

ORDINANCE 950

AN ORDINANCE OF THE CITY OF POMEROY, WASHINGTON, AMENDING CHAPTER 8.18 OF THE POMEROY MUNICIPAL CODE UPDATING JUNK AND UNAUTHORIZED VEHICLE DEFINITIONS; CONTAINING A SEVERABILITY PROVISION; AND SETTING AN EFFECTIVE DATE

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**WHEREAS**, regulation of nuisances is authorized by RCW 35.22.280(30); and

**WHEREAS**, prevention and correction of nuisances are necessary to protect public health and safety; and

**WHEREAS**, the Mayor and City staff recently reviewed the nuisance process and procedures regarding junk and unauthorized vehicles set forth in Chapter 8.18 of the Pomeroy Municipal Code ("PMC"); and

**WHEREAS**, as existing, Chapter 8.18 PMC does not establish clear definitions for certain words contained within; and

**WHEREAS**, the Mayor and City staff have reviewed the existing City code provisions related to junk and unauthorized vehicle nuisances and determined that the provisions in this Ordinance amending Chapter 8.18 PMC are necessary to further protect the public health and safety, and welfare of the citizens of the City; and

**WHEREAS**, the City Council concurs with the recommendation of the Mayor and City staff and reasonably believes that adoption of this Ordinance is in furtherance of the health, safety, and welfare of citizens of the City, now, therefore,

THE CITY COUNCIL OF THE CITY OF POMEROY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Chapter 8.18 of the Pomeroy Municipal Code is hereby amended to read as follows:

## **Chapter 8.18**

### **JUNK AND UNAUTHORIZED VEHICLES**

Sections:

- 8.18.010 Junk vehicles as a nuisance.**
- 8.18.020 Unauthorized vehicles as a nuisance.**
- 8.18.030 Definitions**
- 8.18.040 Junk vehicle on public property.**
- 8.18.060 Junk vehicles on private property.**
- 8.18.065 Inoperable motorized vehicle as nuisance.**
- 8.18.070 Exceptions.**
- 8.18.080 Landowner's lack of consent.**
- 8.18.090 Notice.**
- 8.18.100 Costs assessed to owner.**
- 8.18.110 Hearing.**
- 8.18.120 Hearing officer.**
- 8.18.130 Violation – Penalty.**
- 8.18.132 Enforcement.**

#### **8.18.010 Junk vehicles as a nuisance.**

It is declared to be a public nuisance, and as such unlawful for any person to deposit, keep or leave or to permit to be deposited, kept or left on any ~~p~~Public property, or in any place accessible to children, or in any place viewable from a public street, or from any surrounding or adjoining private property, any ~~j~~Junk vehicle or parts thereof.

#### **8.18.020 Unauthorized vehicles as a nuisance.**

It is declared to be a public nuisance, and as such unlawful for any person to deposit, keep or leave or to permit to be deposited, kept or left on any ~~p~~Public property any ~~u~~Unauthorized vehicle.

#### **8.18.030 Definitions**

“Abandoned vehicle” means a ~~v~~Vehicle that a registered tow truck operator has impounded and held in the operator's possession for ~~ninety-six~~ one hundred twenty (120) consecutive hours.

“Impound” means to take and hold a ~~v~~Vehicle in legal custody. There are two types of impounds – public and private.

1. "Public impound" means that the ~~v~~Vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the ~~p~~Public property upon which the ~~v~~Vehicle was located.

2. "Private impound" means that the ~~v~~Vehicle has been impounded at the direction of a person having control or possession of the private property upon which the ~~v~~Vehicle was located.

"Inoperable motorized vehicle" means any car, truck, van, recreation vehicle, motorcycle, snowmobile, or other ~~v~~Vehicle typically powered by an engine, excepting watercraft, that has been in a stationary position for more than fourteen calendar days, is apparently inoperable or requires repairs in order to be operable, or is unable to move a distance of twenty feet under its own power on a flat surface. "Inoperable motorized vehicle" may include ~~v~~Vehicles that do not meet the definition of ~~j~~Junk vehicle.

"Junk vehicle" means a Vehicle certified under RCW 46.55.230 as meeting at least three of the following requirements from RCW 46.55.010;

1. Is three years old or older;

2. Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

3. Is apparently inoperable;

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

"Public property" ~~shall~~s any publicly owned property, including the dedicated portions of highways, streets and alleys, whether developed or not; public parks and public parking lots and any other property owned by the city of Pomeroy.

"Residential property" means property that has not more than four living units located on it.

"Unauthorized vehicle" ~~shall~~s a ~~v~~Vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

1. Public Locations.

a. Constituting an accident or a traffic hazard as defined in RCW 46.555.113 – immediately.

- b. On a highway or town street and tagged as described in RCW 46.55.085 – twenty-four hours.
- c. In a publicly owned or controlled parking area properly posted under RCW 46.55.070 – immediately.

2. Private Locations.

- a. On ~~r~~Residential property – immediately.
- b. On private, nonresidential property, properly posted under RCW 46.55.070 – immediately.
- c. On private, nonresidential property, not properly posted under RCW 46.55.070 – twenty-four hours.

“Vehicle” means every device capable of being moved upon a roadway and in, upon, or by which any person or property is or may be transported or drawn upon a roadway, and includes, without limitation, automobiles, trucks, trailers, motorcycles, snowmobiles, boats and tractors, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

~~For the purposes of this chapter a “junk vehicle” means a vehicle which meets at least three of the following requirements (RCW 46.55.010):~~

- ~~1. Is three years old or older;~~
- ~~2. Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;~~
- ~~3. Is apparently inoperable;~~
- ~~4. Has an approximate fair market value equal only to the approximate value of the scrap in it.~~

All other words shall have their normal ordinary meaning unless the context or subject matter clearly requires otherwise.

**8.18.040 Junk vehicle on public property.**

Junk vehicles as defined in this chapter found parked or stored on ~~p~~Public property are hereby declared a public nuisance and may be abated as follows:

A. The enforcement officials designated in PMC 8.18.132, Enforcement, shall be notified and shall determine whether a ~~v~~Vehicle parked on ~~p~~Public property is a ~~j~~Junk vehicle as herein defined.

B. If, after the expiration of the notice period described in PMC 8.18.060(B) the ~~v~~Vehicle remains on ~~p~~Public property, the enforcement officials designated in PMC 8.18.132, Enforcement, shall arrange for the removal of the ~~v~~Vehicle to a safe place, and shall see that the notice provisions of RCW 46.55.110 are complied with, which notice provisions



shall contain written notice of right of redemption and the opportunity to request a hearing as to the validity of the impoundment.

#### **8.18.060 Junk vehicles on private property.**

Junk vehicles as defined in this chapter, or parts of such ~~v~~Vehicle, found parked or stored on private property are hereby declared a public nuisance and may be abated as follows:

A. Upon notice that a ~~v~~Vehicle parked or stored on private property may be a ~~j~~Junk vehicle as herein defined, the enforcement officials designated in PMC 8.18.132, Enforcement, shall be notified and shall investigate and inspect the ~~v~~Vehicle and shall make an initial determination as to whether or not the ~~v~~Vehicle is a ~~j~~Junk vehicle as herein defined.

B. If the ~~v~~Vehicle is determined to be a ~~j~~Junk vehicle, the enforcement officials designated in PMC 8.18.132, Enforcement, shall notify the last registered owner of record and the property owner of record of the determination and advise them that a hearing may be requested in writing to the municipal court clerk within fifteen days of the date of the notice, and if no hearing is requested, after such fifteen days the ~~v~~Vehicle may be removed by the city and the costs of removal may be assessed against the last registered owner of the ~~v~~Vehicle or the owner of the property on which the ~~v~~Vehicle is stored.

#### **8.18.065 Inoperable motorized vehicle as nuisance.**

An ~~i~~Inoperable motorized vehicle will be considered a public nuisance unless contained within an enclosed building or screened from the neighboring properties and street by a one hundred percent sight-obstructing fence or other non-nuisance sight barrier.

#### **8.18.070 Exceptions.**

This chapter shall not apply to:

A. A ~~v~~Vehicle or part thereof completely enclosed within a building, garage or carport; or

B. A ~~v~~Vehicle or part thereof that is stored or parked in a lawful manner on private property in connection with a business of a licensed dismantler or licensed ~~v~~Vehicle dealer.

#### **8.18.080 Landowner's lack of consent.**

The owner of the land on which the ~~v~~Vehicle is located may appear in person at the hearing or present a written statement in time for consideration at the hearing, and deny responsibility for the presence of the ~~v~~Vehicle on the land with his reasons for the denial. If it is determined at the hearing that the ~~v~~Vehicle was placed on the land without the consent of the landowner and that he has not subsequently acquiesced in its presence, the city shall not assess costs of administration or removal of the ~~v~~Vehicle against the property upon which the ~~v~~Vehicle is located or otherwise attempt to collect from the owner.

#### **8.18.090 Notice.**

After notice has been given of the intent of the city to dispose of the ~~v~~Vehicle and after a hearing, if requested, has been held, and the period of appeal therefore elapsed, the ~~v~~Vehicle shall be removed at the request of the enforcement officials designated in PMC 8.18.132, Enforcement, with notice to the Washington State Patrol and Department of Licensing that the ~~v~~Vehicle has been wrecked, and may dispose of such ~~v~~Vehicle as scrap.

#### **8.18.100 Costs assessed to owner.**

Costs of the removal of ~~j~~unk vehicles or parts thereof may be assessed against the registered owner of the ~~v~~Vehicle if the ownership of the ~~v~~Vehicle can be ascertained, or the costs of removal may be assessed against the owner of the property on which the ~~v~~Vehicle is stored. Such costs shall be considered to be an indebtedness to the city, and may be collected in the same manner as any other debt.

#### **8.18.110 Hearing.**

If a request for hearing is received by the Garfield County district court clerk, the same shall be forwarded to the administrative hearing officer appointed pursuant to this chapter, who shall set a time for hearing.

#### **8.18.120 Hearing officer.**

The city of Pomeroy municipal/Garfield County district court judge shall conduct hearings that may be requested under this chapter. Such officer shall be empowered to administer oaths, to take evidence as herein provided, and to make determinations required hereunder. Decision may be announced orally at the hearing, but a written copy thereof shall be given to the enforcement officials designated in PMC 8.18.132, Enforcement, the person requesting the hearing, the owner of the property and the registered and legal owner of the ~~v~~Vehicle involved.

#### **8.18.130 Violation – Penalty.**

In addition to the costs of abatement, any person violating any portion of this chapter shall be deemed to have committed a civil infraction commencing upon the date that the enforcement officer or hearing officer had specified for the completion of the abatement, and shall be fined not less than \$250.00 per violation, the first \$250.00 of which shall not be suspended or deferred. A separate offense shall be deemed committed on each day during which a violation occurs or continues. If the city causes the abatement due to failure of the responsible person, then the number of days of offense shall be equal to the number of days from the specified completion date of the abatement through the actual date of abatement.

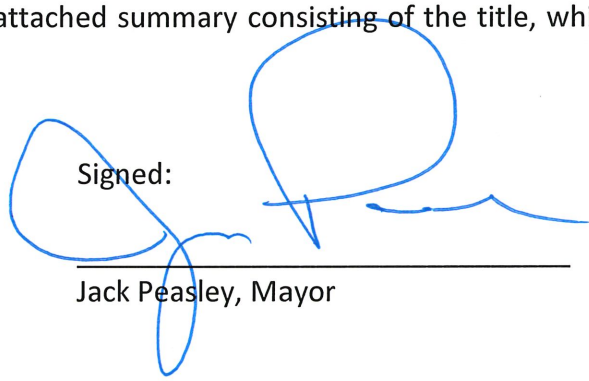
#### **8.18.132 Enforcement.**

The county sheriff or any deputy sheriff, the city administrator and the city's designated building and code enforcement officers are authorized to issue civil or criminal notice or citations as provided herein or take appropriate procedures. Such enforcement action may take actions as specified in PMC 8.16.105 and 8.16.110.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Effective Date. This ordinance shall become effective five (5) days after passage and publication of the attached summary consisting of the title, which is hereby approved.

Signed:

  
\_\_\_\_\_  
Jack Peasley, Mayor

Attest:

  
\_\_\_\_\_  
Diane L Taylor, City Clerk/Treasurer