

ORDINANCE NO. 2 , 2011

AN ORDINANCE REGULATING WRECKED AND DISABLED VEHICLES AND JUNK WITHIN THE CITY OF SUNDANCE, WYOMING; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNDANCE, CROOK COUNTY, WYOMING:

SECTION 1: PURPOSE

This ordinance is enacted for the purpose of regulating wrecked and disabled vehicles and junk within the City of Sundance.

SECTION 2: DEFINITIONS

For the purposes of this ordinance, the following words and phrases will have the meanings respectively ascribed to them by this section:

A. **Firewood** means wood cut for fuel. Wood will be cut to a length of no more than three feet and must be stacked in a neat and orderly pile no greater than six feet in height.

B. **Junk** means all articles such as, but not limited to, vehicles, appliances, furniture (except for furniture intended for outdoor use), furniture parts, boxes, cardboard, paper, glass, plastic, scrap lumber, wood other than firewood, pallets, tires, auto parts, mattresses, batteries, machinery parts, rags, combustible or flammable waste, litter, refuse, rubbish, building materials and similar articles (except construction materials provided for in Ordinance No. 1, 1992), materials such as iron, copper, brass, aluminum, scrap metal, and all trash and debris other than that which has been collected to await arrival of the city's sanitation personnel. As used in this ordinance, junk refers only to materials left outside of any building and does not apply to items stored inside a lawfully constructed building so long as the building is wholly enclosed, except for doors for ingress and egress, and except for appliances and containers under Ordinance No. 1, 2003.

C. **Permitted exceptions** means the storage, repair and servicing of vehicles as defined and the tearing down, stripping or junking of vehicles will be permitted only where and when the use is specifically authorized, permitted or licensed by the City after application is made; then only provided the vehicle is the property of the owner or occupier of the lot and the use is not a commercial use of the property, unless the use is authorized by other ordinances of the city.

D. **Person** means any individual, firm, partnership, corporation or other business entity or the executor, administrator, trustee, receiver, assignee, tenant, purchaser on a contract for deed or personal representative of a deceased person.

E. **Property** means any real property within the city, or any city property within or without the corporate limits which is not a street, alley or highway.

F. **Street, highway or alley** means the entire width between the boundary lines of every way publicly maintained, or if not publicly maintained dedicated to public use, when any part is open to the use of the public for purposes of vehicular travel.

G. **Vehicle** means a machine propelled by power other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery, and will include, without limitation, automobiles, trucks, trailers, motorcycles, tractors, heavy machinery, buggies and wagons.

H. **Permit** means the document issued by the City for any licensed/unlicensed vehicle authorizing the owner to repair and restore the vehicle. Permits may be issued for a period of one year and may be renewed by the City. Fees for permits shall be established from time to time by resolution.

SECTION 3: PUBLIC NUISANCE DECLARED

The accumulation or storage of abandoned, wrecked, dismantled, unlicensed or inoperative vehicles or junk on private or public property is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of the public, to create a harborage for insects, rodents, skunks and other vermin and to be injurious to the health, safety and general welfare of the public. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle, more than one unlicensed vehicle, or junk on private or public property, except as expressly permitted, is declared to constitute a public nuisance which may be abated in accordance with the provisions of this ordinance.

SECTION 4: NOTICE TO ABATE NUISANCE--COMPLIANCE REQUIRED

A. It will be the duty of any person receiving notice of a public nuisance as provided in this ordinance to comply with the provisions of the notice and to abate the nuisance within ten (10) business days after the receipt of the notice, and if the person fails or refuses to abate the nuisance within ten (10) business days from receipt of the notice without just cause, the failure is declared to be unlawful and will constitute a misdemeanor. Each day the nuisance persists will constitute a separate violation.

B. It is unlawful and will constitute a misdemeanor for any person, after having received notice as provided in this ordinance, to remove any vehicle or junk from private property to any other private property upon which storage is not permitted, or any other real property subject to this ordinance, or any street, alley or highway.

SECTION 5: NOTICE TO ABATE NUISANCE--CONTENTS—PROCEDURE

A. Whenever the city council, mayor or his/her appointed representative receives a written complaint or is of the opinion any vehicle or junk is a public nuisance as defined in this ordinance, the city council, mayor or his/her appointed representative will attempt to give written notice to the owner of the vehicle or junk, if his or her address is known, to the owner of the real property where the vehicle or junk is located, and to any other person or entity known by the city council, mayor or his/her appointed representative, or peace officer to have a security interest in the vehicle or junk. The notice will be attempted by certified mail or personal service, if the address of the individual or entity is

known. In the case of vehicles, where practical, the notice will also be affixed to the windshield or some other part of the vehicle where it can be easily seen. Where affixing the notice to a vehicle is impractical, and in the case of junk, the notice will be posted at the site or on the real property where the nuisance exists.

B. Notice will include substantially the following information:

1. A statement that a certain vehicle or junk is a nuisance within the provisions of Section 3 of this ordinance; in the case of a vehicle, the notice should include make, year and vehicle identification number if reasonably possible;
2. A description of the real property, by street address or otherwise, on which the nuisance exists;
3. A statement that nuisance must be abated within ten (10) business days from the date on the notice;
4. A statement that if the nuisance is not abated within the time provided, the city may abate the nuisance, and the cost of abatement may be charged to the owner of the nuisance and assessed against the real property upon which the nuisance exists or both;
5. A statement that a hearing upon the allegation of a public nuisance and the assessment of costs may be requested by giving written notice to the city clerk within ten (10) business days from the date on the notice, and that a request must specify the real property concerning which the request is made, the requesting party's name and address, and the nature of the interest held by the requesting party; that upon request a hearing will be scheduled to determine if a public nuisance exists and as to the assessment of administrative costs and the costs of abatement; that if a hearing is not so requested the right to a hearing shall be waived;
6. A statement that failure to abate the nuisance may result in a city abatement and/or criminal misdemeanor charges.

C. In the event notice, as provided in subsection A of this section, cannot be given to each individual known by the city council, mayor or his/her appointed representative or peace officer to have an interest in the vehicle or junk or the owner of the real property where the nuisance is identified, service will be made by publication. Notice by publication will be made by one publication in the official newspaper of the City. The notice of publication will contain the same information required in the notice described in subsection A of this section. Notice by publication may contain multiple listings of public nuisances.

D. Proof of notice will be made by the certification of any officer or employee of the city, or affidavit of any person over eighteen (18) years of age, naming the person to whom notice was given and specifying the time, place and manner of delivery. Proof of notice will be made in each case and maintained for a period of two (2) years from the date of abatement of the nuisance for which notice has been given.

SECTION 6: HEARING PROCEDURE

A. A request for a hearing upon the allegation of a public nuisance and the assessment of costs shall be made in writing and delivered to the city clerk within ten (10) business days from receipt of the notice to abate. The request will specify the property concerning

which the request is made, the requesting party's name and address, and nature of the interest held by the requesting party in the vehicle or junk.

B. In the event of a public nuisance as defined in Section 3, of which notice has been given, and which remains unabated for more than ten (10) business days following receipt or publication, the city council, mayor or his/her appointed representative is granted the authority to abate, remove or cause the removal of the vehicle or junk; provided, however, if a timely request for hearing is filed, abatement will only proceed upon resolution or order of the city council or hearing examiner.

C. In the event a request for hearing is filed as provided, a hearing will be held before the city council or such other individual or group as designated by the city council to act as hearing examiner. The purpose of the hearing will be to confirm or deny the existence of a public nuisance and for taking further action as is authorized under this ordinance. Notice of the time, place and hour of the hearing will be sent at least ten (10) business days in advance of the hearing to all known parties and the owner(s) of real property.

D. At the hearing, all parties will be afforded an opportunity to present evidence, to cross-examine and present argument; provided that all persons testifying shall be sworn; irrelevant, immaterial or unduly repetitious evidence will be excluded; and the decision of the council or hearing examiner will be based upon the type of evidence commonly relied upon by reasonably prudent people in the conduct of their serious affairs.

E. At or after the hearing, and in the event of confirmation that a public nuisance exists, the city council or the hearing examiner, as the case may be, may resolve or order that the city employees or agents remove or otherwise abate the nuisance; provided, however, that if the circumstances justify, in the opinion of the entity or person presiding at the hearing, the time for abatement may be delayed. In the event a nuisance is confirmed, administrative and removal costs may also be assessed at the hearing. If it is found a public nuisance does not exist, abatement authority will be denied and costs will not be assessed.

F. Appeals from adverse decisions rendered by the city council pursuant to subsection D of this section may be made to the district court in the same manner as an appeal from an adverse decision rendered by an agency in a contested case under the provisions of the Wyoming Administrative Procedures Act. A hearing examiner, as provided in subsection C of this section, is an agency within the meaning of the Wyoming Administrative Procedures Act and adverse decisions may be appealed in the manner provided therein.

G. In the event a request for hearing, as provided, is not timely filed, the right to a hearing will be considered to have been waived.

SECTION 7: REMOVAL--VOLUNTARY CONSENT—AFFIDAVIT

The owner of any real property upon which any unpermitted vehicle or junk is located or the owner of any unpermitted vehicle or junk may voluntarily consent to the removal of the property by the city. In order to give consent, all owners of the property will execute an affidavit in a form acceptable to the city attorney, stating that there are no other known owners of the property or junk, or lien holders having a security interest in the property; that the owners will reimburse the city for the actual costs of removal or other

costs as are established by the city council for the removal; and that reimbursement will be made to the city within thirty (30) days of removal. The affidavit will constitute a statement by the owner(s) signing the affidavit that they will indemnify the city for any loss or expense alleged by any other party as a result of removal or disposal. The execution of the affidavit shall also release the city from any obligation to account or pay over to the owner(s) any amount the city receives for the property in the event of sale.

SECTION 8: DISPOSAL OF JUNK; ASSESSMENT OF COSTS

A. Any junk which is impounded or removed and taken into custody, as provided in this ordinance, may be disposed of by the City without further notice to the owner(s).

B. The city council will, from time to time, determine and fix an amount to be assessed as administrative costs in relation to enforcement of this ordinance. This cost of administration may be set as a fixed sum per removal or as a percentage of the actual cost of removal under this ordinance. In addition, the actual costs of removal and/or storage may be charged against the owner of any junk constituting a public nuisance and/or against the real property or owner of the real property where the junk was situated.

SECTION 9: SEARCH WARRANT

A. The city council, mayor or his/her appointed representative may make application to the municipal court for authority to enter upon real property to examine junk for the purpose of making a determination as to whether a public nuisance exists and/or securing information as to the ownership of junk thought to constitute a public nuisance and/or securing information as to the identity of the person or persons in control of the real property where the junk is situated.

B. The municipal court has authority to issue search warrants and other process necessary to enforce this ordinance.

C. A search warrant shall issue only upon affidavit sworn to before a municipal judge which establishes the grounds for issuing the search warrant. If the judge is satisfied grounds for the application exist or there is probable cause to believe they exist, he/she shall issue a search warrant identifying the purpose of the search, and naming or describing the place to be searched. The search warrant shall be directed to the mayor or his/her appointed representative or to any peace officer authorized to enforce or assist in enforcing the laws of the city. The search warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. The search warrant shall command that the search take place forthwith. The search warrant shall direct it be served in the daytime, but for good cause shown, the search warrant may direct that it be served at any time.

SECTION 10: REPEALING CLAUSE

A. Ordinance No. 1, 1970 is in conflict with this ordinance and is hereby repealed.

B. Certain sections of Ordinance No.5, 1992 duplicate and/or are in conflict with this ordinance and are hereby repealed to the extent of duplication or conflict.

- C. Ordinance No. 1, 2003 is specifically not repealed by this ordinance, but is in addition to and cumulative to this ordinance.
- D. Any other ordinance or parts of ordinances in conflict with this ordinance are hereby repealed

SECTION 11: PENALTY

Any person violating any of the provisions of this ordinance after issuance of a ticket or information and thereafter being convicted will be deemed guilty of a misdemeanor and fined in an amount not exceeding One Hundred Dollars (\$100.00). Each day the violation continues or is permitted to continue will constitute a separate offense and will be punishable as such.

SECTION 12: SEVERABILITY

Should the Courts of this State or the United States declare any section, provision, paragraph, clause, sentence, phrase or part of this ordinance invalid or unconstitutional or in conflict with any other section, provision, paragraph, clause, sentence, phrase or part of this ordinance, then the decision will affect only the section, provision, paragraph, clause, sentence, phrase or part of this ordinance declared to be unconstitutional or unauthorized and will not affect any other part of this ordinance.

SECTION 13: EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 2011.

CITY OF SUNDANCE

BY: _____
PAUL BROOKS, MAYOR

ATTEST:

CITY CLERK

(SEAL)

1 st reading	April 5, 2011
2 nd reading	May 3, 2011
3 rd reading	June 7, 2011
Publish	June 23, 2011