



**CITY OF TYLER
CITY COUNCIL COMMUNICATION**

Agenda Number: O-3

Date: April 25, 2007

Subject: Request that the City Council consider adopting an ordinance amending the Tyler City Code to authorize the waiver of costs associated with the City's removal of junked vehicles when voluntarily requested by the person in control of such vehicle.

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Item Reference: Texas Transportation Code Chapter 683; Tyler City Code Chapter 18, Article III.

State law, at Texas Transportation Code Section 683.074(a), authorizes a municipality to adopt procedures that conform to Texas Transportation Code Chapter 683, Subchapter E., for the abatement and removal of junked vehicles as a public nuisance. The City of Tyler has adopted such junked vehicle regulations in City Code Chapter 18, Article III.

City Code Section 18-32.e. currently provides a list of options to any person receiving a notice from the City regarding a junked vehicle. Section 18-32.e.5 states that one of the options is for the person voluntarily to allow the junked vehicle or part to be removed by the City. Section 18-32.e.5. goes on to state that the costs incurred by the City for removal shall be assessed against the owner, agent or person in control of the junked vehicle or part, and that such removal costs shall become the personal obligation of such person at the time the removal order was issued.

To encourage persons in control of junked vehicles to allow voluntarily the City to remove the vehicle, and to promote the public health and safety, it is now recommended that City Code Section 18-32.e.5 be amended to state that when a person voluntarily allows the City to remove a junked vehicle, **this shall be at no cost to such person.**

RECOMMENDATION:

It is recommended that the City Council adopt the attached ordinance amending the Tyler City Code to authorize the waiver of the costs associated with the City's removal of junked vehicles when voluntarily requested by the person in control of such vehicle.

Drafted/Recommended By:

Department Leader

Dan Brotton

**Edited/Submitted By:
City Manager**

ORDINANCE NO. O-2007-49

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 18, "STREETS", ARTICLE III., "ABATEMENT OF JUNKED VEHICLES", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY AUTHORIZING THE WAIVER OF COSTS ASSOCIATED WITH THE CITY'S REMOVAL OF JUNKED VEHICLES AT THE VOLUNTARY REQUEST OF THE PERSON IN CONTROL OF SUCH VEHICLE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare;
and

WHEREAS, Texas Transportation Code Section 683.074(a) authorizes a municipality to adopt procedures that conform to Texas Transportation Code Chapter 683, Subchapter E., for the abatement and removal of junked vehicles or parts as a public nuisance; and

WHEREAS, pursuant to Texas Transportation Code Chapter 683, the City Council has adopted junked vehicle regulations in City Code Chapter 18, Article III.; and

WHEREAS, Tyler City Code Section 18-32.e.5 currently provides that when a person voluntarily requests removal of a junked vehicle by the City, the costs incurred by the City shall be assessed against the owner, agent or person in control of the junked vehicle or part; and

WHEREAS, to encourage removal of junked vehicles, it is recommended that the City Code be amended to state that when a person voluntarily requests removal of a junked vehicle by the City, the City's costs associated with such removal shall not be assessed against such person;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:

PART 1: That Tyler City Code Chapter 18, "Streets", Article III., "Abatement of Junked Vehicles", is hereby amended to read as follows:

ARTICLE III. ABATEMENT OF JUNKED VEHICLES OR VEHICLE PARTS

Sec. 18-30. Definitions.

In this Article, the following words shall have the meanings described below and in State law:

Antique vehicle means a passenger car or truck that is at least twenty-five (25) years old.

Collector means the owner of one (1) or more antique or special interest vehicles who acquires, collects, or disposes of antique or special interest vehicles or parts thereof for personal use in order to restore and preserve an antique or special interest vehicle for historic interest.

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

Junked vehicle or vehicle part means a motor vehicle that is self-propelled and:

1. does not have lawfully affixed to it either an unexpired license plate or a valid motor vehicle inspection certificate; and
2. is wrecked, dismantled, partially dismantled, or discarded; or
3. is inoperable and has remained inoperable for more than seventy-two (72) consecutive hours if the vehicle is on public property, or is inoperable and has remained inoperable for more than thirty (30) consecutive days if the vehicle is on private property.

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 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. 0-97-54, 11/5/97; Ord. No. O-98-20, 3-18-98) (Ord. No. 0-2001-56, 11/28/2001) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-31. Public nuisance; junked vehicle or vehicle part.

a. The presence of any junked vehicle or vehicle part thereof in a place within the City and which is visible from a public place or public right-of-way shall be deemed a public nuisance.

b. The presence of any junked vehicle or vehicle part thereof in a place outside the City limits but owned by the City (including but not limited to Lindsey Park, the Lake Tyler, Lake Tyler East, and Lake Bellwood Reservoir Areas, and lake lots owned by the City and leased to private individuals or entities), and which is visible from a public place or public right-of-way shall be deemed a public nuisance.

c. It is unlawful for any person to maintain a public nuisance as determined under this Article. The City may seek to abate the public nuisance by first giving notice as set forth in Section 18-32, and then initiating further abatement procedures as described in Section 18-32.f.

d. This Article shall not apply to a junked vehicle or vehicle part thereof that is:

1. completely enclosed in a building in a lawful manner where it is not visible from the street or other public or private property; or

2. 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 collector on the collector's property, provided that the vehicle and any outdoor storage area are maintained in an orderly manner, 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

3. stored at a commercial storage facility or an official depository designated and maintained by a governmental authority; (Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-56, 11/28/2001) (Ord. No. 0-2005-30, 4/27/05) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-32. Notice to abate public nuisance on private or public property.

a. Employees of the Street Department, and Peace Officers and Public Service Officers of the Tyler Police Department, are hereby authorized to perform and administer the procedures in this Article, including removal of junked vehicles and vehicle parts thereof. Whenever a public nuisance, as defined herein, exists on private or public property within the City limits or on City owned property outside the City limits, the Street Department employee or Peace Officer or Public Service Officer shall make or cause to be made an inspection to determine the condition of junked vehicles or vehicle parts in order to safeguard the public health and safety. In making any inspection under this Article, the Street Department employee or Peace Officer or Public Service Officer may enter, examine, take photographs, tag, and survey all suspect junked vehicles or vehicle parts in order to verify that such are, in fact, a public nuisance. (Ord. No. 0-2003-49; 9/24/03) (Ord. No. 0-2005-30, 4/27/05)

b. After determining that a junked vehicle or vehicle part exists on private or public property, the City may seek enforcement action by first giving the notice set forth in this subsection, and then initiating further abatement proceedings as described in Section 18-32.f. However, no action shall be taken to remove the vehicle or vehicle part until the interested persons listed below have received at least ten (10) days notice. Written notice shall be forwarded by either personal delivery or by certified mail with five-day (5) return request, describing the nature of the public nuisance and requiring removal or abatement of the junked vehicle or vehicle part within ten (10) days of either personal delivery or the date of mailing of such notice to:

1. The last known registered owner of the junked vehicle or vehicle part; and
2. Any lienholders of record; and
3. The owner, occupant, or person in control of the premises on which the public nuisance exists; or
4. To the owner or occupant of the premises adjacent to any public right-of-way on which the junked vehicle or vehicle part is found.

c. If the post office address of the last known registered owner of the junked vehicle or vehicle part is unknown, the notice to such owner may be placed on the junked vehicle or vehicle part, or if the last known registered owner is physically located, notice may be hand delivered.

d. If any notice required by this section is returned undelivered by the U.S. Postal Service, official action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of return.

e. Any person receiving notice may:

1. Fix the junked vehicle or vehicle part to an operable condition, if approved by the junked vehicle owner; or
2. Remove the junked vehicle or vehicle part to a scrap yard or demolisher, if approved by the junked vehicle owner; or
3. Store the junked vehicle or vehicle part in accordance with Section 18-31d., if approved by the junked vehicle owner; or

4. Within ten (10) days of receipt of the notice to abate, file with the Neighborhood Services Department a written request for a public hearing before the Neighborhood Revitalization Board at either a special or regular meeting to present any evidence or grievance concerning the junked vehicle or vehicle part; or

5. Voluntarily allow the junked vehicle or vehicle part to be removed by the City. When removal is so voluntarily requested, the costs incurred by the City for removal shall not be assessed against the owner, agent or person in control of the junked vehicle or vehicle part. (Ord. No. 0-2007-49, 4/25/2007)

f. Any person receiving written notice for violation of this Article who desires a hearing before the Neighborhood Revitalization Board shall file a written request for such hearing with the Neighborhood Services Department within ten (10) days of receipt of the notice. A date for the public hearing shall be set and notice shall be given to the interested persons listed in subsection b. If a person receiving notice pursuant to this Section does not otherwise correct the violation and fails to make a written request for a hearing within the ten (10) day period described herein, the Street Department or Police Officer may 1) seek a public hearing on the matter before the Neighborhood Revitalization Board; or 2) file a case in Municipal Court; or 3) proceed with removal actions in accordance with this Article. Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-56, 11/28/2001) (Ord. No. 0-2005-30, 4/27/05) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-33. Public hearing; junked vehicle or vehicle part.

a. Public hearing. If a date for a public hearing before the board is set, notice of the hearing shall be sent by first class mail, postage prepaid. Said hearing shall not be held earlier than the 11th day after the date of service of notice. At the hearing, any interested person listed in Section 18-32b. shall have the right to appear and present evidence concerning the condition of the junked vehicle or vehicle part, the work, if any, required to render the junked vehicle or vehicle part safe or fit for human use, or a reasonable time schedule for completion of such repairs. Following the public hearing, the board shall issue an order either finding the junked vehicle or vehicle part to be safe and fit for human use, or setting forth a time schedule for completion of repairs, or authorize the removal of the junked vehicle or vehicle part thereof.

b. Removal. If the board authorizes removal of the junked vehicle or vehicle part, the board shall issue a written order of removal that includes a description of the vehicle or vehicle part and the identification number and license plate number of the vehicle or vehicle part, if the information is available at the site. A copy of this order shall be sent by certified mail, return receipt requested, to the last known address of the owner, agent or person in control of such junked vehicle or vehicle part.

1. The order shall provide that the junked vehicle or vehicle part be removed immediately by a contractor employed in the manner prescribed by law.

2. The board shall prepare a certified statement of charges incurred by the board to remove the junked vehicle or vehicle part. All costs of removal shall be the personal obligation of the owner, agent, or person in control of such junked vehicle or vehicle part at the time the removal order was issued.

3. Any money received by the City for disposal of a junked vehicle or vehicle part shall be used as reimbursement for cost incurred in ordinance enforcement. (Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-56, 11/28/2001) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-34. Procedure for removal of junked vehicle or vehicle part following hearing and removal order by either Neighborhood Revitalization Board or Municipal Court, or if violator has failed to request a hearing.

a. In accordance with Texas law, a junked vehicle or vehicle part may be disposed of by removal to a scrapyard, demolisher, or any suitable site, for processing as scrap or salvage, if 1) notice has been provided as set forth in Section 18-32; and 2) following a removal order in a public hearing by either the Neighborhood Revitalization Board or the Municipal Court; or if the violator has otherwise failed to file a written request for a hearing before the Neighborhood Revitalization Board within the 10-day period set forth in Section 18-32.f., then the City may proceed with removal unabated.

b. Removal of a junked vehicle or vehicle part under this Article may be made by an employee of the Street Department or by Police Officers of the Tyler Police Department.

c. A junked vehicle or vehicle part removed in accordance with this Article shall not be reconstructed or made operable.

d. The person removing a junked vehicle or vehicle part in accordance with this Article shall secure and deliver to the City an appropriate receipt or true copy thereof indicating the name and address of the scrapyard or demolisher to whom the junked vehicle or vehicle part was delivered, a description of the junked vehicle or vehicle part or the identification number thereof, if available, the date of delivery to the scrapyard or demolisher, and the signature of the person receiving such junked vehicle or vehicle part.

e. All costs of removal shall be personal obligation of the owner, agent, or person in control of such junked vehicle or vehicle part at the time of removal.

f. Within five (5) days of the removal and disposition of a junked vehicle or vehicle part under this Article, the City shall notify the State Department of Transportation of such fact, identifying the junked vehicle or vehicle part, and requesting cancellation of the certificate of title pursuant to Texas law. (Note) (Ord. No. 0-97-54, 11/5/97) (Ord. No.0-2001-56, 11/28/2001) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-35. Authorization to enter premises.

In accordance with Texas law, employees of the Street Department and Tyler Police Officers are authorized to perform or administer the procedures in this Article and may enter private property to examine a junked vehicle or vehicle part, obtain information as to its identity and ownership, and remove or cause the removal of a junked vehicle or vehicle part that constitutes a nuisance. Nothing herein shall affect any law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property. (Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-56, 11/28/2001) (Ord. No. 0-2007-49, 4/25/2007)

Sec. 18-36. Relocation of junked vehicle or vehicle part after abatement/removal proceedings have commenced.

As authorized by Texas law, where the City has commenced a proceeding for the abatement and removal of a junked vehicle or vehicle part that is a public nuisance, the subsequent relocation of such junked vehicle or vehicle part to another location within the City jurisdiction shall have no effect on the proceeding if such junked vehicle or vehicle part constitutes a public nuisance at the new location within the City jurisdiction. (Ord. No. O-2001-56; 11/28//01) (Ord. No. 0-2007-49, 4/25/2007)

Secs. 18-37 - 18-39. Reserved.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be April 27, 2007.

PASSED AND APPROVED this 25th day of April, A. D., 2007.

JOSEPH O. SEEBER, MAYOR OF THE
CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

CASSANDRA BRAGER, CITY CLERK

CITY ATTORNEY