



Ordinance No: 08-11-11-013

Date: 08-25-2011

**ADOPTION OF the ABANDONED, WRECKED, DISMANTLED, INOPERATIVE
or UNREGISTERED VEHICLE ORDINANCE**

SECTION 1 - Short Title

This Ordinance shall be known and may be cited as the Motor Vehicle Maintenance Ordinance.

1.2 Definitions

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in any particular tense, gender, or number shall include any other tense, gender, or number necessary to render meaningful any language used herein. The word "shall" is always mandatory and never merely directory.

1.2.a Town is the Town of Cheswold, a municipal corporation of the State of Delaware.

1.2.b Vehicle is any machine propelled by power, other than human power, designed to travel above, along, or below the ground by use of wheels, treads, runners, or slides to transport persons or property, to pull machinery or other trailers or carriages, and shall include without limitation any automobile, truck, trailer, motorcycle, tractor, buggy, or wagon.

1.2.c Wrecked, Dismantled, or Inoperable Vehicle is any vehicle, with or without a current and valid registration, which:

1.2.c.1 is entirely or partially wrecked, junked, or dismantled,

1.2.c.2 is in such a state of disrepair as to be incapable of being operated in the manner for which it was designed or intended, or

1.2.c.3 has had its wheels, engine, transmission, or any other substantial part thereof removed.

1.2.d Person is any person, firm, partnership, association, corporation, company, or organization of any kind.

1.2 Definitions "continued"

- 1.2.e Private Property** is any real property within the Town which is privately owned and which is not defined as public property herein.
- 1.2.f Public Property** is any real property in the Town which is owned by a governmental body and includes buildings, parking lots, parks, streets, sidewalks, right-of-way, easements, and other similar property.
- 1.2.g Abandoned Vehicle** is any vehicle, with or without a current and valid registration, which is left unattended on public property for a period in excess of two, (2), weeks under such circumstances as to cause such vehicle reasonably to appear to have been abandoned and includes, without limitations, any unregistered vehicle as defined herein.
- 1.2.h Unregistered Vehicle** is any vehicle which is without a current and valid registration form or otherwise properly registered with the appropriate Division of Motor Vehicles and includes any vehicle without a license plate and any vehicle with a fictitious registration or a fictitious license plate.

Section 2 - Wrecked, Dismantled, Inoperable, or Unregistered Vehicles on Public Property Prohibited and Declared a Nuisance

- 2.1** No person shall park, store, leave, abandon, or permit the parking, storing, leaving, or abandonment of any wrecked, dismantled, or inoperable vehicle or any unregistered vehicle of any kind whether attended or not upon any public property within the Town for a period of time in excess of 72 hours.
- 2.2** The presence of any such vehicle(s), or any 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.
- 2.3** The temporary or intermittent movement or removal of such vehicle shall not be deemed to interrupt the running of the 72 hour period.
- 2.4** This section does not apply to vehicles parked or stored on public property by the Town.

Section 3 - Abandonment of Vehicles on Public Property Prohibited and Declared a Nuisance

- 3.1** No person shall park, store, leave, abandon, or permit the parking, storing, leaving, or abandonment of any vehicle (not otherwise prohibited as a wrecked, dismantled, inoperable vehicle, or otherwise prohibited as an unregistered vehicle) of any kind upon any public property within the Town even if bearing a current and valid registration for a period of time in excess of two (2) weeks under such

- 3.1** “continued”
circumstances as to cause such vehicle reasonably to appear to have been abandoned.
- 3.2** The presence of any such vehicle(s), or any parts thereof, under such circumstances is hereby declared to be a public nuisance which may be abated in accordance with the provisions of this Ordinance.
- 3.3** This section does not apply to vehicles parked or stored on public property owned by the Town.
- 3.4** Any person may notify the Cheswold Police Department in writing of the fact that they will be absent from the Town or are otherwise unable to move their vehicle for an extended period of time (as specified therein) and, in such event, that person’s vehicle shall not be deemed to be in violation of this section of this Ordinance until the expiration of two (2) weeks from the time specified by the written notice to the Cheswold Police Department.
- 3.5** Nothing in this section shall excuse such persons from compliance with other Town Ordinances regulating the parking and/or storage of vehicles on public property in the Town.

Section 4 - Wrecked, Dismantled, Inoperable, or Unregistered Vehicles on Private Property Prohibited and Declared a Nuisance; Exceptions

- 4.1** No person shall park, store, leave, abandon, or permit the parking, storing, leaving, or abandonment of any wrecked, dismantled, inoperable vehicle, or any unregistered vehicle of any kind whether attended or not upon any private property within the Town in excess of fifteen (15) days. The temporary or intermittent movement or removal of such vehicle shall not be deemed to interrupt the running of the fifteen (15) day period. The presence of any such vehicle(s), or any parts thereof, on private property is hereby declared a public nuisance which may be abated in accordance with the provisions of this Ordinance.
- 4.2** This section shall not apply to:
- 4.2.1** Any vehicle enclosed within a building or fence on private property in such a manner that it is not visible from without such enclosure.
 - 4.2.2** Any vehicle held in connection with a business enterprise lawfully licensed by the appropriate governmental agency for the servicing and repair of such vehicles and properly operated in an appropriate business zone pursuant to the Zoning Ordinances of the Town.

Section 5 - Order for Removal

5.1 On Public Property.

Whenever it comes to the attention of the Cheswold Police Department that any nuisance as defined in Sections 2 or 3 of this Ordinance appears to exist on public property, the Cheswold Police Department shall cause a written order to be affixed to the vehicle declaring the existence of the nuisance and ordering whosoever has an interest in the vehicle to comply with this Ordinance by removing said vehicle within 72 hours of the notice.

5.2 On Private Property.

Whenever it comes to the attention of the Cheswold Police Department that any nuisance as defined in Section 4 of this Ordinance appears to exist on private property, the Cheswold Police Department shall cause a written order to be affixed to the vehicle declaring the existence of the nuisance and ordering whoever has an interest in the vehicle to comply with this Ordinance by removing said vehicle within 72 hours of the notice.

5.2.1 In addition to affixing an order to the vehicle itself, the Cheswold Police Department shall attempt to deliver notice to the owner of said vehicle in person, in writing, telephonically, or by publication.

5.2.2 If the owner cannot be identified or located, the owner shall be deemed to have been given notice after 20 days of affixing the required notice on said vehicle.

5.3 Form of Order-Public Property.

Any orders required under Section 5.1 above shall contain the following information:

5.3.1 A description of such vehicle including the make, year, model, color, and registration number if known;

5.3.2 The location of such vehicle;

5.3.3 The date and time that the order was affixed to the vehicle;

5.3.4 An order for removal within 72 hours from the time the order was affixed to the vehicle.

5.3.5 That upon failure to comply with the order for removal, the Cheswold Police Department shall remove or cause to be removed such vehicle.

5.4 Form of Order-Private Property

Any orders required under subsection 5.2 above shall contain the following information:

- 5.4.1** A description of such vehicle including the make, year, model, color, and registration number if known;
- 5.4.2** The location of such vehicle;
- 5.4.3** The date and time that the order was affixed to the vehicle;
- 5.4.4** An order for removal within 72 hours from the time the order was affixed to the vehicle;
- 5.4.5** That upon failure to comply with the order for removal, the Cheswold Police Department shall remove or cause to be removed such vehicle;
- 5.4.6** That the owner of the vehicle and/or owner or occupant of the property upon which said vehicle is located may request a hearing before the Town Council at which hearing they may introduce such witnesses and evidence as they deem necessary and relevant to the issue of whether the vehicles constitutes a nuisance as defined herein.
 - 5.4.6a** The order shall state that any request for a hearing shall be in writing addressed to the Town Clerk and filed within 72 hours (not counting weekends or holidays, following the affixing of the order on the vehicle under subsection 5.2.

Section 6 - Hearing Procedures

- 6.1** Upon receiving a request for a hearing pursuant to subsection 5.4.6, the Town Clerk shall set the hearing for the next regular meeting of the Town Council and shall in addition to placing it upon the meeting agenda give notice to the person requesting the hearing and to the Cheswold Police Department. No other notices are required.
- 6.2** At such hearing the Cheswold Police Department shall produce evidence relevant to the issue of whether or not the vehicle is a nuisance in violation of this Ordinance. The person requesting such hearing shall then be permitted to introduce such witnesses and evidence as he desires relevant to that issue.
- 6.3** All witnesses shall be placed under oath. Strict rules of evidence shall not be required but the Town Council may accept any relevant evidence of a probative nature which, in the opinion of the Town Council, is such as could reasonably be relied upon by persons of common sense and prudence.

Section 6 - Hearing Procedures *"continued"*:

- 6.4** At the conclusion of such hearing, the Town Council shall determine by majority vote whether or not they find that the vehicle constitutes a nuisance in violation of this Ordinance. Such determination with a brief statement of the findings upon which that decision was made shall be entered in the minutes of the meeting.

Section 7 - Removal of Vehicles

- 7.1** Within the time for removal set forth in the order of removal or within 72 hours of the hearing at which the Town Council determines that the vehicle is a nuisance in violation of this Ordinance, the owner of the abandoned, wrecked, dismantled, inoperable, or unregistered vehicle and (if on private property) the owner or occupant of the private property on which the same is located, any or all of them shall cause the removal of the vehicle.
- 7.2** If the violation is not remedied within the time set forth herein, the Cheswold Police Department is hereby authorized to remove or have removed such vehicle from the premises.
- 7.3** Except for the Cheswold Police Department and employees of the Town working in concert with the Cheswold Police Department, such vehicles shall be removed only by wreckers or towing services duly licensed by the State of Delaware.
- 7.3** It shall be unlawful for any person to interfere with, hinder, or refuse to allow the Cheswold Police Department and/or any person acting in concert with or at the direction of the Cheswold Police Department to enter upon private property for the purpose of removing a vehicle under the provisions of this Ordinance.

Section 8 - Notice of Removal

- 8.1** Within five (5) days of the removal of such vehicle, the Cheswold Police Department shall give written notice (by certified mail, return receipt requested) to the registered owner of the vehicle if known; and if removed from private property, to the owner or occupant of the private property from which the vehicle is removed.
- 8.2** The notice shall state that said vehicle has been impounded and stored for violation of this Ordinance. Additionally the notice shall give the location where the vehicle is stored.

Section 9 - Disposition of Motor Vehicles

- 9.1** Any person who tows, removes, stores, or keeps a vehicle at the direction of the Cheswold Police Department acting under the provisions of this Ordinance shall, from the time of taking possession thereof, be entitled to all rights, remedies, and authority as provided under the Delaware “garage man’s lien” statute, Title 25 Delaware Code Chapter 39 as it may be amended from time to time hereafter or any future corresponding provision of law.
- 9.2** In exercising such rights, remedies, and authority, such persons shall be governed in all respects by the terms of that statute.

Section 10 - Liability for Towing and Storage Expenses

In the event that the Town should be or become liable for all or any portion of the expenses incurred in the removal and storage of such vehicle, the Town may:

- 10.1** Recover same from the owner of the vehicle and/or the owner of the private property from which it was removed in an action for debt; or
- 10.2** Add that amount to the tax bill of the person owning the private property from which the vehicle was removed or both provided, however, that whenever the private property from which such vehicle has been removed is occupied by a person other than the owner of the property, the occupant shall be primarily responsible and the Town shall not seek to recover from the owner of the property (either in an action at law or by tax collection proceedings) before it exhausts reasonable efforts to recover from the occupant; but this shall not prohibit the Town from joining both the property owner and occupant in one, (1), action for debt.

Section 11 - Penalty

- 11.1** Any person knowingly causing or permitting a nuisance to exist in violation of this Ordinance shall forfeit and pay a fine of **\$50.00** plus costs of prosecution for the first offense and pay a fine of **\$100.00** plus costs of prosecution for each subsequent offense.
- 11.2** Each day following the expiration of the 72-hour period for removal shall constitute a separate offense.

Section 12 - General

- 12.1** If any section subsection, paragraph, or other provision of this Ordinance or its application to any person or circumstances shall be held invalid or unconstitutional, such holding shall not affect the validity of any other section, subsection, paragraph, or other provision of its application to other persons or circumstances.
- 12.2** The Town Council hereby expresses the intent that it would have enacted the other provisions of this Ordinance as if the invalid or unconstitutional provision was not contained therein.

Ordinance No. 08-19-11-013 entitled, Adoption of the Abandoned, Wrecked, Dismantled, Inoperative or Unregistered Vehicle Ordinance, was duly adopted by a majority vote of the Cheswold Town Council at the Council meeting held on Tuesday, September 6, 2011, at which a quorum was present. Said Ordinance becomes effective on, Wednesday, September 7, 2011

I, Robert W. Sine, Mayor of the Town of Cheswold, do hereby certify that the foregoing is a true and correct copy of the Act passed by affirmative vote of all elected Members of the Cheswold Town Council on Tuesday, September 6, 2011.

**Certified: _____
Mayor**

Date: September 6, 2011

**ATTEST: _____
Secretary/Treasurer**

Date: September 6, 2011

Sponsored by: Gregory Donophan – Captain of Police

Date: August 11, 2011

Co-Sponsor: Councilperson Theon Callender

Date: August 11, 2011