

ORDINANCE NO. 987

**AN ORDINANCE REGULATING JUNKED MOTOR VEHICLES ON PRIVATE PROPERTY OF THE
ORDINANCE CODE OF THE CITY OF DOWNS, KANSAS AND REPEALING ALL ORDINANCES OR
PARTS OF ORDINANCES IN CONFLICT THEREOF**

(Published April 26, 2018)

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF DOWNS, KANSAS THAT:

Section 1. That Article 3 of Chapter VIII Health and Welfare of the Ordinance Code of the City of Downs, Kansas be amended to read as follows:

Section 8-301. FINDINGS OF GOVERNING BODY. The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serves as a breeding ground for flies, mosquitoes, rats and other insects and rodents;
- (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports;
- (c) Are a ready source of fire and explosion;
- (d) Encourage pilfering and theft;
- (e) Constitute a blighting influence upon the area in which they are located;
- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures. (Code 2006)

Section 8-302. DEFINITIONS. As used in this ordinance, unless the context clearly indicates otherwise:

- (a) Inoperable means a condition of being junked, wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed;
- (b) Vehicle means, without limitation, any automobile, truck, tractor or motorcycle which as originally built contained an engine, regardless of whether it contains an engine at any other time.
- (c) antique vehicle means a vehicle manufactured more than 25 years prior to the current year and which, because of discontinued production and limited availability, is considered to be a model or make of significant value to collectors or exhibitors and is listed for ad valorem taxes in Osborne County.
- (d) parts vehicle means a vehicle being stripped of parts to be used on a vehicle being repaired by the owner. It must be listed for ad valorem taxes in Osborne County. (Code 2018)

Section 8-303. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS. It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- (a) A motor vehicle nuisance is any motor vehicle which is parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable;
 - (1) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;

(2) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

(b) The provisions of this ordinance shall not apply to:

(1) Any motor vehicle which is enclosed in a garage or other building;

(2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or

(3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

(4) vehicles stored on commercial or industrial zones as indicated on the Downs Zoning Map.

(5) Antique or parts vehicles that have been granted an annual restoration permit by the council. (Code 2018)

Section 8-304. PUBLIC OFFICER. The mayor with the consent of the council shall designate a public officer to be charged with the administration and enforcement of this article. (Code 2006)

Section 8-305. COMPLAINTS; INQUIRY AND INSPECTION. The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the governing body, board of health, chief of police or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions which appear to constitute a nuisance. Upon making any inquiry and inspection the public officer shall make a written report of findings. (Code 2018)

Section 8-306. RIGHT OF ENTRY. The public officer has the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists. (Code 2018)

Section 8-307. ORDER OF VIOLATION. (a) The governing body shall serve upon the owner, any agent of the owner of the property or any other person, corporation, partnership or association found by the public officer to be in violation of Section 3 an order stating the violation. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(b) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail. (K.S.A. 12-1617e) (Code 2006)

Section 8-308. SAME; CONTENTS. The order shall state the condition(s) which is (are) in violation of Section 3. The order shall also inform the person, corporation, partnership or association that

(a) He, she or they shall have 10 days from receipt of the order to abate the condition(s) in violation of Section 3; or

(b) He, she or they have 10 days from receipt of the order to request a hearing before the governing body or its designated representative of the matter as provided by Section 12;

(c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 9 and/or abatement of the condition(s) by the city as provided by Section 10. (Code 2006)

Section 8-309. FAILURE TO COMPLY; PENALTY. Should the person fail to comply with the order to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of Section 3, be fined in an amount not to exceed \$250 or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense. (Code 2018)

Section 8-310. ABATEMENT. In addition to, or as an alternative to prosecution as provided in Section 8-309, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom an order has been sent pursuant to Section 8-307 has neither alleviated the conditions causing the alleged violation or requested a hearing before the governing body within the time period specified in Section 9-308, the public officer may present a resolution to the governing body for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution.

The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located as provided in Section 8-313. A copy of the resolution shall be served upon the person in violation in one of the following ways:

(a) Personal service upon the person in violation;

(b) Service by certified mail, return receipt requested; or

(c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

(d) If the owner or the agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice or order sent pursuant to this section during the preceding twenty-four month period, the governing body of the city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property or provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail (Code 2006)

Section 8-311. DISPOSITION OF VEHICLE; RECOVERY OF VEHICLE. (a) Disposition of any motor vehicle removed and abated from private property pursuant to this ordinance shall be as provided by K.S.A. Supp. 8-1102, as amended.

(b) Any person attempting to recover a motor vehicle impounded as provided in this ordinance, shall show proof of valid registration and ownership of the motor vehicle before the motor vehicle shall be released. In addition, the person desiring the release of the motor vehicle shall pay all reasonable costs associated with the impoundment of the motor vehicle, including transportation and storage fees, prior to the release of the motor vehicle. (Code 2006)

Section 8-312. HEARING. If a hearing is requested within the 10 day period as provided in Section 8-308, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer. The hearing shall be held by the governing body or its designated representative as soon as possible after the filing of the request therefore, and the person shall be advised by the city of the time and place of the hearing at least five days in advance thereof. At any such hearing, the person may be represented by counsel, and the person and the city may introduce such witnesses and evidence as is deemed necessary and proper by the governing body or its designated representative. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the findings of the governing body or its designated representative shall be prepared in resolution form, adopted by the governing body, and the resolution shall be served upon the person in the matter provided in Section 8-310. (Code 2006)

Section 8-313. COSTS ASSESSED. If the city abates or removes the nuisance pursuant to section 8-310, the city shall give notice to the owner or his or her agent by certified mail, return receipt requested, of the total cost of the abatement or removal incurred by the city. The notice shall also state that the payment is due within 30 days following receipt of the notice. The city also may recover the cost of providing notice, including any postage, required by this section. The notice shall also state that if the cost of the removal or abatement is not paid within the 30-day period, the cost of the abatement or removal shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as special assessments and charged against the lot or parcel of land on which the nuisance was located and the city clerk, at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and applicable interest has been paid in full. (Code 2006)

Section 8-314. RESTORATION PERMIT PROCESS. The restoration of an antique vehicle is allowed in residential districts as showed on the Downs Zoning Map under the following conditions:

- (a) Vehicle must be an antique vehicle or parts vehicle.
 - (b) Application shall be made to and approved by the governing body before the vehicle is brought into the city limits.
 - (c) The permit is good for one year from date of approval by council and can be renewed 4 times.
 - (d) Each application or renewal permit shall be accompanied by a fee of \$25.
- The vehicle must be stored in an enclosed building, or in the backyard at least 10 feet from the property line.
- (e) The vehicle must be screened from public view or be properly covered with a tarp that is properly secured unless actively working on the vehicle.
 - (f) Only one restoration permit is allowed per property.
 - (g) Process must be made on the vehicle during each permit period. Only on showing of good cause will this requirement be waived. Renewal applications must contain receipts for the purchase of parts or services along with a description of work completed during the previous permit period.
 - (h) At no time shall the vehicle become a public health nuisance by collecting water to breed mosquitoes, losing fluid to contaminate the soil, becoming a harborage for vermin, or being a point of heavy growth of weeds or other noxious vegetation over ten (10) inches in height.

(i) Upon the permit expiration date, the vehicle shall be removed from the city or placed inside a fully enclosed building as required by this Ordinance. (Code 2018)

Section 2. That Article 3 of Chapter VIII Health and Welfare of the Ordinance Code of the City of Downs, Kansas, prior amendments thereto, and all ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall take effect and be in force from and after its publication in the official newspaper of said City.

Passed by the city council this 16th day of April, 2018.

Signed by the mayor on the 16th day of April, 2018.

Justin Towery, Mayor

ATTEST:

Vickie Oviatt, City Clerk

[SEAL]