

CODE ORDINANCE

By: Administration
Introduced: 04/25/2011
Public Hearing: 05/09/2011
Amended: 05/09/2011
Adopted: 05/09/2011

**CITY OF WASILLA
ORDINANCE SERIAL NO. 11-18(AM)**

AN ORDINANCE OF THE WASILLA CITY COUNCIL ADOPTING A NEW CODE SECTION, WMC 8.12, PUBLIC NUISANCE.

Section 1. Classification. This ordinance is of a general and permanent nature and shall become part of the city code.

Section 2. Amendment of section. WMC 8.12, Public Nuisance, is hereby adopted to read as follows:

CHAPTER 8.12: PUBLIC NUISANCE

Section:

8.12.010 Definitions.

8.12.020 Public nuisance.

8.12.030 Exceptions.

8.12.040 Public nuisances prohibited; enumeration.

8.12.050 Public nuisance abatement.

8.12.060 Violations, enforcement, and penalties.

8.12.070 Enforcement Orders.

8.12.080 Civil penalties and remedies.

8.12.010 Definitions.

When used in this chapter, the following words and phrases shall have the meaning set forth in this section:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

“Abandon or Abandonment” shall be defined as existing where the owner of a building or premises has by action or inaction, failed to correct a serious health and/or safety violation at a building or on the surrounding property. A serious health and/or safety violation may be found, by way of example only and without limitation, where the health, safety and welfare of the community is or may be at risk due to conditions such as:

A. Where a building is vacant. However vacancy is not necessarily to be considered a prerequisite to a finding of abandonment;

B. Where there exists a lack of maintenance of a building or grounds which actually or potentially poses a risk to the public health, safety or welfare;

C. Where a building is not structurally sound or where the building or its interior is otherwise unfit for healthy or safe habitation or access;

D. Where vandalism at the property has gone unrepaired; or

E. Where a lack of maintenance or use of the property promotes a degradation of the surrounding community affecting the public health, safety and welfare.

“Construction companies” means a properly licensed business that is operating in compliance with any home owner association rules and regulations whether or not the association is active, all aspects of state, borough, and municipal law.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

“Farms” means a properly licensed business to produce food, animals, and or wood products for harvesting, bartering, or sale, or personal use in accordance to all aspects of state, borough, and municipal law.

“Junk” means buildings, walls, fences, sheds, yard furnishings, towers, sports equipment, construction materials, storage containers, trailers, 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 by the State of Alaska or the City. The definition of “Junk” also includes hazardous materials either solid, liquid or gasses, including but not limited to: batteries, waste oil or other vehicle fluids, CFCs, HCFs and related compounds.

“Junk vehicle” means a vehicle that:

- a. Is not currently registered under AS 28.10, except for a vehicle not currently registered under AS 28.10 and used exclusively for competitive racing;
- b. Is stripped, wrecked, or otherwise inoperable due to mechanical failure;
- c. Has not been repaired because of mechanical difficulties or because the cost of repairs required to make it operable exceeds the fair market value of the vehicle; or
- d. Is in a condition that exhibits more than one of the following elements:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

- i. Broken glass;
- ii. Missing wheels or tires;
- iii. Missing body panels or parts; or
- iv. Missing drive train parts.

“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. Each outdoor area of 200 square feet that is substantially occupied by junk vehicle parts shall be considered equivalent to a junk vehicle.

“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.

8.12.020 Public nuisance.

A. The following are declared to be a public nuisance subject to regulation by the city:

1. The accumulation of junk or trash for at least 90 calendar days 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, water, or cause a detriment to the public’s health, safety, or welfare.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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

3. Vacant, abandoned, unoccupied buildings are a public nuisance, except those that have been boarded up at all doors, windows, and other openings sufficiently to prevent ingress and otherwise secured.

4. Junk, trash, garbage, or junk vehicles or other waste upon a street, right-of-way or city owned property.

8.12.030 Exceptions.

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

8.12.040 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 are in plain view from the public right-of-way or easement for a period of 90 calendar days.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

C. The city shall have met its burden of proof for a public nuisance if there is reason to believe that by action or inaction, the property owner has failed to correct a serious health and/or safety violation at or near any building or on the surrounding property.

8.12.050 Public nuisance abatement.

A. The mayor or his designee may investigate any junk vehicle or area with accumulated junk and trash, visible from the right-of-way or easement, 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 and WMC 8.12.070 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 this chapter. 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. A

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

reasonable time frame for the restoration, remediation and cleanup shall be determined by the City after taking into consideration weather conditions and the winter season.

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.

8.12.060 Violations, enforcement, and penalties.

A. Trash or junk determined to be a public nuisance under this chapter is a violation of city code.

B. Except as otherwise specified in this chapter 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 and WMC 8.12.070.

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

8.12.070 Enforcement Orders.

A. An enforcement order may be issued which describes the violation of the code, specifies the infraction and order. The enforcement order will require the property to be brought into compliance within 90 calendar days unless the city stipulates in writing that there is good cause to extend the deadline.

Enforcement orders may include:

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

1. The discontinuation of a use, activity, development, or occupancy;

2. The abatement, or removal of development, structures, materials, vehicles, equipment, or other items;

3. The restoration, repair, or replacement necessary as a result of a violation or to eliminate a violation; or

4. Any other lawful action considered necessary by the city to prevent, abate, or discontinue a violation of this code and to bring the violation into compliance with this code, including but not limited to, abatement, citations and fines.

B. The enforcement order shall be posted, personally served, mailed by certified mail, or served in another lawful manner to the property owner. All activity listed in the enforcement order shall cease until the order is rescinded or removed, or a continuance is authorized in writing by the mayor or the mayor's designee.

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

D. The pendency of any proceeding regarding an enforcement order issued does not stay any other legal action with respect to the violation that is subject of the enforcement order.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]

8.12.080 Remedies and penalties.

A. Notwithstanding WMC 1.20 or WMC 8.12.070, 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 \$500 for each violation and applicable attorney's fees shall be imposed.

B. It is a violation of this chapter to fail to follow an enforcement order.

C. Except as otherwise specified violations of this chapter are infractions.

D. Remedies, enforcement actions, and penalties specified in this chapter shall be consistent with the terms and provisions of WMC 1.20.


Bold and underline added. [CAPS AND BRACKETS, DELETED.]

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 8.12.060, as follows:

CODE SECTION	DESCRIPTION OF OFFENSE	FINE
<u>WMC 8.12.060</u>	<u>Trash and Junk</u>	<u>\$50 - \$500</u>

Section 4. Effective date. This ordinance shall take effect upon adoption by the Wasilla City Council.

ADOPTED by the Wasilla City Council on May 9, 2011.


 VERNE E. RUPRIGHT, Mayor

ATTEST:


 AMANDA E. CHARLES, CMC, Deputy City Clerk

[SEAL]

VOTE: Harris, Holler, Katkus, Sullivan-Leonard and Woodruff in favor. Menard absent.

Bold and underline added. [CAPS AND BRACKETS, DELETED.]



**CITY OF WASILLA
LEGISLATION STAFF REPORT**

ORDINANCE SERIAL NO. 11-18: ADOPTING A NEW SECTION WMC 8.12, TRASH AND JUNK.

Agenda of: April 25, 2011 Introduction
Originator: Administration

Date: March 31, 2011

Route to:	Department	Signature/Date
X	Chief of Police	
X	City Planner	<i>[Signature]</i> 4/13/11
X	Finance Director	<i>[Signature]</i> 4/13/11
X	Interim Deputy Administrator	<i>[Signature]</i> 4/13/11
X	City Clerk	<i>[Signature]</i>

REVIEWED BY MAYOR VERNE E. RUPRIGHT: *[Signature]*

FISCAL IMPACT: yes or no

Funds Available yes no

Account name/number:

Attachments: Planning Resolution Serial No. 10-12(AM) (10 pp)

SUMMARY STATEMENT: This ordinance was originally considered for adoption during the December 13, 2010, Regular City Council Meeting. This ordinance was introduced in response to citizen complaints regarding trash and junk, and it is needed to assist with code compliance and clarify what constitutes a public nuisance. However, it was not adopted at that meeting.

This ordinance has been changed since the December 13, 2010, public hearing to remove the provisions addressing the burning of trash, junk and other debris. This type of burning is an air quality issue that is regulated by the State of Alaska Department of Environmental Conservation and it needs special training and equipment to enforce.

Therefore, the ordinance has been simplified by removing the burning of trash and debris provisions to reflect the immediate needs of the community by addressing the accumulation of junk and trash and when it becomes a nuisance to the community.

STAFF RECOMMENDATION: Approve the adoption of Ordinance Serial No. 11-18.

By: Planning
Public Hearing: 07/13/10
Public Hearing Continued: 08/24/10
Adopted: 08/24/10

**WASILLA PLANNING COMMISSION
RESOLUTION SERIAL NO. 10-12 (AM)**

**A RESOLUTION OF THE WASILLA PLANNING COMMISSION RECOMMENDING
THAT THE WASILLA CITY COUNCIL ADOPT A NEW CODE 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; and

WHEREAS, the adoption of this new chapter in Title 8 adds the necessary provisions to abate and prevent public nuisances which endanger the health and welfare of the community; and

WHEREAS, the accumulation of junk and trash or the burning of such in the city is detrimental to the public health, safety, and welfare; and

WHEREAS, 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; and

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; and

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; and

WHEREAS, on August 24, 2010, the Planning Commission deliberated on this request and 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 and is recommended to read as follows:

CHAPTER 8.12: TRASH AND JUNK

Section:

8.12.010 Definitions.

8.12.020 Public nuisance.

8.12.030 Exceptions.

8.12.040 Public nuisances prohibited; enumeration.

8.12.050 Public nuisance abatement.

8.12.060 Violations, enforcement, and penalties.

8.12.070 Enforcement Orders.

8.12.080 Civil penalties and remedies.

8.12.010 Definitions.

When used in this chapter, the following words and phrases shall have the meaning set forth in this section:

“Burning” means the process of combustion to reduce any material or convert the material to ash. Regardless if the process is contained or not.

“Construction companies” means a properly licensed business that is operating in compliance with any home owner association rules and regulations

whether or not the association is active, all aspects of state, borough, and municipal law.

“Farms” means a properly licensed business to produce food, animals, and or wood products for harvesting, bartering, or sale, or personal use in accordance to all aspects of state, borough, and municipal law.

“Junk” means buildings, walls, fences, sheds, yard furnishings, towers, sports equipment, construction materials, storage containers, trailers, 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 by the State of Alaska or the City.

“Junk vehicle” means any vehicle which is not currently insured and registered to legally operate, or any vehicle 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.

“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.

“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.

8.12.020 Public nuisance.

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

1. The accumulation of junk or trash for at least 90 calendar days 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, water, or cause a detriment to the public’s health, safety, or welfare.

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

3. Vacant, abandoned or unoccupied buildings are a public nuisance, except those that have been boarded up at all doors, windows, and other openings sufficiently to prevent ingress and otherwise secured.

4. Junk, trash, garbage, or junk vehicles or other waste upon a street, right-of-way or city owned property.

5. The burning of junk, trash, garbage, buildings, vehicles or debris that causes smoke or odor to cross property lines. It is however permissible to burn yard clippings or organic yard debris such as leaves, tree limbs, stumps, grass and grass clippings as long as all state, borough and City burning requirements are met.

8.12.030 Exceptions.

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

8.12.040 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 are in plain view from the public right-of-way for a period of 90 calendar days or if smoke or odor is found to be crossing property lines in an unreasonable amount or manner and the mayor or his designee is present.

8.12.050 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 this chapter. 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. A reasonable time frame for the restoration, remediation and cleanup shall be determined by the City after taking into consideration weather conditions and the winter season.

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.

8.12.060 Violations, enforcement, and penalties.

A. Trash or junk determined to be a public nuisance under this chapter is a violation of city code.

B. Except as otherwise specified in this chapter 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.

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

8.12.070 Enforcement Orders.

A. An enforcement order may be issued which describes the violation of the code, specifies the infraction and order. The enforcement order will require the property to be brought into compliance within 90 calendar days unless the City stipulates in writing that there is good cause to extend the deadline.

Enforcement orders may include:

1. The discontinuation of a use, activity, development, or occupancy;

2. The abatement, or removal of development, structures, materials, vehicles, equipment, or other items;

3. The restoration, repair, or replacement necessary as a result of a violation or to eliminate a violation; or

4. Any other lawful action considered necessary by the city to prevent, abate, or discontinue a violation of this code and to bring the violation into compliance with this code.

B. The enforcement order shall be posted, personally served, mailed by certified mail, or served in another lawful manner to the property owner. All activity listed in the enforcement order shall cease until the order is rescinded or removed, or a continuance is authorized in writing by the mayor or the mayor's designee.

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

D. The pendency of any proceeding regarding an enforcement order issued does not stay any other legal action with respect to the violation that is subject of the enforcement order.

8.12.080 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.

B. It is a violation of this chapter to fail to follow an enforcement order.

C. Except as otherwise specified violations of this chapter are infractions.

D. Remedies, enforcement actions, and penalties specified in this chapter shall be consistent with the terms and provisions of WMC 1.20.

Amendment of subsection. WMC 1.20.030.C Disposition of scheduled offenses

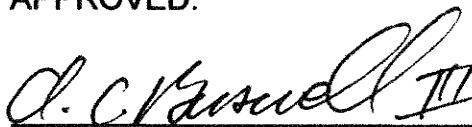
– Fine Schedule, is amended by adding a table entry for WMC 8.12.060, as follows:

CODE SECTION	DESCRIPTION OF OFFENSE	FINE
<u>WMC 8.12.060</u>	<u>Trash and Junk</u>	<u>\$300 - \$1,000</u>

NOW, THEREFORE BE IT RESOLVED that the Wasilla Planning Commission recommends that the Wasilla City Council adopt the proposed language above, WMC 8.12, Trash and Junk, as a new chapter in the Wasilla Municipal Code.

ADOPTED by the Wasilla Planning Commission on August 24, 2010.

APPROVED:



A.C. Buswell, Chairman

ATTEST:



Marvin Yoder, Deputy Administrator

VOTE: Passed Unanimously