

ORDINANCE NO. 1126

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO REMOVAL OF JUNK VEHICLES FROM PRIVATE PROPERTY, DECLARING JUNK VEHICLES TO BE NUISANCES AND UNLAWFUL, DEFINING JUNK VEHICLES, DESCRIBING THE PROCEDURE FOR ISSUANCE OF NOTICES OF VIOLATION TO THE PROPERTY OWNER AND OWNER OF THE VEHICLE, HEARING, ABATEMENT, IMPOSITION OF CIVIL PENALTIES AND COLLECTION OF PENALTIES, REPEALING CHAPTER 8.08 GHMC AND ADDING A NEW CHAPTER 8.08.

WHEREAS, the presence of public nuisances has a detrimental affect on the health safety and welfare of the community; and

WHEREAS, the presence of junk or inoperable vehicles on either public or private property within the City present inherent safety and health concerns; and

WHEREAS, an exemption from the application of this ordinance for an individual's personal vehicle restoration of up to two vehicles on property is appropriate because such use is reasonably associated with the primary use of property; and

WHEREAS, no exemption is available for vehicle restoration on vacant property, as such activity is either not associated with any primary use of the property, or in those zones where vehicle restoration is allowed, the necessary facilities must also be available for restoration to take place; and

WHEREAS, the legislature of the State of Washington allows cities to abate abandoned or junk vehicles as nuisances, in accordance with RCW 46.55.240;

WHEREAS, the City's existing chapter 8.08 regulating Junk Vehicles is outdated and does not fulfill new statutory requirement;

WHEREAS, RCW 46.55.240 requires that the City include certain statutory provisions in any local ordinance; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 8.08 of the Gig Harbor Municipal Code is hereby repealed.

Section 2. A new Chapter 8.08 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

Chapter 8.08 JUNK VEHICLES

Sections:

- 8.08.010 Purpose.
- 8.08.020 Definitions
- 8.08.030 Exemption
- 8.08.040 Nuisance declared, violations
- 8.08.050 Enforcement
- 8.08.060 Investigation and notice of violation
- 8.08.070 Time to comply
- 8.08.080 Hearing
- 8.08.090 Municipal Court Order
- 8.08.100 Removal and Disposal - Costs
- 8.08.110 Civil penalties
- 8.08.120 Additional relief

8.08.010 Purpose.

The purpose of this ordinance is to provide for the abatement and removal of junk vehicles on private property as provided for in RCW 46.55.240. Abatement is necessary to preserve and enhance the aesthetic character of the City's neighborhoods, protect property values and rights and to reduce environmental health, and safety problems associated with junk vehicles.

8.08.020 Definitions.

For the purposes of this chapter, the following definitions apply:

A. "Junk Vehicle" is any vehicle which meets at least three of the following criteria:

1. Is three years old or older;
2. Is extensively damaged, such damage including, but not limited to the following examples:
 - a. broken window or windshield
 - b. flat tires
 - c. missing tires, motor or transmission
 - d. rusted exterior;
 - e. leaking oil or gasoline;

3. Is apparently inoperable, meaning that a vehicle does not appear to comply with requirements for vehicles used on public streets with regard to brakes, lights, tires, safety glass or other safety equipment;
4. Has expired license tabs;
5. Has an approximate fair market value equal only to the approximate value of the scrap in it;
6. A vehicle illegally parked in the required front or side yard;

B. Enforcement Officer means the City Administrator, his or her designee, representative or a City of Gig Harbor law enforcement official.

C. Vehicle shall include, but not be limited to, automobiles, motorcycles, trucks, buses, motorized recreational vehicles, campers, travel trailers, boat trailers, utility trailers, or other similar devices capable of moving or being moved on the public right-of-way, and shall also include parts of Vehicles, but shall not include devices moved by human or animal power, or used exclusively upon stationary rails or tracks.

8.08.030 Exemptions.

The provisions of this ordinance shall not apply to:

- A. A vehicle or part thereof that is completely enclosed within a building in a lawful manner, or otherwise parked legally on the property so as not to be visible from adjacent or nearby public property. Temporary tarp garages and carports do not satisfy this exemption;
- B. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dismantler or licensed vehicle dealer and is fenced in accordance with the provisions of RCW 46.80.130.
- C. A vehicle enclosed in an opaque auto cover specifically designed to completely shield the vehicle from view as long as the vehicle is parked in a lawful manner on private property. The cover must be in good condition and must be replaced if it is torn, weather-beaten, or acquires any other defects. Tarps and makeshift covers do not meet the requirement. This exemption will apply to only two vehicles per legal lot. Vehicles stored on vacant or undeveloped land are not exempted by this subsection C.

8.08.040 Nuisance declared, violations.

- A. The storage or retention of junk vehicles on private property is declared a public nuisance which is subject to the enforcement, removal and abatement procedures in this chapter.
- B. It shall be unlawful for any person, firm or corporation to retain, place or store junk vehicles on private property, in conflict with or in violation of any of the provisions of this code.
- C. Additional Violations. In addition to the above, it is a violation of this chapter to:
 1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;
 2. Fail to comply with any of the requirements of this title, including any requirement of the city's codes and state codes adopted by reference herein.

8.08.050 Enforcement.

- A. The Enforcement Officer shall have the authority to enforce this chapter. The Enforcement Officer may call upon the building, fire, planning and community development or other appropriate city departments to assist in enforcement.
- B. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.
- C. It is the intent of this chapter to place the obligation of complying with its requirements upon the property owner, occupier of the property, owner of the junk vehicle or other person responsible for the storage or retention of junk vehicles within the scope of this title.
- D. No provision of or any term used in this chapter is intended to impose any duty upon the city or any of its officers or employees which would subject them to damages in a civil action.

8.08.060 Investigation and notice of violation.

- A. Investigation. The Enforcement Officer shall investigate the premises which he/she reasonably believes does not comply with the standards and requirements of this title.

B. Notice of Violation. If, after investigation, the Enforcement Officer determines that the standards or requirements of this title have been violated, the Enforcement Officer shall serve a notice of violation upon the property owner, tenant, vehicle owner, or other person responsible for the condition. The notice of violation shall contain the following information:

1. Name and address of the person(s) to whom the citation is issued;
2. The location of the subject property by address or other description sufficient for identification of the subject property;
3. A description of the vehicle and its location;
4. A separate statement of each standard, code provision or requirement violated, and the reasons for which the City deems the junk vehicle(s) to be a public nuisance in violation of this chapter;
5. What corrective action, if any, is necessary to comply with the standards, code provisions or requirements;
6. A reasonable time for compliance;
7. A statement that if the person(s) to whom the notice of violation is issued fails to complete the corrective action by the date required, the City or its designee shall remove, impound and dispose of the vehicle, and will assess all costs of administration and removal against the owner of the property upon which the vehicle is located or otherwise attempt to collect such costs against the owner of the vehicle;
8. A statement that the owner of the land on which the vehicle is located may appear in person at the hearing and present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the junk vehicle on the land, with his/her reasons for denial.

C. Service. The notice shall be served on the owner, tenant, vehicle owner or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the Enforcement Officer makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the city's official newspaper; and
2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address as shown on the

official Pierce County assessor's parcel data, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Amendment. A notice or order may be amended at any time in order to:

1. Correct clerical errors; or
2. Cite additional authority for a stated violation.

F. Withdrawal. The city may choose to withdraw a notice of violation at any time, without prejudice to the city's ability to reissue it, if a certificate of compliance has not been obtained for the specific violations.

8.08.070 Time to comply.

A. Determination of Time. When calculating a reasonable time for compliance, the Enforcement Officer shall consider the following criteria:

1. The type and degree of violation cited in the notice;
2. The stated intent, if any, of a responsible party to take steps to comply;
3. The procedural requirements for obtaining a permit to carry out corrective action;
4. The complexity of the corrective action, including seasonal considerations, and
5. Any other circumstances beyond the control of the responsible party.

B. A copy of the notice may be recorded against the property with the Pierce County auditor. The Enforcement Officer may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

8.08.080 Hearing.

A. The property owner, tenant, vehicle owner or other person responsible for the violation may appeal the notice of violation by requesting such appeal of the notice within 15 calendar days after service of the notice. When the last day of the period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in

writing, and upon receipt of the appeal request, the Enforcement Officer shall forward the request to the municipal court judge.

B. If a request for a hearing is received, a notice giving the time, location and date of the hearing shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the County Assessor records and the legal owner of the vehicle, unless the vehicle condition is such that identification numbers are not available.

C. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement for consideration, and deny responsibility for the presence of the vehicle, with the reasons for denial. If it is determined that the vehicle was placed on the property without the consent of the landowner and that the landowner has not acquiesced in its presence, then the cost of removal shall not be assessed against the landowner.

D. At or after the appeal hearing, the municipal court judge may:

1. Sustain the notice of violation and require that the vehicle be removed at the request of the Enforcement Officer after a date certain, and that the junk vehicle be disposed of by a licensed vehicle wrecker or tow truck operator, with notice to the Washington State Patrol and the department of licensing that the vehicle has been wrecked;
2. Withdraw the notice of violation;
3. Continue the review to a date certain for receipt of additional information;
4. Modify the notice of violation, which may include an extension of the compliance date, and/or determine that the owner of the property is not responsible for the costs of removal, pursuant to subsection C above.

8.08.090 Municipal Court Order.

A. Unless mutually agreed to by the appellant and the Court, the order of the Court shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to such person at his/her last known address as determined the Enforcement Officer within 15 calendar days following the conclusion of testimony and hearings and the closing of the record.

B. Proof of service shall be made by a written declaration by the person effecting the service, declaring the time and date of service and the manner by which service was made.

C. The Municipal Court, in affirming the Enforcement Officer's Notice of Violation and Abatement, may assess administrative costs or costs related to the abatement of the violators' vehicle. The Court may also order the refund of hearings fees to parties deemed not responsible for the violation.

D. If it is determined at the hearing that the Vehicle was placed on the land without the consent of the Landowner and that he or she has not subsequently acquiesced in its presence, then the Municipal Court's order shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the Landowner.

8.08.100 Removal and Disposal - Costs.

A. Commencing 45 calendar days after service of the Notice of Violation and Abatement, if no appeal had been filed, or 15 calendar days after the issuance of an Order from the municipal court resulting in authority to remove, the Enforcement Officer shall supervise the removal and disposal of the Vehicle or part thereof. The Enforcement Officer will provide notice to the Washington State Patrol and the Washington State Department of Licensing that the vehicle has been processed in accordance with the laws of the State of Washington.

B. The City's costs related to the removal of the junk vehicle may be collected from the registered owner of the vehicle(s) if the identify of the owner can be determined, unless the owner, in the transfer of ownership, has complied with RCW 46.12.101. Alternatively, the cost may be collected from the owner of the property on which the vehicle has been stored.

8.08.110 Civil Penalties.

A. In addition to any other sanction or remedial procedure which may be available, any person, firm or corporation violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative civil penalty in the amount of \$100.00 per day for each violation from the date set for compliance until compliance with the order is achieved.

B. The penalty imposed by this section shall be collected by civil action brought in the name of the city. The Enforcement Officer shall notify the city attorney in writing of the name of any person subject to the penalty, and the city attorney shall, with the assistance of the Enforcement Officer, take appropriate action to collect the penalty.

8.08.120 Additional relief.

The Enforcement Officer may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of this title when civil penalties are inadequate to effect compliance.

Section 3. Severability. If any portion of this ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 14th day of April, 2008.

CITY OF GIG HARBOR

CHUCK HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

By: _____
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 03/05/08
PASSED BY THE CITY COUNCIL: 04/14/08
PUBLISHED: 04/23/08
EFFECTIVE DATE: 04/28/08
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