

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING CHAPTER 10.52 "ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLES" OF TITLE 10 "VEHICLES AND TRAFFIC" OF THE DESERT HOT SPRINGS MUNICIPAL CODE RELATING TO ABANDONED VEHICLE ABATEMENT

WHEREAS, the City of Desert Hot Springs ("City") is a charter city organized pursuant to Article XI of the California Constitution; and

WHEREAS, the City is a member of a joint powers authority known as the Abandoned Vehicle Abatement Service Authority, which is administered by Riverside County to provide reimbursement for member jurisdictions to remove abandoned, wrecked, inoperative and dismantled vehicles that create a public nuisance; and

WHEREAS, the City removes abandoned, wrecked, inoperative and dismantled vehicles pursuant to the procedures described in Chapter 10.52 of the Municipal Code; and

WHEREAS, the City Council now desires to update Chapter 10.52 to incorporate the best practices and procedures followed by many member jurisdictions of the Abandoned Vehicle Abatement Service Authority.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS DOES ORDAIN AS FOLLOWS:

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. AMENDMENT TO CHAPTER 10.52 "ABANDONED, WRECKED, DISMANTLED, OR INOPERATIVE VEHICLES" OF TITLE 10 "VEHICLES AND TRAFFIC" OF THE MUNICIPAL CODE

That Chapter 10.52 ("Abandoned, Wrecked, Dismantled, Or Inoperative Vehicles") of Title 10 ("Vehicles and Traffic") of the Desert Hot Springs Municipal Code is hereby amended to read as follows:

10.52.010 Findings and determinations.

In addition to and in accordance with the determinations made and the authority granted by the state under California Vehicle Code Section 22660 to remove abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof, as public nuisances, the City Council makes the following findings and declarations:

The accumulation of abandoned, wrecked, dismantled or inoperative vehicles, or parts thereof, on private or public property or where the vehicle or vehicles can be viewed from or parked on the public street, is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle, or part thereof, on private or public property or where the vehicle or vehicles can be viewed from or parked on the public street, except as expressly hereinafter permitted, is declared to constitute a public nuisance which may be abated as such in accordance with provisions of this section.

10.52.020 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Abandoned vehicle” means any vehicle is considered to be “abandoned” if it is left on any highway, public property, or private property in such inoperable or neglected condition that the owner’s intent to relinquish all further rights or interest in it may be reasonably concluded. In reaching a reasonable conclusion one must consider the amount of time the vehicle has not been moved, its condition, statements from the owner and witnesses.

“Dismantled vehicle” means any vehicle which is partially or wholly disassembled.

“Highway” means a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street.

“Inoperative vehicle” means any motor vehicle from which the engine, wheels, tires or other essential parts have been damaged or removed, or which the engine, wheels, tires, or other essential parts have been altered, damaged or allowed to deteriorate so that the vehicle cannot and/or is incapable of being driven under its own power or rendering the vehicle unsafe to operate on a highway. The lack of inflated tires, lack of a working engine, transmission, differential or other essential parts, or left unattended on jacks, blocks, or elevated in any other way which constitutes a threat to the public health, safety or general welfare.

“Owner of land” means the owner of land on which the vehicle or part thereof is located as shown on the last equalized assessment bill.

“Owner of the vehicle” means the last registered owner and legal owner of record.

“Public nuisance vehicle” means any vehicle that is abandoned, wrecked, dismantled, or any inoperative parts thereof that is on public or private property, including highways, and that creates a condition tending to reduce the value of private property, promotes blight and deterioration, invites plundering, creates fire hazards, constitutes an attractive nuisance and endangering the health and safety of the general public, harbors rodents, insects and other vermin, or jeopardizes health, safety and general welfare is a public nuisance.

“Public property.” This term does not include highway.

“Vehicle” means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved by human power or used exclusively on stationary rails or tracks.

“Wrecked vehicle” means any vehicle that is damaged to such an extent that it cannot be operated upon the highway is termed a wrecked vehicle. A vehicle which has been wrecked in a traffic accident and which has been removed from the roadway to a lawful storage facility, but which has not been claimed by its owner, will not be considered an abandoned vehicle for purposes of this chapter.

10.52.030 Act of abandonment prohibited.

It is unlawful and a misdemeanor for any person to abandon, park, store, or leave or permit the abandonment, parking, storing or leaving of any licensed or unlicensed vehicle, or parts thereof, which is in an abandoned, wrecked, dismantled or inoperative condition upon any private property or public property within the City for a period in excess of ten days, unless such vehicle, or parts thereof, is completely enclosed within a building in a lawful manner where it is not plainly visible from the street or other public or private property, or unless such vehicle is stored or parked in a lawful manner on private property in connection with the business of a licensed dismantler, a licensed vehicle dealer, or a licensed junk dealer.

~~Upon discovering the existence of an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, on private property or public property, a 72-hour notice of intention to abate shall be posted on the vehicle. A follow-up inspection shall be conducted within 72 hours to verify if such vehicle has been voluntarily abated. Upon determining that such vehicle still exist and a period of 72 or more consecutive hours has elapsed, a ten-day notice of intention to abate and remove such vehicle shall be mailed in accordance with Section 10.52.100 of this chapter.~~

10.52.040 Exceptions.

A. The provisions of this section shall not apply to:

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, licensed vehicle dealer, a licensed junk dealer, or which such storage or parking is necessary for the operation of a lawfully conducted business or commercial enterprise.

B. Nothing in this section shall authorize the maintenance of a public or private nuisance as defined under the provisions of law other than California Vehicle Code Division 11, Chapter 10 (commencing with Section 22650) and this section.

10.52.050 Effect on other laws.

This chapter is not the exclusive regulation of abandoned, wrecked, dismantled or inoperative vehicles within the City. It shall supplement and be in addition to the other regulatory codes, statutes and ordinances heretofore or hereinafter enacted by the City, the state or any other legal entity or agency having jurisdiction.

10.52.060 Administration.

Except as otherwise provided herein, the provisions of this chapter shall be administered and enforced by the City Manager or City Manager's designee. In the enforcement of this chapter, the City Manager or City Manager's designee may enter upon private or public property in a manner consistent with the State and Federal Constitutions to examine a vehicle or part thereof, or obtain information as to the identity of a vehicle declared to be a nuisance pursuant to this chapter.

10.52.070 Administrative costs.

The Council shall, from time to time, determine and fix an amount to be assessed as administrative costs (excluding the actual cost of removal of any vehicle or part thereof) under this chapter, including, but not limited to court costs and attorney fees.

10.52.080 Right of entry of certain persons.

When the Council has contracted with or granted a franchise to any person or persons, such person or persons shall be authorized to enter upon private property or public property to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this chapter in a manner consistent with the state and federal Constitutions. (Prior code § 90.08)

10.52.090 Abatement authorization.

Upon discovering the existence of an abandoned, wrecked, dismantled or inoperative vehicle, or parts thereof, on private property within the City, the City Manager or City Manager's

designee shall have the authority to cause abatement and removal thereof in accordance with the procedure described in this chapter.

10.52.100 Notice of intention to abate.

A. Unless the property owner and the owner of the vehicle have signed releases authorizing removal and waiving further interest in the vehicle or part thereof, a ten-day notice of intention to abate and remove the vehicle or parts thereof as a public nuisance shall be mailed by certified mail to the owner of the land and to the owner of the vehicle except when the vehicle is in such a condition that identification numbers are not available to determine ownership of such vehicle. The notices of intention shall be in substantially the following form:

1. Notice to owner of land:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE

(Name and address of owner of land)

As owner shown on the last equalized assessment roll of the land located at (address), you are hereby notified that the undersigned pursuant to Chapter 10.52 of the Desert Hot Springs City Code has determined that there exists on said land an (or part of an) abandoned, wrecked, dismantled or inoperative vehicle registered to _____ License No. _____, which constitutes a public nuisance pursuant to the provisions of the Desert Hot Springs City Code, Chapter 10.52.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of vehicle) within ten (10) days from the date of mailing of this notice, and upon your failure to do so the same will be abated and removed by the City and the cost thereof, together with administrative costs, assessed to you as owner of the land on which said vehicle (or said parts of a vehicle) is located.

As owner of the land on which said vehicle (or said parts of a vehicle) is located, you are hereby notified that you may, within ten (10) days after the mailing of this notice of intention, request a public hearing, and if such request is not received by the **Code Compliance Division** ~~**Community Safety Department**~~ within such ten (10) day period, the Code **Compliance Enforcement** Officer shall have the authority to abate and remove said vehicle (or said parts of a vehicle) as a public nuisance and assess the costs as aforesaid without a public hearing. You may submit a sworn written statement within such ten (10) day period denying responsibility for the presence of said vehicle (or said parts of a vehicle) on said land, with your reasons for denial, and such statement shall be construed as a request for a hearing at which your presence is not required. You may, however, appear in person at any hearing requested by you or by the owner of the vehicle, or, in lieu thereof, may present a sworn written statement as aforesaid in time for consideration at such hearing.

Notice mailed _____ (Date)

Signature _____

(Code ~~**Enforcement**~~ **Compliance** Officer)

2. Notice to last registered and/or legal owner of record of vehicle:

NOTICE OF INTENTION TO ABATE AND REMOVE AN ABANDONED, WRECKED,
DISMANTLED OR INOPERATIVE VEHICLE OR PARTS THEREOF AS A PUBLIC NUISANCE

(Name and address of last registered and/or legal owner of record of vehicle; notice should
be given to both if different)

As last registered (and/or legal) owner of record of (description of vehicle-make, model, license,
and the like), you are hereby notified that the undersigned, pursuant to the provisions of Desert
Hot Springs City Code Chapter 10.52, as determined that said vehicle (or parts of a vehicle)
exists as an abandoned, wrecked, dismantled or inoperative vehicle at (described location on
public or private property) and constitutes a public nuisance pursuant to the provisions of the
Desert Hot Springs City Code Chapter 10.52.

You are hereby notified to abate said nuisance by the removal of said vehicle (or said parts of a
vehicle) within ten (10) days from the date of mailing of this notice.

As registered (and/or legal) owner of record of said vehicle, you are hereby notified that you
may, within ten (10) days after the mailing of this notice of intention, request a public hearing
and if such request is not received by the Code Compliance Division ~~Community Safety
Department~~ within such ten (10) day period, the Code Enforcement Officer shall have the
authority to abate and remove said vehicle (or said parts of a vehicle) without a hearing.

Notice mailed _____ (Date)

Signature _____

(Code ~~Enforcement~~ Compliance Officer)

B. Notwithstanding the provisions of subsection A, the notice of intention is not
required for removal of a vehicle or part thereof which is inoperable due to the absence of a
motor, transmission, or wheels and incapable of being towed, is valued at less than \$200 by a
person specified in Section 22855 of the Vehicle Code of the State of California, and is
determined by the City to be a public nuisance presenting an immediate threat to public health
or safety, provided that the property owner has signed a release authorizing removal and
waiving further interest in the vehicle or part thereof. Prior to final disposition under California
Vehicle Code Section 22662 of such a low-valued vehicle or part for which evidence of
registration was recovered pursuant to Section 10.52.010 of this chapter, the local agency shall
provide notice to the registered and legal owners of intent to dispose of the vehicle or part, and
if the vehicle or part is not claimed and removed within 12 days after the notice is mailed, from a
location specified in California Vehicle Code Section 22662, final disposition may proceed. No
local agency of contractor thereof shall be liable for damage caused to a vehicle or part thereof
by removal pursuant to this section. This subsection applies only to inoperative vehicles located
upon a parcel that is: (1) zoned for agricultural use; or (2) not improved with a residential
structure containing one or more dwelling units.

10.52.110 Public hearing—Request, procedure and action.

A. Request.

1. Upon request by the owner of the vehicle or owner of the land received by an
official of the Code Compliance Division ~~Community Safety Department~~ within ten days
after the mailing of the notices of intention to abate and remove, a public hearing shall be held
by the City an impartial Hearing Officer on the question of abatement and removal of the
vehicle, or parts thereof, as an abandoned, wrecked, dismantled or inoperative vehicle, and the
assessment of the administrative costs and the cost of the removal of the vehicle, or parts
thereof, against the property on which it is located.

2. If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land within such ten-day period, such statement shall be construed as a request for a hearing, which does not require the owner's presence. Notice of the hearing shall be mailed, by registered or certified mail, at least ten days before the hearing to the owner of the land and to the owner of the vehicle, unless the vehicle is in such condition that identification numbers are not available to determine ownership. If such a request for hearing is not received within the ten days after mailing of the notice of intention to abate and remove, the City shall have the authority to abate and remove the vehicle, or parts thereof, as a public nuisance without holding a public hearing.

B. Procedure—Action.

1. All hearings under this chapter shall be held before the Hearing Officer who shall hear all facts and testimony he or she deems pertinent. The facts and testimony may include testimony on the condition of the vehicle, or parts thereof, and the circumstances concerning its location on the private or public property. The ~~City~~ Hearing Officer shall not be limited by the technical rules of evidence. The owner of the land may appear in person at the hearing or present a sworn written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with the reasons for such denial.

2. The Hearing Officer may impose such conditions and take such other action as he or she deems appropriate under the circumstances to carry out the purpose of this chapter. The Hearing Officer may delay the time for removal of the vehicle, or parts thereof, if in his or her opinion, the circumstances justify it. At the conclusion of the public hearing, the Hearing Officer may find that a vehicle, or parts thereof, has been abandoned, wrecked, dismantled or is inoperative on private or public property and order same removed from the property as a public nuisance and disposed of as hereinafter provided, in a manner consistent with the state and federal Constitutions and determine the administrative costs and the cost of removal to be charged against the owner of the land. The order requiring removal shall include a description of the vehicle, or parts thereof, and the correct identification number and license number of the vehicle, if available at the site.

C. Notification. If the owner of the land submits a sworn written statement denying responsibility for the presence of the vehicle on his or her land but does not appear, or if an interested party makes a written presentation to the Hearing Officer but does not appear, he or she shall be notified in writing of the decision.

D. If it is determined at the hearing that the vehicle was placed on the land without the consent of the owner of the land and that he or she has not subsequently acquiesced in its presence, the hearing officer shall not assess the costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect such costs from such owner of the land.

E. The decision of the Hearing Officer shall be final and the appellant may not appeal such decision to the City Council.

10.52.120 Abatement procedure.

A. ~~Five Ten~~ days after adoption of the order declaring the vehicle, or parts thereof, to be a public nuisance, or ~~five ten~~ days from the date of mailing of notice of the decision, as required by Section 10.52.110(B) of this chapter, **or fifteen days after such action of the hearing officer authorizing removal following appeal, whichever date is later,** the vehicle, or parts thereof, may be disposed of in a manner consistent to the state and federal Constitutions by removal to a scrap yard or automobile dismantler's yard, or to a suitable site operated by the City for processing as scrap or other final disposition consistent with applicable vehicle code regulations according to California Vehicle Code Section 22710.

B. After a vehicle has been removed, it shall not thereafter be reconstructed or made operable, unless it is a vehicle which qualifies for either horseless carriage license plates or historical vehicle license plates, pursuant to California Vehicle Code Section 5004, in which case the vehicle may be reconstructed or made operable.

C. ~~The local agency shall provide notice to the registered and legal owners of intent to dispose of the vehicle or part, and if the vehicle or part is not claimed and removed within 12 days after the notice is mailed, from a location specified in California Vehicle Code Section 22662, which states that vehicles or parts thereof may be disposed of by removal to a scrapyard, automobile dismantler's yard, or any suitable site operated by a local authority for processing as scrap, or other final disposition consistent with subdivision California Vehicle Code Section 22661(e). A local authority may operate such a disposal site when its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of such vehicles or parts, or the local agency may transfer such vehicle or parts to another, provided such disposal shall be only as scrap, final disposition may proceed.~~ No local agency or contractor thereof shall be liable for damage caused to a vehicle or part thereof by removal pursuant to this section.

10.52.130 Notice to Department of Motor Vehicles.

Within five days after the date of the removal of the vehicle, or part thereof, notice shall be given to the Department of Motor Vehicles identifying the vehicle, or part thereof, removed. At the same time there shall be transmitted to the Department of Motor Vehicles any evidence of registration available, including registration certificates, certificates of title and license plates.

10.52.140 Cost of abatement.

If the administrative costs and the costs of removal which are charged against the owner of a parcel of land pursuant to Section 10.52.110(B) of this chapter are not paid within 30 days of the date of the order, such costs shall be assessed against the parcel of land pursuant to California Government Code Section 38773.5 and shall be transmitted to the Tax Collector for collection. The assessment shall have the same priority as other City taxes.

10.52.150 Refusal to abate.

It is unlawful for any person to fail or refuse to remove an abandoned, wrecked, dismantled, or inoperative vehicle, or parts thereof, or refuse to abate such nuisance when ordered to do so in accordance with the abatement provisions of this section, and of state law where such state law is applicable.

10.52.160 Penalty.

Any person violating any of the provisions of this chapter is guilty of a misdemeanor.

Section 3. SEVERABILITY

That, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 4. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 5. AMENDING OF BAIL SCHEDULE

That the City Attorney's Office is hereby directed to determine whether this Ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 6. EFFECTIVE DATE

That this Ordinance shall take effect thirty (30) days after its adoption.

Section 7. CERTIFICATION

That the City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held this ____ day of _____ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

[SIGNATURES FOLLOW ON THE NEXT PAGE]

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer Mizrahi, City Attorney