

Ordinance No. 236

AN ORDINANCE PROHIBITING THE MAINTENANCE OF INOPERABLE VEHICLES WITHIN THE CITY LIMITS OF THE CITY OF GREENLAND, ARKANSAS, MAKING IT A MISDEMEANOR TO MAINTAIN SUCH INOPERABLE VEHICLES MORE THAN TEN DAYS AFTER NOTICE AND PROVIDING A PENALTY THEREFOR.

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 and

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

WHEREAS, maintaining inoperable vehicles, after notice of violation of this ordinance, creates an unreasonable risk to others and should be declared a misdemeanor and punishment provided therefor.

SECTION 1 DEFINITIONS

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. Vehicles are excluded as long as they are registered and bear a current license permit.

B. "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.

C. "Salvage yard," means any business that, in the course of its operation, maintains five (5) or more vehicles to be used, wholly or in parts, to generate revenue for the operation of the business.

D. "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.

E. "Automobile repair shop" means any business which engages in the repair or servicing of vehicles;

F. "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;

G. "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 2 PROHIBITION

A. It shall be unlawful for any person to place, or cause to be placed, any inoperable vehicle, 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 vehicle or inoperable 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. A person, persons, or entity who violates Subsection B hereof after receiving a notice as hereinafter provided, and who fails to correct the prohibited conduct within ten (10) days shall be guilty of a misdemeanor. Each day beyond the tenth (10th) day shall be a separate offense. Upon a plea of guilty, nolo contendere or a finding of guilt the defendant shall be fined not less than \$10.00 no more than \$25.00 for each day of violation per nuisance vehicle. A second prosecution for violation of Subsection B hereof of the same person or entity within thirty-six (36) months of the previous offense, upon a plea of guilty, nolo contendere or a finding of guilt shall result in the defendant being fined not less than \$25.00 nor more than \$50.00 for each day of violation per nuisance vehicle.

D. This ordinance section shall not apply to:

A vehicle or parts of a vehicle 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; and
4. Any motor vehicle which is being expeditiously repaired.

SECTION 3 VIOLATION; NOTICE AND OPPORTUNITY FOR HEARING

A. When the city or the chief of police or other city representative believes that a vehicle is being maintained in violation of this ordinance, the enforcement agency shall give the private property owner and the owner of the motor vehicle, if ascertainable, within thirty (30) days' notice by certified mail, registered mail or personal service by a Greenland Police officer that the vehicle shall be towed at the owner's 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. The notice shall also advise the recipient that a violation that continues ten (10) days after receipt of the notice constitutes a criminal offense punishable as set forth herein.

B. The notice shall contain a description of the inoperable vehicle(s), the license numbers of the inoperable vehicles (if known) and the address/location 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 address 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 4
HEARING AND POST-HEARING**

A. A Hearing Panel shall consist of a member of the City Council elected by the Council, a resident of the City appointed by the Mayor, and the City Inspector/Code Enforcement Officer. The initial terms for the Council member shall be three (3) years and thereafter terms of two (2) years each. The initial term for the resident member shall be two (2) years and thereafter terms of two (2) years each. The Hearing Panel shall conduct all non-criminal hearings pertaining to inoperable vehicles. At the hearing before the Hearing Panel, the recipients of the notice or their designated representative shall be provided with a copy of this ordinance if a copy of the ordinance was not attached to the notice they were provided, and be presented with the factual basis for the belief that the vehicle is being maintained in violation of this ordinance.

B. At the hearing before the Hearing Panel 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 Hearing Panel shall inform the parties present of its decision at the conclusion of the hearing.

D. Within five (5) business days of the hearing, the enforcement agency shall send to the private property owner, the owner of the motor vehicle, and their representative (if any) by certified mail, registered mail or personal service by a Greenland Police Officer a letter 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 letter 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 5
REMOVAL OF THE INOPERABLE VEHICLE(S)**

A. At the conclusion of the post-hearing notice period (as provided in Sec. 4(E) of this ordinance), the city official charged with enforcement of this ordinance shall instruct and authorize the chief of police 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 chief of police shall be required to obtain and serve a Seizure Warrant authorizing the seizure and removal of any inoperable vehicle located with the curtilage of a house or home.

SECTION 6 POST REMOVAL

A. The enforcement agency which takes into custody and possession any 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 lien holders of record by certified mail, registered mail or personal service by a Greenland Police Officer that the motor vehicle has been taken into custody and possession.

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 lien holders of record of their right to reclaim the motor vehicle within ten (10) days after the date notice was received by the owner or lien holders upon payment of all towing, a 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 lien holders 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 lien holders of record of all right, title, and interest in the motor vehicle and of their consent to the sale or disposal of the inoperable motor vehicle at a public auction or to a salvage yard or demolisher.

B. If the identity of the last registered owner of the 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 lien holders, then notice shall be served as provided in Ark. Code Ann. Section 14-54-902.

C. The consequences and effect of failure to reclaim an inoperable vehicle within the ten-day period after notice is received or within ten (10) days after the notice is published in a newspaper as prescribed shall be set forth in the notice.

SECTION 7
SALE

A. If an inoperable 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 lien holder for ninety (90) days, after which time, if no owner or lien holder 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 12th day of December 2005.

William Yoer
WILLIAM YOES, Mayor

Donna Cheevers
DONNA CHEEVERS, Recorder-Treasurer