EXHIBIT NO. 1

13
6-14-05

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 6, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER

SUBJECT: CONSIDERATION OF AN ORDINANCE TO AMEND THE CITY CODE SECTION RELATING TO INOPERABLE VEHICLES

ISSUE: City Council consideration of an ordinance to amend Title 5, Chapter 8, of the Code of the City of Alexandria regarding regulations governing inoperable vehicles.

RECOMMENDATION: That City Council pass the ordinance of first reading, and schedule it for public hearing, second reading and final passage on Tuesday, June 21.

DISCUSSION: During the 2004 session, the Virginia General Assembly passed Senate Bills 204 and 529 to amend §§15.2-904 and 15.2-905 of the Code of Virginia to adopt new regulations governing the keeping and storing of inoperable vehicles on private property. The Code section was amended again by the 2005 Virginia General Assembly to clarify the 2004 changes.

Specifically, the new regulations give clarity to the definition of when and how inoperable vehicles may be stored on public or private property. Likewise, the new regulations give permission for an additional inoperable vehicle provided the owner of such vehicles can demonstrate that such vehicle is being "actively restored or repaired."

Accordingly, the following sub sections of §5-8-61 are hereby amended: (2) (iv) increases the period for which a vehicle may display an expired inspection sticker to sixty days; and (3) re-defines the term shielded or screened from view to "the vehicles shall not be visible by someone standing at ground level from outside of the property on which the subject vehicle is located." This Code section previously defined shielded or screened from view as being behind fences, shrubbery or kept within a fully enclosed building. Although the keeping of an inoperable vehicle within a fully enclosed building remains permitted, the requirement for keeping it behind shrubbery or fences has been eliminated.

Previously property owners or tenants were restricted to the keeping of not more than one inoperable vehicle on private property for a period not to exceed sixty days. The new provisions of State law now allow a property owner to keep one additional vehicle on their property provided that they can demonstrate that the additional vehicle is being used in conjunction with

the "active" restoration or repair of the original vehicle and that both vehicles are "shielded screened from view."

Under section §5-8-64 (a), staff recommends that the current compliance time of five days to remove an inoperable automobile be increased to ten days. Code Enforcement staff feels this is a more reasonable time frame to allow citizens to have inoperable automobiles removed based upon the number of extension request they receive from them.

Finally, section 5-8-65 has been subdivided and provides for a new administrative appeal process to enable citizens to submit a written challenge to the Director of Code Enforcement if they feel they have been improperly cited under these regulations. Currently, there is no administrative appeal process for those who may have been cited under this section.

ATTACHMENTS:
Attachment 1. Proposed Ordinance
Attachment 2. Senate Bill(s) 204 & 529

STAFF:
Gary Mesaris, Fire Chief
Art Dahlberg, Director, Code Enforcement

EXHIBIT NO. 2

Introduction and first reading:	6/14/05
Public hearing:	6/21/05
Second reading and enactment:	6/21/05

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Section 5-8-61 (DEFINITIONS), Section 5-8-63 (UNLAWFUL TO KEEP; EXCEPTIONS), Section 5-8-64 (REMOVAL OF INOPERABLE VEHICLE; REMEDIES FOR FAILURE TO REMOVE; COSTS) and Section 5-8-65 (CIVIL VIOLATION AND PENALTY), all of Article D (INOPERABLE MOTOR VEHICLES), Chapter 8 (PARKING AND TRAFFIC REGULATIONS), Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance amends the provisions in the city code concerning inoperable motor vehicles on private property to conform to recent changes in state law. The ordinance (i) requires a 60 day period before a vehicle is considered inoperable because of an expired inspection sticker; (ii) requires that a vehicle shielded or screened from view not be visible by someone standing at ground level from outside of the property on which the subject vehicle is located; (iii) allows a property owner to have two inoperable vehicles, both screened from view, on the property, if the owner is actively restoring one vehicle and the other is being used for the restoration; (iv) extends the notice prior to having an inoperable vehicle towed to ten days; and (v) provides for an administrative reconsideration by the Director of Code Enforcement of the decision that a vehicle is inoperable.

Sponsor

Staff

Gary Mesaris, Fire Chief
Arthur Dahlberg, Director of Code Enforcement
Mary Elliott O'Donnell, Assistant City Attorney

Authority

§ 15.2-904, § 15.1-905, Code of Virginia (1950), as amended
§ 2.04(g), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance

Senate Bills(s) 204 & 529

C:\Documents and Settings\jhenders\Local Settings\Temp\notesC9812B\Inoperable Vehicle Ord Cover.wpd

EXHIBIT NO. 3

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Section 5-8-61 (DEFINITIONS), Section 5-8-63 (UNLAWFUL TO KEEP; EXCEPTIONS), Section 5-8-64 (REMOVAL OF INOPERABLE VEHICLE; REMEDIES FOR FAILURE TO REMOVE; COSTS) and Section 5-8-65 (CIVIL VIOLATION AND PENALTY), all of Article D (INOPERABLE MOTOR VEHICLES), Chapter 8 (PARKING AND TRAFFIC REGULATIONS), Title 5 (TRANSPORTATION AND ENVIRONMENTAL SERVICES) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Article D of Chapter 8, Title Five of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 5-8-61 Definitions.

The following terms shall, for purposes of this article, have the meanings set forth below.

(1) Motor vehicle or vehicle means any motor vehicle, trailer or semitrailer, or any part thereof, as defined in section 46.2-100, Code of Virginia (1950), as amended.

(2) Inoperable motor vehicle means any motor vehicle which:

(i) is not in operating condition;
(ii) for 60 or more days has been partially or totally disassembled, as evidenced by the removal of its wheels and tires, its engine, or one or more other components required for the operation of the vehicle;
(iii) does not display valid state license plates; or
(iv) does not display a ~~valid~~ state inspection decal <u>which is valid or which was valid within the preceding 60 days.</u>

(3) Shielded or screened from view means <u>that the vehicle, whether covered or uncovered, is not visible by someone standing at ground level from outside of the property on which the subject vehicle is located</u> ~~hidden from sight, from any ground level location, by plantings or fences.~~

Section 3. That Section 5-8-63 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 5-8-63 Unlawful to keep; exceptions.

It shall be unlawful for any person, firm or corporation to keep on any private property in the city, except property zoned for industrial purposes, an inoperable motor vehicle, unless it is

located within a fully enclosed building or structure or is otherwise shielded or screened from view. It shall also be unlawful for any person, firm or corporation to keep on any private property in the city, except property zoned for industrial purposes, more than one inoperable motor vehicle, located outside of a fully enclosed building or structure, which is shielded or screened from view. Notwithstanding the other provisions of this section, if the owner of such vehicle can demonstrate that he is actively restoring or repairing such vehicle and if it is shielded or screened from view, such vehicle and one additional inoperative motor vehicle that is shielded or screened from view being used for the restoration or repair may remain on the property. However, the provisions of this article shall not apply to a licensed business which is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor. Nor shall the provisions of this article apply to any antique motor vehicle, as defined in section 46.2-100, Code of Virginia (1950), as amended, so long as a bona fide effort is being made to repair or restore the vehicle and it is shielded in a manner to protect it from the weather and to make it unsuitable for rodent harborage.

Section 4. That Section 5-8-64 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 5-8-64 Removal of inoperable vehicle; remedies for failure to remove; costs.

(a) The occupant, and if different the owner, of the private property on which an inoperable motor vehicle is being kept in violation of this article shall be provided a written notice of said violation. The notice shall be provided by the fire marshal or the fire marshal's designee, or another city employee designated by the city manager, shall be posted both on the inoperable vehicle and in a conspicuous place on the property and, where the owner of the property is not its occupant, shall be mailed, by first class mail, to the owner at the address maintained by the city's office of real estate assessments. The notice shall identify the inoperable vehicle, describe the conditions of the vehicle which render it inoperable and in violation of this article, and shall state that, unless the conditions are remedied by a specified date, which date shall be at least ~~five~~ ten days following the date on which the notice is posted or, if applicable and later, the date on which the notice was mailed, the vehicle will be removed by the city to an impoundment facility. In the event that the inoperable vehicle remains on the property after the date specified in the notice, the fire marshal or the fire marshal's designee, or another city employee designated by the city manager, may remove the vehicle and place it in the city's impoundment yard or another impoundment facility.

(b) Within five days of any removal under subsection (a), the fire marshal or the fire marshal's designee shall provide a written notice to the owner, and if different the occupant, of the property from which the inoperable motor vehicle was removed and, if different, to the owner of record of the impounded vehicle. The notice shall be sent by registered or certified mail, return receipt requested, and shall state the following: (I) the year, make, model and serial number of the impounded vehicle; (ii) the location of the impoundment yard where it is being held; (iii) that the owner of the vehicle and any person having a security interest in the vehicle may reclaim the vehicle within 15 days from the date of the notice, after the payment of all removal and storage

costs resulting from the removal and storage of the vehicle, and after providing an assurance that the vehicle will be brought into compliance with this article; and (iv) that the failure of the vehicle owner to reclaim the vehicle within the time provided shall constitute both a waiver by the owner of all right, title and interest in the vehicle, and the owner's consent to the disposition of the vehicle by the city. If the inoperable vehicle is not reclaimed within the time specified in the notice, the city may dispose of the vehicle.

(c) The costs incurred by the city in removing, storing and disposing of an inoperable motor vehicle in excess of any proceeds derived from the sale of the vehicle shall be assessable against the owner of the property from which the vehicle was removed, the occupant of the property on the date the vehicle was removed, and the owner of the vehicle, and may be collected as taxes and levies are collected. The costs assessed against the owner of the property from which the vehicle was removed shall constitute a lien against such property, and the lien shall continue until actual payment of the costs have been made.

Section 5. That Section 5-8-65 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

Sec. 5-8-65 Civil violation, ~~and~~ penalty <u>and reconsideration</u>

<u>(a)</u> A person receiving a notice under section 5-8-64(a) which describes the conditions of a motor vehicle that render the vehicle inoperable shall remove or otherwise remedy the conditions within the time period set out in the notice, and failure to do so shall constitute a violation of this section. Said violation shall be a class four civil violation which shall be enforced through the levying of a civil penalty pursuant to section 1-1-11 of this code; provided, that the penalty shall be $100 for a person's first violation of this section occurring in any six-month period, shall be $250 for a person's second violation occurring within the six-month period, and shall be $500 for each additional violation by a person occurring the six-month period.

<u>(b) Within five days of receipt of a notice issued under Sec. 5-8-64, the recipient may request in writing that the Director of Code Enforcement reconsider the determination that the vehicle is inoperable, and may include with such request any supporting documentation or other evidence. The vehicle shall not be removed for impoundment while such request is pending. The Director of Code Enforcement shall review the request, and notify the requestor in writing of the Director's decision. If the Director confirms the determination, such written notification shall serve as new notice provided pursuant to Sec. 5-8-64(a).</u>

Section 6. That this ordinance shall become effective July 1, 2005.

WILLIAM D. EUILLE
Mayor

Introduction: 6/14/05
First Reading:

Publication:
Public Hearing:
Second Reading:
Final Passage:

C:\Documents and Settings\jhenders\Local Settings\Temp\notesC9812B\Inoperable Vehicle Ord.wpd

Attachment 2

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 934

An Act to amend and reenact §§ 15.2-904 and 15.2-905 of the Code of Virginia, relating to inoperable motor vehicles.

[S 204]

Approved April 15, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-904 and 15.2-905 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-904. Authority to restrict keeping of inoperable motor vehicles, etc., on residential or commercial property; removal of such vehicles; penalty.

A. Any locality may, by ordinance, provide that it shall be unlawful for any person to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial or agricultural purposes any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable. Any locality in addition may, by ordinance, limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure, but which are shielded or screened from view by covers. As used in this section, an " inoperable motor vehicle" means any motor vehicle which is not in operating condition; or which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle or on which there are displayed neither valid license plates nor a valid inspection decal. However, the provisions of this section shall not apply to a licensed business which on June 26, 1970, is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

B. Any locality may, by ordinance, further provide that: (i) the owners of property zoned for residential, commercial or agricultural purposes shall, at such time or times as the locality prescribes, remove therefrom any such inoperable motor vehicles, trailers or semitrailers that are not kept within a fully enclosed building or structure; (ii) such locality through its own agents or employees may remove any such inoperable motor vehicles, trailers or semitrailers, whenever the owner of the premises, after reasonable notice, has failed to do so; (iii) in the event such locality, through its own agents or employees, removes any such motor vehicles, trailers or semitrailers, after having given such reasonable notice, such locality may dispose of such motor vehicles, trailers or semitrailers after giving additional notice to the owner of the vehicle; (iv) the cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the locality as taxes are collected; and (v) every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs has been made to the locality. *Notwithstanding the other provisions of this subsection, if the owner of such vehicle can demonstrate that he is actively restoring or repairing the vehicle, and if it is shielded or screened from view, the vehicle and one additional inoperative motor vehicle being used for the restoration or repair may remain on the property.*

C. The governing body of any locality may by ordinance provide that violations of this section shall be subject to a civil penalty, not to exceed $50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed $200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of $3,000 in a 12-month period.

D. Except as provided in this subsection, adoption of an ordinance pursuant to subsection C shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. The governing body of any locality may, however, by ordinance provide that such violations shall be a Class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

E. As used in this section, notwithstanding any other provision of law, general or special, "shielded or screened from view" means not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.

§ 15.2-905. Authority to restrict keeping of inoperable motor vehicles, etc., on residential or commercial property in certain localities; removal of such vehicles.

A. The governing body of any county having adopted the urban county executive form of government; any county contiguous thereto; the county manager form; any town located, wholly or

partly, in such counties; any city contiguous to a county having adopted the urban county executive form of government or surrounded by a county contiguous thereto; any city having a population between 35,000 and 40,000, any city having a population between 60,000 and 70,000 and any city having a population between 95,000 and 105,000 may by ordinance prohibit any person from keeping, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned or used for residential purposes, or on any property zoned for commercial or agricultural purposes, any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable.

The locality in addition may by ordinance limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure.

As used in this section, *notwithstanding any other provision of law, general or special,* "shielded or screened from view" means ~~hidden from sight by plantings or fences~~ *not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.*

As used in this section, an "inoperable motor vehicle" means any motor vehicle, trailer or semitrailer which is not in operating condition; or does not display valid license plates; or does not display an inspection decal that is valid or does display an inspection decal that has been expired for more than ~~sixty~~ *60* days. The provisions of this section shall not apply to a licensed business which is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

B. The locality may, by ordinance, further provide that the owners of property zoned or used for residential purposes, or zoned for commercial or agricultural purposes, shall, at such time or times as the governing body may prescribe, remove therefrom any inoperable motor vehicle that is not kept within a fully enclosed building or structure. The locality may remove the inoperable motor vehicle, whenever the owner of the premises, after reasonable notice, has failed to do so. *Notwithstanding the other provisions of this subsection, if the owner of such vehicle can demonstrate that he is actively restoring or repairing the vehicle, and if it is shielded or screened from view, the vehicle and one additional inoperative motor vehicle being used for the restoration or repair may remain on the property.*

In the event the locality removes the inoperable motor vehicle, after having given such reasonable notice, it may dispose of the vehicle after giving additional notice to the owner of the premises. The cost of the removal and disposal may be charged to either the owner of the inoperable vehicle or the owner of the premises and the cost may be collected by the locality as taxes are collected. Every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the inoperable vehicle was removed, the lien to continue until actual payment of the cost has been made to the locality.

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 513

An Act to amend and reenact § 15.2-904 of the Code of Virginia, relating to inoperable motor vehicles.

[S 529]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 15.2-904 of the Code of Virginia is amended and reenacted as follows:

§ 15.2-904. Authority to restrict keeping of inoperable motor vehicles, etc., on residential or commercial property; removal of such vehicles; penalty.

A. Any locality may, by ordinance, provide that it shall be unlawful for any person to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial or agricultural purposes any motor vehicle, trailer or semitrailer, as such are defined in § 46.2-100, which is inoperable. Any locality in addition may, by ordinance, limit the number of inoperable motor vehicles which any person may keep outside of a fully enclosed building or structure, but which are shielded or screened from view by covers. As used in this section, an "inoperable motor vehicle" ~~means~~ *may, at the election of the locality, mean any one or more of the following: (i)* any motor vehicle which is not in operating condition; ~~or~~ *(ii) any motor vehicle* which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle*;* or *(iii) any motor vehicle* on which there are displayed neither valid license plates nor a valid inspection decal. However, the provisions of this section shall not apply to a licensed business which on June 26, 1970, is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

B. Any locality may, by ordinance, further provide that: (i) the owners of property zoned for residential, commercial or agricultural purposes shall, at such time or times as the locality prescribes, remove therefrom any such inoperable motor vehicles, trailers or semitrailers that are not kept within a fully enclosed building or structure; (ii) such locality through its own agents or employees may remove any such inoperable motor vehicles, trailers or semitrailers, whenever the owner of the premises, after reasonable notice, has failed to do so; (iii) in the event such locality, through its own agents or employees, removes any such motor vehicles, trailers or semitrailers, after having given such reasonable notice, such locality may dispose of such motor vehicles, trailers or semitrailers after giving additional notice to the owner of the vehicle; (iv) the cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the locality as taxes are collected; and (v) every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs has been made to the locality.

C. The governing body of any locality may by ordinance provide that violations of this section shall be subject to a civil penalty, not to exceed $50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed $200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of $3,000 in a 12-month period.

D. Except as provided in this subsection, adoption of an ordinance pursuant to subsection C shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. The governing body of any locality may, however, by ordinance provide that such violations shall be a Class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.