

AN ORDINANCE PROVIDING FOR THE REMOVAL AND DISPOSITION OF
ABANDONED, NUISANCE AND JUNKED MOTOR VEHICLES

WHEREAS, the Board of Councilmen of the Town of Creswell is authorized by 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 Board of Councilmen of the Town of Creswell 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 liveability 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 presents 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 ORDAINED by the Creswell Town Council of the Town of Creswell, North Carolina:

Section 1. Administration;

The Town Clerk and /or her designee of the Town shall be responsible for the administration and enforcement of this chapter. The Sheriffs 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 Clerk and/or her designee 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 sheriffs Department and Fire Department in enforcing other laws or in otherwise carrying out their duties.

Section 2. Definitions:

For purposes 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 a-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 of 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 Sheriffs department or the Town Clerk and/or her designee, 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 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 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 its falling or turn-
in 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 Creswell Town Council.

Section 3. Abandoned vehicle unlawful; removal authorized.

- (a) It shall be unlawful for the registered owner or person entitled to posses-
sion 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 posses-
sion 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 Clerk and/or her designee 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 pos-
session 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 Or-
dered removed.
- (b) 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 of the concealment requirements of this section.
- (d) Subject to the provisions of subsection (e), Upon investigation, the Town
Clerk and/or her designee may order the removal of a junked motor vehicle
as defined in this chapter after finding in writing that the aesthetic bene-
fits 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 fol-
lowing 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, can be located in the rear yard as defined by the Town's zoning ordinance if the junked motor vehicle is entirely concealed from public view from a public street and from abutting premises by an acceptable covering.

The Town Clerk and/or his designee 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. The covering or enclosure must be compatible with the objectives stated in the preamble of this ordinance.

- (2) More than one junked motor vehicle. Any other junked motor vehicle(s) must be kept in a garage or building structure that provides a complete enclosure so that the junked motor vehicle(s) cannot be seen from a public street or abutting property. A garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations.

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 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 addresses 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 Town 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 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 the vehicle outweigh the burdens, such appeal shall be made to the Creswell

Town Council in writing, heard at the next regularly scheduled meeting of the Creswell Town Council, and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.

Section 7. Excetions to prior notice requirement.

The requirement that notice be given prior to the removal of an abandoned, nuisance ofr junked motor vehicle may, as determined by 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 includes:

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

- (1) Obstructing traffic.
- (2) Parked in violation of and 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 in clude 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, be removed to a storage or area by the tow truck operator or towing business contracting to perform such services for the Town. Whenever such a vehicle be removed, the authorizing Town official shall immediately notify the las known registered owner of the vehicle, such notice to include the following:

- (1) The desription of the removed vehicle.
- (2) The location where the vehicle is stored.
- (3) The violation with which the owneer 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 twentyfour 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 vehicle is removed, such vehicle has no valid registration or registration plates, the authorizing town 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 other person entitled to possession is intitled 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.

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 Town and in accordance with Article 1 of Chapter 44A of the North Carolina Statutes.

Section 11. 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 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 Town and in accordance with Article 1 of Chapter 44A of the North Carolina Statutes. (*See not 2 below).

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 stat 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 Clerk. 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 will 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 if the vehicle is necessary to the operation of the enterprise; or (4) which is in 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 Town 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.

DULY ADOPTED THIS 8 DAY OF Sept., 19⁹⁷

Rona Patriak, Clerk

Clerk

Reynold D. Phelps

Mayor