

**ORDINANCE NO. 2138**

**AN ORDINANCE OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS AMENDING CHAPTER 7, HEALTH AND SANITATION, SECTION 4: ABANDONED AND JUNKED VEHICLE REGULATIONS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING A PENALTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TERRELL, KAUFMAN COUNTY, TEXAS THAT:**

**ARTICLE I.**

That Chapter 7, Health and Sanitation, Section 4, Abandoned and Junked Vehicle Regulations shall be amended as follows;

Sec. 7-4 Abandoned and Junked Vehicles

A. Abandoned Vehicles

1. Certain motor vehicles declared abandoned and nuisances; impoundment by police.

Any motor vehicle which is inoperable and over five (5) years old and left unattended on public property for more than forty-eight (48) hours or that has remained illegally on public property for a period of more than forty-eight (48) hours or that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours or that is left unattended on the right-of-way of any designated county, state or federal highway or any city street or alley in excess of forty-eight (48) hours is hereby declared abandoned and to be a nuisance and the police department may take into custody any such vehicle. In such connection, the police department may employ its own personnel, equipment and facilities or hire persons, equipment and facilities for the purpose of removing, preserving and storing abandoned motor vehicles.

2. Notification of owner and lienholders.

(a) If the police department takes into custody an abandoned motor vehicle, it shall notify not later than the tenth day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lienholders or

records pursuant to the Certificate of Title Act (Article 6687-1 Vernon's Texas Civil Statutes) or Chapter 31, Parks and Wildlife Code, that the vehicle has been taken into custody. The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, specify the location of the facility where the motor vehicle is being held, inform the owner and any lienholders of their right to reclaim the motor vehicle not later than the twentieth day after the date of the notice, on payment of all towing, preservation and storage charges resulting from placing the vehicle in custody or garagekeeper's charges if notice under Section 5.05 of Vernon's Annotated Civil Statutes, Article 4477-9a. The notice shall also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) 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 address of all lienholders, notice by one (1) publication in one (1) newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail and shall have the same contents required for a notice by certified mail.

3. Payment of fees, charges, etc.: Upon redemption of impounded motor vehicle. The owner or any person legally entitled to possession of any motor vehicle impounded under the provision of this section may redeem the same by paying the impounding fee and any other actual expenses or charges incurred by the city in towing, impounding and storing the impounded vehicle.
4. Auction of unclaimed abandoned motor vehicles.
  - a. If an abandoned motor vehicle has not been reclaimed as provided in this section, the police department shall sell such vehicle at a public auction. Thirty (30) days notice of the time and place of sale of the motor vehicle shall be posted at the city hall, and a copy thereof sent by certified mail to the last known owner. In the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction. If the name of the owner is not known to the police department, a copy of

the notice of the sale shall be published in the official newspaper published in the city once a week for two (2) consecutive weeks, the date of the first publication to be at least (14) days prior to the date of the auction sale.

- b. The notice of sale shall describe the motor vehicle, state the same is unredeemed, state that the same will be sold at public auction, designate the place of sale and the time and date of sale, which shall not be less than fourteen (14) days from the date of posting such notice. Thereafter, such property shall be offered for sale by public auction to the highest bidder. The police department has the discretion to assemble lots of motor vehicles and offer such lots for sale to the highest bidder at public auction.
- c. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of liens and claims of ownership, shall receive a sales receipt from the police department and shall be entitled to register the purchased vehicle and receive a certificate of title.

5. Proceeds of sale.

- a. From the proceeds of the sale of any motor vehicle, the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving and storing the vehicle which resulted from placing the abandoned vehicle in custody and all notice and publication costs incurred under this section.
- b. Any remainder from the proceeds of the sale shall be held for the owner of the vehicle or entitled lienholder for ninety (90) days and then shall be deposited in a special fund which shall remain available for payment of towing, preserving, storage and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from a sale of such other abandoned motor vehicles are insufficient to meet these expenses and costs. The city may, at its discretion, transfer any amount exceeding one thousand dollars (\$1,000.00) from the special fund to the city's general fund to be used by the police department.

6. City officers and employees not to purchase at sales.

It shall be against city policy for any police officer or any other officer or employee of the city, either directly or indirectly, to purchase at any sale or acquire in any manner the ownership at such sale of any vehicle impounded or offered for sale under the provisions of this section.

B. Junked Vehicles

1. Definitions

Junk Vehicle means a self-propelled vehicle, or part thereof that:

- (a) Does not lawfully have attached to it:
  - (1) An unexpired license plate registration; or
  - (2) A valid motor vehicle inspection certificate; and
- (b) Is:
  - (1) Wrecked, dismantled or partially dismantled, or discarded; or
  - (2) Inoperable and has remained inoperable for more than:
    - (aa) Seventy-two (72) consecutive hours if the vehicle is on public property; or
    - (bb) Thirty (30) consecutive days, if the vehicle is on private property.

Special interest vehicle means a motor vehicle of any age without alteration or modification from original manufacturer's specifications that because of its historic interest, is preserved by hobbyists.

2. Junked vehicles declared a public nuisance.

A junked vehicle located in any place visible from a public place or on a public right-of-way is a public nuisance wherein the junked vehicle is detrimental to the health, safety and welfare of the general public by inviting vandalism, creating a fire hazard and constituting an attractive nuisance to minors as well as detrimental to the economic welfare of the City of Terrell by reducing the value of private property and producing urban blight adverse to the maintenance and continuing development of the city.

3. Offense.

- (a) A person commits an offense if the person allows or maintains a junked vehicle in any place, whether on private or public property, in view of the public or on a public right-of-way.
- (b) An offense under this section is punishable by fine not to exceed two hundred dollars (\$200.00). A separate offense occurs each and every day the violation described in subsection (a) above continues.
- (c) The court shall order abatement and removal of the public nuisance on conviction of this offense.

4. Authority to abate nuisance; procedures.

To abate and remove a junked vehicle from any place visible to the public, whether on private or public property, the following procedure is required:

- (a) Notice.
  - (1) Any employee of a department authorized by the manager to enforce this section shall:
    - (aa) Send written notice via certified mail, return receipt requested within five (5) days, to the last known registered owner of the junked vehicle; to any known lienholder of record of the junked vehicle; and to the owner or occupant of the property on which the junked vehicle is located, or, if the junked vehicle is on the public right-of-way, the owner or occupant of the property adjacent to the public right-of-way; or
    - (bb) Post written notice on the junked vehicle if the address of the last known registered owner of the junked vehicle is unknown; or
    - (cc) Hand-deliver notice to the last known registered owner of the junked vehicle if his or her physical location is known.

- (2) The notice must state the nature of the nuisance and that:
  - (aa) The junked vehicle must be abated and removed no later than the 10<sup>th</sup> day after the date on which the notice was mailed; and
  - (bb) Any request for a hearing must be made in writing and received by the department before the ten (10) day period expires.
- (3) If any notice is returned undelivered, action to abate the nuisance shall continue to a date not earlier than the 11<sup>th</sup> day after the return.

(b) Hearing.

- (1) A designee of the City Manager shall conduct all hearing under this section. This hearing officer does not have to adhere to strict rules of evidence and can adopt informal procedures for the hearing.
- (2) If a person receiving notice of a junked vehicle requests a hearing, the public hearing shall occur not earlier than the 11<sup>th</sup> day after the date of the service of notice. If a person has not responded to the initial notice, a public hearing may occur five (5) business days after the date on the notification of public hearing.
- (3) At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(c) Abatement and removal of nuisance.

- (1) Request for abatement and removal of junked vehicles.
  - (aa) After receiving written notice from the city regarding the public nuisance created by a junked vehicle:
    - {1} The owner of the junked vehicle may request and authorize the city to remove the junked vehicle; or

{2} The owner or occupant of the private property upon which the junked vehicle is located may request and authorize the city to remove the junked vehicle if the city cannot locate the vehicle's owner.

(bb) Before the city removes a junked vehicle, the person requesting removal under this section must execute an authorization and indemnification agreement, thereby allowing the city to enter the private property and holding the city harmless from any claim of injury or damage sustained as a result of the removal and disposal of the junked vehicle.

(2) Abatement and removal of junked vehicle after hearing.

(aa) Should a hearing officer find that a junked vehicle, or part thereof, is located in an area visible from a public place or in a public right-of-way, the hearing officer shall order abatement and removal of the junked vehicle.

(bb) If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's description, vehicle identification number, and license plate number.

(cc) The Municipal Court may issue orders necessary to enforce the procedures and removal of the public nuisance.

5. Administration of procedures; authority to enforce.

- a. Regularly salaried, full-time city employees shall administer the procedures outlined in subsection 4 above for abatement and removal of a junked vehicle, except that any authorized person may remove the nuisance.
- b. Any employee of a department authorized by the City Manager to enforce this article may enter private property to examine the public nuisance to obtain information to

identify the nuisance and to remove or direct removal of the nuisance.

- c. Any person authorized by the City Manager, or his designee, may enter private property to remove the junked vehicle or part thereof.

6. Junked vehicle disposal.

- a. A junked vehicle removed under subsection 4 may not be reconstructed or made operable.
- b. A junked vehicle may be removed to a scrapyard, a motor vehicle demolisher or any other suitable site for processing scrap or salvage.
- c. After a proceeding for abatement and removal of a public nuisance commences, removal of the junked vehicle to another location within the city limits where said vehicle continues to constitute a public nuisance has no effect on the proceedings already underway.

7. Notice to Texas Department of Transportation

No later than the fifth day after the date of removal of a junked vehicle, the Police Department shall send notice to the Texas Department of Transportation identifying the vehicle, or part thereof, removed.

8. Exceptions.

The provisions of this section do not apply to a vehicle or vehicle part:

- (a) 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
- (b) 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 or vehicle part stored by a vehicle collector on the collector's property, where the vehicle or vehicle part and the outside storage area are:

- (1) Maintained in an orderly manner;
- (2) Not a health hazard; and
- (3) Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

## **ARTICLE II.**

All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

## **ARTICLE III.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

## **ARTICLE IV.**

This ordinance will take immediately from and after its passage and the publication of the caption as the law in such cases provides.

**PASSED AND APPROVED THIS 15<sup>TH</sup> DAY OF OCTOBER, 2002.**  
**PASSED AND ADOPTED THIS 5<sup>TH</sup> DAY OF NOVEMBER, 2002.**

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FRANCES ANDERSON, MAYOR

ATTEST:

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JOHN ROUNSAVALL, CITY SECRETARY

APPROVED AS TO FORM:

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MARY GAYLE RAMSEY, CITY ATTORNEY