

ORDINANCE NO. 211

AN ORDINANCE FOR THE IMPOUNDING AND DISPOSITION  
OF DISCARDED VEHICLES.

THE CITY OF BROOKINGS DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance  
unless the context requires otherwise:

- (1) "Costs" shall mean the expense of removing,  
storing, or selling a junked vehicle.
- (2) "Chief of police" includes any authorized law  
enforcement officer of the city.
- (3) "Discarded" shall mean any vehicle which does  
not have lawfully affixed thereto an unexpired license plate  
and is in one or more of the following conditions:
  - (a) Inoperative,
  - (b) Wrecked,
  - (c) Dismantled,
  - (d) Partially dismantled,
  - (e) Abandoned,
  - (f) Junked.

Discarded vehicles may be deemed to include major parts thereof  
including but not limited to bodies, engines, transmissions,  
and rear ends.

(4) "Vehicle owner" shall mean any individual, firm,  
corporation, or unincorporated association with a claim, either  
individually or jointly, of ownership or any interest, legal  
or equitable, in a vehicle.

(5) "Person in charge of property" shall mean any  
agent, occupant, lessee, contract purchaser, owner, or person  
having possession, control, or title of property where a  
vehicle is located.

(6) "Vehicle" shall mean every device in, upon, or

by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Section 2. Declaration of Public Nuisance. The open accumulation and storage of a discarded vehicle is hereby found to create a condition tending to reduce the value of private property, to promote blight, deterioration, and unsightliness, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety, and general welfare. Therefore, the presence of a discarded vehicle on private or public property is hereby declared to constitute a public nuisance which may be abated in accordance with the provisions of this ordinance.

Section 3. Prohibited Action. It shall be unlawful to store or permit the storing of a discarded vehicle upon any private property within the city unless the vehicle is completely enclosed within a building or unless it is in connection with a business enterprise dealing in junked vehicles lawfully conducted within the city.

Section 4. Police Duty.

(1) It shall be the duty of the chief of police, whenever a discarded vehicle is found upon private property to:

(a) Make an investigation to discover the owner of the vehicle and the person in charge of the property upon which such vehicle is located, and give written notice to them by personal service or by registered or certified mail, that the vehicle is in violation of this ordinance; and

(b) If the owner of the vehicle is not found, to place a notice upon the windshield, or some other part of the vehicle where it can be easily seen.

(2) The notice shall state that a certain discarded vehicle is in violation of this ordinance and that within 10 days of the day of the sending or posting of the notice:

(a) The vehicle must be removed from the city, or to the storage yard of a business enterprise dealing in junked vehicles lawfully conducted within the city, or

(b) Completely enclosed within a building.

(3) The notice shall also state that the alternative to compliance with sub-section (2) of this section is to petition the city recorder and request appearance in writing before the city council within 10 days of sending or posting of the notice and show cause why such vehicle should not be immediately abated as provided in this ordinance.

(4) The notice shall also state that failure to comply with this ordinance authorizes the city to remove the vehicle and charge the cost.

Section 5. Entry upon Private Property.

(1) The chief of police is authorized at all times to enter upon private property and examine any vehicle for the purpose of determining whether or not it is in a discarded condition. However, before entering upon private property, the chief shall obtain the consent of an occupant thereof or a warrant of the municipal court authorizing his entry for the purpose of inspection, except when an emergency exists.

(2) No search warrant shall be issued under the terms of this ordinance until an affidavit has been filed with the municipal court, showing probable cause for such inspection by stating the purpose and extent of the proposed inspection, citing this ordinance as the basis for such inspection, whether it is an inspection instituted by complaint or other specific or general information concerning the vehicle in question or the property on which it is situated.

(3) It is unlawful for any person to interfere with or attempt to prevent the chief of police from entering upon private premises and inspecting any vehicle, when an emergency exists or the chief exhibits a warrant authorizing entry.

Section 6. Hearing by City Council. Pursuant to a request, the city council shall fix a time for a hearing to show cause why a vehicle should not be immediately abated. It shall receive the evidence and testimony of the chief of police and other interested persons concerning the existence, location, and condition of the vehicle. After the hearing, the council may authorize and order the vehicle removed by the city in accordance with the provisions of this ordinance. The council shall make its order in the form of a resolution which declares the vehicle to be a public nuisance. The resolution may order the removal of more than one vehicle and may consolidate the hearings and orders relating to more than one vehicle. The persons receiving the notice specified in section 4 shall be sent copies of the resolution of the council. In addition, the council may impose conditions and take such other action as it deems appropriate under the circumstances in order to carry out the purposes of this ordinance. It may delay the time for removal of said vehicle where, in its opinion, the circumstances justify it. It shall refuse to order the removal of the vehicle where the vehicle, in the opinion of the council, is not subject to the provisions of this ordinance. The council shall not be bound by the technical rules of evidence in the conduct of the hearing.

Section 7. Abatement by City and Appraisal.

(1) Ten days after the giving of notice required in section 4 or two days after adoption of a resolution declaring a vehicle to be a public nuisance as set forth in section 6,

the city shall be deemed to have acquired jurisdiction to abate the nuisance and may remove the vehicle by use of city employees or duly authorized independent contractors. It shall be unlawful for any person to interfere with, hinder, or refuse to allow such persons to enter upon private property for the purpose of removing a vehicle under the provisions of this ordinance.

(2) After removing the vehicle, the city shall cause it to be appraised.

Section 8. Low Value Vehicle.

(1) If the vehicle is appraised at \$75 or less, the chief of police shall file with the Department of Motor Vehicles an affidavit describing the vehicle, including the license plates, if any, stating the location and appraised value of the vehicle, and stating that the vehicle will be junked or dismantled. The chief of police may, without notice and public auction, dispose of the vehicle and execute a certificate of sale.

(2) The certificate of sale shall be substantially as follows:

CERTIFICATE OF SALE

This is to certify that under the provisions of Ordinance No. \_\_\_\_\_ entitled "An Ordinance for the Impounding and Disposition of Discarded Vehicles," I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, sell to \_\_\_\_\_ for the sum of \$ \_\_\_\_\_ cash, the following described personal property, to-wit:

(brief description of the property)

and in consideration of the payment of the said sum of \$ \_\_\_\_\_, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Note: The city of Brookings assumes no responsibility as to the condition of title of the above described property. In case this sale shall for any reason be invalid, the liability of the city is limited to the return of the purchase price.

Section 9. Public Sale Notice.

(1) If the vehicle is appraised over \$75, the chief of police shall cause to be published in a newspaper of general circulation with the city a notice of sale. The notice of sale shall state:

(a) The sale is of discarded property in possession of the city.

(b) A description of the vehicle, including the type, make, license number, I.D. number, and any other information which will aid in accurately identifying the vehicle.

(c) The terms of the sale, and

(d) The date, time, and place of sale.

(2) The notice of sale shall be published two times. The first publication shall be made not less than ten days prior to the date of the proposed sale, and the second shall be not less than three days prior to the date of the proposed sale.

Section 10. Public Sale.

(1) If a vehicle is appraised over \$75, the chief of police shall hold a sale at the time and place appointed within the view of the vehicle to be sold.

(2) The vehicle shall be sold to the highest and best bidder, providing that if no bids are entered, or those bids which are entered are less than the costs incurred by the city, the chief of police may enter a bid on behalf of the city in an amount equal to such costs.

(3) At the time of payment of the purchase price,

the chief of police shall execute a certificate of sale, in duplicate, the original of which shall be delivered to the purchaser, and the copy thereof filed with the city recorder of the city.

(4) The certificate of sale shall be substantially as follows:

CERTIFICATE OF SALE

This is to certify that under the provisions of Ordinance No. \_\_\_\_\_ entitled "An Ordinance for the Impounding and Disposition of Discarded Vehicles" and pursuant to due notice of the time and place of sale, I did on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, sell at public auction to \_\_\_\_\_ for the sum of \$\_\_\_\_\_ cash, he being the highest and best bidder, and that being the highest and best sum bid therefor, the following described personal property, to-wit:

(brief description of the property)

And in consideration of the payment of the said sum of \$\_\_\_\_\_, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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Note: The city of Brookings assumes no responsibility as to the condition of title of the above described property. In case this sale shall for any reason be invalid, the liability of the city is limited to the return of the purchase price.

Section 11. Redemption before Sale.

(1) A vehicle, impounded under the provisions of this ordinance, may be redeemed by its owner or by the person in charge of the property from which the vehicle was removed, before a sale or disposition has taken place, by applying to the police department, whereupon he shall:

(a) Submit evidence of his ownership or interest in the vehicle, satisfactory to the chief of police, that

such claim is rightful and

(b) Pay the costs due and owing at the time the application to redeem is made, and

(c) Give evidence that the nuisance character of the vehicle will not be allowed to be resumed.

(2) Upon compliance with sub-section (1) of this section, the chief of police shall execute a receipt and cause the vehicle to be returned.

Section 12. Assessment of Costs.

(1) After disposing of the discarded vehicle and deducting the money, if any, received from any sale of the vehicle from the costs, the city recorder shall give notice as specified in section 4 to the person in charge of the property from which the vehicle was removed:

(a) Of the unpaid costs of abatement.

(b) That the cost as indicated will be assessed to and become a lien against the real property unless paid within 30 days from the date of the notice.

(c) That if the person in charge of the property objects to the cost of the abatement indicated, he may file a written notice of objection with the city recorder within 20 days from the date of the notice.

(2) Within 40 days after the date of the notice, objections to the proposed assessment shall be heard and determined by the council.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs shall be made by resolution of the city council and shall be entered in the docket of city liens and upon such entry being made shall constitute a lien upon the real property from which the nuisance was removed or abated.


(4) The lien shall be enforced in the same manner

as liens for street improvements are enforced and shall bear interest at the rate of six percent per annum. Such interest shall accrue from date of the entry of the lien in the lien docket.


(5) An error in the name of the person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void. The assessment shall remain a valid lien against the property.

Section 13. Emergency. It is hereby determined that it is in the interest of the peace, health and safety of the city of Brookings that this ordinance take effect immediately. Therefore, an emergency is declared to exist and this ordinance shall take effect immediately upon its passage by the council and signing by the mayor.

PASSED by the council and signed by the mayor this 10th day of February, 19 70.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

