

ORDINANCE NO. 2009-10-345

**AN ORDINANCE PROHIBITING THE MAINTENANCE OF INOPERABLE VEHICLES WITHIN THE CITY LIMITS OF THE CITY OF TONTITOWN**

WHEREAS, Inoperable vehicles carry a higher potential for broken parts with sharp edges, are more likely to leak hazardous substances, and are more likely to harbor vermin;

WHEREAS, Inoperable vehicles are a fire hazard, an attractive nuisance to children, a liability in encouraging tourist trade; and an eyesore;

WHEREAS, Inoperable vehicles hinder the promotion of the health, safety, peace, comfort, and general welfare of the inhabitants of the municipality and decrease the aesthetic beauty of the community;

WHEREAS, It is found and determined by the City Council of the City of Tontitown, Arkansas, that the location of such inoperable vehicles within the city limits should be prohibited; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Tontitown, Arkansas, to amend Section 154 of the Code of Ordinances for the City of Tontitown, Arkansas, by repealing the current section and adopting a revised Section 154.

SECTION 1: Section 154.056 of the Code of Ordinances for the City of Tontitown, Arkansas is hereby amended by adding the following sections and shall read as follows:

SECTION 2: Whenever the following terms are used in this article they shall have the meaning respectively ascribed to them in this section:

- A. "Inoperable vehicle," means any vehicle which is inoperable, dismantled, or damaged and that is unable to start and move under its own power.
- B. "Junk vehicle," means junked, dismantled, or wrecked automobiles, or parts thereof, pursuant to Ark. Code Ann. §27-74-402.
- C. "Vehicle," includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.
- D. "Salvage yard," means any business that, in the course of its operation, maintains ten (10) or more vehicles to be used, wholly or in parts, to generate revenue for the operation of the business.
- E. "Curtilage" means the area immediately surrounding a house or home, including, but

not limited to: any driveway, carport, or non-enclosed garage, any fenced in area, and any area within two hundred (200) yards of a residence.

- F. "Automobile repair shop" means any business which engages in the repair or servicing of vehicles.
- G. "Demolisher" means any person whose business, to any extent or degree, is to convert a motor vehicle or household appliance into processed scrap or scrap metal, into saleable parts, or otherwise to wreck or dismantle vehicles or appliances.
- H. "Expeditious repair" means that (1) the parts for repair have been ordered but are not yet available for installation for reasons beyond the owner's control, (2) the vehicle is scheduled to be repaired within 30 days, or (3) the vehicle is inoperable because of an accident and the owner is pursuing a claim for damages.

### SECTION 3: PROHIBITION

- A. It shall be unlawful for any person to place, or cause to be placed, any junk vehicle, inoperable old vehicle or part thereof, upon any private property unless it is at a salvage yard, automobile repair shop, or at the business establishment of a demolisher.
- B. The location or presence of any inoperable or junked vehicle or inoperable or junked vehicles on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, except as excluded in subsection (a) of this section, shall be deemed a public nuisance and it shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning or discarding his or their vehicle or vehicles on the property of another or to suffer, permit or allow the same to be placed, located, maintained or exist upon his or their own real property.
- C. This ordinance section shall not apply to:
  - 1. a vehicle or part thereof which is completely enclosed within a building or fence in a lawful manner where it is not visible from the street or other public or private property;
  - 2. any motor vehicle which can be started and moved under their own power;
  - 3. antique automobiles, provided such is at least twenty five (25) years old and is restored to operating condition;
  - 4. any motor vehicle which is being expeditiously repaired; and
  - 5. any automobile that is considered a historic or special interest vehicle pursuant to Ark. Code Ann. §27-15-2207.

### SECTION 4: VIOLATION; NOTICE AND OPPORTUNITY FOR HEARING

- A. When the city believes that a vehicle is being maintained in violation of this ordinance, Tontitown Code Enforcement shall give the private property owner and the owner of the motor vehicle, if ascertainable, thirty (30) days' notice by registered or certified mail that the vehicle shall be towed at the owner' expense unless the motor vehicle is restored to a functional use, disposed of by the owner in a manner not prohibited by this subchapter, or placed in an enclosed building.
- B. The notice shall contain a description of the inoperable vehicle(s), the license numbers of the inoperable vehicles (if known) and the address where the inoperable vehicles are being improperly stored.
- C. The notice shall inform the recipient that he may request a hearing within 30 days of the date of the letter in front of the Hearing Panel to determine if there is a violation.
- D. This notice shall include the name, address and phone number (and email address, if applicable) that the recipient may contact to set up the hearing.
- E. The notice shall contain a copy of this ordinance.
- F. If it is impossible to determine with reasonable certainty the identity and addresses of the private property owner or the owner of the motor vehicle, then notice shall be given as provided in Ark. Code Ann. section 14-54-902.
- G. The thirty (30) days' notice may be waived by the owners of the inoperable vehicle.

#### SECTION 5: HEARING and POST-HEARING

- A. The Tontitown Planning Commission shall conduct all hearings pertaining to inoperable vehicles or junk vehicle. At the hearing before the Planning Commission, the recipients of the notice or their designated representative shall be provided with a copy of this ordinance and be presented with the basis of the belief that the vehicle is being maintained in violation of this ordinance.
- B. At the hearing the recipients of the notice or their designated representative shall be given an opportunity to prove that the vehicle(s) in question is not being maintained in violation of this ordinance, or is being expeditiously repaired.
- C. The Planning Commission shall inform the parties present of their decision at the conclusion of the hearing.
- D. Within three (3) days of the hearing, Tontitown Code Enforcement shall send to the private property owner, the owner of the motor vehicle, and all persons present at the hearing by registered or certified mail a notice informing them of the outcome of



hearing and the opportunity to appeal the decision to the appropriate state circuit court, including the address and phone number of the court.

- E. The post-hearing notice shall inform the recipients that the inoperable vehicle(s) in question will be towed at their expense within ten (10) days of the date of the hearing, or the expiration of the original thirty (30) days notice, whichever is longer.

#### SECTION 6: REMOVAL OF THE INOPERABLE OR JUNK VEHICLE(S)

- A. At the conclusion of the post-hearing notice period (as provided for in Sec. 4(c) of this ordinance), the city official charged with enforcement of this ordinance shall instruct and authorize the Washington County Sheriff's Department to have the inoperable vehicle(s) towed.
- B. This authorization shall not be given if the violation of this ordinance has been corrected and the vehicle(s) are no longer inoperable, or has been completely enclosed within a building or fence in a lawful manner where it is not visible from the street or other public or private property.
- C. The Washington County Sheriff's Department shall be required to obtain and serve a warrant authorizing the seizure and removal of any inoperable vehicle located within the curtilage of a house or home.

#### SECTION 7: POST REMOVAL

- A. The enforcement agency which takes into custody and possession any junk or inoperable motor vehicle, within thirty (30) days after taking custody and possession thereof, shall notify the last known registered owner of the motor vehicle and all lienholders of record by registered or certified mail, return receipt requested that the motor vehicle has been taken into custody and possession.
- B. The notice shall:
  - 1. contain a description of the motor vehicle, including the year, make, model, manufacturer's serial or identification number, or any other number which may have been assigned to the motor vehicle by the Office of Motor Vehicle and shall note any distinguishing marks;
  - 2. set forth the location of the facility where the motor vehicle is being held and the location where the motor vehicle was taken into custody and possession; and
  - 3. inform the owner and any lienholders of record of their right to reclaim the motor vehicle within ten (10) days after the date notice was received by the owner or lienholders upon payment of all towing, preservation, and storage charges resulting from taking and placing the motor vehicle into custody and

possession and state that the failure of the owner or lienholders of record to exercise their right to reclaim the motor vehicle within the ten-day period shall be deemed a waiver by the owner and all lienholders of record of all right, title, and interest in the motor vehicle and of their consent to the sale or disposal of the junk motor vehicle at a public auction or to a salvage yard or demolisher.

- C. If the identity of the last registered owner of the junk or inoperable motor vehicle cannot be determined, if the certificate of registration or certificate of title contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, then notice shall be served as provided in Ark. Code Ann. section 14-54-902.
- D. The consequences and effect of failure to reclaim an inoperable vehicle within the ten-day period after notice is received by registered or certified mail or within ten (10) days after the notice is published in a newspaper as prescribed shall be set forth in the notice.

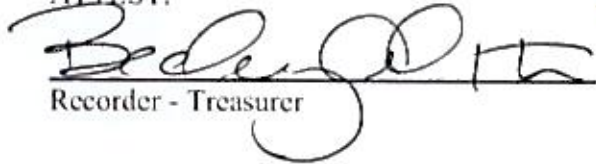
#### SECTION 8: SALE

- A. If an inoperable or junk vehicle is not reclaimed, the enforcement agency in possession of the inoperable vehicle shall sell it either at a public auction or to a salvage yard or demolisher. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, and shall receive a sales receipt from the enforcement agency which disposed of the motor vehicle. The sales receipt at the sale shall be sufficient title only for purposes of transferring the motor vehicle to a salvage yard or to a demolisher for demolition, wrecking, or dismantling. No further titling of the motor vehicle shall be necessary by either the purchaser at the auction, the salvage yard, or the demolisher, who shall be exempt from the payment of any fees and taxes.
- B. From the proceeds of any sale, the enforcement agency which sold the inoperable vehicle shall reimburse itself for any expenses it may have incurred in removing, towing, preserving, and storing the property and for the expenses of conducting any auction and any notice and publication expenses incurred pursuant to this ordinance.
- C. Any remainder from the proceeds of the sale shall be held for the last registered owner of the motor vehicle or any lienholder for ninety (90) days, after which time, if no owner or lienholder claims the remainder, it shall be deposited with the city's funds.
- D. The city shall retain all rights and remedies contained in Ark. Code Ann. sections 14-54-903 and 14-54-905.

PASSED AND APPROVED THIS 6<sup>th</sup> DAY OF October 2009.

  
Mayor

ATTEST:

  
Recorder - Treasurer

SPONSOR:

Planning Commission