

ABANDONED AND INOPERABLE VEHICLE ORDINANCE

Ordinance No. 195

AN ORDINANCE OF THE CITY OF DALTON GARDENS ADDING A NEW CHAPTER (TO BE ENTITLED ABANDONED AND INOPERABLE VEHICLE ORDINANCE) TO THE MUNICIPAL CODE OF THE CITY OF DALTON GARDENS, IDAHO AND REPEALING TITLE 8, CHAPTER 3 OF SAID CODE.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF DALTON GARDENS THAT A NEW CHAPTER CALLED ABANDONED AND INOPERABLE VEHICLE ORDINANCE IS ADDED TO "THE MUNICIPAL CODE OF THE CITY OF DALTON GARDENS, IDAHO" TO READ AS FOLLOWS:

Table of Contents

- Section 1: Findings and purpose.
- Section 2: Definitions.
- Section 3: Nuisance Declared
- Section 4: Definitions
- Section 5: Exceptions
- Section 6: Chapter Not Exclusive
- Section 7: Right of Entry
- Section 8: Removal
- Section 9: Removal Notice
- Section 10: Removal Hearing Time
- Section 11: Removal Hearing Notice
- Section 12: Removal Notification of Decision
- Section 13: Abatement
- Section 14: Removal Costs
- Section 15: Notice to Law Enforcement

Section 16: Appeals of Interpretation

Section 17: Severability

Section 18: Conflicting Ordinance Provision

Section 19: Effective Date

SECTION 1: FINDINGS AND PURPOSE:

The City Council of the City of Dalton Gardens does hereby find that it is necessary to provide for the abatement of abandoned and inoperable vehicles which are offensive or annoying to the senses, detrimental to property values and community appearance, an obstruction to or interference with the comfortable enjoyment of adjacent property or premises, or hazardous or injurious to the health, safety or welfare of the general public in such ways to constitute a public nuisance; and, to provide standards to safeguard life, health and public welfare in keeping with the character of the City by allowing for the maintenance of property or premises.

SECTION 2: STANDARDS:

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety and general welfare. Whenever the requirements of this chapter conflict with the requirements of any other lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive or that imposing the highest standard shall govern.

SECTION 3: NUISANCE DECLARED:

The accumulation and/or storage of abandoned, ~~wrecked, dismantled~~ or inoperable vehicles or parts thereof on private or public property creates a condition tending to reduce the value of surrounding private property in the vicinity, and/or promotes blight and/or deterioration, and/or creates fire hazards and/or constitutes an attractive nuisance creating a hazard to the health and/or safety of minors, or is a harborage for rodents and/or insects injurious to the health, safety and/or general welfare of the public and is, therefore, a public nuisance within the meaning of Idaho Code section 50-334.

SECTION 4: DEFINITIONS:

"Abandoned vehicle" means any vehicle observed by an authorized officer or reported by a member of the public to have been left within the limits of any highway or upon the property of another without the consent of

the property owner for a period of twenty-four (24) hours or longer, except that a vehicle shall not be considered abandoned if its owner-operator is unable to remove it from the place where it is located and has notified a law enforcement agency and requested assistance in a timely manner. For purposes of this ordinance, timely manner means that the removal of the vehicle is completed within 72 hours of contact.

HIGHWAY: The entire width between the boundary lines of every way publicly maintained when any part is open to the use of the public for vehicular travel, with jurisdiction extending to the adjacent property line, including sidewalks, shoulders, berms and rights of way not intended for motorized traffic. The term "street" is interchangeable with highway and/or a street or travel area located on private property open to the use of the public for purposes of vehicular travel.

INOPERABLE: Incapable of being operated legally on a public highway, including, but not limited to, not having a valid, current registration. A vehicle which is not able to perform that cannot perform it's normal function

NUISANCE: A vehicle described in this chapter.

PUBLIC PROPERTY: Any property not privately owned exclusive of highways.

VEHICLE: Any device designed to move or propel persons or property or to be drawn upon a highway or public or private road. For purposes of this ordinance, vehicle does not include not including a device designed to be propelled or moved by human power, such as wagons, tricycles, bicycles, or a device to be used exclusively upon stationary rails or tracks. This also does not include devices such as ATV's ,derby cars, or vehicles that would not require license and registration to be operated on a highway or public street.

SECTION 5: EXCEPTIONS FROM CHAPTER PROVISIONS:

- A. A vehicle or part thereof which is completely enclosed within a building.
- B. Not more than three vehicles or parts thereof that are or is not visible from the street or other public or private property; completely screened by at least a 75% sight obscuring fence.
- B. ~~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, licensed vehicle dealer, a junk dealer, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise;~~

- C. A licensed vehicle that is visible from the street or other public/private property which is in the process of being repaired or restored within a reasonable time. For purposes of this ordinance, reasonable time is considered to be 60 days ;
- D. Recreational vehicles, such as, but not limited to, ATV's, derby cars, boats, snowmobiles and motor homes, are exempt from this chapter provided a valid current registration and license is obtained yearly. The amount of recreational vehicles visible from the street or public/private property is limited to three total recreational vehicles. All other vehicles shall be completely enclosed within a building or completely screened by at least a 75% sight obscuring fence. Note: Any recreational vehicle that does not require a registration or license shall be completely enclosed within a building.

SECTION 6: CHAPTER NOT EXCLUSIVE:

This chapter shall not be deemed to be the exclusive method of abating abandoned, dismantled or inoperable vehicles within the city, but shall supplement and be in addition to all other provisions of this code and statutes of the state of Idaho.

SECTION 7: ENFORCEMENT; RIGHT OF ENTRY:

Except as otherwise provided herein, the provisions of this chapter shall be enforced by persons employed or otherwise engaged by the city. In the enforcement of this chapter such persons may enter upon private or public property to examine the vehicle or parts thereof, or obtain information as to the identity of the vehicle, and when directed by the council, remove or cause to be removed such vehicle or part thereof declared to be a nuisance pursuant to this chapter.

SECTION 8: REMOVAL; BY WHOM:

Such vehicles as are declared to be a nuisance may be removed by an employee of the city, or the council may contract with any person or persons for such removal.

SECTION 9: REMOVAL; NOTICE TO PROPERTY OWNER AND OCCUPANTS:

Upon the City's receipt of a written complaint by a City resident or member of the public, the persons charged with enforcing this chapter shall inspect the vehicle and make an initial determination of abandonment or inoperability. After making an initial determination of violation, the City shall notify the property owner in writing of the violation, the hearing and appeal procedures. Should any of the persons enforcing this chapter be informed of or observe the existence of a nuisance, he shall inspect the vehicle and if in his opinion the vehicle is a nuisance, he shall notify the owner of the property, as determined from the records of the county assessor, and the occupants of

~~the premises, if occupied, of the fact that in his opinion the vehicle is a nuisance and he shall instruct them as to the manner in which they can remedy the situation and the time within which to do so.~~

SECTION 10: REMOVAL; HEARING; TIME SET:

If the nuisance has not been abated as provided in this chapter, any of the persons enforcing this chapter shall notify the mayor of the nuisance, the mayor shall set a time for a public hearing in the council chambers to be held on the question of whether or not the vehicle is a nuisance, the manner in which it may be abated, and the time within which it shall be abated.

.SECTION 11: REMOVAL; HEARING; NOTICE TO OWNER:

Notice of such hearing as mentioned in this chapter shall be given to the owner of the property, as disclosed by the records of the county assessor, and to the occupant of the property upon which the vehicle is parked, at least ten (10) days before the hearing, either by certified mail or personal service and to the owner of the vehicle if such owner can be identified.

**SECTION 12: REMOVAL; HEARING; DETERMINATION OF NUISANCE;
MANNER OF ABATEMENT; NOTIFICATION OF DECISION:**

At the public hearing any interested party may be represented by counsel and introduce evidence by testimony or otherwise, or may submit his position on the question by written statement. The council shall determine whether, in its opinion, the vehicle is a nuisance, and if it is so found, declare the same to be a nuisance, and notify the persons or parties upon whom notice has been served or who appeared at the hearing in defense of the declaration of a nuisance of its decision and may impose such conditions, take such action as it deems appropriate under the circumstances to carry out the purpose of this chapter. It shall state the manner in which the nuisance may be abated and the time within which it should be abated. If an interested party makes a written presentation at the hearing but does not appear, he shall be notified of the decision by the council by written decision mailed to the party by certified mail. If the party maintaining the nuisance does not remedy the situation or abate the nuisance within the time prescribed by the decision of the council, which time limit shall not be less than ten (10) days, the owner of the vehicle will thereby forfeit all right, title and interest therein.

SECTION 13: ABATEMENT BY CITY:

The persons enforcing this chapter shall cause the abatement of the nuisance by the removal of the vehicle by city employees or by contractor.

SECTION 14: REMOVAL; COSTS; NONPAYMENT; COLLECTION:

The cost of removal plus actual costs sustained by the City associated with administration of this ordinance ~~administrative costs of twenty five dollars (\$25.00)~~ shall be paid by the party found to have caused or maintained the nuisance within thirty (30) days of the hearing.

Should it appear at the hearing that the party permitting or causing the nuisance is the owner of the property from which the vehicle was removed, either as record owner or contract buyer, and the costs provided for in this section are not paid within thirty (30) days, the costs shall be levied as a special assessment against such property and certified to the tax collector of the county by the clerk as provided by Idaho Code section 50-1008. Whether or not the costs are levied as a special assessment, the council in its discretion may order such costs to be collected by civil action.

SECTION 15: NOTICE TO DEPARTMENT OF LAW ENFORCEMENT;
TRANSFERRAL OF LICENSE PLATES OR REGISTRATION
CERTIFICATE:

Within five (5) days after the abatement of the nuisance, notice shall be given to the state of Idaho department of law enforcement identifying the vehicle, or part thereof, removed as fully as possible. At the same time any registration certificate or license plates found shall be transmitted to the state of Idaho department of law enforcement.

~~SECTION 16: APPEALS~~

~~An appeal from an administrative determination or interpretation made by the City designee under this Chapter may be made by the applicant within ten (10) days after written notice of the action by the City has been mailed to the applicant or posted on the site. The appeal shall be in writing and filed with the City Clerk who shall place the matter before the next City Council meeting. The City Council may approve, modify or deny the request. The decision shall be made within fifteen (15) days of the meeting, and a copy of the decision shall be mailed to the applicant. Further appeals shall be to District Court.~~

SECTION 16: SEVERABILITY:

Should any section, clause, or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of the remaining portions of this Ordinance.

SECTION 17: CONFLICTING ORDINANCE PROVISIONS:

If any conflict occurs between this Ordinance and provisions of the other City Ordinances, the more restrictive Ordinance shall take precedence.

SECTION 18: REPEAL:

This Ordinance shall repeal title 8, Chapter 3 of the Dalton Gardens City Municipal Code.

SECTION 19: EFFECTIVE DATE:

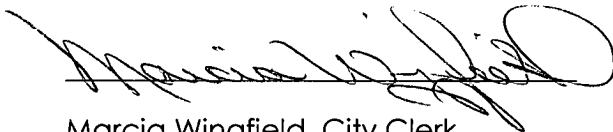
This Ordinance shall take effect and be in full force upon its passage, approval, and publication in one (1) issue of the Coeur d'Alene Press.

ADOPTED this 7th day of February, 2008



Dan Franklin, Mayor

ATTEST:



Marcia Wingfield, City Clerk

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Kootenai, } ss.

Molly Stern

being first duly sworn

upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The

legal notice

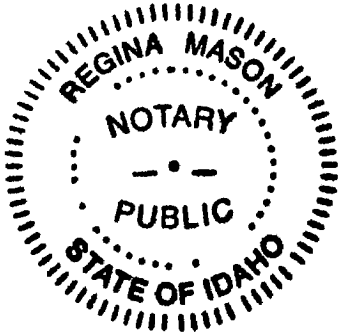
of which the annexed is a printed copy, was published in the regular Wednesday issue of said newspaper for 1 consecutive week commencing on the 12 day of March, 2008 and ending on the 12 day of March, 2008 and such publication was made as often during said period as said daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice Molly Stern. On this 12 day of March in the year of 2008, before me, a Notary Public, personally appeared Molly Stern, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Regina Mason

Notary Public for the State of Idaho,
residing at Coeur d'Alene, Idaho.

MY COMMISSION EXPIRES 6/18/09



SUMMARY OF
CITY OF DALTON GAR-
DENS, IDAHO

ORDINANCE NO. 195

AN ORDINANCE OF DAL-
TON GARDENS, IDAHO, A
POLITICAL SUBDIVISION
OF THE STATE OF IDAHO,
ADDING A NEW CHAPTER
(TO BE ENTITLED ABAN-
DONED AND INOPERABLE
VEHICLE ORDINANCE) TO
THE MUNICIPAL CODE OF
THE CITY OF DALTON GAR-
DENS, IDAHO.

In accordance with Idaho Code
§50-901A, the following is a
Summary of Ordinance 195
of the City of Dalton Gardens,
Idaho:

1. Ordinance 195 is an ordi-
nance adding a new chapter
to the municipal code of the
City of Dalton Gardens, Idaho
providing for the abatement
of abandoned and inoperable
vehicles, repealing Title 8,
Chapter 3, ABANDONED,
WRECKED VEHICLES, and
providing for severability and
conflicting ordinances.

2. Ordinance 195 shall be
known as the ABANDONED
AND INOPERABLE VEHICLE
ORDINANCE.

3. The Ordinance sets forth
the findings of necessity and
purpose of the ordinance as it
relates to the safety and wel-
fare of the general public and
protection of property values
and community appearance,
and declares the accumulation
and/or storage of abandoned
or inoperable vehicles or parts
thereof to be a public nuisance
within the meaning of Idaho
Code section 50-334.

5. The Ordinance further sets
forth the definitions of "aban-
doned vehicle", "highway", "in-
operable", "nuisance", "public
property" and "vehicle", and
sets forth exceptions from the
chapter provisions.

6. Persons employed or en-
gaged by the City to enforce
the Ordinance may enter upon
private or public property to
examine, obtain information,
remove or cause to be removed
any vehicle or part declared to
be a nuisance.

7. The City shall notify in writ-
ing the property owner and
occupant of the building of
any violation of the ordinance,
public hearing and appeal pro-
cedures, and time limits for re-
moval.

8. The Ordinance incorporates
a provision regarding penal-
ties concerning real property
as follows:

The cost of removal plus actual
costs sustained by the City as-
sociated with administration of
this ordinance shall be paid by
the party found to have caused
or maintained the nuisance
within thirty (30) days of the
hearing.

Should it appear at the hear-
ing that the party permitting
or causing the nuisance is the
owner of the property from
which the vehicle was re-
moved, either as record own-
er or contract buyer, and the
costs provided for in this sec-
tion are not paid within thirty
(30) days, the costs shall be
levied as a special assessment
against such property and cer-
tified to the tax collector of the
county by the clerk as provided
by Idaho Code section 50-1008.
Whether or not the costs are
levied as a special assessment,
the council in its discretion
may order such costs to be col-
lected by civil action.

9. The Ordinance takes effect
upon publication of this Sum-
mary in the Coeur d'Alene
Press.

10. The full text of Ordinance
195 is available at the Dalton
Gardens City Hall.

DATED this day of _____
_____, 2008.

Daniel Franklin, Mayor

ATTEST:

Marcia Wingfield, Clerk

Legal 2221

March 12, 2008



DOLAN & JACOBSEN
ATTORNEYS AT LAW
LIBERTY BUILDING
118 N. 7TH ST. - P.O. Box 1116
COEUR D'ALENE, IDAHO 83816-1116

February 29, 2008

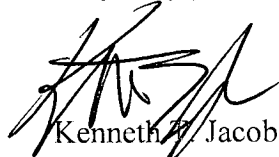
City of Dalton Gardens
Attn: Marcia Wingfield, City Clerk
6360 N.4th Street
Dalton Gardens, ID 83815

RE: Ordinance 195

Dear Marcia:

Pursuant to Idaho Code § 50-901A, this letter is to certify that the summary of Ordinance No. 195, ABANDONED AND INOPERABLE VEHICLE ORDINANCE, is true and complete and provides adequate notice to the Public of the contents of said Ordinance.

Very truly yours,



Kenneth T. Jacobsen
City Attorney

KTJ/rs