

CHAPTER 75: JUNKED AND ABANDONED PROPERTY

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§ 75.01 Definitions

Whenever the following terms are used in this chapter they shall have the meaning respectively ascribed to them as follows:

Abandoned Motor Vehicle means any motor vehicle which:

- (1) is inoperable and more than eight (8) years old and left unattended on public property for more than forty-eight (48) hours; or
- (2) Has remained illegally on public property for a period of more than forty eight (48) hours; or
- (3) Has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours; or
- (4) Is left unattended on a right-of-way of any designated county, state, federal highway, or any street, alley, or public right-of-way within the City for more than forty eight (48) hours.

Antique Auto means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least thirty-five (35) years old.

Collector means the owner of one or more antique or special interest vehicles, who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Demolisher means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.

Garagekeeper means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

In Ordinary Public View means that the vehicle or part thereof or the tarp or cover thereon is visible from any public right-of-way, or adjacent land, or the first floor level of a building thereon which is owned or occupied by a person other than the owner or occupant of the property on which the junked vehicle or part thereof is located or parked.

Junked Vehicle means any motor vehicle as defined in Section 1 of Article 670ld-11, Vernon's Texas Civil Statutes, as amended, which:

(1) is inoperative; and

(2) Does not have lawfully affixed to it either an unexpired license plate or a valid motor vehicle safety inspection certificate; and is wrecked, dismantled, partially dismantled, or discarded, or that remains inoperative for a continuous period of more than forty five (45) days. Evidence that a vehicle in public view has not been driven under its own power for a period of forty five (45) days or more shall constitute prima facie evidence that said vehicle was inoperative for the same period.

Motor Vehicle means a motor vehicle subject to registration under the Certificate of Title Act (V.T.C.S., Art. 66871), except that for purposes of Sections 5.02, 5.03, and 5.04 of this Act, "motor vehicle" includes a motorboat, outboard motor, or vessel subject to registration under V.T.C.A., Parks and Wildlife Code, Chapter 31.

Person means any individual, firm, partnership, association, corporation, company, or organization of any kind.

Special Interest Vehicle means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

Storage Facility means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

(Ord. No. 90-06, Sec. 1, passed 6-28-90, as amended by Ordinance adopting Revised Code of Ordinances, passed January 9, 2001)

Junked Vehicles¹

§ 75.10 Presence of Junked Vehicles Doomed Public Nuisance; Exception

The location or presence of any junked motor vehicle or vehicles on any private or public property, occupied or unoccupied, improved or unimproved, within the City shall be deemed a public nuisance. It shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning, or discarding any motor vehicle on the real property of another or to suffer, permit, or allow the same to be placed, located, maintained, or exist upon his own real property. This section shall not apply to:

- (1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard;
- (3) A vehicle in an appropriate storage place or depository maintained in a location officially designated and in a manner approved by the City;
- (4) A motor vehicle in operable conditions specifically constructed for racing or operation on privately owned drag strips or race strips;
- (5) An unlicensed, inoperable antique or special interest vehicle stored on property, provided that the vehicle and outdoor storage area are maintained so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means; or
- (6) A motor vehicle stored as the property of a member of the armed forces of the United States while on active duty assignment.

§ 75.11 Abatement Order, Private Property

(a) Whenever such public nuisance as described in § 95.10 exists on private property within the City, the Chief of Police or other designated official enforcing this chapter shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same. Such order shall:

- (1) Be in writing;

¹ **State law reference** -- Authority of City to adopt procedures for the abatement and removal of junked vehicles, V.A.C.S., Art. 4477-9a, Sec. 5.01 - Sec. 5.11.

(2) specify the public nuisance and its location;

(3) Specify the corrective measure required;

(4) Provide for compliance within ten (10) days from service thereof; and

(5) Inform the owner or occupant of his right to a hearing before the City Council if notice of a demand for hearing is given in writing within ten (10) days of the issuance of the order.

(b) Such order shall be served upon the owner or occupant of the premises wherein the nuisance is located, by sending said order by certified United States mail with a five-day return receipt requested to:

(1) The address of the premises, and

(2) The address listed on the certificate of title of the offending vehicle, and

(3) The address of any lien holder.

(c) If the owner or the occupant of the premises fails and refuses to comply with the notice stating the order of the Chief of Police or his duly authorized agent within ten (10) days after service thereof, the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.

(d) If the notice is returned undelivered by the United States Postal Service, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(e) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such a manner as the City Council may provide.

(f) The owner or occupant of said premises may, within said ten (10) day period after service of notice to abate the nuisance, request of the Chief of Police, either in person or writing and without the requirement of bond, that a date and time be set when he may appear before the municipal judge for a hearing to determine whether he is in violation of this chapter.

(g) If a request is made under the provisions of subsection (I) above, no action to remove said vehicle shall be taken pending the hearing.

(h) Any such vehicle, after ten (10) days of being in the possession of the City, shall begin to invoke a fine of \$200/day if the owner has not contacted the City and made plans to remove the vehicle.

§ 75.12 Abatement Order, Public Property

(a) Whenever such public nuisance as described in § 75.10 exists on public property within the City, the Chief of Police or other designated official enforcing this chapter shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same, Such order shall:

(1) Be in writing;

(2) specify the public nuisance and its location;

(3) Specify the corrective measure required;

(4) Provide for compliance within ten (10) days from service thereof; and

(5) Inform the owner or occupant of his right to a hearing before the City Council if notice of a demand for hearing is given in writing within ten (10) days of the issuance of the order.

(b) Such order shall be served upon the owner of the vehicle and any lien holder of record thereof by sending said order by certified United States mail with a five day return receipt requested to the address listed on the certificate of title of the offending vehicle, and the address of any lien holder.

(c) If the owner of the offending vehicle fails and refuses to comply with the notice stating the order of the Chief of Police or his duly authorized agent within ten (10) days after service thereof, the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.

(d) If the notice is returned undelivered by the United States Postal Service, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(e) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such a manner as the City Council may provide.

(f) The owner of said vehicle may, within said ten (10) day period after service of notice to abate the nuisance, request of the Chief of Police, either in person or writing and without the requirement of bond, that a date and time be set when he may appear before the municipal judge for a hearing to determine whether he is in violation of this chapter.

(g) If a request is made under the provisions of subsection (f) above, no action to remove said vehicle shall be taken pending the hearing.

(h) Nothing in this section shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

§ 75.13 Public Hearing

(a) Upon receipt of a request for a hearing made pursuant to § 75.11(f) and § 75.12(f), the Chief of Police or his duly authorized agent shall set a date and time for such hearing before the municipal judge. The Chief of Police or his duly authorized agent shall notify the owner of the vehicle or the owner or occupant of the premises, as the case may be, in writing as to the date and time of such hearing.

(b) The municipal judge shall hear any case brought before it and as set out herein determine whether the subject vehicle is a junked vehicle under the provisions of this chapter. The judge may summon any witnesses or solicit any information it deems necessary in determining the status of the vehicle.

(c) If the judge determines that the subject vehicle is junked, under the provisions of this chapter, the owner of said vehicle or the owner or occupant of the premises, as the case may be, shall be ordered to remove or cause to be removed said vehicle from either public or private property within an amount of time determined by the judge. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, the correct vehicle identification number, and license number of the vehicle, if available.

§ 75.14 Filing Complaint

If the order of the municipal judge is not complied with, the City Attorney shall forthwith cause to be prepared, filed, and served on the defendant a written complaint charging that the owner of the vehicle or the owner or occupant of the premises, as the case may be, has violated the provisions of this chapter.

§ 75.15 Trial

(a) The judge of the municipal court shall hear any case brought before said court and shall determine whether the defendant is in violation of this chapter. Upon finding that the defendant is in violation of this chapter, said defendant shall be found guilty of a misdemeanor and subject to a fine as provided in §10.10 of this Code. Each day that the nuisance continues shall be considered a separate occurrence.

(b) The judge of said court shall further order such offense removed and said nuisance abated within ten (10) days, same being a reasonable time.

(c) If the defendant shall fail and refuse to abate and remove said nuisance within ten (10) days, the judge of said court may issue an order directing the Chief of Police or his duly authorized agent to have the same removed and the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.

(d) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

§ 75.16 Removal of Junked Vehicle with Permission

The owner of the vehicle or the owner or occupant of the premises, as the case may be, if after receipt of ten (10) day's notice from the Chief of Police or his duly authorized agent to abate the nuisance as herein provided, may give his written permission to the Chief of Police or his duly authorized agent for removal of the junked motor vehicle and the giving of such permission shall be considered in compliance with the terms and provisions of this chapter. Once a vehicle has been removed, it shall not be reconstructed or made operable.

§ 75.17 Removal from Unoccupied Premises

If a junked vehicle as defined in § 75.01 is located on premises that are unoccupied and the owner of the premises is notified to remove same but cannot be found, then upon a showing of such facts to the judge of the municipal court, the court may issue an order directing the Chief of Police or his duly authorized agent to have the same removed, and the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises. The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

§ 75.18 Notice to SDHPT Required

When a junked motor vehicle is removed from any premises by the Chief of Police or his duly authorized agent, notice shall be given to the Texas Department of Highways and Public Transportation within five (5) days after the date of removal of the junked vehicle or part thereof and identifying the junked vehicle or part thereof, and requesting that said department cancel the certificate of title to such vehicle pursuant to V.A.C.S., Art. 6687-9, as amended.

Abandoned Motor Vehicles and Other Property

§ 75.20 Declaration of Nuisance; Duty to Impound

An abandoned motor vehicle or any property other than a junked motor vehicle, as defined in § 75.01, placed, left standing, parked, erected, or lying in violation of any ordinance or code of the City or left unattended for more than forty-eight (48) continuous hours in or on any public street, alley, sidewalk, park, or other public place of the City is declared to be a nuisance. Any such property when so found shall be removed summarily by any officer of the City and taken to the City pound and shall be kept there until redeemed or sold as herein provided.

§ 75.21 Lien on Impounded Property

The City shall have a lien on such impounded personal property for all costs incurred in impounding, storing, and advertising such property and such lien shall be prior and superior to all other liens of every kind, save and except liens for ad valorem taxes. The City may retain possession thereof until all costs are paid and may sell the same as herein provided.

§ 75.22 Redemption

The owner or any person legally entitled to possession of such impounded personal property may redeem the same as follows:

(1) Before sale: By paying to the Chief of Police and any actual expenses incurred by the City in keeping the property, as determined by the Chief of Police.

(2) After sale: By paying to the buyer at the auction sale double the amount paid by him for such personal property and any reasonable expenses incurred by him for keeping same, provided that the property must be redeemed from the auction buyer within thirty (30) days after the date of auction sale, excluding the date of sale. If not redeemed within thirty (30) days after the date of auction sale, title to said property shall become absolute in the auction buyer.

§ 75.23 Sale of Property

(a) When any personal property, other than a motor vehicle, is not redeemed within sixty (60) days after being impounded, and when any motor vehicle, other than a junked motor vehicle, is not redeemed after compliance by the Chief of Police with the provisions of this chapter, the Chief of Police shall sell the same at public auction or sealed bids to satisfy the lien of the City.

(b) Procedures for sale of property other than motor vehicles

(1) Before selling such personal property, other than motor vehicles, the Chief of Police shall post two (2) notices thereof, one at the United States Post Office, Overton, Texas, and one at the entrance to the City Hall, and shall cause a copy thereof to be published in a newspaper published and/or widely distributed in the City once a week for two (2) consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the day of the auction sale.

(2) The notice of sale shall describe the impounded property, state that the same is unredeemed, state that the same shall be sold at public auction, designate the place of sale, and state a time and date of sale which shall not be less than fourteen (14) days from the date of posting such notices as herein required.

(c) Procedures for sale of motor vehicles

(1) When any motor vehicle has not been redeemed within thirty (30) days from the date of its impounding, it shall be the duty of the Chief of Police to submit to the Texas Department of Transportation (TxDOT), and similar agency of the proper state when the vehicle is registered in

another state, all information that said department supply to him all information the records of the department contained on said vehicle.

(2) Immediately upon receipt of such information from said department, the Chief of Police shall notify the owner and lienholders as shown by the records of said department by registered mail with return receipt requested that said vehicle has been impounded and of the provisions of this division in regard to redemption and sale of impounded property.

(3) In the event a motor vehicle has not been redeemed within fifteen (15) days from receipt of the return receipt or notice of non-delivery of said registered mail, the Chief of Police shall prepare a notice of sale of such vehicle, in the manner described in subsection (b)(2) above, shall send a copy of said notice to owner and lienholders, as shown by the records and advertise said notices in the manner required in subsection (b)(1) above. Notice by registered mail to the address shown on the records of said TxDOT shall constitute notice of the pending sale to such owner and lienholders.

(4) When the Chief of Police is unable to ascertain the names of the owner and lienholders, and the motor vehicle has not been redeemed with forty-five (45) days from its impounding, no notice of sale other than posting and advertising as herein prescribed shall be required.

(d) When any impounded property, including motor vehicles, is not redeemed by the date and time designated in the notice of sale, the Chief of Police shall sell such property at public auction, and, as City auctioneer, shall execute bill of sale of said property to the purchaser thereof. He shall not execute or deliver any but a conditional bill of sale unless and until the title of said buyer has become absolute by an expiration of thirty (30) days in time, exclusive of the date of sale, without being redeemed by the owner of the impounded property.

(e) After deducting the impounding fee and all other actual expenses incurred by the City in impounding, storing, and selling of said property, as determined by the Chief of Police, not to exceed a reasonable amount for each impounded article, he shall pay the balance of the proceeds of such sale, if any, to the owner of the property.

(f) If the owner fails to call for such proceeds, they shall be paid into the City general fund. Within six (6) months after such auction sale, the owner may apply in writing to the Chief of Police and upon satisfactory proof of ownership, shall be entitled to receive the amount of the proceeds delivered to the City general fund.

(g) Impounded property which is offered for sale at public auction in accordance with the procedures herein prescribed and upon which no person bids shall thereafter be sold or otherwise disposed of as junk. Money received for junk property shall be disposed of in the same manner as proceeds from an auction under this section.

§ 75.24 Records; Fees

The Chief of Police shall keep a record book which shall contain a description of all property impounded, the date and time of such impounding, the date notices of sale were posted and

advertised and mailed to owners and lienholders, the return of receipts of registered notices, the date of the sale at auction, the amount realized for each article at such sale, the name and address of the owner and lienholders, if known, the name and address of the auction buyer, and any such other information as he may deem necessary.

(b) The fees shall be charged as specified in the Schedule of Fees (Appendix A of this Code) and shall be set by the City Council and paid into the City general fund.

General Provisions

§ 75.30 State Law Applicable

V.A.C.S., Article 4477-9a, Article 5, is adopted by reference and the provisions of said article shall control and take precedence over any conflicting provisions of this chapter.

§ 75.31 Penalty

If any person is found guilty after a trial held according to the terms of this chapter and shall fail and refuse within ten (10) days to remove and abate said nuisance as ordered by the court, he shall be guilty of a misdemeanor and fined according to the provisions of Appendix B – Schedule of Fines of this Code. Each day of continuing violation shall be considered a separate offense.

§ 75.32 Relationship to Other Regulations

Nothing in this chapter is intended to relieve any person of any condition, restriction, or requirement imposed by any other law, ordinance, or code of the City. Where any other ordinance, law, or code is in conflict with the provisions of this chapter, this chapter shall govern.

