ORDINANCE NO. 6 OF 2018

TOWN OF BAUXITE, SALINE COUNTY, ARKANSAS

AN ORDINANCE PROHIBITING THE STORAGE, REPAIR, OR DISMANTLING OF ABANDONED, WRECKED, INOPERABLE, OR DISMANTLED MOTOR VEHICLES, TRAILERS, BOATS, OR MAJOR PORTIONS THREOF ON PUBLIC OR PRIVATE PROPERTY; DECLARING THE SAME TO BE A NUSIANCE; PROVIDING FOR AN ABATEMENT PROCEDURE; AND FOR OTHER PURPOSES.

WHEREAS, it is to the benefit of the citizens of the Town of Bauxite to live within an area free of abandoned, dismantled, partially dismantled, wrecked, junked, inoperative or discarded motor vehicles, trailers, boats or major portions thereof; and

WHEREAS, such conditions tend to impede traffic in the streets, interfere with the enjoyment of property, reduce the value of private property, invite plundering, create health and fire hazards, and result in a serious hazard to the public health, safety, comfort, convenience, welfare and happiness of the citizens of the City of Bauxite: and

WHEREAS, it is the duty of the Town to protect the health and welfare of its citizens; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAUXITE, SALINE COUNTY, ARKANSAS:

SECTION 1: Abandoned, Inoperable or Unlicensed Vehicles

A. Definitions. That for the purpose of this ordinance, the following words and phrases shall have the meaning set forth herein.

(1) Motor Vehicle. Any vehicle or conveyance, which is self-propelled and designed to travel along the ground and incudes, but is not limited to, automobiles, buses, mopeds, motorcycles, trucks, tractors, go-carts, campers and motor homes and is subject to registration under Arkansas law.

(2) Boat. Any vessel initially designed for the carrying of passengers or cargo on the water, whether currently seaworthy or not, and regardless of the size or design, including without limitation barges, motorboats (whether inboard or outboard), canoes, rowboats, rafts and sailboats.

(3) Trailer. Any free-wheeling object designed or intended to be pulled or towed behind a motor vehicle, regardless of whether wrecked or inoperable, including without limitation the following: boat trailers, camper trailers, cargo trailers, and special trailers for items such as golf carts or motorcycles, utilities trailers, and farm implements.

(4) City. The City of Bauxite, Arkansas.

(5) Private Property. Any real property within the City which is privately owned and which is not defined as Public Property herein.

(6) Public Property. Any real property within the City which is owned by a governmental body and incudes buildings, parking lot, parks, streets, sidewalks, right-of-way, easements and other similar property.

(7) Abandoned Motor Vehicle. Any motor vehicle left on public or private property for a period of more than seventy-two (72) hours without the owner's permission, regardless of whether wrecked or inoperable, and regardless of whether the said vehicle contains a current registration and/or current vehicle inspection sicker.

(8) Wrecked Motor Vehicle. Any motor vehicle the condition of which is wrecked, or dismantled, or partially dismantled, or incapable of operation by its own power on a public street, or from which the wheels, engine, transmission or any substantial part thereof has been removed.

(9) Inoperable Motor Vehicle. A motor vehicle which is wrecked, dismantled, incapable of operation by its own power upon a public street, or from which the wheels, engine, transmission or any substantial part thereof has been removed, whether or not it has lawfully affixed thereto an unexpired license plate.

(10) Non-operating Motor Vehicle. Any vehicle placed on blocks or has one or more wheels placed on blocks or one or more wheels removed, or is not in proper condition to be legally operated on the streets of the City because of lack of or missing proper windshield glass, door glass, fenders, gauges, steering wheel, tie rods, springs, drive train, gear box, rear end, mufflers, tires, headlights or other mechanical defects, or because of lack of an integral part of assembly, or is not capable of self-locomotion.

(11) Major Portion. Any part of a motor vehicle that is sufficiently large enough to constitute a public nuisance as a harborage of snakes or rodents, or as otherwise defined by state or city nuisance laws, and shall include, without limitation, the following: truck-bed, cab or cabin, chassis or frame, axle, motor or engine, transmission, hull or pontoon, cargo compartment, seats, and portions of exterior parts or paneling such as walls or roofs.

B. Public nuisance.

(1) Public Property. No person shall abandon or leave any item defined herein, including an abandoned, wrecked, inoperable or non-operable motor vehicle, boat or trailer, farm implement or piece of machinery, whether attended or not, upon any Public Property within the City for a period of time in excess of seventy-two (72) hours. The presence of such vehicles or parts thereof on Public Property is hereby declared to be a public nuisance which may be abated in accordance with the provisions of this Ordinance.

(2) Private Property. No person shall abandon or leave any item defined herein, including an abandoned, wrecked, inoperable or non-operable motor vehicle, boat or trailer, farm implement or piece of machinery, whether attended or not, upon any Private Property within the City for a period of time in excess of seventy-two (72) hours. The presence of such vehicles or parts thereof on Public Property is hereby declared to be a public nuisance which may be abated in accordance with the provisions of this Ordinance.

C. Exceptions. The provisions of this ordinance shall not apply to:

(1) Any item as defined herein parked or stored within a building or enclosed garage on private property.

(2) Any motor vehicle that can be started or moved under its own power on demand. If said vehicle can be moved under its own power, then it shall be licensed and tagged in accordance with Arkansas state law.

(3) Antique automobiles, provided the vehicle has an antique license as required by law.

(4) Any item defined herein held in connection with a business enterprise lawfully licensed by the City for the servicing and repair of said items and properly operated in the appropriate business zone pursuant to the zoning ordinances of the City.

(5) A motor vehicle upon private property that is being actively and continuously repaired.

D. Abatement of Public Nuisance. If any nuisance as defined herein in this Ordinance appears to exist on Public Property, the City shall cause a notice to be issued to be affixed to the said item, declaring the existence of a nuisance and ordering whomsoever has an interest in the said item to comply with this Ordinance by removing the said item within seventy-two (72) hours of the notice. If the nuisance is found to exist on Private Property, in addition to the foregoing notice, a copy of said notice shall be delivered to the owner or occupant of the Private Property, with a duplicate copy sent to the owner of the abandoned, wrecked, inoperable or non-operable motor vehicle, boat or trailer, farm implement or piece of machinery, if determined to be different from the owner of the Private Property, by certified mail, return receipt requested. This notice shall contain the request for removal within the time specified and the notice shall advise that upon the failure to comply with the notice or removal the City shall undertake such removal, with the cost of removal to be levied against the owner of the said item.

E. Issuance of Summons. The City may, thru a duly authorized officer, issue a summons to the owner or occupant of the Private Property wherein the nuisance exists to appear in Saline County District Court, Bauxite Division, for violation of this Ordinance which shall be an unscheduled misdemeanor and which shall carry a fine of not more than $250.00 plus court costs and fees, per occurrence.

F. Notice upon Removal. The City shall furnish notice of removal of the subject item to the registered owner at the owner's last known address within seven (7) days from the date on which the subject item was taken, with a copy of the notice to the owner or occupant of the property from which the subject item was taken. The notice shall contain the following information:

(1) The year, make, model, serial number, vehicle registration number, and title registration number of the subject item, if available;

(2) The name and address of the last known registered owner of the subject item, if available. The City will contact Arkansas Department of Motor Vehicles, Arkansas Crime Information Center, and other such agencies and departments of

government in this and other states as is reasonably necessary to ascertain the names and addresses of other persons with record interest in the subject item, including lienholders, and provide notice to any such person in accordance with this Ordinance, and to ensure that the vehicle is not stolen.

(3) The date that the subject item was removed;

(4) The location from which the subject item was removed;

(5) The location at which the subject item is being stored;

(6) The name, address, and telephone number of the towing and storage firm that provided removal services; and

(7) The amount of towing and storage charges, including the towing charge, the storage charge, the administrative fee, and any other fee that was charged and/or assessed against the owner or operator of the subject item removed from the property.

(8) That the person to whom the notice is given is entitled to possession of the subject item and may reclaim it upon payment to the City of all charges incurred by the City in the removal and storage of the subject item, except that if such reclamation is not made within forty-five (45) days of the notice, the right to reclaim the subject item, as well as right, title and interest of said person in the subject item, shall be deemed to be waived and that such person shall be deemed to have consented to the disposition of the subject item by the City.

G. Notice by publication. If the City is unable to identify properly the last registered owner of the subject item, or if unable to obtain with reasonable certainty the names and addresses of the owner or other interested parties, including lien holders, it shall be sufficient notice to publish the required notice one time in one newspaper of general circulation in Saline County, Arkansas.

H. Towing Companies. The City may have the subject item removed from the property by a towing and storage firm licensed by and subject to the rules of the Arkansas Towing and Recovery Board. Prior to the removal of the subject item, the towing and storage firm shall obtain in writing from the property owner or agent a written statement that includes at a minimum the following:

(1) Identification of the property owner or agent, including name, address, and telephone number;

(2) A statement that the property from which the subject item is to be removed is property owned or otherwise under the control of the agent requesting the removal;

(3) That the subject item which is to be removed is deemed abandoned or has been parked on the property without authorization, as the case may be;

(4) The make, model, and vehicle identification number or serial number of the subject item to be removed;

(5) The location to which the subject item will be removed, including the name, address, and telephone number of the towing and storage firm removing the subject item; and

(6) The signature of the property owner or agent requesting removal of the subject item.

A copy of the written statement shall be left with the property owner or the on-site agent, who shall make the written statement available for inspection upon request by any person claiming an interest in the subject item. The towing and storage firm removing the subject item shall retain a copy of the written statement for three (3) years and make the statement available during regular business hours upon request to any person claiming an interest in the subject item which has been removed, or upon request to any law enforcement agency or board investigator. In accordance with Arkansas law, the towing and storage firm removing an abandoned, wrecked, inoperable or non-operable motor vehicle, boat or trailer, farm implement or piece of machinery as directed herein shall not pay any compensation related to the removal of the subject item, whether a referral fee or otherwise, to the owner or agent requesting the removal of said item.

I. Parking Lots. Owners of parking lots must comply with the provisions of Ark. Code Ann. §27-51-1305 regarding the postage of signage.

J. Following removal of any subject item pursuant to the provisions of this Ordinance, the City shall obtain an appraisal of the subject item within ten (10) days of it removal and the subject item may be sold in accordance with the provisions of Ark. Code Ann. §§ 27-50-1208 thru 27-50-1210. If the appraised value is less than or equal to $500.00, the sale may take place after all notices as set forth herein have been given and thirty (30) days have passed since the date of the notice. If the appraised value is more than $500.00, the sale will be by public sale after all notices as set forth herein have been given and thirty (30) days have passed since the date of the notice.

K. Notice of Sale. The City will cause a notice to be published once in a newspaper of general circulation in Saline County, Arkansas, at least ten (10) days prior to the sale, and the notice shall state:

(a) The year, make, model, and vehicle identification number of the vehicle towed;

(b) The name, address, and telephone number of the storage facility;

(c) That the vehicle is in the possession of that towing and storage firm under police order, describing the general circumstances of any law enforcement or other official hold on the vehicle;

(d) That towing, storage, and administrative costs are accruing as a legal liability of the owner;

(e) That the towing and storage firm claims a first priority possessory lien on the vehicle and its contents for all such charges;

(f) That unless claimed within forty-five (45) days, the vehicle and its contents will be dismantled, destroyed, or sold at public sale to the highest bidder;

(g) That the failure to exercise the right to reclaim the vehicle and its contents within the time prescribed by this section constitutes a waiver by the owner and lienholder of all right, title, and interest in the vehicle and its contents and constitutes consent to the sale, dismantling, or destruction of the vehicle and its contents;

(h) That the owner or lienholder may retake possession at any time during business hours by appearing, proving ownership, and releasing the law enforcement or other official hold, if any, and by paying all charges or by other written arrangement between the owner or lienholder and the towing and storage firm;

(i) That should the owner consider that the original taking was not legally justified, he or she has a right for thirty (30) days to contest the original taking as described by Ark. Code Ann. §27-50-1207; and

(j) That the owner of the vehicle or operator or his or her authorized representative may recover without charge any item described in subdivision (a)(2)(B) of §27-50-1207 by providing within forty-five (45) days to the towing and storage firm proof that the claimant is the registered owner of the vehicle or has been authorized by the registered owner of the vehicle to take possession of the items.

The City shall cause a copy of this notice to be mailed to the last known registered owner of the subject item and to the owner or occupant of the property from which the subject item was taken (unless they are one and the same), and to any person known to the City to be interested in the subject item. The subject item shall be sold to the highest bidder. If the subject item cannot be sold for more than the costs of the sale and other Charges owed, then the subject item may be disposed of as if its value is less than or equal to $500.00. The City will execute the certification of sale and retain a copy for its records. Any certification of sale issued by the City does not guarantee clear title. If for any reason the sale is invalid, the City's liability will be limited to return of the purchase price to the buyer upon return of the subject item to the City.

L. Disbursement of Funds. All costs and expenses related to the repossession and sale of the subject item will be paid out of the proceeds of the sale. The remaining proceeds will be dispursed to the State of Arkansas in accordance with Arkansas law. A copy of any certificate of sale issued hereunder by the City, shall be forwarded to Arkansas Department of Motor Vehicles Department of Finance and Administration.

M. Statutory Authority. This Ordinance is established pursuant to the provisions of Ark. Code Ann. §27-50-1101, which provides that a person who pleads guilty or nolo contendere to or is found guilty of any violation of this section is guilty of a Class B misdemeanor.

SECTION 2: General Repealer and Severability. All ordinances or parts of ordinances in conflict herein are repealed. In the event any section, subsection, subdivision, paragraph, subparagraph, item, sentence, clause, phrase, or word of this ordinance is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of this ordinance, as if such invalid or unconstitutional provision was not originally a part of this ordinance.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF BAUXITE, ARKANSAS, on this 19 day of November, 2018.

APPROVED:

Bill Russell, Mayor

ATTEST:

Town Recorder