TOWN OF EATONVILLE

Agenda Staff Report

Agenda Item No.:		Meeting Date:	August 8, 2016
Subject:	Amendment to EMC Chapter 8.09 Junk Vehicles to Add Clarity and Ease Enforcement Efforts	Prepared by:	Town Attorney
		Atty Routing No:	029-14
		Atty Review Date:	August 2, 2016

Summary: The Eatonville Municipal Code contains chapters dealing with general nuisances, junk vehicles, and public noise nuisances. The chapters allow for enforcement via the general penalty chapter of the code. Collectively these chapters are considered the Town's nuisance code. The chapters forming the nuisance code were all drafted at different times and are inconsistent in terms of how enforcement is to take place. Law enforcement and Town officials have encountered difficulty in trying to enforce the nuisance code. Changes have been recommended which will clarify the nuisance code for both the public and enforcement officials.

Recommendation: Staff recommends adoption of Ordinance 2016-18 regarding amending EMC Chapter 8.09, Junk Vehicles.

Motion for consideration: I move to adopt Ordinance 2016-18 regarding amending EMC Chapter 8.09, Junk Vehicles.

Fiscal Impact: None

Attachments: Proposed Ordinance 2016-18 Regarding Junk Vehicles

ORDINANCE NO. 2016-18

AN ORDINANCE OF THE TOWN OF EATONVILLE, WASHINGTON, AMENDING CHAPTER 8.09 OF THE EATONVILLE MUNICIPAL CODE REGARDING JUNK VEHICLES

WHEREAS, the Eatonville Municipal Code contains chapters dealing with General Nuisance, Junk Vehicles, Public Noise Nuisances, and a General Penalty (these Chapters are collectively referred to herein as the "Nuisance Code"), which prohibits certain conduct within the Town and provides penalties for violations; and

WHEREAS, law enforcement and Town officers charged with enforcing the Nuisance Code have found the Nuisance Code difficult to interpret and therefore difficult to enforce; and

WHEREAS, the Eatonville Town Council, in an effort to clarify the Nuisance Code in order to better inform the public and ease enforcement efforts, finds that the public health, safety, and welfare will be served by amending the various chapters of the Eatonville Municipal Code which form the Nuisance Code; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF EATONVILLE AS FOLLOWS:

Section 1. Eatonville Municipal Code Chapter 8.09 is AMENDED to read as follows:

Chapter 8.09
JUNK VEHICLES*

Sections:
8.09.010 Purpose.
8.09.020 Definitions.
8.09.030 Exemptions.
8.09.040 ~~Nuisance declared, violations~~Violations - Penalties.
8.09.050 ~~Enforcement~~Abatement procedure.
8.09.060 ~~Investigation and notice of violation~~Liability for costs of abatement.
8.09.070 Right of Entry – Private Property.~~Time to comply.~~
~~8.09.080 Hearing.~~
~~8.09.090 Municipal court order.~~
~~8.09.100 Removal and disposal – Costs.~~
~~8.09.110 Civil penalties.~~
~~8.09.120 Additional relief.~~

*Prior legislation: Ord. 90-19, formerly codified in Ch. 10.20 EMC.

8.09.010 Purpose.

The purpose of the ordinance codified in this chapter is to provide for the abatement and removal of junk vehicles on private property as provided for in RCW 46.55.240, and for the assessment of monetary penalties pursuant to Chapter 1.12 EMC. Abatement is necessary to preserve and enhance the aesthetic character of the town's neighborhoods, protect property values and rights and to reduce environmental health and safety problems associated with junk vehicles. Monetary penalties are necessary to promote compliance with the provisions set forth herein.

8.09.020 Definitions.

For the purposes of this chapter, the following definitions apply:

A. "Junk vehicle" is any vehicle, or parts of a vehicle, which meets at least three of the following criteria:

1. Is extensively damaged, such damage including, but not limited to, the following examples:

a. Broken window or windshield;

b. Flat tires;

c. Missing tires, motor or transmission;

d. Rusted exterior;

e. Leaking oil or gasoline;

2. Is apparently inoperable, meaning that a vehicle does not appear to comply with requirements for vehicles used on public streets or highways with regard to licensing, brakes, lights, tires, safety glass or other safety equipment;

3. ~~Has expired license tabs~~Is three years old or older;

4. Has an approximate fair market value equal only to the approximate value of the scrap in it;

5. ~~A vehicle~~Is illegally parked in the ~~required~~ front or side yard.

B. "Enforcement officer" means the mayor, his or her designee, ~~representative~~ or a town of Eatonville law enforcement ~~official~~officer.

C. "Vehicle" shall include, but not be limited to, automobiles, motorcycles, trucks, buses, motorized recreational vehicles, campers, travel trailers, boat trailers, utility trailers, or other similar devices capable of moving or being moved on the public right-of-way, and shall also include parts of vehicles, but shall not include devices moved by human or animal power, or used exclusively upon stationary rails or tracks.

D. "Person" shall include natural persons of either sex, firms, partnerships, corporations and all associations of natural persons, whether acting by themselves or by a servant or employee.

8.09.030 Exemptions.

The provisions of this chapter shall not apply to:

A. A vehicle or part thereof that is completely enclosed within a building in a lawful manner, or otherwise parked legally on the property so as not to be visible from adjacent or nearby public property. Temporary tarp garages and carports do not satisfy this exemption;

B. A vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dismantler or licensed vehicle dealer and is fenced in accordance with the provisions of RCW 46.80.130;

C. A vehicle enclosed in an opaque auto cover specifically designed to completely shield the vehicle from view as long as the vehicle is parked in a lawful manner on private property. The cover must be in good condition and must be replaced if it is torn, weather-beaten, or acquires any other defects. Tarps and makeshift covers do not meet the requirement. This exemption will apply to only two vehicles per legal lot. Vehicles stored on vacant or undeveloped land are not exempted by this subsection;

D. An individual's personal vehicle restoration of up to two vehicles per legal lot. Vehicles stored on vacant or undeveloped land are not exempted by this subsection~~on property is appropriate because such use is reasonably associated with the primary use of property~~.

8.09.040 Nuisance declared~~; , violations~~Violations - Penalties.

A. ~~The storage or retention of~~ One or more junk vehicles which have been accumulated, dismantled, parked, placed, or stored on private property is declared a public nuisance, which is subject to the enforcement, penalty, removal, and abatement procedures in this chapter and as provided in state law.

B. ~~It shall be unlawful for~~ It is a violation of this chapter for any person~~, firm or corporation~~ to accumulate, dismantle, park, ~~retain,~~ place or store a junk vehicle~~s~~ on private property, in conflict with or in violation of any of the provisions of this ~~code~~chapter. Both the registered owner of the vehicle and the record owner of the private property upon which the vehicle is found shall be considered in violation of this chapter and subject to the enforcement and penalty provisions, except as otherwise set forth herein.

C. ~~Additional Violations.~~ In addition to the above, it is a violation of this chapter to:

1. Remove or deface any sign, notice, complaint or order required by or posted in accordance with this chapter;

2. Fail to comply with any of the requirements of this chapter, including any requirement of the town's codes and state codes adopted by reference herein.

D. Penalties. Any violation of the provisions of this chapter shall be considered a civil infraction and shall subject the person committing the violation to the procedures, terms, and conditions set forth in Chapter 1.12 EMC, as well as the abatement remedies set forth herein.

8.09.050 ~~Enforcement~~Abatement procedure.

A. When judgment is rendered against any person finding them guilty of creating, keeping or maintaining a nuisance, as provided in this chapter, it shall be the duty of the court before whom the conviction is had, in addition to imposing the monetary penalty or penalties provided in

Chapter 1.12 EMC, to order the defendant or defendants in such action to forthwith abate and remove the nuisance, and if the same is not done by the offender within such period of time as the court finds reasonable, the same shall be abated and removed under the direction of a police officer of the town, or any other officer authorized by the order of the court, and the costs thereof made a part of the judgment in the action.

B. Summary Abatement. Whenever any junk vehicle, as defined herein, causes, constitutes or reasonably appears to cause or constitute an imminent or immediate danger to the health or safety of the public or a significant portion thereof, and the responsible person(s) cannot be contacted or refuse(s) to immediately abate the condition, the enforcement officer shall have the authority to summarily and without notice abate the same. The expenses of such abatement may become a civil debt against the owner or the responsible person(s) and shall be collectible in the same manner as any other civil debt owing to the town or as otherwise provided in this chapter.

C. Disposal. If after 45 days from the date of the lawful abatement and removal of a junk vehicle pursuant to this section the registered owner of said junk vehicle has failed to retrieve the vehicle, the town may seek to dispose of the vehicle. Notice of the town's intent to dispose of the vehicle shall be served upon the registered owner of the vehicle and a hearing shall be held in the same manner as set forth in Chapter 1.12 EMC. At the hearing the municipal court shall approve the disposal of the vehicle unless it shall find that good cause exists to refuse the town's request.

1. In the event the court grants the town's request to dispose of the vehicle, the enforcement officer shall facilitate the disposal with notice to the Washington State Patrol and the Department of Licensing that the vehicle has been wrecked. The vehicle shall only be disposed of as scrap.

~~A. The enforcement officer shall have the authority to enforce this chapter. The enforcement officer may call upon the building, fire, planning and community development or other appropriate town departments to assist in enforcement.~~

~~B. This chapter shall be enforced for the benefit of the health, safety and welfare of the general public, and not for the benefit of any particular person or class of persons.~~

~~C. It is the intent of this chapter to place the obligation of complying with its requirements upon the property owner, occupier of the property, owner of the junk vehicle or other person responsible for the storage or retention of junk vehicles within the scope of this title.~~

~~D. No provision of or any term used in this chapter is intended to impose any duty upon the town or any of its officers or employees which would subject them to damages in a civil action.~~

8.09.060 ~~Investigation and notice of violation~~Liability for costs of abatement.

A. Costs of abatement, removal and disposal of junk vehicles pursuant to EMC Section 8.09.050 shall be a joint and several debt assessable

against the registered owner of such vehicle and the record owner of the property from which such junk vehicle is removed for disposal, except as otherwise provided in this section.

B. Costs of abatement, removal and disposal of junk vehicles shall not be assessed against the registered owner of such vehicle if the registered owner has transferred ownership prior to the service of a notice of violation, and the registered owner has complied with RCW 46.12.101.

C. The record owner of the property from which the junk vehicle is removed may appear in person at the hearing on the violation or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the vehicle on the land, with the reasons for the denial. If it is determined at the hearing, by a preponderance of the evidence, that the vehicle was placed on the land without the consent of the landowner and that the landowner has not subsequently acquiesced in its presence, then the court shall not assess costs for the removal and disposal of such vehicle against the record owner of the property.

D. Costs of abatement, removal and disposal of junk vehicles pursuant to EMC Section 8.09.050 shall include any and all costs incurred in the removal, storage and disposal of said junk vehicle(s).

8.09.070 Right of Entry – Private Property.

When the enforcement officer has probable cause to believe that a nuisance created by a junk vehicle exists on private property in violation of this chapter, he or she may request permission to enter the premises to inspect for evidence thereof if the property owner is present. If permissive entry cannot be obtained, the enforcement officer or prosecuting attorney may apply to a court of competent jurisdiction for a warrant to enter the property, notwithstanding the inability to locate the property owner.

~~Investigation. The enforcement officer shall investigate the premises which he/she has probable cause to believe does not comply with the standards and requirements of this title.~~

~~B. Notice of Violation. If, after investigation, the enforcement officer determines that the standards or requirements of this title have been violated, the enforcement officer shall serve a notice of violation upon the property owner, tenant, vehicle owner, or other person responsible for the condition. The notice of violation shall contain the following information:~~

~~1. Name and address of the person(s) to whom the notice of violation is issued;~~

~~2. The location of the subject property by address or other description sufficient for identification of the subject property;~~

~~3. A description of the vehicle and its location;~~

~~4. A separate statement of each standard, code provision or requirement violated, and the reasons for which the town deems the junk vehicle(s) to be a public nuisance in violation of this chapter;~~

~~5. What corrective action, if any, is necessary to comply with the standards, code provisions or requirements;~~

6. A reasonable time for compliance which shall not be less than 60 days;

7. A statement that if the person(s) to whom the notice of violation is issued fails to complete the corrective action by the date required, the town or its designee shall remove, impound and dispose of the vehicle, and will assess all costs of administration and removal against the owner of the property upon which the vehicle is located or otherwise attempt to collect such costs against the owner of the vehicle;

8. A statement that the owner of the land on which the vehicle is located may appear in person at the hearing and present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the junk vehicle on the land, with his/her reasons for denial.

C. Service. The notice shall be served on the owner, tenant, vehicle owner or other person responsible for the condition by personal service, registered mail, or certified mail with return receipt requested, addressed to the last known address of such person. If, after a reasonable search and reasonable efforts are made to obtain service, the whereabouts of the person(s) is unknown or service cannot be accomplished and the enforcement officer makes an affidavit to that effect, then service of the notice upon such person(s) may be made by:

1. Publishing the notice once each week for two consecutive weeks in the town's official newspaper; and

2. Mailing a copy of the notice to each person named on the notice of violation by first class mail to the last known address as shown on the official Pierce County assessor's parcel data, or if unknown, to the address of the property involved in the proceedings.

D. Posting. A copy of the notice shall be posted at a conspicuous place on the property, unless posting the notice is not physically possible.

E. Amendment. A notice or order may be amended at any time in order to:

1. Correct clerical errors; or

2. Cite additional authority for a stated violation.

F. Withdrawal. The town may choose to withdraw a notice of violation at any time, without prejudice to the town's ability to reissue it, if a certificate of compliance has not been obtained for the specific violations.

8.09.070 Time to comply.

A. Determination of Time. When calculating a reasonable time for compliance, the enforcement officer shall consider the following criteria:

1. The type and degree of violation cited in the notice;

2. The stated intent, if any, of a responsible party to take steps to comply;

3. The procedural requirements for obtaining a permit to carry out corrective action;

4. The complexity of the corrective action, including seasonal considerations; and

5. Any other circumstances beyond the control of the responsible party.

B. A copy of the notice may be recorded against the property with the Pierce County auditor. The enforcement officer may choose not to file a copy of the notice or order if the notice or order is directed only to a responsible person other than the owner of the property.

8.09.080 Hearing.

A. The property owner, tenant, vehicle owner or other person responsible for the violation may appeal the notice of violation by requesting such appeal of the notice within 15 calendar days after service of the notice. When the last day of the period so computed is a Saturday, Sunday, or federal or town holiday, the period shall run until 5:00 p.m. on the next business day. The request shall be in writing, and upon receipt of the appeal request by the enforcement officer, he/she shall forward the request to the municipal court judge.

B. If a request for a hearing is received, a notice giving the time, location and date of the hearing shall be mailed, by certified mail, with a five-day return receipt requested, to the owner of the land as shown on the county assessor records and the legal owner of the vehicle, unless the vehicle condition is such that identification numbers are not available.

C. The owner of the land on which the vehicle is located may appear in person at the hearing or present a written statement for consideration, and deny responsibility for the presence of the vehicle, with the reasons for denial. If it is determined that the vehicle was placed on the property without the consent of the landowner and that the landowner has not acquiesced in its presence, then the cost of removal shall not be assessed against the landowner.

D. At or after the appeal hearing, the municipal court judge may:

1. Sustain the notice of violation and require that the vehicle be removed at the request of the enforcement officer after a date certain, and that the junk vehicle be disposed of by a licensed vehicle wrecker or tow truck operator, with notice to the Washington State Patrol and the Department of Licensing that the vehicle has been wrecked;

2. Withdraw the notice of violation;

3. Continue the review to a date certain for receipt of additional information;

4. Modify the notice of violation, which may include an extension of the compliance date, and/or determine that the owner of the property is not responsible for the costs of removal, pursuant to subsection C of this section.

8.09.090 Municipal court order.

A. Unless mutually agreed to by the appellant and the court, the order of the court shall be served upon the person to whom it is directed, either personally or by mailing a copy of the order to such person at his/her last known address as determined by the enforcement officer within 15

~~calendar days following the conclusion of testimony and hearings and the closing of the record.~~

~~B. Proof of service shall be made by a written declaration by the person effecting the service, declaring the time and date of service and the manner by which service was made.~~

~~C. The municipal court, in affirming the enforcement officer's notice of violation and abatement, may assess administrative costs or costs related to the abatement of the violator's vehicle. The court may also order the refund of hearings fees to parties deemed not responsible for the violation.~~

~~D. If it is determined at the hearing that the vehicle was placed on the land without the consent of the landowner and that he or she has not subsequently acquiesced in its presence, then the municipal court's order shall not assess costs of administration or removal of the vehicle against the property upon which the vehicle is located or otherwise attempt to collect the cost from the landowner.~~

~~8.09.100 Removal and disposal—Costs.~~

~~A. Commencing 45 calendar days after service of the notice of violation and abatement, if no appeal has been filed, or 15 calendar days after the issuance of an order from the municipal court resulting in authority to remove, the enforcement officer shall supervise the removal and disposal of the vehicle or part thereof. The enforcement officer will provide notice to the Washington State Patrol and the Washington State Department of Licensing that the vehicle has been processed in accordance with the laws of the state of Washington.~~

~~B. The town's costs related to the removal of the junk vehicle may be collected from the registered owner of the vehicle(s) if the identity of the owner can be determined, unless the owner, in the transfer of ownership, has complied with RCW 46.12.101. Alternatively, the cost may be collected from the owner of the property on which the vehicle has been stored.~~

~~8.09.110 Civil penalties.~~

~~A. In addition to any other sanction or remedial procedure which may be available, any person, firm or corporation violating or failing to comply with any of the provisions of this chapter shall be subject to a cumulative civil penalty in the amount of $100.00 per day for each violation from the date set for compliance until compliance with the order is achieved.~~

~~B. The penalty imposed by this section may be collected by civil action brought in the name of the town. The enforcement officer may notify the town attorney in writing of the name of any person subject to the penalty, and the town attorney may, with the assistance of the enforcement officer, take appropriate action to collect the penalty.~~

~~8.09.120 Additional relief.~~

~~The enforcement officer may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will~~

~~constitute a violation of this title when civil penalties are inadequate to effect compliance.~~

Section 2. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 3. This ordinance shall take effect after publication of a summary, consisting of the title, pursuant to RCW 35.27.300.

1ST READING:
2ND READING: 08/08/2016

PASSED by the Town Council of the Town of Eatonville and attested by the Clerk in authentication of such passage this _____day of August, 2016.

_____
Mike Schaub
Mayor

ATTEST:

_____
Kathy Linnemeyer
Town Clerk

APPROVED AS TO FORM:

_____
Gregory A. Jacoby
Town Attorney