

ORDINANCE NO. 135

AN ORDINANCE REGULATING ABANDONED PERSONAL PROPERTY ON PUBLIC WAYS; PROPERTY FOUND ON PRIVATE LANDS; AND JUNK AUTOMOBILES WITHIN THE CITY OF WASHBURN, MCLEAN COUNTY, NORTH DAKOTA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHBURN, MCLEAN COUNTY, NORTH DAKOTA, AS FOLLOWS:

Article I. Personal Property on Public Ways.

Section 1. Definitions.

(a) "Abandoned personal property" shall be any personal property, which has been located on a street, alley, other public way, or parking lot of the city or which has been removed from such a location to a public parking lot, city storage or city building by proper authorities to prevent a nuisance, to safeguard the property or to avoid obstruction of the public ways.

(b) "Abandoned motor vehicle" means a motor vehicle, as defined in Section 39-01-01 of the North Dakota Century Code, that has remained for a period of more than forty-eight (48) hours on public property illegally or lacking vital component parts or has remained for a period more than forty-eight (48) hours on private property without consent of the person in control of such property or in an in operable condition such that it has no substantial potential further for use consistent with its useful functions unless it is kept in an enclosed garage or storage building.

Section 2. Removal.

After a period of forty-eight (48) hours shall have elapsed from the commencement of the abandonment, the city shall be

entitled to take and store the property. The city shall not be held responsible for any damage to abandoned vehicle or responsible for any loss of parts or other personal property in or on abandoned vehicle and all abandoned property.

Section 3. Notice to owner of abandoned vehicle.

(a) When an abandoned motor vehicle is more than seven (7) model years of age, is lacking vital components parts, and does not display a license plate currently valid in North Dakota, or any other state or foreign country, it is immediately eligible for disposition, and must be disposed of to a scrap iron processor licensed by the State of North Dakota, and is not subject to the notification, reclamation, or title provisions of this ordinance.

(b) When an abandoned motor vehicle does not fall within Section 3 (a) above, the city shall take it into custody and shall further give notice of the taking within ten (10) days.

(c) The notice shall set forth the date and place of the taking, the year, make, model, and serial number of the abandoned motor vehicle and the place where the vehicle is being held. The city shall inform the owner and any lienholders or secured parties of their right to reclaim the motor vehicle as specified below in this ordinance, and shall state that failure of the owner or lienholders or secured parties to exercise their right to reclaim the vehicle is deemed a waiver by them of all right, title, and interest in the vehicle and a consent to the sale of the vehicle at a public auction pursuant to this ordinance.

(d) The owner, secured parties, or lienholder of an abandoned motor vehicle, which has been taken into custody, have a right to reclaim such vehicle from the city upon payment of all towing and storage charges resulting from taking the vehicle into custody provided said vehicle is reclaimed within fifteen (15) days after the notice specified in Section 3 (c).

Section 4. Sale.

An abandoned vehicle, not more than seven (7) model years of age, taken into custody and not reclaimed pursuant to the provisions of this ordinance must be sold to the highest bidder at public auction following a reasonable public notice thereof. One publication of said sale at least ten (10) days prior to the sale shall be deemed reasonable public notice. The purchaser must be given a receipt and a form prescribed by the State of North Dakota which shall be sufficient title to dispose of the vehicle. The receipt also entitles the purchaser to register the vehicle and receive a certificate of title free and clear of all liens and claims of ownership. License plates displayed on an abandoned vehicle must be removed and destroyed prior to the purchaser taking possession of the vehicle.

Section 5. When proceeds may be claimed.

From the proceeds of the sale of abandoned motor vehicle, the city shall reimburse itself for the costs of towing, preserving and storing the vehicle and all notice and publication costs incurred pursuant to this ordinance. Any remainder from the proceeds of sale shall be held for the owner of the vehicle or entitled

lienholder or securer parties for ninety (90) days and then shall be deposited in a state treasury of the State of North Dakota as provided in Section 1 of Article IX of the Constitution of North Dakota and credited to the permanent school fund.

Article II. Property found on private lands.

Section 1. Definitions.

The following words or terms when used herein shall be deemed to have the meanings set forth below:

Abandoned vehicle shall include without limitation any vehicle which has remained on private property for a period of forty-eight (48) continuous hours or more, without consent of the owner or occupant of the property or for a period of forty-eight (48) continuous hours or more, after the consent of the owner or occupant has been revoked.

Blighted structure shall include without limitation any dwelling, garage or outbuilding, or any factory, shop, store, warehouse or any other structure or part of a structure which because of fire, wind, or other natural disaster, or physical deterioration, is no longer habitable as a dwelling, nor useful for the purpose for which it may have been intended.

Building materials shall include without limitation, lumber, bricks, concrete or cinder blocks, plumbing materials, electric wiring or equipment, heating ducts or equipment, shingles, mortar, concrete or cement, nails, screws, or any other materials used in constructing any structure.

Junk shall include without limitation parts of machinery or motor vehicles, unused furniture, stoves, refrigerators, or other appliances, remnants of wood, metal, or any other castoff material of any kind, whether or not the same could be put to any reasonable use.

Junk automobiles shall include without limitation any motor vehicle which is not licensed for use upon the highways of the state for a period in excess of sixty (60) days and shall also include whether licensed or not any motor vehicle which is inoperative for any reason for a period in excess of sixty (60) days, provided that there is excepted from this definition unlicensed but operative vehicles which are kept as a stock in trade of a regularly licensed and established new or used automobile dealer.

Inoperative shall mean a condition of being junked, wrecked, wholly or partially, dismantled, discarded, abandoned, or unable to perform the functions or purposes for which a vehicle was originally constructed.

Person shall include all natural persons, firms, co-partnerships, corporations, and all associations of natural persons, incorporated or unincorporated, whether acting by themselves or by a servant, agent, or employee. All persons who violate any of the provisions of this article, whether as owner, occupant, lessee, agent, servant or employee shall, except as herein otherwise provided, be equally liable as principals.

Trash and rubbish shall include any and all forms of debris not herein otherwise classified.

Section 2. Storage of junk, junk automobiles - Contrary to public health and safety nuisance.

It is hereby determined that the storage or accumulation of trash, rubbish, junk, junk automobiles, abandoned vehicles, building materials, and the maintenance of blighted structures upon any private property within the city tends to result in blighted and deteriorated neighborhoods, increase criminal activity, spread vermin and disease and is contrary to the public peace, health, safety and general welfare of the community and therefore constitutes a nuisance.

Section 3. Unlawful to store or accumulate junk, junk automobiles, etc.

It shall be unlawful and is declared a nuisance for any person to store or permit the storage or accumulation of trash, rubbish, junk, junk automobiles, or abandoned vehicles on any private property in the city except within a completely enclosed building or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods or junk gatherer. However, any duly licensed junk dealer, junk buyer, dealer in used parts or dealer in second hand goods or junk gatherer shall store said items in an area which shall be enclosed in a building or located behind a site fence approved by the city and shall be stored in a manner so as not to create unsightly mess, deterioration of neighborhoods, increase criminal activities, spread vermin and disease or in any way create a situation contrary to the public peace, health, safety, or general welfare.

Section 4. Unlawful to dismantle automobiles except on business premises.

It shall be unlawful and is declared a nuisance for any person to dismantle, cut up, remove parts from, or otherwise disassemble any automobile, whether or not the same be a junk automobile, abandoned vehicle or otherwise, or any appliance or machinery, except in a completely enclosed building, or upon the business premises of a duly licensed junk dealer, junk buyer, dealer in used auto parts, dealer in secondhand goods or junk gatherer.

Section 5. Unlawful to maintain blighted structure.

It shall be unlawful and is declared a nuisance for any person to keep or maintain any blighted or vacant structure, dwelling, garage, outbuilding, factory, shop, store, or warehouse unless the same is kept securely locked, the windows kept glazed or neatly boarded up and otherwise protected to prevent entrance thereto by unauthorized persons or unless such structure is in the course of construction in accordance with a valid building permit issued by the city unless such construction is completed within a reasonable time.

Section 6. Unlawful to store building materials except on business premises.

It shall be unlawful and is declared a nuisance for any person to store or permit storage or accumulation of building materials on any private property, except in a completely enclosed building or except where such building materials are part of the stock in trade of a business located in the property, or except when such materials are being used in the construction of a structure on the property in accordance with a valid building permit issued by the

city and unless such construction is completed within a reasonable time.

Section 7. Police department may remove junk automobiles or abandoned vehicles.

(a) The McLean County Sheriff's Department is hereby authorized and empowered, to notify the owner, tenant, occupant, lessee or agent of the owner, of any property within the city to obey and remove junk, junk automobiles, or any other items or materials found accumulated, lying or located on such property (whether private or public). Such notice shall be served personally or delivered by certified mail, return receipt requested, to the last reasonably known address of the owner, tenant, occupant, lessee or agent of the owner, if such address is reasonably ascertainable or shall be posted on the premises at least ten (10) days prior to abatement of the nuisance. The notice shall specify the legal description of the premises and shall set forth, if possible, the street address of the premises. It shall include an explanation of the right to a hearing on the necessity for the abatement which is provided in this ordinance.

(b) Upon the failure, neglect, or refusal of the owner, tenant, occupant, lessee or agent of the owner, so notified to abate and remove the nuisance caused by the accumulation of junk, junk automobiles, or other nuisances as specified in this ordinance, the McLean County Sheriff's Department is hereby authorized and empowered to pay for the abatement and removal of said nuisance. If within ten (10) days after the date of any letter containing such notice is returned to the city because of

inability to make delivery thereof, provided the same was properly addressed to the last known address of such owner, occupant, or agent of the owner, and if the McLean County Sheriff's Department is unable to contact such owner, occupant or agent by telephone upon reasonable effort, the McLean County Sheriff's Department may also pay for the abatement of the nuisance or order its removal by the city. In order to abate said nuisance, the McLean County Sheriff's Department or its agent is authorized to enter upon the premises described in such notice and to take whatever steps as might be reasonably required to abate the nuisance and such actions, if reasonable in nature and undertaken in good faith, said entry shall not constitute a trespass or conversion.

(c) The costs of abatement or removal of the nuisance which are incurred by the city shall be certified by the McLean County Sheriff's Department to the city auditor for assessment against property, provided however, that if the property has any value it may be disposed of as previously provided in this ordinance and funds retained shall first be applied to expenses, as specified in this ordinance, and then shall be returned to the owner of the property, if the owner can be located within ninety (90) days. If the owner cannot be located, the funds shall be returned to the treasury of the City of Washburn.

(d) Such removal by the sheriff's department shall not excuse or relieve any person of the obligation imposed by this ordinance to keep his property free from storage or accumulation of junk automobiles or abandoned vehicles, or parts of junk automobiles or abandoned vehicles, or parts of either, or from any other violation

of this ordinance, nor from the penalties for violation thereof.

Section 8. Opportunity for hearing.

Any owner, tenant, occupant, lessee or agent of owner, of any property within the city, who has been ordered to remove junk, junk automobiles, or other items or materials found accumulated, or blighted structures, and in violation of this ordinance may seek a hearing before the Municipal Judge of the City of Washburn for the purpose of making a determination whether or not the items ordered to be removed by the McLean County Sheriff's Department are in violation of this ordinance. Any person desiring said hearing shall notify the Municipal Judge, in writing, within ten (10) days of the receipt of or posting of the required notice and shall be given an opportunity to appear before the Municipal Judge within fifteen (15) days after said notification of a desire for hearing. The city shall have the burden of proving by a preponderance of the evidence that the conditions of which it complains, constitutes a nuisance as to find in this ordinance. The Municipal Judge shall either find for the owner of the property, in which case no further action may be taken by the city without the issuance of another notice, pursuant to this ordinance, which shall be issued only in the event of a material change in circumstances, or the Municipal Judge shall find for the city, in which case the owner shall have an additional ten (10) days from the date of service upon him by mail or in person of a copy of the Municipal Judge's decision in which to abate the nuisance. If the owner fails, neglects, or refuses to abate the nuisance within that period of time, then the McLean County Sheriff's Department may proceed to enter upon the

property and to abate the nuisance and such actions, if reasonable in nature and undertaken in good faith, shall not constitute a trespass or conversion.

Section 9. Disposition of junk automobiles or abandoned vehicles determined to be of no value.

Any junk automobile, abandoned vehicle, or part of either removed from unenclosed private property as provided by this ordinance, or coming into the possession of the sheriff's department by abandonment on public property in the city, which is determined by the McLean County Sheriff's Department to be of no value other than as scrap metal shall be disposed of by the city in such a manner as to eliminate the unsightly accumulation of such worthless hulks and the hazards to public health attendant thereto with the least practicable delay.

Section 10. Abatement without prior notice.

In the event a nuisance as defined herein shall, in the opinion of the McLean County Sheriff's Department constituted immediate and serious danger to the health of any person, or shall constitute immediate and serious danger to private or public property, the city may, without prior notice to the owner of the premises immediately enter upon the premises and take whatever steps are required to abate the nuisance. If such actions are reasonable in nature and undertaken in good faith, such action shall not constitute trespass or conversion. Any attempt by the city to give the owner prior notice shall not constitute a waiver of the right under this section to act without prior notice.

Section 11. Other remedies: Harboring a nuisance.

The provisions of this ordinance shall not constitute the exclusive remedy of the City of Washburn to abate nuisances. The city reserves the right to proceed in any court of competent jurisdiction to obtain an injunction requiring abatement of the nuisance and such remedy may be asserted without regard to the notice requirements of this ordinance and the provisions for administrative relief set forth herein. Moreover, the harboring or maintenance of a nuisance shall constitute an offense punishable under this ordinance as set forth below.

Article III. Penalty Section

Section 1. Any person who violates or fails to comply with any provision of this Ordinance shall be subject to a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for more than thirty (30) days, or by both such fine and imprisonment.

Article IV. Effective Date

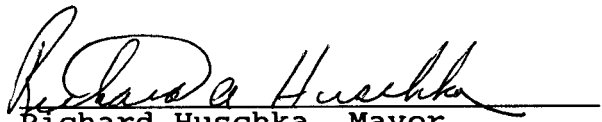
Section 1. This ordinance shall be in full force and effect from and after its final passage and approval of the publication of its title and penalty clause.

Article V. Conflicts

Section 1. All ordinances or parts of ordinances in conflict herewith are hereby rescinded and repealed.

Article VI. Savings Clause

Section 1. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.


Richard Huschka, Mayor

ATTEST:


Jeneen Loe, City Auditor

First Reading: May 17, 1999

Second Reading: June 7, 1999

Final Passage: June 7, 1999

Publication Date: June 17, 1999

Public Notices

Ordinance No. 135

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Richard Huschka, Mayor

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