

By: Planning
Public Hearing: 01/26/10
Failed: 01/26/10

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 10-01**

**A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL ADOPT A NEW
SECTION WMC 8.12, TRASH AND JUNK.**

WHEREAS, the City of Wasilla ("City") strongly supports a community free of public nuisances and health hazards within its boundaries;

WHEREAS, the amendment to Title 8 adds the necessary provisions to abate and prevent public nuisances which endanger the health and welfare of the community;

WHEREAS, the accumulation of junk and trash in the city is detrimental to the public health, safety, and welfare. Junk and trash that is improperly kept, or disposed of, increases risks of environmental pollution and hazards to public health, safety, and welfare and lowers property value in the vicinity;

WHEREAS, junk and trash that is improperly kept or disposed of, interferes with the rights of other people to enjoy their property, makes the City less attractive to residents, visitors, and investors, and harms the quality of life in the City;

WHEREAS, due to the potential for harm to the public health, safety, and welfare, junk and trash kept in a manner prohibited by this legislation is a public nuisance subject to regulation by the City;

WHEREAS, the Wasilla Planning Office published notice in local newspaper of general circulation;

WHEREAS, the public hearing date and time was publicly advertised;

WHEREAS, on January 12, 2010, the Wasilla Planning Commission held a public hearing on this request;

WHEREAS, the Wasilla Planning Commission deliberated on this request taking into account the information and recommendations of the staff, public testimony, the applicable provisions of the Wasilla Comprehensive Plan, and other pertinent information brought before them;

WHEREAS, on January 12, 2010, after due consideration, the Wasilla Planning Commission determined that the proposed code amendments and enactment of new code is consistent with the goals and policies of the City Comprehensive Plan;

WHEREAS, WMC 8.12. is added and reads as follows:

CHAPTER 8.12: Trash and Junk

Section:

8.12.005 Definitions

8.12.010 Public nuisance

8.12.015 Applicability

8.12.020 Public nuisances prohibited; enumeration

8.12.025 Public nuisance abatement

8.12.030 Violations, enforcement, and penalties

8.12.040 Enforcement orders.

8.12.050 Civil penalties and remedies.

The following definitions shall apply unless the context clearly indicates or requires a different meaning:

A. "Junk" means buildings, walls, fences, yard furnishings, towers, and other structures which have been damaged by dismantling, fire, wind, water erosion, subsidence, snow load, vandalism, neglect, collision or any other cause, to such an extent that they cannot be used for their original purpose without significant repair or alteration, or has been declared unsafe in accordance with code.

B. "Junk vehicle" means a motor vehicle which is not currently insured and registered to legally operate, or that also has one or more of the following characteristics: The vehicle is inoperable, unlicensed due to safety or equipment violations, wrecked, abandoned, partially dismantled, missing glass, body panels or drive train components, or illegal to operate without alteration or repair. Each outdoor area of 200 square feet that is substantially occupied by junk vehicle parts shall be considered equivalent to a junk vehicle.

C. "Junk vehicle parts" means parts of vehicles which are removed, dismantled, wrecked, discarded, abandoned, damaged, or are no longer suitable for their original use without repair, reprocessing, reconditioning or reinstallation.

D. "Trash" means garbage, damaged, spoiled, discarded or waste tangible material including, but not limited to, food, containers, paper products, cloth, fabric, plastics, glass, wood or metal, household items, waste by-products, manure, liquids or other effluent, which are not intended for reuse or are no longer suitable for their original use without major repair or reprocessing. Any tangible material that is, by evidence of its location and disposition, discarded or treated as waste.

8.12.010 Public nuisance.

The following are declared to be a public nuisance subject to regulation by the City.

A. The accumulation of junk or trash for at least a three month period which is determined by the City to detract from the character of the neighborhood, interfere with the rights of other people to use and enjoy land and water, or cause a detriment to the public's health, safety, or welfare.

B. Three or more junk vehicles, parts, or junk and trash kept in a manner prohibited by this chapter

C. Junk, trash, garbage, or junk vehicles or other waste upon a street, Right of way or City owned property, or upon any property owned by another or in a refuse container owned by another except with the consent of the owner and for the purpose of collection.

8.12.015 Exceptions.

A. This section does not apply to the following activities if they are operating in accordance with other applicable City codes: commercial or public storage facilities, junk/salvage yards, refuse areas, landfills, trash transfer sites, septic waste facilities, inoperative and unlicensed vehicles that are located on the premises of legally operating motor vehicle sales, service, and repair businesses if the vehicles are subject to an active repair order.

8.12.020 Public nuisances prohibited; enumeration.

A. No person shall allow, maintain or permit a public nuisance to exist.

B. The City shall have met its burden of proof for a public nuisance if the items constituting a public nuisance is in plain view from the public right-of-way for a period in excess of three months and cover 25% of the property, excluding the footprint of any structure.

C. The City shall recover all costs and fees for the clean-up and restoration of the property including: towing, storage, soil remediation, disposal fess, environmental restoration costs, attorney fees and court costs.

8.12.025 Public nuisance abatement.

A. The mayor or his designee may investigate any junk vehicle or area with accumulated junk and trash to determine if the subject items constitute a public nuisance. The mayor or his designee's determination shall include findings supporting the decision.

B. Upon determination that a public nuisance exists, the mayor or designee may issue an enforcement order in accordance with WMC 1.20 to the owner of the property upon which the junk, trash, or litter is located, and to any owner's agents, occupants, tenants, operators, or any other person responsible for the junk and trash.

C. The enforcement order may require abatement of the public nuisance and may require provision of visual screening, cessation and removal of the hazard and nuisance, relocation, containment, remediation, decontamination, and other measures authorized under WMC 1.20 and WMC 8.12. If removal is required, the enforcement order shall require proof of legal and proper disposal of the subject junk, trash, or waste. The enforcement order shall provide a reasonable time frame for the property owner to bring the property into compliance. Restoration may be required for any structure,

vegetation, land, water body, or other thing that is destroyed, damaged, altered, or removed in violation of this code.

D. Nothing in this section shall be construed to limit the right of the City, pursuant to common law, to summarily abate a public nuisance.

8.12.040 Enforcement orders.

A. An administrative official may issue an enforcement order which describes the violation, specifies the code being violated, and orders:

(1) the discontinuation of a use, activity, development, or occupancy that is in violation of this code;

(2) the abatement, or removal of development, structures, materials, vehicles, equipment, or things that are in violation of this code;

(3) the restoration, repair, or replacement necessary as a result of a violation or to eliminate a violation;

(4) any other lawful action considered necessary by the mayor to prevent, abate, or discontinue a violation of this code and to bring a violation into compliance with this code; or

(5). an enforcement order will require a time from for compliance.

B. When an enforcement order is posted or lawfully served, all activity contrary to the terms of the order shall cease until the order is rescinded and removed, or continuance is authorized in writing by the mayor or the mayor's designee.

C. Unless otherwise specified by code, an enforcement order issued hereunder which is posted at the site where the violation is occurring, if the violator cannot be located or personally served, or served on a violator personally or by certified

mail, is final with respect to that violator if not appealed within 15 calendar days of its service or posting.

D. When necessary to avoid or abate an imminent or existing nuisance or hazard to public health, safety or welfare an enforcement order need not be issued before any lawful action is commenced with respect to a violation of this code.

E. The pendency of any proceeding regarding an enforcement order issued pursuant to WMC 8.12.040(A) does not stay any other legal action with respect to the violation that is subject of the enforcement order.

8.12.050 Civil penalties and remedies.

A. Notwithstanding WMC 1.20, the City or any person aggrieved by a violation of this code may bring a civil action to perform the following:

(1) A violation of this code may be enjoined or abated pursuant to Alaska Statute 29.25.070(b), upon application for injunctive relief and a finding that a person is violating or threatening to violate this code, the superior court shall enjoin the violation.

(2) Any partition, sale, transfer or lease of property that creates a subdivision of land in violation of this code may be enjoined. Any transfer of real property subdivided in violation of this code may be enjoined until the violation has been cured.

(3) Damages may be recovered resulting or related to the violation, including but not limited to, treble damages allowable in accordance with Alaska Statute 9.45.730.

(4) In addition to injunctive or compensatory relief, a civil penalty not exceeding \$1,000 for each violation and applicable attorney's fees shall be imposed.

8.12.030 Violations, enforcement, and penalties.

- A. It is a violation of this chapter to fail to follow an enforcement order.
- B. Except as otherwise specified violations of this chapter are infractions.
- C. Remedies, enforcement actions, and penalties specified in this chapter shall be consistent with the terms and provisions of WMC 1.20.

Section 3. Amendment of subsection. WMC 1.20.030.C, Disposition of scheduled offenses – Fine Schedule, is amended by adding a table entry for WMC 8.12., as follows:

CODE SECTION	DESCRIPTION OF OFFENSE	FINE
WMC 8.12	Land Use Code Violation	\$300-1,000

NOW, THEREFORE BE IT RESOLVED, that the Wasilla Planning Commission approves of the enactment of the proposed new code and hereby forwards their support for adoption of this code to the Wasilla City Council.

FAILED by the Wasilla Planning Commission on January 26, 2010.

APPROVED:

ATTEST:

A.C. Buswell, Chairman

Jim Holycross, City Planner