ORDINANCE NO. 6355

AN ORDINANCE TO AMEND TITLE 4 "HEALTH AND SANITATION" OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING "CHAPTER 4.15 – ABANDONED AND JUNK VEHICLES, MACHINERY, TRAILERS AND PARTS."

BE IT ORDAINED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

SECTION 1. That Title 4 "Health and Sanitation" Chapter 4.15 "Abandoned and Junk Vehicles, Machinery, Trailers and Parts" of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended to read as follows:

4.15.010 - Purpose.

The city council of the city of Council Bluffs makes, finds and declares that the accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles, machinery, trailers, or parts thereof, on private or public property is hereby 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 harbor for rodents and insects, and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, or dismantled or inoperative vehicle, or part thereof, on private or public property not including highways, except as expressly hereinafter permitted, is hereby declared to constitute a public nuisance, which may be abated as such in accordance with the provisions of this chapter.

4.15.020 - Definitions.

For the purpose of this chapter the following definitions shall apply:

(a) "Vehicle" means any device by which any person or property may be propelled, moved, or drawn upon a street, except a device which is designed to be exclusively moved by human power or used exclusively upon stationary rails or tracks. The term vehicle shall include, but is not limited to, an automobile, truck, van, sports utility vehicle, motorcycle, trailer, watercraft, boat, canoe, jet skis or aircraft.
(b) "Machinery" is synonymous with and means the same as 'machine' as defined by the current edition of Webster's New Collegiate Dictionary.
(c) "Trailer" means any vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle.
(d) "Parts" means any mechanical, structural, body or decorative part of any vehicle, machinery or trailer.
(e) "Junk vehicle" means any vehicle, machinery, trailer, or parts thereof, located within the corporate limits of the city of Council Bluffs, which, as to a vehicle or trailer, does not properly display license plates or stickers indicating current registration and/or, as to any vehicle, machinery, trailer, or parts thereof, which has any one or more of the following characteristics:
(1) Lacks an engine, wheel, tire, properly installed battery or other structural parts which

renders the vehicle inoperable for use as designed by the manufacturer; provided, that if there is more than one vehicle on the real property, there shall be the necessary number of engines, wheels, tires, batteries and other structural parts for each respective vehicle;

(2) Has a broken or cracked windshield, window, headlight, taillight, or any other cracked or broken glass;

(3) Has a broken or missing fender, door, bumper, hood, exterior door handle, running board, steering wheel, trunk top, trunk handle, tail pipe, muffler, driver's seat, fuel tank, driveshaft, differential, generator, alternator or other structural piece;

(4) Has become or the potential to become the breeding ground or habitat of rats, mice, snakes, mosquitoes or other vermin, rodents or insects, or is otherwise used for the storage, harbor, caging or dwelling for an animal of any kind;

(5) Has heavy growth of weeds or other noxious vegetation over eighteen (18) inches in height under or immediately next to it;

(6) Has become a point of collection for stagnant water;

(7) Has junk, garbage, refuse, gasoline or fuel other than in its fuel tank, paper, cardboard, wood or other combustible materials, solid waste or other hazardous material present in it or which is primarily used for storage of any materials;

(8) Has become a source of danger for children through entrapment in areas of confinement that cannot be opened from inside, through a danger of the vehicle falling or turning over, or through possible injury from exposed surfaces of metal, glass or other rigid materials;

(9) Has become a potential source of contamination of the soil from petroleum products or other toxic liquids being discharged or leaking from the vehicle;

(10) Has become illegal to operate on the public streets because it is missing one or more parts required by law;

(11) Is an abandoned vehicle; or

(12) Because of its defective, deteriorated or obsolete condition in any other way constitutes a nuisance or a threat to the public's health or safety.

(f) "Abandoned vehicle" means any of the following. For the purposes of this subsection, the word 'vehicle' includes a vehicle, machinery, trailer or parts thereof:

(1) A vehicle that has been left unattended on public property for more than twenty-four hours and lacks current registration, plates, or one or more wheels/tires or other parts which renders the vehicle totally inoperable;

(2) A vehicle that has remained illegally parked on public property for more than twenty-four hours;

(3) A vehicle that has been unlawfully parked on private real property or has been placed on private property without the consent of the real property owner or person in control of the property for more than twenty-four hours;

(4) A vehicle that has been legally impounded by order of a law enforcement authority and has not been reclaimed for a period often days. However, a law enforcement authority may declare the vehicle abandoned within the ten-day period by commencing the notification process in section 321.89 of the Code of Iowa;

(5) Any vehicle parked on a street determined by a law enforcement authority to create a hazard to other vehicle traffic;

(6) A vehicle that has been impounded pursuant to Section 321J.4B by order of the court and whose owner has not paid the impoundment fees after notification by the person or agency responsible for carrying out the impoundment order.

(g) "Law enforcement authority" means a peace officer or any city, state or federal department or agency operating with arrest authority in Council Bluffs, Iowa, which employs peace officers.
(h) "Responsible parties" means

(1) the private real property owner, as indicated in the records of the county auditor, upon which the junk vehicle is located, if applicable and

(2) if ascertainable, the last known registered owner of the junk vehicle as indicated in the official records of the state of Iowa Department of Transportation or a sister state division of transportation or motor vehicles.

(i) For the purposes of this chapter, a vehicle is presumed to be operated on the public roadway if it contains fuel or gasoline and there is no fuel or gasoline storage or pumping facilities on the same parcel of real property.

4.15.030 - Exemptions.

This chapter shall not apply to the following:

(a) A vehicle or part thereof which is completely enclosed within a garage, shed, barn, hangar, boathouse or other similar permanent structure with walls and ceiling designed for the storage of vehicles in a lawful manner, and where the vehicle is not visible from the street or other public or private property;
(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, an auto body shop, or when such storage or parking is necessary to the operation of a lawfully conducted business or commercial enterprise on land which such business or enterprise is authorized by the city's zoning regulations; or
(c) A vehicle which was recently involved in a collision, duly documented by a timely report filed with the appropriate law enforcement agency or the state department of transportation, or its equivalent in a sister state, shall not be deemed a junk vehicle unless the owner/operator of said vehicle fails to repair the same within a reasonable period of time after said collision.
(d) Nothing in this chapter shall authorize the maintenance of a public or a private nuisance as defined under provisions of law.

4.15.040 - Junk vehicle deemed nuisance.

The keeping, maintaining or allowing a junk vehicle to be on public or private property, except as provided by Section 4.15.030 above, shall constitute a nuisance. The owner of a junk vehicle and the owner of private property upon which the junk vehicle is located shall be responsible for the maintaining or keeping of a nuisance in violation of Chapter 8.54 of this code.

4.15.050 - Administration and enforcement.

Except as otherwise provided in this chapter, the provisions of this chapter shall be administered and enforced by the administrative authority designated by the mayor and/or the police chief, or their respective designees, hereinafter collectively referred to as 'enforcement officer.' The enforcement officer and any person designated by the enforcement officer to abate the nuisance pursuant to this code or court order, are hereby authorized access to any property upon which a junk vehicle is located for the purpose of carrying out any and all actions necessary to enforce this chapter.

4.15.060 - Administration costs.

The city council shall determine and fix the administrative fee, an amount to be assessed as administrative costs under this chapter. Said administrative fee shall be in addition to the actual costs incurred regarding towing, storage and disposal of the vehicle. The administrative fee shall be as set forth in the current schedule of fees contained in Chapter 2.08 of this code.

4.15.070 - Notices of intention to abate and remove—Mailing—Form of notices.

(a) A seven-day notice of intention to abate and remove the vehicle or parts thereof as a public nuisance shall be given to the owner of the land and/or to the owner of the vehicle, if known. The notices of intention shall be in a form promulgated by the health director, and shall provide the following information at a minimum:

(1) A description of the vehicle or parts which constitute(s) a nuisance under the provisions of the Council Bluffs Municipal Code;

(2) That the nuisance must be abated within seven calendar days, to-wit: the junk vehicle must be either

(i) Brought into a condition that it no longer is defined as a junk vehicle,

(ii) Placed in a proper enclosure, or

(iii) Removed from the property and properly disposed of or removed from the city; and

(3) Failure to properly abate said nuisance as prescribed shall be sufficient cause for the removal of the junk vehicle by the enforcement authority or his/her duly designated agent as set forth by the municipal code.

(b) The notice required by this section shall be served in any one of the following manners:

(1) Certified or registered mail, return receipt requested, to the owner of the property as indicated by the records of the county auditor at the address listed on said records and to the last registered-owner of said vehicle, if ascertainable, at the address listed in the state's records concerning ownership of the vehicle (for the purposes of this provision service shall be deemed to have been perfected the day after the notice is mailed); or

(2) Posting notice on or near the junk vehicle(s) in question and by posting a copy of the notice by the front entrance to the main building on the subject real property; or, if there is no building on said real property, by mailing a copy of the notice via first-class United States mail to the owner of the property as indicated by the records of the county auditor and at the address listed on the records of the county auditor and to the last registered-owner of said vehicle, if ascertainable, at the address listed on the state's records concerning ownership of the vehicle (for the purposes of this provision, service shall be deemed to have been perfected the day the notice is posted on or near the junk vehicle); or

(3) Any method allowed by law for service of original notice in a civil lawsuit (for the purposes of this provision service shall be deemed to have been perfected in the same manner as for original notice).

4.15.080 - Appeal to the City Council.

Any interested party may appeal the decision of the enforcement officer by filing a written notice of appeal with the administrative authority within five calendar days after service of notice as required by Section 4.15.070. Such appeal shall be heard by the City Council which may affirm, amend or reverse the notice/order or take other action deemed appropriate. The City Clerk shall

give at least five days' written notice of the time and place of the hearing to the appellant by first-class mail or personal service. In conducting the hearing the City Council shall not be limited by the technical rules of evidence.

4.15.090 - Abatement and removal.

(a) The responsible party, after service of notice is perfected, shall abate the nuisance within seven calendar days of service being perfected. Abatement shall consist of:

(1) (i) Providing for the current registration of each and every vehicle including the affixing the registration plate or current sticker to the vehicle;

(ii) Repairing any and all conditions which cause such vehicle(s) to be a nuisance under the provisions of the municipal code; and

(iii) Having all of the required equipment and parts for each vehicle which was described in the notice; or

(2) Removing the junk vehicle or causing the junk vehicle to be removed to a licensed dismantler, salvage yard, licensed vehicle dealer, a junk dealer, an auto body shop or to any other location provided the same complies with all applicable provisions of the municipal code.

(b) If the responsible parties fail to abate the nuisance as prescribed, the city, through the enforcement officer, may abate such nuisance by causing the junk vehicle(s) to be removed, impounded and sold or disposed of as provided for abandoned vehicles under the laws of the state of Iowa. All costs of such abatement and the administrative fee provided by this chapter shall be charged to the responsible parties, jointly and severally.

4.15.100 - Disposition of vehicle after notice or appeal.

Seven calendar days after declaring the vehicle or parts thereof to be a public nuisance, or five calendar days after action of the City Council authorizing removal following appeal, the vehicle or parts thereof may be removed and disposed of as provided by law.

4.15.110 - Assessment of costs against the land.

The administrative fee and the cost of removal and disposition which are charged against the owner of a parcel of land pursuant to this chapter shall be assessed against the parcel of land pursuant to Iowa Code and shall be transmitted by the city clerk to the tax collector for collection. Said assessment shall have the same priority as other city taxes.

4.15.120 - Illegal off-street parking.

(a) No person shall park a vehicle onto or upon privately owned real property or area developed as an off-street parking facility without the consent of the owner, lessee or person in charge of said property or facility.

(b) No person shall park a vehicle onto or upon publicly owned real property or area developed as an off-street parking facility, if said property is not properly designated and signed for parking of private vehicles; contrary to any signs set forth upon said property or facility; or contrary to the laws of the state of Iowa, county of Pottawattamie or the city of Council Bluffs without proper consent of said state, county or city.

(c) Any vehicle parked in violation of this section shall be deemed an abandoned vehicle.

4.15.130 - Continuing notice.

A notice issued as provided in Section 4.15.070 above shall be deemed a continuing notice regarding the vehicle(s) described in the notice for a period of one year from the date of service and is valid for all locations within the city of Council Bluffs. No further notice by an enforcement officer or seven-day period to abate is necessary to abate a nuisance created by said vehicle(s) within the one year period.

4.15.140 - Penalty.

Any person found guilty of a violation of any of the provisions of this chapter shall, upon conviction, be subject to the penalty provisions of Section 8.02.020 of this code. Each day that a violation is allowed to continue shall constitute a separate and distinct violation. At the discretion of the city attorney, any violation of the provisions of this chapter may be pursued as a municipal infraction according to the terms of Chapter 1.95 in lieu of criminal prosecution.

4.15.150 - Nonexclusivity of this chapter.

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

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED
AND October 8, 2018.
APPROVED

_____
MATTHEW J. WALSH Mayor

Attest: _____
JODI QUAKENBUSH City Clerk

First Consideration: 10-8-18
Second Consideration: 10-22-18
Public Hearing: N/A
Third Consideration: _____