior to the removal of the derelict, junk, or abandoned property is to be held before the special magistrate when such a hearing is requested by the owner of such property or other interested party within ten (10) days after service of notice to abate the violation. Any decision by the special magistrate requiring the removal of derelict, junk, or abandoned property from public land shall include a description of such property. In the case of a derelict vehicle, the order shall include correct identification and license number, if available at the site.

(c) If a hearing is not requested, and if at the end of ten (10) days after posting such notice the owner or any person interested in the article described in such notice has not removed the article from public property or shown reasonable cause for failure to do so, the ~~enforcement officer~~ code compliance inspector may cause the article to be removed and destroyed, and the salvage value, if any of same shall be retained by the city government to be applied against the cost of removal and destruction thereof.

(d) The state department of motor vehicles shall be notified of vehicle removal from public property pursuant to the terms of this section.

(e) In addition, the City Attorney may apply for a court order for the removal of derelict, junk or abandoned property from private property.

~~**Sec. 10-22. Removal from private property.**~~

~~(a) Whenever the enforcement officer of the city shall ascertain that an article of derelict, junk, or abandoned property is present on private property within the city limits and same does not fall under the exceptions outlined in section 10-19, he shall mail a notice by certified mail with a five-day return receipt requested to the owner of the real property as shown by the real estate tax records used by the local government upon which the derelict, junk, or abandoned property is located, requesting the removal of such property within ten (10) days of receipt of the notice and advising the owner that he may request a hearing before the special magistrate before expiration of the ten-day period. The notice shall also state failure to remove the derelict, junk, or abandoned property or to request a hearing before the special magistrate may result in the issuance of summons to appear before such board. If the notice is returned undelivered by the United States Post Office, official action to abate the violation shall be continued to a date not less than ten (10) days from the date of such return.~~

~~(b) In addition to the mailing of a notice to the property owner in question, as described in subsection (a) of this section, the enforcement officer may cause a notice to be placed upon the derelict, junk, or abandoned property in the following form:~~

~~NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. This property, to wit: (setting forth brief description) located at (setting forth brief description of location) is improperly stored and is in violation of (setting forth ordinance or regulation violated) and must be removed within ten (10) days from date of this notice. A request for a hearing by the owner of the real property upon which the derelict, junk, or abandoned property is located must be made before expiration of the ten-day period; otherwise it shall be presumed to be derelict, junk, or abandoned property, in which case a summons shall be issued to the property owner requesting his appearance before the special magistrate. Dated this: (setting forth day of posting of notice) Signed: (setting forth name, title, address and telephone number of enforcement officer).~~

~~Such notice shall not be less than eight (8) inches by ten (10) inches and shall be sufficiently weatherproof to withstand normal exposure to the elements.~~

~~(c) A public hearing prior to the removal of the derelict, junk, or abandoned property is to be held before the special magistrate when such a hearing is requested by the owner of the property, within ten (10) days after service of notice to abate the violation. Any order by the special magistrate requiring the removal of derelict, junk, or abandoned property from private land shall include a description of the property. In the case of a derelict vehicle, the order shall include correct identification and license number, if available at the site.~~

~~(d) If a hearing is not requested by the property owner within the prescribed ten (10) days and the derelict, junk, or abandoned property has not been removed, the enforcement officer may issue a summons requesting the property owner to appear before the special magistrate. Any order by the special magistrate requiring the removal of derelict, junk, or abandoned property from private land by the property owner, or the city, or its agents shall include a description of the property. In the case of a derelict vehicle, the order shall include correct identification and license number, if available at the site. Thereafter the enforcement officer may cause the article to be removed and destroyed, and the salvage value, if any, of the article shall be retained by the city government to be applied against the cost of removal and destruction thereof.~~

~~(e) The state department of motor vehicles shall be notified of vehicles removed from private property pursuant to the terms of this section.~~

Sec. 10-~~23~~12. Immunity of ~~enforcement officer~~ code compliance inspector from prosecution.

Any ~~enforcement officer~~ code compliance inspector, or any person authorized by the code compliance inspector, shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of the duties imposed by this article.

Sec. 10-~~24~~13. Penalties for obstruction.

It shall be unlawful for any person to oppose, obstruct or resist any ~~enforcement officer~~ code compliance inspector, or any person authorized by the ~~enforcement officer~~ code compliance inspector, in the discharge of his duties as provided in this article.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are repealed.

Section 3. **Conflict.** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are repealed.

Section 4. **Severability.** If any word, clause, phrase, sentence, paragraph or Section of this Ordinance is held to be invalid by a court of competent jurisdiction, such declaration of invalidity shall not affect any other word, clause, phrase, sentence, paragraph or Section of this Ordinance.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 4-1 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 11 day of March, 2014.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this _____ day of _____, 2014.

LUCIE M. TONDREAU
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.