

ORDINANCE NO. O-2009-17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 18, "STREETS", (CURRENTLY BEING AMENDED AND RENAMED TO CHAPTER 18 "CODE ENFORCEMENT") ARTICLE III, "ABATEMENT OF JUNKED VEHICLES", OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY AMENDING THE DEFINITION OF "JUNKED VEHICLE" TO REQUIRE THE ABSENCE OF EITHER A LICENSE PLATE THAT HAS BEEN VALIDATED BY THE ATTACHMENT OF A REGISTRATION INSIGNIA FOR THE CURRENT REGISTRATION PERIOD OR A VALID MOTOR VEHICLE INSPECTION CERTIFICATE, ADDING A DEFINITION FOR "INOPERABLE", AUTHORIZING THE CODE ENFORCEMENT DEPARTMENT TO ENFORCE PROVISIONS RELATED TO "JUNKED VEHICLES", AND DESIGNATING MUNICIPAL COURT JUDGES AS HEARING OFFICERS FOR "JUNKED VEHICLES" PROCEEDINGS; 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, pursuant to Texas Transportation Code Chapter 683, the City Council has adopted junked vehicle regulations in City Code Chapter 18, Article III.; and

WHEREAS, the Tyler City Code matches the State law definition of a "junked vehicle" provided in Transportation Code Section 683.071, requiring both a license plate that has been validated by the attachment of a registration insignia and a valid motor vehicle inspection certificate must be absent from a vehicle before the vehicle may be designated as a "junked vehicle."

WHEREAS, this definition of a "junked vehicle" has resulted in significantly lessening the Code Enforcement Department's ability to enforce against vehicles that tend to reduce the value of private property, invite vandalism, create fire hazards, present attractive nuisances, and produce urban blight adverse to the maintenance and continuing development of the municipality; and

WHEREAS, Texas Transportation Code, Section 683.0711 provides that, "An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of a junked vehicle than the definition in Chapter 683, Subchapter E of the Texas Transportation Code; and

WHEREAS, the City Council has determined the City's junked vehicle ordinance should be amended to better utilize the current junked vehicle statutory provisions contained in Chapter 683, Subchapter E of the Texas Transportation Code; and

WHEREAS, it is the intent of the City Council to protect to the fullest extent possible the public health, safety and welfare of it's citizens and the City Council has determined that once a self-propelled vehicle without an unexpired license plate, or without a valid motor vehicle inspection certificate, has remained inoperable for more than 72 consecutive hours on public property or for more than 30 consecutive days on private property, the vehicle should be declared to be a junked vehicle; and

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

PART 1: That Tyler City Code Chapter 18, "Streets" (currently being amended and renamed to Chapter 18 "Code enforcement"), 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.

Inoperable means:

1. due to mechanical failure, breakdown, or disrepair, cannot be started, driven, operated, steered, or stopped under its own power without causing damage to the vehicle; or
2. not capable of passing a state motor vehicle inspection due to missing mechanical components required for the normal and legal operation of the vehicle.

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

1. does not have lawfully affixed to it:
 - (a) a license plate that is for the current period and that has been validated by the attachment of a registration insignia for the registration period in effect; or
 - (b) 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) (Ord. No. 0-2008-65, 5/14/08) (Ord. No. 0-2009-17, 2/25/09)

Sec. 18-31. No changes.

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

a. Employees of the Code Enforcement 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 Code Enforcement 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 Code Enforcement 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) (Ord. No. 0-2009-17, 2/25/09)

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.

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 Municipal Court Administrator a written request for a public hearing before a Municipal Court Judge 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) (Ord. No. 0-2009-17, 2/25/09)

f. Any person receiving written notice for violation of this Article who desires a hearing before a Municipal Court Judge shall file a written request for such hearing with the Municipal Court Administrator 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. Section 683.075(a)(3), the hearing shall be held not earlier than the 11th day after the date of the service of notice. 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 Code Enforcement Department or Police Officer may 1) seek a public hearing on the matter before the Municipal Court; or 2) file a criminal action 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) (Ord. No. 0-2009-17, 2/25/09)

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

a. Public hearing. If a date for a public hearing before a Municipal Court Judge 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 to the extent that it that it no longer meets the definition of a junked vehicle or part under Section 18.30, or a reasonable time schedule for completion of such repairs. At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. Following the public hearing, the Municipal Court Judge shall issue an order finding whether the vehicle or vehicle part is a junked vehicle or junked vehicle part as defined by Section 18.30, that is visible at any time of the year from a public place or public right-of-way, and if so, either setting forth a time schedule for completion of repairs, or authorizing the removal of the junked vehicle or vehicle part thereof.

b. Removal. If the a Municipal Court Judge authorizes removal of the junked vehicle or vehicle part, the a Municipal Court Judge 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 Code Enforcement Department or the Tyler Police Department shall prepare a certified statement of charges incurred by the Department 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) (Ord. No. 0-2009-17, 2/25/09)

Sec. 18-34. Procedure for removal of junked vehicle or vehicle part following hearing and removal order by 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 the Municipal Court; or if the violator has otherwise failed to file a written request for a hearing before the Municipal Court 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 Code Enforcement 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) (Ord. No. 0-2009-17, 2/25/09)

Sec. 18-35. Authorization to enter premises.

In accordance with Texas law, employees of the Code Enforcement 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) (Ord. No. 0-2009-17, 2/25/09)

Sec. 18-36. No changes


Sec. 18-36. No changes

Secs. 18-37 - 18-39. Reserved. No changes

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 February 27, 2009.

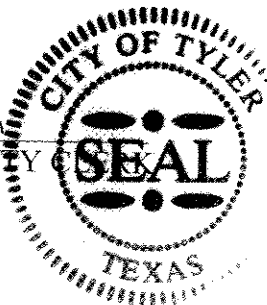
PASSED AND APPROVED this 27th day of February, A. D., 2009.


BARBARA BASS, MAYOR OF THE
CITY OF TYLER, TEXAS

ATTEST:

APPROVED:


CASSANDRA BRAGER, CITY CLERK




MARY C. SANDERS
CITY ATTORNEY