



# AGENDA ITEM REPORT

**Meeting Date:** May 18, 2021

**Contact Name:** Eric Pedersen

**Department:** Police

---

---

**Subject: Ordinance 2021-06-615 Abandoned Vehicles**

---

---

## **Background Summary:**

This ordinance is designed to comport with Current caselaw and compliments the City's new parking ordinance by updating the City's Code regarding abandoned, junked, wrecked, or discarded vehicles. While complimentary, these regulations address violations of City Code on private property rather than on City-owned property/ROW/roadways. The City's current Code provides for forfeiture of items which violate the Code's prohibition against the improper storage of such vehicles and equipment. Recently, the U.S. Supreme Court decision held that such civil forfeitures are potentially subject to scrutiny as excessive fines. This ordinance provides a process whereby a person has an opportunity to reclaim his/her property taken into custody by the City when the owner compensates the City for removal and storage costs. Accordingly, this ordinance clarifies that seizures under the Code are meant to remedy public nuisances rather than enact a forfeiture or fine as punishment for violation of the section. The ordinance provides detailed procedures to ensure that due process requirements are met.

## **Recommendations:**

Motion to approve first reading of Ordinance 2021-06-615 Abandoned Vehicles

## **Attachments:**

[Ordinance #2021-06-615 Abandoned Vehicles](#)

## **Type of Item:**

- Public Hearing
- Ordinance First Reading
- Ordinance Second Reading
- Resolution
- Discussion & Direction
- Motion and Approval
- Local Planning Agency

## ORDINANCE NO. 2021-06-615

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MASCOTTE, FLORIDA; AMENDING CHAPTER 13, ARTICLE V OF THE CITY OF MASCOTTE, FLORIDA CODE TO AMEND THE DISPOSITION PROCESS FOR ABANDONED, JUNKED, WRECKED OR DISCARDED ITEMS REMOVED FROM PRIVATE PROPERTY; PROVIDING SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, vehicles, boats, equipment and machinery that are abandoned, junked, wrecked or discarded constitute a public nuisance and a detriment to the public interest; and

**WHEREAS**, the City's current code provides for forfeiture of items which violate the Code's prohibition against the improper storage abandoned, junked, wrecked or discarded items, including those which simply do not have a current registration decal; and

**WHEREAS**, a recent U.S. Supreme Court decision held that such civil forfeitures are potentially subject to scrutiny as excessive fines; and

**WHEREAS**, the City desires to provide a disposition process whereby a person has an opportunity to reclaim abandoned, junked, wrecked or discarded property when the owner compensates the City for removal and storage costs, thus clarifying that seizures under the Code are meant to remedy public nuisances rather than enact a forfeiture or fine as punishment for violation of the section.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MASCOTTE, FLORIDA:**

**SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

**SECTION 2. Amendment of City Code.** Chapter 13, Article V of the City Code is hereby amended as follows:

**NOTE:** Underlined words constitute additions to the Code of the City of Mascotte, Florida ("Code"), ~~striketrough~~ constitutes deletions from the current Code, and asterisks (\*\*\*) indicate an omission from the existing text which is intended to remain unchanged.

### **Section 13-85. 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, junked, wrecked, or discarded motor vehicle, boat, machinery or equipment shall mean a motor vehicle as defined in F.S. 316.003, or a boat, machinery, or equipment, which is in a state of evident disuse, neglect or abandonment. Evidence of being in a state of disuse, neglect or abandonment shall include, but is not limited to, the following: the vehicle, boat, machinery, or equipment being wrecked; the vehicle, boat, machinery, or equipment being inoperative as evidenced by vegetation underneath as high as the vehicle, boat, machinery, or equipment's body or frame; refuse or debris being collected underneath the vehicle, boat, machinery or equipment; the vehicle, boat, machinery or equipment being used solely for storage purposes; the vehicle, boat, machinery or equipment being partially dismantled, having no engine, transmission, or other major or visible parts which are dismantled; the vehicle, boat, machinery, or equipment being in any physical state rendering it inoperable or unsightly to the neighborhood; the vehicle boat, machinery, or equipment being no longer safely usable for the purposes for which it was manufactured; or the vehicle or boat having no current valid license tag or current registration decal. in one of the following conditions:

- (1) ~~A motor vehicle or boat having no current valid license tag or current registration decal;~~
- (2) ~~A motor vehicle, boat, or other implement, machinery, or equipment which is in a state of evident disuse, neglect or abandonment. Evidence of disuse, neglect or abandonment shall include, but is not limited to, the following facts; the vehicle or boat being wrecked; the vehicle or boat being inoperative as evidenced by vegetation underneath as high as the vehicle or boat body or frame; refuse or debris being collected underneath the vehicle, boat, machinery or equipment; the vehicle, boat, machinery or equipment being used solely for storage purposes; the vehicle, boat, machinery or equipment being partially dismantled, having no engine, transmission, or other major or visible parts which are dismantled; the vehicle boat, machinery or equipment being in any physical state rendering it inoperable or unsightly to the neighborhood; machinery or equipment being no longer safely usable for the purposes for which it was manufactured; or the vehicle or boat having no current valid license tag or current registration decal.~~

Violative Item shall be synonymous with "abandoned, junked, wrecked, or discarded motor vehicle, boat, machinery or equipment."

### **Sec 13-86. Responsibility for compliance.**

The owner, landlord, agent, and/or tenant of the real property on which a violation of this ~~section~~ article occurs, and the owner of the abandoned, junked, wrecked or discarded motor vehicle, boat, machinery or equipment shall be jointly and individually responsible for compliance with the requirements of this article.

### **Sec. 13-87. Violation.**

No person in charge or control of any real property within the city, whether an owner, tenant, occupant, landlord, or otherwise, shall allow any abandoned, junked, wrecked, or discarded motor vehicle, boat, machinery or equipment to be placed on or remain on such real property, unless such vehicle, boat, machinery or equipment is within a completely enclosed building, or is on the premises of an automotive repair or storage business for which the owner of the business has a current city occupational license and zoning approval. A motor vehicle, boat, machinery or equipment covered with a car cover, tarpaulin, or similar cover does not constitute enclosure or storage. Any condition caused or permitted to exist in violation of any of the provisions of this article shall be deemed a public nuisance, and may be, by the city, abated as provided herein, or by any other means as provided by law, and each day that such condition continues shall be regarded as a new and separate offense.

### **Section 13-88. Enforcement.**

When violation of this article is found:

- (1) The code enforcement or law enforcement officer shall place a written citation notice of violation on the ~~motor vehicle, boat, machinery, or equipment,~~ violative item or post such notice in a conspicuous place on the premises where the same is located indicating ~~that it is in~~ the violation of this article, ~~and that it~~ the violation must be ~~removed~~ cured within ten (10) business days or ~~it will be~~ the violative item will be subject to removal by the city, and that the owner of the violative item or real property may appeal the notice of violation within ten (10) business days. The ~~code enforcement~~ officer shall make every reasonable attempt to ascertain the owner of the ~~vehicle, violative item;~~ the owner of the real property on which the violative item is located; any lienholder ~~on a~~ of the violative item ~~vehicle, boat, machinery, or equipment;~~ and shall notify such owner(s) and lienholder(s) with a written notice of violation delivered by regular United States mail or personal service at their current address, last known address, or, if applicable, the address appearing on the certificate of title for the ~~vehicle,~~ violative item.
- (2) Within the ten-day period specified in the notice, the owner of the ~~vehicle, violative item~~ the owner of the property, or any authorized agent may correct the violation and thereby avoid any further action by the city. ~~appeal to the city manager, or his/her designee.~~ If the violation has not been remedied after the ten-day notice period and the property owner(s) or the owner(s) of the violative item have not filed an appeal, the city manager, his/her designee, or the code enforcement or law enforcement officer may cause the violative item to be removed from its location and stored, and/or pursue any other remedy available at law, including, but not limited to further code enforcement action. As further described in Section

13-89 of this article, the cost of such removal and storage shall constitute a lien against the property from which the vehicle was removed, which charge and lien shall be due and payable thirty (30) days after the date the violative item is disposed of pursuant to this article, with interest accruing thereon at six percent per annum from the due date. Such lien shall be reduced by any amount recovered by the city in disposing of the violative item. The city manager or designee shall determine the validity of the violation and may for good cause extend the time for compliance or removal. If such an appeal is made under this section, the city shall not remove the item no removal shall be required until after said appeal has been finally determined.

- (3) The property owner(s) or owner(s) of the vehicle, boat, machinery, or equipment violative item may appeal the written notice of violation city manager's or his designee's final decision to the code enforcement board or special magistrate under Section 12-22 of the Code for a determination of whether the a violation of this Article has occurred. motor vehicle is subject to removal.
- (4) In lieu of mechanism of enforcement and nuisance abatement described above, code enforcement may elect to issue a civil citation under Chapter 12, Article II of the Code for a violation of this section against the property owner(s), owner(s) of the violative item, or both. In addition to all other remedies normally available in code enforcement, the city may seek the towing and storage of violative items, which may be disposed of as described in Section 13-90 of the Code. If no appeal is made, and the violation continues after the ten-day period specified in this section, the city manager, his/her designee or the code enforcement officer, shall cause the vehicle, boat, machinery, or equipment to be removed to a storage or salvage facility approved by the city and thereafter disposed of in accordance with applicable state law or city ordinance.

### **Sec. 13-89. - Lien.**

The city may acquire a lien against any ~~abandoned, junked, wrecked, or discarded motor vehicle, boat, equipment or machinery,~~ violative item for the cost of removal and storage by the city, which shall be satisfied by sale of the violative item as provided by this article, and may acquire the title to any such violative item sold to satisfy said lien.

If the disposal of the violative item fails to compensate the city for the cost of removal and storage, the remaining debt shall constitute a lien upon the property upon which the violation occurred.

### **Section 13-90. – Disposal.**

When the City takes possession of an item pursuant to this article, the following provisions for its disposal apply:

- (1) After taking possession of the item, the City shall furnish notice by certified mail to the property from which the item was taken, as well as the address for the last-known registered owner of the item (if applicable). The notice shall contain the following information:
  - a. The date the item was removed.
  - b. The location from which the item was removed.
  - c. The location where the item is being stored.
  - d. A phone number to contact to retrieve the item.
  - e. A notice that the person who is entitled to possession of the item may reclaim it upon payment to the City or its agent of all charges incurred by the City for the removal and storage of the item, and that if such reclamation is not made within ninety (90) days after date of the notice, the right to reclaim the item shall be deemed waived and such persons shall be deemed to have consented to the disposition of the item by the City.
  - f. In the case that the item is a motor vehicle or boat, the notice shall also state the name and address of the last known registered owner; the year, make, model and serial number; the vehicle registration number and the title registration number, if available.
- (2) If the City is unable to identify the last registered owner of an item or is unable to obtain with reasonable certainty the names and addresses of the owner or other interested parties, including lienholders, it shall be sufficient notice under this section to publish one notice in a newspaper of general circulation in the county directed to all whom it may concern, setting forth the removal of such item and notifying all interested persons that title to the item will vest in the City unless within a ninety (90) day period the item is reclaimed and all removal and storage charges are paid to the City. Such notice may include multiple items.
- (3) No claim against the City for the removal or for the value of any item removed under this Article shall be valid unless presented in writing to the City before the expiration of said ninety (90) days from the date of removal of the item. After said ninety-day period, the City may dispose of such item, either by junking same or by auction or otherwise.

**SECTION 3. Codification.** This Ordinance shall be incorporated into the Mascotte City Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical,

typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance or the City Code may be freely made.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**SECTION 5. Conflicts.** In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

**SECTION 6. Effective date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Mascotte, Florida.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by the City Council of the City of Mascotte, Florida.

CITY OF MASCOTTE

\_\_\_\_\_  
Mike Sykes, Mayor

ATTEST:

By: \_\_\_\_\_  
Stephanie Abrams, City Clerk