

ORDINANCE NO. 2017-3

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 2015-3, AND REGULATING ABANDONED VEHICLES AND OTHER PERSONAL PROPERTY, THE ACCUMULATION OF JUNK, JUNK AUTOMOBILES, TRASH, RUBBISH, BUILDING MATERIALS, NOXIOUS WEEDS/GRASS, NUISANCES, ABATEMENT OF SAME, AND PROVIDING A PENALTY FOR VIOLATION THEREOF.

BE IT ORDAINED, by the City Council of the City of Cooperstown, North Dakota, as follows:

SECTION 1: REPEAL AND ENACTMENT:

Ordinance 2015-3 of the City of Cooperstown, North Dakota is hereby repealed, replaced and re-enacted to read as follows:

SECTION 2: DEFINITIONS:

The following words or terms when used herein shall be deemed to have the meanings set forth below:

- A. The term "junk" shall include, without limitation, parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or any other castoff material of any kind, whether or not the same could be put to any reasonable use.
- B. The term "junk automobiles" shall include, without limitation, any motor vehicle which is not licensed for use upon the highways of the State of North Dakota for a period in excess of sixty days (60) and shall also include whether licensed or not any motor vehicle which is inoperative for any reason for a period in excess of sixty (60 days) provided that there is excepted from this definition unlicensed, but operative, vehicles which are kept as the stock in trade of a regularly licensed and established new or used automobile dealer.
- C. The term "abandoned motor vehicle" means a motor vehicle, as defined in Section 39-01-01 of the North Dakota Century Code, that has remained for a period of more than forty-eight (48) hours on public property illegally or lacking vital component parts or has remained for a period more than forty-eight (48) hours on private property without consent of the person in control of such property or in an inoperable condition such that it has no substantial potential further use

consistent with its useful functions unless it is kept in an enclosed garage or storage building.

- D. The term "abandoned personal property" shall be any personal property, which has been located on a street, alley, other public way, or parking lot of the City or which has been removed from such a location to a public parking lot, City storage or City building by proper authorities to prevent a nuisance, to safeguard the property or to avoid obstruction of the public ways.
- E. The term "building materials" shall include, without limitation, lumber, bricks, concrete, or cinder blocks, plumbing materials, electric wiring, or equipment, heating ducts or equipment, shingles, mortar, concrete, or cement, nails, screws, pipes, scrap metal, or any other materials used in any kind of construction.
- F. The term "inoperative" shall mean a condition of being junked, wrecked, wholly or partially, dismantled, discarded, abandoned, or unable to perform the functions or purposes for which a vehicle was originally constructed.
- G. The term "noxious weeds and/or grass" shall mean and include all weeds of the kind known as Canada Thistle, sow thistle, quack grass, leafy spurge (*Euphorbia esula* or *Ruphrobia virgata*), field bindweed, Russian knapweed, (*Centaurea picris*), hoary cress (*Lapidium draba*, *Lepidium roebs* and *Humenophysa pubescens*), dodder, any similar unwanted vegetation, and/or unkept lawn/grass over eight inches in height.
- H. The term "person" shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or un-incorporated whether acting by themselves or by a servant, agent or employee. All persons who violate any of the provisions of this ordinance, whether as owner, occupant, lessee agent, servant, or employee shall, except as herein otherwise provided, be equally liable as principals.
- I. The terms "trash" and "rubbish" shall include any and all forms of debris not herein otherwise classified.
- J. The words "in the conduct of a business" shall mean that the owner or occupant accumulating or storing used cans, garbage, refuse, scrap, old used cars and parts or used

building materials, is licensed by the City, county, or state to carry on such business, or has a use or sales tax permit issued by the state for such business.

- K. A nuisance is one which affects one or more individuals in the enjoyment of some right not common to the public or which at the same time affects an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

SECTION 3: STORAGE OF TRASH, RUBBISH, GARBAGE, REFUSE, JUNK, JUNK AUTOMOBILES, ABANDONED VEHICLES, SCRAP, SCRAP IRON AND BUILDING MATERIALS:

The storage or accumulation of trash, rubbish, garbage, refuse, junk, junk automobiles or parts thereof, abandoned vehicles, scrap, scrap iron, and building materials or parts thereof, upon, in or upon any private property within the City of Cooperstown tends to result in blighted and deteriorated neighborhoods, the increase in criminal activity, the spread of vermin and disease, and is contrary to the public peace, health, safety and general welfare of the community and therefore constitutes a nuisance.

SECTION 4. UNLAWFUL TO STORE OR ACCUMULATE TRASH, RUBBISH, GARBAGE, REFUSE, SCRAP, SCRAP IRON, JUNK, JUNK AUTOMOBILES, AND ABANDONED VEHICLES:

- A. It shall be unlawful and is hereby declared a nuisance for any person to store, or permit the storage or accumulation of trash, rubbish, garbage, refuse, scrap, scrap iron, junk, junk automobiles or parts thereof, abandoned vehicles, or building materials when not in the conduct of a business, on any private property in the City of Cooperstown except within a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods or junk gatherer. However, any junk dealer, junk buyer, dealer in used parts or dealer in second hand goods or junk gatherer shall store said items in an area which shall be enclosed in a building or located behind a site fence approved by the City and shall be stored in a manner so as not to create an unsightly mess, deterioration of the neighborhood, increased criminal activities, spread of vermin and disease or in any way create a situation contrary to the public peace, health, safety, or general welfare of the community.

- B. Excluded as nuisances are vehicles which are covered by a secured automobile cover, specifically designed to cover the individual vehicles in question, when the vehicles are not being used or worked on. Said vehicles shall be located in such an area on the vehicle owner's property and in a manner so as not to create an unsightly mess, deterioration of the neighborhood, increased criminal activities, spread of vermin and disease, or in any other way create a situation contrary to the public peace, health, safety, or general welfare of the community. Where practicable storage should be out of sight or as near out of sight as possible from a public street or neighbor's yard.
- C. Further excluded as nuisances are antique vehicles, special interest vehicles, or parts of cars owned by a collector or car enthusiast and which are located, stored and maintained strictly in areas within the City of Cooperstown zoned with the "Industrial District" designation.

SECTION 5. UNLAWFUL TO DISMANTLE AUTOMOBILE OR OTHER EQUIPMENT EXCEPT ON BUSINESS PREMISES OR ON PRIVATE PROEPRTY NOT TO EXCEED SIXTY (60) DAYS:

- A. It shall be unlawful and is declared a nuisance for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same is a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery, except in a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, or dealer in secondhand goods. Automobiles may be dismantled on private property, for purposes of making necessary repairs or improvements to said vehicles provided that said vehicles may not be dismantled for a period of time longer than sixty (60) consecutive days and that said dismantling shall be done in a manner so as not to create an unsightly mess, unreasonable noise, deterioration of the neighborhood, increased criminal activities, spread of vermin and disease or in any other way create a situation contrary to the public peace, health, safety, or general welfare of the community. In all cases, vehicles dismantled on private property shall be the property of the owner or resident of the property. Vehicles which have tires or other external parts removed from them shall be covered, as specified hereinabove in this ordinance, when such vehicles are not being worked on.

- B. Automobiles may be dismantled by car enthusiast and/or collectors on private property located within industrial districts pursuant to Ordinances of the City of Cooperstown. Such dismantling shall be done in a manner so as not to create an unsightly mess, unreasonable noise, deterioration of the neighborhood, increased criminal activity, spread of vermin and disease or in any other way create a situation contrary to the public peace, health, safety, or general welfare of the community. In all such cases, vehicles dismantled on private property within an industrial district shall be the property of the owner or resident of the property.

SECTION 6. UNLAWFUL TO STORE BUILDING MATERIALS EXCEPT ON BUSINESS PREMISES:

It shall be unlawful and is declared a nuisance for any person to store or permit the storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in said property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the City of Cooperstown and unless such construction is completed within a reasonable time.

SECTION 7. NOXIOUS WEEDS/UNKEPT LAWN/GRASS PROHIBITED:

No owner of any lot, place or area within the City or the agent/occupant of such owner, shall permit on such lot, place or area and the one-half of any road or street lying next to the lands or boulevards abutting thereon, noxious weeds, or unkept lawn/grass, or other deleterious, unhealthful growths.

SECTION 8. ABANDONED VEHICLES:

- A. When an abandoned motor vehicle as defined herein, is more than seven (7) model years of age, is lacking vital components parts, and does not display a license plate currently valid in North Dakota, or any other state or foreign country, it is immediately eligible for disposition, and must be disposed of to a scrap iron processor licensed by the State of North Dakota, and is not subject to the notification, reclamation, or title provisions of this Section 8.
- B. When an abandoned motor vehicle does not fall within Section 8(A) above, the City shall take it into custody and shall further give notice of the taking within ten (10) days.

1. The notice shall set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held. The City shall inform the owner and any lienholders or secured parties of their right to reclaim the motor vehicle as specified below in this ordinance, and shall state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to this ordinance.
 2. The owner, secured parties, or lienholder of an abandoned motor vehicle, which has been taken into custody, have a right to reclaim such vehicle from the City upon payment of all towing and storage charges resulting from taking the vehicle into custody provided said vehicle is reclaimed within fifteen (15) days after the notice specified in Section 8 B1.
 3. Sale: An abandoned vehicle, not more than seven (7) model years of age, taken into custody and not reclaimed pursuant to the provisions of this ordinance must be sold to the highest bidder at public auction following a reasonable public notice thereof. One publication of said sale at least ten (10) days prior to the sale shall be deemed reasonable public notice. The purchaser must be given a receipt and a form prescribed by the State of North Dakota which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title free and clear of all liens and claims of ownership. License plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.
- C. Any junk automobile, abandoned vehicle, or part of either removed from unenclosed private property as provided by this ordinance, or coming into the possession of the City by abandonment on public property in the City, which is determined by the City to be of no value other than as scrap metal shall be disposed of by the City in such a manner as to eliminate the unsightly accumulation of such worthless hulks and the hazards to public health attendant thereto with the least practicable delay.

SECTION 9. WHEN PROCEEDS MAY BE CLAIMED:

From the proceeds of the sale of an abandoned motor vehicle as set out in Section 8 B above, the City shall reimburse itself for the costs of towing, preserving and storing the vehicle and all notice and publication costs incurred pursuant to this ordinance. Any remainder from the proceeds of sale shall be held for the owner of the vehicle or entitled lienholder or secured parties for ninety (90) days and then shall be deposited in the state treasury of the State of North Dakota as provided in Section 1 of Article IX of the Constitution of the State of North Dakota and credited to the permanent school fund.

SECTION 10. NOTICE OF ALLEGED VIOLATIONS OF THIS ORDINANCE EXCEPT SECTION 8:

- A. Notice of an alleged violation of any part of this Ordinance except Section 8 shall be in writing and served personally upon the owner, agent or occupant of such property, if occupied or may be posted in a conspicuous place upon vacant or unoccupied property. If the owner or agent resides outside of the City of Cooperstown, North Dakota, said Notice shall be served upon said owner or agent by certified mail if the address of same can be ascertained. The owner or occupant shall thereafter have ten (10) days within which to remove the cause of the alleged violation, or to request a hearing before the City Council of the City of Cooperstown on the matter.
- B. OPPORTUNITY FOR HEARING: Any owner, tenant, occupant, lessee or agent of owner, of any property within the City, who has been ordered to remove junk, junk automobiles, or other items or materials found accumulated, and in violation of this ordinance may seek a hearing before the City Council of the City of Cooperstown for the purpose of making a determination whether or not the items ordered to be removed by the City are in violation of this ordinance. Any person desiring said hearing shall notify the City Auditor, in writing, within twenty (20) days of the receipt of or posting of the required notice and shall be given an opportunity to appear before the City Council within thirty (30) days after said notification of a desire for hearing. The City shall have the burden of proving by a preponderance of the evidence that the conditions of which it complains, constitute a nuisance as set forth in this ordinance. The City Council shall either find for the owner of the property, in which case no further action may be taken by the City without the issuance of another

notice, pursuant to this ordinance, which shall be issued only in the event of a material change in circumstances, or the City Council shall find for the City, in which case the owner shall have an additional fifteen (15) days from the date of service upon him by mail or in person of a copy of the City Council's decision in which to abate the nuisance or to file an appeal to an appropriate Court as provided by the ordinances of the City of Cooperstown, North Dakota.

If the owner fails, neglects, or refuses to abate the nuisance within that period of time or fails to file a Notice of Appeal, the City of Cooperstown may remove or cause to be removed any junk automobile, abandoned vehicle as described hereinabove in Section 9 A, parts thereof, building materials, trash, rubbish, or junk from any unenclosed private property and dispose of in accordance with the law; or to cut, destroy and/or remove any noxious weeds, and/or unkept lawn/grass found growing, lying, or located on such owner's property or upon the one-half of any road or street lying next to the lands or boulevards abutting thereon. Such removal by the City of Cooperstown shall not excuse or relieve any person of the obligation imposed by this Ordinance to keep his property free from storage or accumulation of junk automobiles or parts thereof, building materials, trash, rubbish, or junk or from cutting, destroying and/or removal of such noxious weeds and/or unkept lawn/grass, nor from the penalties for violation thereof.

SECTION 11. COST OF REMOVAL TAXED AGAINST PROPERTY:

- A. The cost of any removal of junk vehicles, abandoned vehicles as described hereinabove in Section 9A or any other materials from which removal is provided under the provisions of this ordinance, and the cost of any sanitation improvement required by this ordinance shall, where applicable, be charged back against the property from which such junk materials, junked or abandoned automobile or debris was removed.
- B. When the City has effected the cutting, destroying and/or removal of such noxious weeds and/or unkept lawn/grass or has paid for the same, the actual cost thereof, if not paid by the owner prior thereto, shall be charged and assessed against the property upon which the noxious weeds and/or unkept lawn/grass were cut, destroyed, or removed.
- C. The cost of any removal or abatement of any such violations

shall constitute a lien against said real property. If said lien is not adequate to cover the cost of abatement or removal of said condition the City shall have a lien for the additional costs on all real property owned or later acquired by the owner in the City.

SECTION 12. ABATEMENT WITHOUT PRIOR NOTICE:

In the event a nuisance as defined herein shall, in the opinion of the City constitute immediate and serious danger to the health of any person, or shall constitute immediate and serious danger to private or public property, the City may, without prior notice to the owner of the premises immediately enter upon the premises and take whatever steps are required to abate the nuisance. If such actions are reasonable in nature and undertaken in good faith, such action shall not constitute trespass or conversion. Any attempt by the City to give the owner prior notice shall not constitute a waiver of the right under this section to act without prior notice.

SECTION 13. OTHER REMEDIES: HARBORING A NUISANCE:

The provisions of this ordinance shall not constitute the exclusive remedy of the City of Cooperstown to abate nuisances. The City reserves the right to proceed in any court of competent jurisdiction to obtain an injunction requiring abatement of the nuisance and such remedy may be asserted without regard to the notice requirements of this ordinance and the provisions for other relief set forth herein. Moreover the harboring or maintenance of a nuisance shall constitute an offense punishable under this ordinance as set forth below.

SECTION 14. PENALTY:

Any person, firm or corporation violating or failing to comply with any of the terms or provisions of this ordinance may be assessed a fine not to exceed \$500.00.

SECTION 15. CONFLICTS:

All Ordinances or parts of Ordinances in conflict herewith are hereby rescinded and repeated insofar as the conflicting portions thereof are concerned.

SECTION 16. SAVINGS CLAUSE:

If any provision of this ordinance or its application to any person or

circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SECTION 17. EFFECTIVE DATE OF ORDINANCE:

This ordinance shall be in full force and effect from and after its final adoption and publication of its title and penalty clause in the manner provided by law.



PAUL PAINTNER, Mayor

ATTEST:



NANCY LUNDE, City Auditor

First Reading 3-6-17

Second Reading 4-3-17

Final Passage and Adoption 4-14-17

Publication 4-14-17