

ORDINANCE NO. 112 A

AN ORDINANCE of the Board of Mason County Commissioners establishing procedures for the abatement and removal as public nuisances of abandoned vehicles or automobile hulks or parts thereof from private property not including highways.

BE IT RESOLVED AND/OR ORDAINED by the Board of County Commissioners of Mason County, Washington;

SECTION 1. PREAMBLE

The Board of Mason County Commissioners finds and declares that it is necessary for the protection and welfare of the general public in regard to automobile hulks and abandoned vehicles that certain rules and regulations be established.

SECTION 2. BASIC CLAUSE

The Sheriff of Mason County is hereby authorized to declare a public nuisance any abandoned vehicle or any automobile hulk or parts therefrom on private property, without the incorporated limits of cities and towns, not including highways. Subject to a contrary determination at a public hearing, such vehicle or hulk shall be removed and impounded at the direction of the Sheriff. Removal shall be executed by a tow truck operator that qualified pursuant to Section 7 herein.

This ordinance shall not apply to: (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner or where it is not otherwise visible from the street or other public or private property; or (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler

or vehicle dealer, fenced according to the provisions of R.C.W. 46.80.130.

For the purposes of this ordinance, a vehicle is deemed to be "abandoned" if it has been left upon the property of a person other than the registered or legal owner of said vehicle without the consent of the owner of such property for a period of twenty-four hours (24) or longer, except that a vehicle shall not be considered abandoned if its owner or operator is unable to remove it from the place where it is located and so notifies law enforcement officials and requests assistance. An automobile hulk for the purposes of this ordinance shall mean the remnant or remains of an automobile, truck, or other motor vehicle which is wrecked, dismantled or inoperative and cannot be made mechanically operative without the addition of vital parts or mechanisms and the application of a substantial amount of labor to effect repairs, whether or not the owner of the hulk is one and the same person as the owner of the land upon which it is located.

SECTION 3. NOTICE REQUIREMENTS

Within two calendar days of the Sheriff's declaration that an abandoned vehicle or automobile hulk is a nuisance, the Sheriff shall select a tow truck operator, pursuant to Section 7 of this ordinance. Within three days thereafter, said tow truck operator shall send by certified mail return receipt requested within five days, notice of intent to remove and a notice of right to a public hearing to the last registered owner where such person's identity can be established through a title search, and to the owner of record of the location of the abandoned vehicle or

automobile hulk. These notices shall be sent to the last known addresses of said persons.

Minimum compliance with this requirement shall include a written statement that: (1) an abandoned vehicle or automobile hulk is on land belonging to the recipient of the notice, giving the address or legal description thereof; or was last registered to the recipient; such vehicle or hulk has been declared a public nuisance and the County intends to remove said vehicle or hulk; (2) the recipient has a right to have a public hearing before the Mason Board of County Commissioners; (3) this hearing is not automatic but rather must be requested at the Office of the Mason County Commissioners in the County Courthouse; (4) if no hearing request is received by the Commissioners' Office either by letter or in person, within fifteen days from the mailing date of the notice of right thereto, the vehicle shall be removed and the costs of removal charged to the person so notified.

If a hearing request is communicated to the Office of the Board of County Commissioners, that Office shall set a hearing date and then send notification as to the time, date, and location of such hearing on the question of abatement and removal of the vehicle or part thereof as a public nuisance. Such notice shall be mailed by certified or registered mail, with a five day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered owner of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership.

FORM OF NOTICE OF INTENT TO ABATE NUISANCE:

"NOTICE TO ABATE NUISANCE"

(Date of Mailing)

County of Mason

vs.

Name of Last Registered Owner

Address

and

Name of Landowner

Address

NOTICE IS HEREBY GIVEN that the keeping or storing of the abandoned vehicle or automobile hulk described as follows:
(Description of Vehicle)

at

(Location of Vehicle)

constitutes a nuisance in violation of the ordinances of Mason County, and said County intends to remove and abate said nuisance.

A public hearing may be had on the issues of impoundment and liability therefor. Recipients of this notice have, as a matter of right, fifteen days from the above mailing date to request a public hearing before the County Commissioners; this hearing is not automatic and if no request is received by the Commissioners' Office either by letter or in person, the vehicle will be removed, liability for costs of impoundment will be assessed against one or both of the above-named individuals.

Name of Tow Truck Operator
for
Mason County Sheriff

SECTION 4. REMOVAL OF VEHICLE OR HULK

If fifteen days have elapsed since the designated tow truck operator has duly sent the notice required in Section 3 of this ordinance, and no hearing has been requested; or if a requested hearing has been held and the Sheriff's determination of nuisance has been affirmed, such tow truck operator shall take possession of such abandoned vehicle or automobile hulk, and remove the same to the established place or business of the truck operator where the same shall be stored. All persons acting under color of this ordinance in effecting said impoundment shall incur no liability for trespass in abatement of said nuisance. Any vehicle or hulk so impounded and left unclaimed for a period of fifteen days shall be deemed to be in the legal custody of the Sheriff of Mason County and the said Sheriff shall effect a constructive delivery of legal custody to the tow truck operator. Within five days after receiving legal custody of such abandoned vehicle or hulk, the tow truck operator shall give notice to the Department of Motor Vehicles and the Washington State Patrol that the vehicle has been wrecked or sold at public sale.

SECTION 5. LIABILITY FOR COST OF REMOVAL

(a) Primary Liability

The abandonment of any vehicle or automobile hulk shall constitute a prima facie presumption that the last owner of record is responsible for such abandonment and thus liable for any costs incurred in removing, storing and disposing of such motor vehicle or automobile hulk. A registered owner who has

complied with the requirements of R.C.W. 46.52.104 as it now exists or may hereafter be amended shall be relieved of liability under this section. The impounding tow truck operator shall have a lien upon such vehicle or hulk for services provided in the towing and storage of the same, and shall also have a claim against the last registered owner of such vehicle or hulk for services provided in the towing and storage of the same, not to exceed the sum of One Hundred Dollars (\$100.00).

(b) Secondary Liability

If the identity of the last registered owner of the vehicle or automobile hulk cannot be determined, the cost of removal shall be assessed against the owner of the land on which the vehicle is located prior to removal. Such liability for cost of removal shall be limited to not more than One Hundred Dollars (\$100.00) per vehicle.

SECTION 6. DEFENSES AVAILABLE

(a) The record owner of the land on which the vehicle is located prior to removal may appear in person at the hearing or present a written statement in time for consideration at the hearing and deny responsibility for the presence of the vehicle on the land, with his reasons for such denial. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, then costs of administration or removal of the vehicle shall not be assessed against the property upon which the vehicle is located; and the County shall not otherwise attempt to collect such cost from the owner.

(b) The last registered owner of the vehicle shall be excused from liability for costs of removal whenever the State Motor Vehicle Department certifies that said registered owner has transferred the car and executed a document in compliance with R.C.W. 46.52.104 as it now exists or may hereafter be amended.

(c) Upon the occasion of a requested hearing, the petitioner may assert that a vehicle or hulk otherwise within the category of the contemplated vehicles or hulks should not be abated as a nuisance because of his peculiar circumstances. Petitioner may further assert that under these circumstances, stated with particularity, there can be no reasonable basis for removing the vehicle or hulk because its manifest usefulness to petitioner outweighs the community benefit of concealment.

In such cases the Board of County Commissioners shall promote the ends sought by the ordinance, without destroying the usefulness of the vehicle or hulk, by inquiring into the particular facts, including the locations of the vehicle or hulk and outbuildings in relation to the adjacent public way. The Commissioners shall then decide whether means exist to effect concealment from public view without removal.

Even if it is determined that concealment is not practicable, the Board of County Commissioners shall prevent removal in appropriate cases. The determination of appropriateness shall depend upon such factors as: The extent to which removal will cause material loss and prevent use of the hulk or vehicle for the purpose for which it has been adapted; the continued use of the vehicle or hulk as a parts' reservoir and the degree of actual dependency of the continued functioning of petitioner's transportation or business upon said parts' reservoir; the educative value, if any, provided by the vehicle or hulk.

The burden of proof of such mitigating circumstances shall be upon the petitioner to demonstrate that abatement would be confiscatory or otherwise unreasonable.

SECTION 7. QUALIFICATION OF TOW TRUCK OPERATORS

The ^{Mason} ~~Clallam~~ County Sheriff may appoint any tow truck operator engaged in removing and storing motor vehicles within Mason County as his agent for the purpose of disposing of abandoned vehicles and automobile hulks. Each Such appointment shall be contingent upon the submission of an application to the Sheriff and the making of subsequent reports in such form and frequency as may be required by said Mason County Sheriff, and upon the posting of a surety bond in the amount of Three Thousand Dollars (\$3,000.00) to compensate the owner of any vehicle that has been unlawfully sold as a result of any negligence or misconduct of the tow truck operator.

Any appointment may be cancelled by the Sheriff upon evidence that the appointed tow truck operator is not complying with all laws, rules and regulations relative to the handling and disposition of abandoned vehicles and automobile hulks. Where more than one tow truck operator qualifies under this section the Sheriff shall distribute the impoundments discovered by his agency as nearly upon a rotation schedule as is practicable. Where the discovery of the necessity for impoundment of a particular vehicle or hulk originates with an appointed tow truck operator the fact of that impoundment shall not be considered in the rotation schedule.

SECTION 8. DISPOSITION OF ABANDONED VEHICLES & AUTOMOBILE HULKS

If, after the expiration of thirty (30) days from the mailing of the first notice to the registered owner and land-owner, the vehicle or automobile hulk remains unclaimed and has not been listed as a stolen or recovered vehicle, then the tow truck operator having custody of such vehicle or hulk shall conduct a sale of the same at public auction after having first published a notice of the date, place and time of such auction in a newspaper of general circulation in Mason County not less than three (3) days before the date of such auction. The notice of sale to the registered owner of the vehicle shall be sent by the tow truck operator to the last known address of said owner appearing on the records of the Department of Motor Vehicles, and such notice shall be sent to the registered owner by first class mail with return receipt requested. Such notice shall contain a description of the vehicle or hulk including its license number and/or motor number if obtainable, and shall state the amount due the tow truck operator for services in the towing and storage of the same and the time and place of public sale, if the amount remains unpaid: PROVIDED, that if the vehicle is of a model year ten (10) or more years prior to the calendar year in which such vehicle is stored, the vehicle or hulk may be disposed of without notice of sale, and in such case, the tow truck operator shall secure an appropriate bill of sale from the Director of Motor Vehicles. Thereafter, the tow truck operator may dispose of the vehicle as he may determine.

The proceeds of disposition and sale of the vehicle or hulk, regardless of its age, shall first be applied in satisfaction of the tow truck operator's lien. The tow truck operator shall have a lien not to exceed One Hundred Dollars (\$100.00) upon such vehicle or hulk for services provided in the towing and storage of the same; and shall have a claim against the last registered owner for such costs. Should the identification number be so obliterated as to prevent a title search, or if for any other reason the last registered owner is not identifiable, the claim for reimbursement shall extend to the owner of record of the real estate upon which the car was found. These claims are subject to the defenses set out in Section 6 of this ordinance, and in no event shall exceed One Hundred Dollars (\$100.00). If neither claim for personal liability is voluntarily paid the tow truck operator shall satisfy his lien out of the proceeds of the sale of said abandoned vehicle or automobile hulk.

The abandoned vehicle or automobile hulk shall be sold at public auction to the highest bidder. The proceeds of such sale, after deducting the towing and storage charges due the tow truck operator, including the cost of sale, which shall be computed as in a public auction sale of personal property by the Sheriff, shall be by certified check one-half to the County Treasurer of Mason County and credited to the County Current Expense Fund and one-half to the State Treasurer to be credited to the Highway Safety Fund. If the amount bid at the auction is insufficient to compensate the tow truck operator for his towing and storage charges and the cost of sale, such tow truck operator shall be entitled to assert a claim for any deficiency, not to exceed One Hundred Dollars (\$100.00) less the amount bid at the auction,

against the last registered owner of such vehicle or automobile hulk or the landowner, as provided in Section 5 above. A registered owner who has complied with R.C.W. 46.52.104 as it now exists or may hereafter be amended in the transfer of ownership of the vehicle or hulk shall be relieved of liability under this section.

SECTION 9. SEVERABILITY

If any provision of this ordinance on its fact, or its application to any person or circumstances, is held invalid, the remainder of this ordinance, or the application of the provision to other persons or circumstances is not affected.

SECTION 10. This ordinance shall take effect midnight the 31st day of August, 1970.

ADOPTED this 31st day of August, 1970.

BOARD OF MASON COUNTY COMMISSIONERS:

(Absent on vacation)
Chairman

William C. Hunter

John Parickman

ATTEST:

Ruth E. Boyser
Mason County Auditor and Ex-Officio Clerk of the Board of County Commissioners

PREPARED AND PRESENTED BY:

John C. Ragan
JOHN C. RAGAN, Mason County Prosecuting Attorney

Introduced: _____

Passed: _____

Published: _____