

ORDINANCE NO. 1931

AN ORDINANCE OF THE CITY OF TERRELL, TEXAS, AMENDING THE TERRELL CITY CODE CHAPTER 7, SECTION 4, REGULATING ABANDONED AND JUNKED VEHICLES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; DECLARING JUNK VEHICLES A PUBLIC NUISANCE; ABATEMENT OF NUISANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY OF A FINE NOT TO EXCEED TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE; PROVIDING FOR PUBLICATION AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, TEXAS:

SECTION I.

That Chapter 7, Section 4, Abandoned and Junked Vehicle Regulation of the Terrell City Code is hereby amended to read as follows, in any other respect, said Code to remain in full force and effect:

A. TITLE

This section shall be cited as the "Abandoned and Junked Vehicle Regulations."

B. DEFINITIONS

As used in this section:

- (1) Police department means the City of Terrell Police Department and its duly authorized employees, acting under the general police power authority as vested in such department by its governing body.
- (2) Abandoned motor vehicle means a motor vehicle that is inoperable, is more than five (5) years old and has been left unattended on public property for more than forty-eight (48) hours, or a motor vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours, or a motor vehicle that has remained on private property without the consent of the owner or person in charge of the property for more than forty-eight (48) hours or a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway, or any city street, alley, or other city right-of-way, within the Terrell city limits in excess of forty-eight (48) hours.
- (3) Motor vehicle demolisher means any person in the business of converting a motor

vehicle into processed scrap or scrap metal, or wrecking or dismantling motor vehicles.

- (4) Junked Vehicle means any motor vehicle as defined in Section 683.071, Transportation Code, Title 7, Vernon's Texas Codes Annotated, that is self-propelled and inoperable and which does not have lawfully attached to it an unexpired license plate; or a valid motor vehicle inspection certificate; is wrecked, dismantled, partially dismantled or discarded; has remained inoperable for more than forty-five (45) days consecutive days.
- (5) Storage facility includes a garage, parking lot or establishment for the servicing, repairing, storing or parking of motor vehicles.
- (6) Motor vehicle means a vehicle subject to registration under Chapter 501, Transportation Code, and shall include a motorboat, outboard motor or vessel subject to registration under Chapter 31, Parks and Wildlife Code.
- (7) Outboard motor means an outboard motor subject to registration under Chapter 31, Parks and Wildlife Code.
- (8) Watercraft means a vehicle subject to registration under Chapter 31, Parks and Wildlife Code.
- (9) Antique auto means a passenger car or truck that is at least thirty-five (35) years old.
- (10) 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.
- (11) Motor vehicle collector means the owner of one (1) or more antique or special interest vehicles and who acquires, collects, or disposes of special interest or antique vehicles or parts of them for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (12) Department means the Texas Department of Transportation.
- (13) Garagekeeper means an owner or operator of a storage facility.

C. OFFICES DESIGNATED

- (1) The administration of this Section shall be by regularly salaried employees of the City of Terrell, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

- (2) The Terrell Police Department is charged with enforcement of this section on public property. The Licensed Code Enforcement Officer is charged with enforcement of this section on private property.
- (3) Wherever the Terrell Police Department is charged with the enforcement of this section, the Chief of Police may delegate said authority to any employee of the police department of the City of Terrell.

D. AUTHORITY TO TAKE ABANDONED MOTOR VEHICLE INTO CUSTODY

- (a) The police department may take into custody an abandoned motor vehicle, watercraft or outboard motor found on public or private property.
- (b) The police department may use its own personnel, equipment and facilities or contract for other personnel, equipment, and facilities for the purpose of removing, preserving, and storing abandoned motor vehicles, watercraft or outboard motors taken into custody by the police department.

E. NOTIFICATION OF OWNERS AND LIEN HOLDERS

- (1) When the police department takes into custody an abandoned motor vehicle, watercraft or outboard motor, found on public or private property, it shall notify not later than the 10th day after taking the motor vehicle, watercraft or outboard motor into custody, by certified mail, the last known registered owner of each motor vehicle, watercraft or outboard motor taken into custody and each lienholder of record for the motor vehicle or under Chapter 31, Parks and Wildlife Code, for the watercraft or outboard motor.
- (2) The notice must be sent by certified mail not later than the 10th day after the date the Police Department takes the abandoned motor vehicle, watercraft or outboard motor into custody; or receives the report such vehicle is left in a storage facility operated for commercial purposes. Such notice must specify the year, make, model, and vehicle identification number of the item; set forth the location of the facility where the item is being held, inform the owner and any lien holders of their right to reclaim the item not later than the 20th day after the date of the notice, on payment of all towing, preservation, and storage charges resulting from placing the item in custody, or garagekeeper's charges and fees. The notice shall state that the failure of the owner or lien holders to exercise their right to reclaim the item within the time provided constitutes a waiver by the owner and lien holders of all right, title, and interest in the vehicle and their consent to the sale of the item at a public auction.
- (3) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable

certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle, watercraft or outboard motor was abandoned is sufficient notice under this section. The notice by publication may contain multiple listings of abandoned items, shall be published within the time requirements prescribed for notice by certified mail and shall have the same contents required for notice by certified mail.

- (4) When the police department or an agent of a police department takes custody of an abandoned motor vehicle, watercraft or outboard motor it is entitled to reasonable storage fees for:
 - (a) not more than 10 days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed; and
 - (b) beginning on the day after the day the department mailed notice and continuing through the day any accrued charges are paid and the vehicle is removed.

F. POLICE DEPARTMENT USE OF CERTAIN ABANDONED MOTOR VEHICLES

- (1) If an abandoned motor vehicle, watercraft or outboard motor has not been reclaimed as provided by Section E above, the police department that originally took custody of the abandoned motor vehicle may use that vehicle for police department purposes as provided by this section.
- (2) The police department may use the abandoned motor vehicle, watercraft or outboard motor for police department purposes as long as the department considers it cost-effective. If the police department discontinues use of the abandoned motor vehicle, watercraft or outboard motor, the department shall auction the vehicle as provided by Section G below.
- (3) This section does not apply to abandoned motor vehicle, watercraft or outboard motor with a garagekeeper's lien.

G. AUCTION OF ABANDONED MOTOR VEHICLES

If an abandoned motor vehicle, watercraft or outboard motor has not been reclaimed as provided for in subsection E above, the police department may sell the abandoned motor vehicle, watercraft or outboard motor at a public auction. Proper notice of the public auction shall be given and in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction. The purchaser of the motor vehicle, watercraft or outboard motor shall take title to the motor vehicle, watercraft or outboard motor, free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, watercraft or outboard motor, the police department shall be entitled to reimbursement for the expenses of the auction, the cost of

towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle, watercraft or outboard motor in custody, and all notice and publication costs incurred pursuant to subsection E above. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for ninety (90) days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle, watercraft or outboard motor are insufficient to meet these expenses and costs. The City may transfer the amount in the special fund exceeding \$1,000.00 from the special fund to the City's general revenue account to be used by the police department.

H. GARAGEKEEPERS AND ABANDONED MOTOR VEHICLES

- (1) The police department, upon receiving a report from a garagekeeper of possession of a vehicle considered abandoned under the provisions of this Section shall follow the notification procedures provided by Section E above and custody of the vehicle shall remain with the garagekeeper until such notification requirements are satisfied. A fee of \$5.00 shall accompany the report of the garagekeeper to the police department and such fee shall be retained by the police department to defray the costs of notification and costs incurred in the disposition of the abandoned motor vehicle.
- (2) The application must set out the name and address of the applicant, year, make, model and vehicle identification number of the motor vehicle, if ascertainable, together with any other identifying features and must contain a concise statement of the facts surrounding the abandonment. The City of Terrell shall execute an affidavit stating the facts alleged in the application are true and no material fact has been withheld. If an abandoned motor vehicle is not reclaimed in accordance with the article, the State Department of Highways and Public Transportation, on notification of that fact by the applicant, shall issue a certificate of authority to sell the motor vehicle to a demolisher for demolishing, wrecking or dismantling.
- (3) An abandoned motor vehicle, watercraft or outboard motor left in a storage facility and not reclaimed after notice is sent in the manner provided by Section E of this article shall be taken into custody by the police department and used for police department purposes as provided by Section F or sold in the manner provided by Section G of this article. The proceeds of a sale under this section shall first be applied to the garagekeeper's charges for servicing, storage, and repair, but as compensation for the expenses incurred by the police department in placing the vehicle in custody and the expenses of auction, the police department shall retain two percent of the gross proceeds of the sale of each vehicle auctioned, unless the gross proceeds are less than \$10. If the proceeds are less than \$10, the department shall retain the \$10 to defray expenses of custody and auction. If the Department of Public Safety conducts the auction, the compensation shall be deposited in the state treasury and shall be used to defray the expenses incurred. Surplus proceeds remaining from an auction shall be distributed as hereinabove set forth.

I. JUNKED VEHICLES DECLARED A PUBLIC NUISANCE

- (1) A junked vehicle including a part of a junked vehicle that is visible from a public place or public right-of-way is detrimental to the safety and welfare of the public; tends to reduce the value of private property; invites vandalism; creates fire hazards; is an attractive nuisance creating a hazard to the health and safety of minors; produces urban blight adverse to the maintenance and continuing development of municipalities; and is a public nuisance.
- (2) A person commits an offense if that person maintains a public nuisance as determined under this section and upon conviction is subject to a fine not to exceed two hundred dollars (\$200.00). Upon conviction, the Municipal Court shall order removal and abatement of the nuisance.

J. NOTICE

- (1) If it is determined that a public nuisance exists, notice shall be issued stating the nature of the public nuisance and that it must be removed and abated not less than ten (10) days after the date on which the notice was mailed; and that a request for a hearing must be made before the expiration of the ten (10) day period. The notice shall be mailed, by certified mail, with a five (5) day return requested, to the last known registered owner of the nuisance, each lienholder of record of the nuisance, and to the owner or occupant of the property on which the nuisance is located or to the owner or occupant of the adjacent property if such nuisance is located on a public right-of-way. 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 physically located, the notice may be hand delivered. If the notice is returned undelivered by the United State Post Office, official action to abate such nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

K. HEARING

- (1) A person for whom notice is required, shall have a right to request a hearing within ten (10) days from receipt of the notice.
- (2) Should a hearing be requested by a person for whom notice is required, the hearing shall be held not earlier than the 11th day after the date of the service of notice.
- (3) The City Manager or his designee shall conduct hearings under this section.
- (4) In the event no request for hearing is received before the expiration of the ten (10) day period, it shall be conclusively presumed said vehicle is a junked vehicle as defined by state law and this ordinance.

L. REMOVAL AND STORAGE OF JUNKED VEHICLES

If a hearing has not been requested within ten (10) day period and if an order requiring the removal of such junked vehicle has been issued, then the City Attorney, Code Enforcement Officer, or any police officer may, if such nuisance has not been abated, file a complaint concerning the nuisance in the Municipal Court to have it abated. After consideration of the facts, the Court may order the nuisance or part or portions thereof which was the subject of such notice to a suitable city storage area as designated by the City Manager or his designee.

Such junked vehicle, watercraft or outboard motor parts or portions thereof, shall be stored in such storage area for a period of not more than ten (10) days, beginning the day during which period any party owning or claiming any right, title, or interest therein, shall be entitled to claim possession of same by the payment to the City of Terrell, Texas, the actual costs incurred by the city in abating such nuisance.

M. SALE OR DISPOSAL OF JUNKED VEHICLES

(1) When any abandoned or junked vehicle, part or portion thereof, has remained in the storage area provided in the previous subsection for more than ten (10) days, the Police Department shall cause the abandoned or junked vehicle, parts or portions thereof, to be disposed of by removal to a scrap yard or any storage site operated by the City or county by providing scrap or salvage.

(2) Out of the proceeds of same, the City of Terrell shall be reimbursed for costs of removal and storage and the balance, if any, shall be held upon deposit and upon demand shall be paid to the person entitled thereto (either owner or lienholder).

N. JUNKED VEHICLES REMOVED NOT BE MADE OPERABLE

After a junked vehicle has been removed in accordance with or under the terms and provisions of this section, it shall not be reconstructed or made operable.

O. NOTICE TO TEXAS HIGHWAY DEPARTMENT

Notice shall be given to the Texas Highway Department within five (5) days after the junked vehicle, vehicle part, or portions thereof are removed, identifying the vehicle or vehicle part on a form provided by the Texas Highway Department.

P. PROVISIONS NOT APPLICABLE TO CERTAIN VEHICLES

This section shall not apply to

(1) A vehicle or vehicle part that 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 vehicle part that 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) An unlicensed, operable, or inoperable antique and special interest vehicles stored by a collector on the collectors property, if the vehicles and the outdoor storage areas are maintained in a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence.

Q. AUTHORITY TO ENFORCE PROVISIONS

The Licensed Code Enforcement Officer or other duly authorized city official may enter private property for the purpose of examining a vehicle or vehicle part, obtain information as to the identity of the vehicle and remove or cause the removal of a vehicle or vehicle part, declared to be a nuisance. The Judge of the Municipal Court of the City of Terrell shall have authority to issue all orders necessary to enforce this section. Nothing in this section shall affect statutes that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

R. INTERFERENCE WITH REMOVAL PROHIBITED; PENALTY

It shall be unlawful for any person to knowingly or intentionally interfere with or attempt to prevent the examination and/or identity of vehicles pursuant to this section, or to knowingly or intentionally interfere with or attempt to prevent the removal of a junked vehicle, watercraft or outboard motor under the terms of this section. Violation hereof shall be punished by a fine not exceeding two hundred dollars (\$200.00).

SECTION II

A. SEVERABILITY

If any section or part of any section or paragraph of this Ordinance is declared invalid or unconstitutional for any reason, it shall not invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

B. VIOLATIONS

It shall be unlawful and a violation of this section for any such person to whom an order is given to abate a declared nuisance under this section to fail or refuse to comply therewith. Any person who shall violate the terms and provisions of this section upon conviction thereof, be deemed guilty of a misdemeanor and each and every day this section is violated shall constitute a separate offense.

PASSED on first reading on the 16TH day of June, 1998.

PASSED on second reading on the 7th day of July, 1998.

HENRY C. MADGWICK, SR., MAYOR

ATTEST:

JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

MARY GAYLE RAMSEY, CITY ATTORNEY