

**ORDINANCE # 07-08
JUNK VEHICLE ORDINANCE**

REPEALING SECTION IV, 6 OF # 41

ORDINANCE NO. 07-08

AN ORDINANCE OF THE CITY OF DANBURY, TEXAS, CONCERNING JUNKED VEHICLES; REPEALING SECTION IV, 6 OF ORDINANCE NO. 41; PROVIDING DEFINITIONS; PROVIDING EXCEPTIONS FOR CERTAIN ANTIQUE AND SPECIAL INTEREST VEHICLES; PROVIDING PURPOSES; DECLARING JUNKED VEHICLES TO BE A NUISANCE TO BE ABATED; PROHIBITING JUNKED VEHICLES AND PARTS THEREOF; PROHIBITING THE RECONSTRUCTION OF JUNKED VEHICLES OR MAKING JUNKED VEHICLES OPERABLE AFTER REMOVAL UNDER THIS ORDINANCE; AUTHORIZING COURT ORDERS; PROVIDING AFFIRMATIVE DEFENSES; PROVIDING FOR ADMINISTRATION, AUTHORITY OF OFFICERS, NOTICES, HEARINGS, REMOVAL AND DISPOSITION OF JUNKED VEHICLES OR PARTS THEREOF, AND NOTICE TO THE STATE DEPARTMENT OF TRANSPORTATION; PROVIDING THAT A VIOLATION OF THIS ORDINANCE IS AN OFFENSE PUNISHABLE BY A FINE OF UP TO \$200; PROVIDING THAT EACH DAY A VIOLATION CONTINUES IS A SEPARATE OFFENSE; PROVIDING FOR CUMULATIVE REMEDIES, NO ELECTION OF REMEDIES, NONWAIVER BY THE CITY, AND NONWAIVER OF IMMUNITY BY THE CITY; AND PROVIDING A SAVINGS, SEVERANCE CLAUSE, AND EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DANBURY, TEXAS, DULY ASSEMBLED:

PART ONE. REPEAL OF FORMER JUNKED VEHICLE ORDINANCE.

Section IV, 6 of Ordinance No. 41 of the City of Danbury is hereby repealed.

PART TWO. JUNKED VEHICLE REGULATIONS

Sec. 1. Definitions.

"City" herein shall mean the City of Danbury, Texas, and its officers, agents, employees, and representatives.

"Demolisher" herein shall mean any person whose business is to convert a motor vehicle into processed or scrap metal, or otherwise to wreck or dismantle a motor vehicle.

"Junked Vehicle" herein shall mean a vehicle that is self-propelled and inoperable and:

1. does not have lawfully attached to it:
 - a. an unexpired license plate; or
 - b. a valid motor vehicle inspection certificate;

2. is wrecked, dismantled or partially dismantled, or discarded; or
3. has remained inoperable for more than 45 consecutive days.

Sec. 2. Exceptions.

- a. This ordinance shall not apply to a vehicle or vehicle part:
 1. that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
 2. that is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - A. maintained in an orderly manner;
 - B. not a health hazard; and
 - C. screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
- b. In this ordinance:
 1. "Antique vehicle" means a passenger car or truck that is at least 35 years old.
 2. "Motor vehicle collector" means a person who:
 - A. owns one or more antique or special interest vehicles; and
 - B. acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.
 3. "Special interest vehicle" means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Sec. 3. Purpose of Ordinance.

This ordinance is adopted pursuant to the provisions of Sections 683.071 through 683.078 of the Texas Transportation Code for the abatement and removal of junked

vehicles or parts thereof, as public nuisances, from private property, public property or public rights-of-way.

Sec. 4. Junked Vehicle Declared to be Public Nuisance.

The City Council hereby finds and declares that a junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

1. is detrimental to the safety and welfare of the public;
2. tends to reduce the value of private property;
3. invites vandalism;
4. creates a fire hazard;
5. is an attractive nuisance creating a hazard to the health and safety of minors;
6. produces urban blight adverse to the maintenance and continuing development of the city; and
7. is a public nuisance to be abated and removed as herein provided.

Sec. 5. Prohibited Acts, Punishment and Continuing Offenses.

a. Reconstructing or making vehicle operable. After a vehicle has been removed pursuant to the provisions of this ordinance, it shall be unlawful for any person to thereafter reconstruct or make such vehicle operable.

b. Maintaining public nuisance. Any person maintaining a public nuisance as defined in this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$200. Each day any such violation continues or occurs shall constitute a separate offense.

c. Court order. The court shall order abatement and removal of the nuisance on conviction under subsection (b).

d. Affirmative defense. It is an affirmative defense to a prosecution under subsection (b) that: (1) such nuisance is removed or abated within ten (10) days after notice to do so; or (2) that a public hearing has been held and has determined on the merits such vehicle or part thereof is not a public nuisance hereunder.

Sec. 6. Administration of Ordinance.

a. Persons authorized. The Code Enforcement Officer and the full time employees of the Police Department shall jointly and severally administer the procedures contained in this ordinance, except that the removal of vehicles or parts thereof from property may be done by any other person duly authorized by an officer or court administering this ordinance.

b. **Additional authority of officer administering this ordinance.** The officer administering this ordinance is hereby authorized to enter upon private property for the purpose of examining nuisance vehicles or parts thereof, obtaining information as to the identity of nuisance vehicles, parts, and the owner thereof, to obtain information concerning the identity of the owner or occupant of the premises on which the vehicle or part is situated and to remove or cause the removal of a junked vehicle or part thereof declared to be a nuisance pursuant to the provisions of this ordinance.

Sec. 7. Notice.

a. The officer enforcing this ordinance shall give not less than 10 days notice of the nature of the junked vehicle nuisance by certified mail with a five-day return requested to:

1. the last known registered owner of the nuisance;
2. each lienholder of record of the nuisance; and
3. the owner or occupant of:

A. the property on which the nuisance is located; or

B. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

b. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.

c. The notice must state that:

1. the nuisance must be abated and removed not later than the 10th day after the date on which the notice was mailed; and

2. any request for a hearing must be made before that 10-day period expires.

d. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Sec. 8. Hearing.

(a) The municipal court of the city is the body to conduct hearings under the procedures adopted under this ordinance. There is no right to a jury trial in the civil hearing on the removal of a nuisance vehicle or part, but there is a right to a jury trial in a misdemeanor prosecution for a violation of this ordinance. The municipal court may

choose whether to conduct a misdemeanor prosecution and a civil hearing under this ordinance simultaneously or separately.

b. If a hearing is timely requested by a person for whom notice is required under Section 7, the hearing shall be held not earlier than the 11th day after the date of the service of notice.

c. At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

d. If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's:

1. description;
2. vehicle identification number; and
3. license plate number.

e. The Municipal Court of the City may issue necessary orders to enforce this ordinance.

Sec. 9. Removal and Disposition by Officer Administering this Article.

Upon the issuance of a court order under this ordinance requiring the removal of a vehicle or part thereof as a public nuisance, or if a public hearing as herein provided is not requested within ten (10) days after service of notice under section 7 to abate the nuisance, then the officer administering this ordinance shall enter upon the private or public property where the nuisance is located and cause to be removed the vehicle or parts thereof declared to be a public nuisance. The officer shall dispose of the nuisance by causing it to be delivered to any commercial scrapyard, demolisher, or suitable site operated by a municipality or county, selected by the officer administering this article. In the event more than one (1) scrapyard or demolisher requests junked vehicles or parts thereof removed by the officer administering this ordinance, the same shall be distributed to all such scrapyards or demolishers on a rotating basis.

Sec. 10. Notice to State.

Within five (5) days after the date of the removal of any junked vehicle or part thereof pursuant to the provisions of this section, the officer administering this ordinance shall give notice to the State Department of Transportation identifying the vehicle or part thereof removed.

Sec. 11. Effect of Article on Other Laws.

This ordinance shall not impair a law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property, or a law authorizing removal for any other reason.

Sec. 12. Offenses and Penalties.

a. A person commits an offense if the person maintains a public nuisance described by this ordinance. A prosecution for this offense does not require a civil hearing to determine whether the nuisance exists or must be abated. Rather, the misdemeanor prosecution may proceed, regardless whether there is a civil proceeding to declare and abate the nuisance. Likewise, a civil hearing under this ordinance may proceed, regardless whether there is a misdemeanor prosecution.

b. An offense under this section is a misdemeanor punishable by a fine not to exceed \$200. Each day or portion of a day that an offense continues or is repeated shall constitute a separate offense.

Sec. 13. Cumulative Remedies. No Election of Remedies.

All remedies and penalties in favor of the City or against any person other than the City hereunder or under any order or notice issued hereunder are cumulative. The pursuant or receipt by the City of any one or more penalties or remedies shall not constitute an election of remedies, and shall not prevent the City from pursuing and receiving any and all other remedies and penalties.

PART THREE. NONWAIVER.

The failure or omission of the City, upon one or more occasions, to enforce any right, obligation, or remedy hereunder shall never be construed as a waiver of the City's right to strictly enforce such right, obligation, or remedy, and the City may resume such strict enforcement without advance notice.

PART FOUR. NONWAIVER OF IMMUNITY.

Nothing herein or in any notice, order, or other document issued pursuant hereto shall ever be construed as a full or partial waiver of governmental immunity, official immunity, or any other immunity of the City.

PART FIVE. SAVINGS CLAUSE

Except as specifically provided herein, the remainder of Ordinance No. 41 and all other ordinances and portions of ordinances shall remain in full force and effect.

PART SIX. SEVERANCE CLAUSE.

If any part, of whatever size, of this ordinance is ever held invalid or unenforceable for any reason, then the remainder of this ordinance shall remain in full force and effect.

PART SEVEN. EFFECTIVE DATE.

This ordinance shall be effective upon its passage and approval.

PASSED AND APPROVED this 9th day of August, 2007.

CITY OF DANBURY, TEXAS

By: Fred Williamson
Fred Williamson, Mayor

ATTEST:

Jenny Brogger
Jenny Brogger, City Secretary