IN THE COURT OF APPEALS OF IOWA

No. 7-061 / 95-2184

000085

CITY OF WEST BURLINGTON,

Plaintiff-Appellee,

vs.

EMERGENCY TOWING & SALES, INC., and LARRY BECKMAN,

Defendants-Appellants.

Appeal from the Iowa District Court for Des Moines County, William L. Dowell, Judge.

Defendants appeal from a district court order enjoining them from using their property as a junk yard. **AFFIRMED.**

Daniel L. Manning of Connolly, O'Malley, Lillis, Hansen & Olson, L.L.P., Des Moines, for appellants.

Terry D. Loeschen of Loeschen & Loeschen, Burlington, for appellee.

Heard by Sackett, P.J., Cady, and Vogel, JJ.

CADY, J.

Emergency Towing and Sales, Inc., (Emergency) and Larry Beckman appeal from a district court order enjoining them from conducting an automotive salvage yard, salvage operation, or junk yard and placing or storing a wrecked, inoperable or disabled vehicle on their property. On our de novo review we affirm.

Emergency is an Iowa corporation which owns real property within the corporate limits of the City of West Burlington. The property is located in an I-2 General Industrial Zone. The corporation operates a business on the property which rents U-Haul equipment. Emergency also operates a towing service from the property. Beckman is employed by Emergency as its manager.

The towing service has been in operation since 1976. The service operates throughout Des Moines County and surrounding counties. Towing services are requested by private individuals and by law enforcement agencies from the scene of an accident. After Emergency tows a vehicle to the area of business operations, it is kept in an open area until it is retrieved by the owner or an insurance company. Beckman testified vehicles which may or may not be operable, could be stored for a few days to a year. Beckman stated Emergency does not, however, sell the towed vehicles, parts from the vehicles or any other materials from its property.

The City of West Burlington filed a petition for injunction on January 5, 1995. The petition requested that Emergency and Beckman be permanently enjoined from operating an automotive salvage yard, salvage yard or junk yard on property owned

by Emergency within the corporate city limits of West Burlington in violation of sections 165.13.6(a) and 165.02.66 of the City Ordinances of the City of West Burlington. Section 165.13.6(a) prohibits operations of an automotive salvage facility, including wrecking and dismantling on land located in an I-2 General Industrial Zone. Section 165.02.66 states in pertinent part a "Junk Yard - Salvage Yard" encompasses land used for the "collection, storage, and sale" of operable or inoperable vehicles.

The district court entered an order on November 17, 1995, permanently enjoining Emergency and Beckman from conducting an automotive salvage yard, salvage operation, or junk yard on the corporate property. The court also enjoined Emergency and Beckman from the placement or storage of wrecked, inoperable or disabled vehicles on the property. The district court found it was inconsequential for the purposes of 165.02.66 that Emergency conducted no sales from its property. The court found the collection, storage or sale of operable or inoperable vehicles violates the ordinance. Emergency and Beckman appeal alleging the district court erred in determining their use of the corporate property constitutes operation of a junk yard or salvage yard pursuant to sections 165.13.6(a) and 165.02.66 of the West Burlington City Ordinances.

I. Scope of Review

This action was tried in equity. An action for injunction tried in equity is reviewed de novo. *Rokusek v. Jensen*, 548 N.W.2d 570, 571 (Iowa 1996).

II. Construction of the Ordinance

Section 165.02.66 of the West Burlington Code of Ordinances defines a junkyard and salvage yard in the following manner:

> 'Junk Yard - Salvage Yard' means a lot, land or structure, or part thereof, used for the collection, storage, *and* sale of waste paper, rags, scrap, metal, operable or inoperable vehicles, discarded materials, or for the collection, storage, dismantling, and salvaging of machinery, parts, materials or vehicles for the sale of any part thereof. The term 'junk yard' shall include auto wrecking yards, crushing or compacting metal yards and storage of the same.

(Emphasis added). The City argues and the district court found the word "and" in the phrase "collection, storage, *and* sale" is a disjunctive conjunction. Consequently, property becomes a junk yard or salvage yard if the property owner collects, stores *or* sells the materials described in the definition on the property. Emergency and Beckman argue the word "and" is conjunctive, thus all three actions must occur before their property can be classified as a junk yard or salvage yard. Emergency and Beckman allege they do not sell any materials described in the above definition from their property. They collect and store inoperable or operable vehicles until such time as the vehicle owner or insurance company retrieves the vehicle.[1]

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[1] **Under the Ordinances of the City of West Burlington a towing operation is not a specifically prohibited use nor is it specifically permitted for an I-2 General Industrial Zone. Emergency and Beckman have not sought a special use permit from the City Board of Adjustment. However, both parties agree the lack of a special use permit is not at issue on this appeal.**

When determining the meaning of an ordinance, we use the same rules of construction used for statutes. *See Lauridsen v. City of Oskaloosa*, 554 N.W.2d 541, 543 (Iowa 1996). We initially apply the rule requiring an interpretation in accord with the municipality's clear intent as manifested by the plain wording of the ordinance. *See Farmers Co-op Co. v. DeCoster*, 528 N.W.2d 536, 537 (Iowa 1995); *In re Estate of Millers*, 159 N.W.2d 441, 443 (Iowa 1968) (when interpreting the meaning of a statute, courts are required to interpret the language fairly and sensibly in accordance with the plain meaning of the words used by the legislature). Further judicial construction is unnecessary and impermissible unless the ordinance is ambiguous. *See State v. Rodgers*, 560 N.W.2d 585, 586 (Iowa 1997).

We find the section 165.02.66 is unambiguous. The ordinance uses conjunctive language. "Generally the words 'and' and 'or' as used in statutes are not interchangeable, being strictly of a conjunctive and disjunctive nature respectively, and their ordinary meaning should be followed if it does not render the sense of the statute dubious." 82 C.J.S. *Statutes* § 335 (1953).

> Where two or more requirements are provided in a section and it is the legislative intent that all of the requirements must be fulfilled in order to comply with the statute, the conjunctive "and" should be used. Where a failure to comply with any requirement imposes liability, the disjunctive 'or' should be used.

1A Norman J. Singer, *Sutherland on Statutory Construction*, § 21.14, at 129 (5th ed. 1993)(hereinafter *Sutherland*). Legislators, however, have been so lax in the use of these terms, courts have found the words "or" and "and" may be construed as

interchangeable when necessary to effectuate the obvious intention of the legislature. *Sutherland*, § 21.14, at 129; 82 C.J.S. *Statutes* § 335 (1953).

The Iowa Supreme Court frequently has found the terms "and" and "or" interchangeable. *See State v. Hardin County Cooperative*, 226 Iowa 896, 285 N.W. 219 (1939); *Arhweiler v. Board of Supervisors*, 226 Iowa 229, 283 N.W. 889 (1939); *Lahn v. Primghar*, 225 Iowa 686, 281 N.W. 214 (1938); *State v. Myers*, 10 Iowa 449 (1860). The words "and" and "or" are interchangeable when failure to do so would lead to a result which is preposterous, absurd or contrary to the legislative intent. *See Kearney v. Ahmann*, 264 N.W.2d 768 (Iowa 1978); *Green v. City of Mt. Pleasant*, 256 Iowa 184, 131 N.W.2d 5 (Iowa 1964); *Meyer*, 10 Iowa at 450.

The ordinance before us uses the conjunction "and", denoting a property owner must conduct all three activities on the property - collect , store, sell - before the property is defined as a junk yard or salvage yard. The City argues this is a situation where "or" is interchangeable with "and" for the purpose of construction and application of the ordinance. We agree.

Zoning ordinances are authorized as an exercise of police power in the interest of public peace, order, morals, health, safety, convenience, and the general welfare of a community. *Anderson v. City of Cedar Rapids*, 168 N.W.2d 739, 742 (Iowa 1969). **When contemplating West Burlington's intent when enacting this ordinance we note:**

> Junkyards are, to some extent, incompatible with most other uses of land. Their accumulation of worn-out or wrecked automobiles or other debris is unsightly; they produce noise, dust, and smoke; they are potentially attractive and dangerous to children if they enter the premises; they generate increased traffic; and they may serve as a potential avenue for the dispositions of stolen property.

John J Michalik, Annotation, *Validity, Construction, and Application of Zoning Ordinance Relating to Operation of Junkyard or Scrap Metal Processing Plant*, 50 A.L.R.3d 837, 840-41 (1973). After examining the contested ordinance as a whole, we conclude its intent is to prevent the accumulation of junk, as described in the ordinance to include operable and inoperable vehicles, in an effort to minimize the problems, such as those described above, which may flow from the use of the property for such a purpose. Like other similiar ordinances, it serves to protect the aesthetic quality of the zoned area and the surrounding areas, and in turn maintain neighboring property values. *See Neuzil v. City of Iowa City*, 451 N.W.2d 159, 166 (Iowa 1990)(maintenance of current property values is a consideration that bears a substantial relationship to the public's health, safety, welfare and comfort.)

We find the "and" in the ordinance is interchangeable with "or" in order to effectuate the intent of the ordinance as described above. It is not necessary for Emergency to sell the vehicles or vehicles parts from his property to be in violation of Sections 165.136(a) and 165.02.66. The accumulation of operable and inoperable vehicles, particularly for the extended length of time for which they are stored on Emergency's property violates the intent of the ordinance. Emergency's towing

operation violates the ordinances. We affirm the trial court order enjoining emergency and Beckman from conducting an automotive salvage yard, salvage operation, or junkyard on the corporate property.

AFFIRMED.