

## ORDINANCE

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**AN ORDINANCE BY THE CITY OF FARMINGTON  
PROVIDING FOR THE REMOVAL AND DISPOSAL  
OF ABANDONED AND JUNK MOTOR VEHICLES AND  
MACHINERY LEFT UPON THE PUBLIC STREETS AND GROUNDS  
AND PRIVATE PROPERTY, DECLARING THEIR OPEN STORAGE ON  
PRIVATE PROPERTY WHERE NOT AUTHORIZED  
TO BE A NUISANCE AND PROVIDING FOR ABATEMENT,  
AND PROVIDING PENALTIES FOR VIOLATIONS.**

BE IT ENACTED By the Council of the City of Farmington Iowa:

**SECTION 1** The Farmington Municipal Code of 1989 is adding a new Ordinance, entitled "An Ordinance by the City of Farmington Providing for the Removal and Disposal of Abandoned and Junk Motor Vehicles and Machinery Left Upon the Public Streets and Grounds and Private Property, Declaring Their Open Storage on Private Property Where Not Authorized to be a Nuisance and Providing for Abatement, and Providing Penalties for Violations", as follows.

**SECTION 2** Purpose. The purpose of this Ordinance is to protect the health, safety, and welfare of the citizens and safety of property of this City by providing for removal of abandoned motor vehicles and the elimination of the open storage of abandoned and junk motor vehicles and machinery except in authorized places.

**SECTION 3** Definitions. For the purpose of this Ordinance, the following terms are defined:

1. "Abandoned vehicle" means any of the following:
  - a. A vehicle that has been left unattended on public property for more than forty-eight hours and lacks current registration plates or two or more wheels or other parts which render the vehicle totally inoperable; or
  - b. A vehicle that has remained illegally on public property for more than seventy-two hours; or
  - c. A vehicle that has been unlawfully parked on private property or has been placed on private property without the

consent of the owner or person in control of the property for more than twenty-four hours; or

d. A vehicle that has been legally impounded by order of the department and has not been reclaimed for a period of ten days; or

e. Any vehicle parked on the highway determined by the department to create a hazard to other vehicle traffic.

A vehicle shall not be considered abandoned for a period of fifteen days if its owner or operator is unable to move the vehicle and notifies the department and requests assistance in the removal of the vehicle.

2. "Department" means the police department of the City of Farmington, Iowa.

3. "Private property" means any real property within the City which is not public property as defined in this section.

4. "Public property" means any public right-of-way open for the purposes of vehicular travel.

5. A "junk vehicle" means any unlicensed vehicle stored within the corporate limits of the City of Farmington, Iowa, and which has any one of the following characteristics:

a. Any vehicle with a broken or cracked windshield or window or headlight or any other cracked or broken glass.

b. Any vehicle with a broken or loose fender, door, or bumper or hood or door handle or window handle or steering wheel, trunk top or trunk handle or tailpipe.

c. Any vehicle which has become the habitat of rats, mice, or snakes, or any other vermin or insects.

d. Any vehicle which contains gasoline or any other flammable fuel.

e. Any motor vehicle if it lacks an engine or two or more wheels or other structural parts which render said motor vehicle totally inoperable.

f. Any other vehicle which, because of its defective or obsolete condition, in any other way constitutes a threat to the public health and safety.

6. "Vehicle" means every device in, upon, or by which a person or property is or may be transported or drawn upon a highway or street, excepting devices moved by human power or used exclusively upon stationary rails or tracks, and shall include without limitation a motor vehicle, automobile, truck, trailer, motorcycle, tractor, buggy, wagon, farm machinery, or any combination thereof.

**SECTION 4** Removal of Abandoned Vehicles.

1. The department may, without prior notice or hearing, remove and impound any abandoned vehicle as defined in Section 3.1. The department may hire other personnel, equipment, and facilities for the purposes of removing, preserving, storing, or disposing of abandoned vehicles.

2. The impoundment and storage of all vehicles pursuant to this Ordinance shall be in such areas or places designated by the City Council.

3. When a vehicle is taken into custody and impounded under the provisions of this Ordinance, the department shall maintain a record of the vehicle, listing the color, year of manufacture, manufacturer's trade name, body style, vehicle identification number, and license plate and year displayed on the vehicle. The records shall include the date and hour of tow, location towed from, location towed to, person or firm doing the towing, reason for towing, and the name of the officer authorizing the tow.

4. Nothing in this chapter shall govern the procedures of any police officer in taking into custody and impounding any vehicle to be used or proposed to be used as evidence in a criminal case involving crimes other than violations of this Ordinance.

**SECTION 5** Notification of Owners and Lienholders

1. When a vehicle is taken into custody under the provisions of this Ordinance or under any provisions of state law, the department shall notify, within three days, by certified mail with five-days return receipt, the last known registered owner of the vehicle, all lienholders of record, and any other known claimant to the vehicle or to personal property found in the vehicle, addressed to their last

known addresses of record, that the abandoned vehicle has been taken into custody. Notice shall be deemed given when mailed. The notice shall:

a. Describe the year, make, model and serial number of the vehicle.

b. Describe the personal property found in the vehicle.

c. Describe the location of the facility where the vehicle is being held.

d. Inform the persons receiving notice:

(1) of their right to reclaim the vehicle and personal property within twenty-one days after the effective date of the notice;

(2) that the right can be exercised upon payment of all towing, preservation, notice, and storage charges resulting from placing the vehicle in custody;

(3) that failure of the owner or lienholders to exercise their right to reclaim the vehicle within the reclaiming period shall be deemed a waiver by the owner and all lienholders of all right, title, claim, and interest in the vehicle;

(4) that failure to reclaim the vehicle is deemed consent to the sale of the vehicle at a public auction or disposal of the vehicle to a demolisher.

e. State that any person claiming rightful possession of the vehicle or personal property who disputes the planned disposition of the vehicle or personal property by the department or the assessment of fees and charges provided by this Ordinance may request a hearing to contest these matters in accordance with the provisions of Section 7.

f. State that a request for a hearing must be in writing and received by the department prior to the expiration of the twenty-one day reclaiming period.

g. State that in the event a hearing is requested immediate release of the vehicle may be obtained by posting a cash bond as required by Section 6.

2. The owner or any person receiving notice may, by written request received by the department prior to the expiration of the twenty-one day reclaiming period, obtain an additional fourteen days within which the vehicle may be reclaimed.

3. Notice by one publication in one newspaper of general circulation in the area where the vehicle was abandoned shall be sufficient to meet the requirements of this Ordinance. The published notice may contain multiple listings of abandoned vehicles but shall be published within the same time requirements and shall contain the same information as prescribed for mailed notice in this section. Published notice shall be used if:

a. the identity of the last registered owner cannot be determined, or

b. the registration contains no address for the owner, or

c. it is impossible to determine with reasonable certainty the identity and address of all lienholders.

4. If the persons receiving notice do not request a hearing or exercise their right to reclaim the vehicle or personal property within the reclaiming period, the owner of the vehicle or owners of the personal property shall no longer have any right, title, claim, or interest in or to the vehicle.

5. No court in any case of law in equity shall recognize any right, title, claim, or interest of the owner and lienholders after the twenty-one day reclaiming period.

**SECTION 6** Impoundment Fees and Bonds

1. Before the owner or other person lawfully entitled to possession of any vehicle that has been impounded under the provisions of this Ordinance or any other provisions of law may recover such vehicle, such person shall present to the department evidence of such person's identity and right to possession of the vehicle, shall sign a receipt for its return, and shall pay the costs of:

a. An impoundment fee of \$25.00

b. Towing charge (as per towing company)

- c. Preservation charges of \$10.00
  - d. Storage charges of \$5.00 per day
  - e. Notice charges (certified letter/return receipt fee)
2. The amount of the charges specified in a-d shall be set by the Council. The notice charges shall be limited to the actual cost of such notice.
3. If a hearing is requested under Section 5.1.e, the owner or person lawfully entitled to possession of the vehicle shall be permitted to secure the immediate release of the vehicle upon posting a cash bond in an amount equal to the sum of:
- a. The fees required by Section 6.1,
  - b. The amount of the fine or penalty for each violation for which there is an outstanding or otherwise unsettled traffic violation notice or warrant.

**SECTION 7** Hearing Procedures

1. The registered owner, any lienholder of record, or duly authorized agents thereof, may object to the legality of the impoundment or the assessment of fees and request a hearing thereon. Request for a hearing after an impoundment shall be made in writing and received by the department prior to the expiration of the twenty-one day reclaiming period. No person shall be entitled to more than one hearing on each impoundment. The objector shall be informed of the reason for the impoundment and a hearing shall be held, without unnecessary delay, before a hearing officer who shall be a neutral council appointed citizen upon request of the objector, the hearing may be set for a later time and date.
2. At the hearing, the hearing officer shall consider the objection, make a decision as to the legality of the impoundment and immediately notify the objector in writing of the decision. The decision shall state either of the following:
- a. That impoundment is authorized by law, an explanation for the basis of that decision, and an itemization of the charges assessed pursuant to Section 6.1. Any bond posted under Section 6.3 shall be applied to the satisfaction of the charges itemized by the hearing officer.

b. That impoundment is not authorized by law, and if the vehicle has been impounded, that the vehicle will be released to the objector upon compliance with Section 6.1 and that all costs of removal, preservation, storage, and notification accruing through the fourth day after the hearing officer's decision are waived and will be paid by the City. All costs accruing thereafter shall be paid prior to recovery of the vehicle. Any bond posted under Section 6.3 shall be refunded, less any amounts for outstanding or unsettled traffic violations.

3. The decision of the hearing officer shall be final.

4. Failure of the objector to appear at the scheduled hearing shall constitute a waiver of the right to hearing and the bond shall be forfeited.

5. The only issue to be considered at the hearing shall be the validity of the determination that the vehicle is an abandoned vehicle. The hearing will not be determinative of or adjudicate any outstanding or unsettled traffic violation notice or warrant.

**SECTION 8** Auction or Disposal of Abandoned Vehicles. The department shall follow the procedures in state law for the auction or disposal of abandoned vehicles.

**SECTION 9** Junk Vehicles Declared a Nuisance. Except as hereinafter provided, it is hereby declared that the parking, leaving, or storage of a junk vehicle upon either public or private property within the corporate limits of the City of Farmington, Iowa, constitutes a threat to the health and safety of the citizens and is a nuisance within the meaning of Section 657.1 of the Code of Iowa. If any junk vehicle is stored upon private property or public property in violation thereof, the owner of the property shall be prima facie liable for said violation.

**SECTION 10** Authority to Enforce. The department, upon obtaining a search warrant, may enter upon private property for the purposes specified in this Ordinance to examine vehicles or parts thereof, obtain information as to the identity of vehicles, and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this Ordinance.

**SECTION 11** Notice to Abate

1. Whenever the department shall find a junk vehicle placed or stored on public or private property within the City in violation of Section 9, the department shall notify, by certified mail with five-days return receipt, the following persons:

- a. The last known registered owner of the vehicle
- b. All lienholders of record
- c. The owner of the property
- d. The occupant of the property

2. The notice to abate shall:

- a. Describe, to the extent possible, the year, make, model, and color of the vehicle
- b. Describe the location of the vehicle
- c. State that the vehicle constitutes a nuisance under the provisions of this chapter
- d. State that the owner of the property shall remove or repair the said junk vehicle within twenty-one days
- e. State that any person ordered to abate a nuisance or condition may request, in writing, within the twenty-one day limit, a hearing to determine whether a nuisance or prohibited condition exists.
- f. State that if the nuisance or condition is not abated as directed or if no request for a hearing is made within twenty-one days, the city will abate the nuisance and assess the costs against the property owner.

3. Notice shall be deemed given when mailed. If the notice is returned undelivered by the United States Post Office, action to abate the nuisance shall be continued to date not less than twenty-one days from the date of such return.

**SECTION 12** Duty of Owner to Remove or Repair

1. The owner of the property upon which a junk vehicle is stored in violation of the provisions of Section 9 shall within twenty-one days after receipt of the notice to abate from the department remove the motor vehicle or machinery to a lawful place of storage without the city limits, or repair the defects that cause such motor vehicle or machinery to violate the provisions of this Ordinance, including licensing in the case of a motor vehicle not currently licensed.
2. If a hearing is requested under Section 13, the duty of the owner to remove or repair the junk vehicle shall be suspended pending the decision.

**SECTION 13** Hearing Procedures -- Junk Vehicles

1. Any person ordered to abate a nuisance or condition may request a hearing before the City Council, or an official of the City designated by the Council, to determine whether a nuisance or prohibited condition exists.
2. A request for a hearing shall be made in writing and filed with the City Clerk within the twenty-one day limit or
  - a. The right to a hearing shall be considered waived and
  - b. It will be conclusively presumed that the nuisance or prohibited condition exists and it must be abated as ordered.
3. The City Council shall, within fifteen days after the filing of the request for a hearing, fix the time and place of the hearing, which shall be within thirty days of the filing of the request.
4. At the conclusion of the hearing, the City Council, or its designee, shall render a written decision as to whether a nuisance exists. If a nuisance is found to exist, it shall be ordered abated within a reasonable time.
5. The decision shall be final.

**SECTION 14** Abatement by Municipality. If the person notified to abate a nuisance or condition neglects or fails to abate as directed, the City may perform the required action to abate, keeping as accurate account of the expense incurred. The itemized expense account shall

be filed with the City Clerk who shall pay such expenses of behalf of the municipality.

**SECTION 15** Collection of Cost of Abatement. The Clerk shall mail a statement of the total expense incurred to the property owner who has failed to abide by the notice to abate, and if the amount shown by the statement has not been paid within one month, the Clerk shall certify the costs to the County Auditor and the costs shall than be collected with, and in the same manner, as general property taxes.

**SECTION 16** Exceptions. This chapter shall not apply to the following:

1. A vehicle in an enclosed building.
2. A vehicle on the premises of a business enterprise operated in a district properly zoned thereof, as authorized under the zoning ordinance of this City, when necessary to the operation of said business enterprise.
3. A vehicle in an appropriate storage space or depository maintained in a lawful place and lawful manner by this City.

**SECTION 17** Interference With Enforcement. Any person who shall interfere in any way with the enforcement provision of this chapter shall be deemed guilty of a simple misdemeanor and punished accordingly.

**SECTION 18** Penalty. Any person failing to remove or repair any junk vehicle or machinery stored or private property in violation of Section 9 shall be deemed guilty of a simple misdemeanor and, upon conviction, be subject to imprisonment not exceeding thirty days, or a fine not exceeding \$100 or both.

**SECTION 19** Repealer. That any section or parts of Ordinance in conflict herewith are hereby repealed.

**SECTION 20** Severability. If any section, provision, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 21** When Effective. This Ordinance shall be in effect after its final passage, approval and publication in the Van Buren County Leader-Record as provided by law.

Passed by the Farmington City Council on the 12<sup>th</sup> day of June, 1989, and approved this 12<sup>th</sup> day of June, 1989.

Elmer L. Huff, Mayor

Attest: Karen Faulkner, City Clerk

First Reading: May 8, 1989

Second Reading: Moved to be dispenses with June 12, 1989

Third Reading: June 12, 1989