

ORDINANCE NO. 1508

AN ORDINANCE OF THE CITY OF DES MOINES, WASHINGTON regarding junk vehicles and amending chapter 7.32 DMMC.

WHEREAS, junk and inoperable vehicles are located throughout the City, and

WHEREAS, citizens and property owners have expressed frustration and concern over the number of these vehicles located in their neighborhoods and throughout the City, and

WHEREAS, these vehicles contribute to blight in the community, degrade the quality of life of Des Moines residents, and impact public welfare, and

WHEREAS, existing regulations regarding junk vehicles do not adequately provide for efficient enforcement measures, and

WHEREAS; the City Council finds that it is in the public interest to use the City's police powers to increase enforcement capabilities relating to junk vehicles as provided in this Ordinance; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES ORDAINS AS FOLLOWS:

Sec. 1. DMMC 7.32.010 and section 2 of Ordinance No. 1283 are amended to read as follows:

Definitions.

(1) Use of words and phrases. As used in this ordinance, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) "Apparently inoperable" means that the vehicle does not appear to comply with requirements for safe and legal operation on public streets or highways with regard to expired or a lack of current licensing, a lack of brakes, lights, tires, safety glass, or other safety equipment or other circumstances or conditions that are evidence that the vehicle is not currently operable, including, but not limited to, a vehicle having its passenger compartment filled with trash or debris, vegetation growing inside, around, or on the vehicle, or other evidence that the vehicle has not been moved for an extended period of time.

(3) "Director" means the director of the department in charge of code enforcement or his or her designee or any designated alternate who is empowered by ordinance or by the City Manager to enforce this chapter including assigned code enforcement officials.

(4) "Junk vehicle" means a vehicle meeting at least three of the following requirements:

(a) Is three years old or older;

(b) Is extensively damaged, such damage including, but not limited to, any of the following: a broken window or missing windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable; or

(d) Has an approximate fair market value equal only to the approximate value of the scrap value.

(5) "Landowner" means an owner of private property, or a person in possession or control of private property.

(6) "Vehicle" means a motorized or nonmotorized vehicle or device for carrying passengers, goods or equipment, including but not limited to, automobiles, trucks, motorcycles, bicycles, boats, tractors, campers, trailers, utility trailers or devices of a similar nature or any components of such devices.

Sec. 2. DMMC 7.32.020 and section 2 of Ordinance No. 1057 are amended to read as follows:

Junk vehicles prohibited. No person shall keep, permit, or allow a junk vehicle to be placed, maintained, or stored on real property.

Sec. 3. DMMC 7.32.030 and section 4 of Ordinance No. 1283 are amended to read as follows:

Exceptions.

(1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or

(2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler or licensed vehicle dealer and is fenced according to the provisions of RCW 46.80.130.

(3) At any one time, a landowner may have on his or her premises only one junk vehicle outside an enclosed building for a period not to exceed ten (10) days.

Sec. 4. DMMC 7.32.040 and section 5 of Ordinance No. 1283 are amended to read as follows:

Abatement and removal of junk vehicles on private property.

(1) Voluntary compliance. Whenever the director determines that a vehicle is a public nuisance and in violation of this chapter, a reasonable attempt shall be made to secure voluntary compliance from the landowner and the vehicle's registered owner.

(2) Issuance of notice of civil violation. If the director does not obtain voluntary compliance with this chapter, the director shall issue a notice of civil violation to the landowner of record and the vehicle's last registered owner of record in accordance with the provisions of DMMC 1.28.040.

(3) Content. For violations of this chapter, the notice of civil violation to the fullest extent reasonably possible shall contain the following information:

(a) The name and address of the landowner of record upon whose property the vehicle is located;

(b) The name and address of the vehicle's last registered owner of record provided license or vehicle identification numbers are available and/or readily capable of obtaining;

(c) The vehicle description, including the license plate number and/or the vehicle identification number, the model year, the make, and the factors which render the vehicle a public nuisance;

(d) The street address or a description sufficient for identification of the property where the vehicle is located;

(e) The required corrective action and a date and time by which the correction must be completed;

(f) The date, time, and location of a hearing before the Des Moines Municipal Court on the question of abatement and removal of the vehicle or part thereof as a public nuisance which will be at least 10 days but no more than 45 days from the date the notice is issued;

(g) A statement indicating the City may remove, impound, and dispose of the vehicle, and assess all costs and expenses of

administration, removing, impounding, and disposing of the vehicle against the landowner or the registered owner as ordered by the Des Moines Municipal Court; and

(h) A statement that a monetary penalty pursuant to DMMC 1.28.040(5) in an amount per day for each violation shall be assessed against the landowner and/or the vehicle's registered owner as specified and ordered by the Des Moines Municipal Court in accordance with DMMC 1.28.040.

(4) Service of notice. The notice shall be mailed by certified mail, with a five (5) day return receipt requested, to the owner of the land as shown on the last equalized assessment roll and to the last registered and legal owner of record of the vehicle unless the vehicle is in such condition that identification numbers are not available to determine ownership.

(5) Landowner responsibility disclaimer. The landowner must appear in person at the hearing or present a written statement prior to the hearing to deny responsibility for the vehicle's presence on the property. If the Des Moines Municipal Court determines that the vehicle was placed on the property without the landowner's consent and that the landowner has not subsequently acquiesced in its presence, then the costs and expenses of administration, removing, impounding, and disposing of the vehicle shall not be assessed against the landowner or otherwise attempted to be collected from said landowner.

(6) Removal by the City. Pursuant to the Des Moines Municipal Court's orders, the vehicle or part thereof may be removed at the request of a law enforcement officer with notice to the Washington State Patrol and the Washington Department of Licensing that the vehicle has been wrecked. The City may use any lawful means to cause the vehicle to be removed from the private property and disposed of to a licensed motor vehicle wrecker or hulk hauler or scrap processor.

(7) Recovery of costs and expenses.

(a) The costs of removal and disposal shall be assessed against the last registered owner if the identity of the owner can be determined unless the owner in the transfer of ownership complied with RCW 46.12.101 and RCW 46.12.650, or against the landowner of record of the property on which the vehicle is stored, or both. If both the owner of the vehicle and the landowner are assessed the costs of removal, then

liability for the costs shall be their joint and separate obligation.

(b) Pursuant to law, the City shall file a lien for the cost of any abatement proceedings and all other related costs against the real property on which the monetary penalty was imposed or any of the work of abatement was performed, except no lien shall attach to the real property if the landowner was found not responsible in the ruling issued by the Des Moines Municipal Court. Any claim of lien shall contain sufficient information regarding the Notice of Violation and Abatement, a description of the property to be charged with the lien and the owner of record, and the total amount of the lien.

(c) The costs of administration and of removal and disposal of the vehicle may also be recovered pursuant to DMMC 1.28.060(4).

(8) Entry of private property. Using any lawful means, the City may enter upon the subject property and remove or correct the condition that is subject to abatement. The City may seek such judicial process as it deems necessary to effect the removal or correction of such condition. When a law enforcement officer or public official has probable cause to believe that a nuisance created by public nuisance vehicles exists on any property in violation of this chapter, he or she may request permission to enter the premises to inspect for evidence thereof if the landowner is present. If permissive entry cannot be obtained, the law enforcement officer or prosecuting attorney may apply to a court of competent jurisdiction for a warrant to enter the property, notwithstanding the inability to locate the landowner.

(9) Conflict of provision. This notice and related requirements of this section are intended to supplement those of chapter 1.28 DMMC; however, should a conflict exist, the provisions of this section shall prevail.

Sec. 5. DMMC 7.32.050 and section 6 of Ordinance No. 1283 are amended to read as follows:

Violation - Penalty.

(1) Any violation of any provision of this chapter is a class 1 civil infraction and shall be prosecuted as provided in chapter 1.24 DMMC.

(2) If the same individual receives two (2) committed findings for violating this chapter within one (1) year, the third (3rd) violation

within one (1) year from the date of the original citation shall constitute a misdemeanor.

(3) The violation of this chapter shall also entitle the City to abate or impound the nuisance in accordance with DMMC 7.32.040 and chapter 1.28 DMMC.

(4) Each day upon which a violation occurs constitutes a separate offense.

Sec. 6. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 7. Effective date. This ordinance shall take effect and be in full force thirty (30) days after its passage and approval in accordance with law.

PASSED BY the City Council of the City of Des Moines this 24th day of March, 2011 and signed in authentication thereof this 24th day of March, 2011.


M A Y O R

APPROVED AS TO FORM:


Assistant City Attorney

ATTEST:


City Clerk

Published: March 29, 2011

Effective Date: April 23, 2011

LEGAL NOTICE
SUMMARY OF ADOPTED ORDINANCE
CITY OF DES MOINES

ORDINANCE NO. 1508, Adopted March 24, 2011.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance relates to junk vehicles and amends chapter 7.32 DMMC.

The full text of the ordinance will be mailed without cost upon request.

Sandy Paul, CMC
City Clerk

Published: March 29, 2011