

ORDINANCE NO. 2008-08-12-001

(Revision of 2005-02-08-001)

AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS; REGULATING ABANDONED AND DERELICT VEHICLES, AND ITEMS; MAKING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE AND IMPOUNDMENT; PROVIDING FOR THE DISPOSITION OF VEHICLES AND PROCEEDS; DECLARING DERELICT VEHICLES A PUBLIC NUISANCE; PROVIDING PROCEDURES FOR ABATEMENT OF A PUBLIC NUISANCE; PROVIDING A PENALTY; PROVIDING FOR DISPOSAL; PROVIDING FOR SEVERABILITY; AND PROVIDING EFFECTIVE DATE AND OPEN MEETINGS CLAUSES.

WHEREAS, the City Council of the City of Kempner recognizes the need to regulate abandoned and derelict motor vehicles and to make provisions for wrecked, collectible, and special interest vehicles within the City in order to preserve and protect the public health and safety and to preserve the quality of life and property values;

WHEREAS, the City Council seeks to re-adopt such regulations, as amended, and give additional emphasis to the regulation of abandoned and derelict vehicles by providing procedures for the impoundment, reclamation and sale of such abandoned and derelict vehicles in order to maintain the health, safety and welfare of the City;

WHEREAS, the City Council supports the collection of antique and special interest vehicles that are maintained and stored in compliance with applicable state laws and city ordinances; and

WHEREAS, the City Council has held a public hearing to consider the voice and views of the citizens regarding the process, procedures, requirements and conditions provided in this ordinance;

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

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

Section 2. Abandoned and Derelict Motor Vehicle Regulations Adopted. The City Council hereby adopts the "Abandoned and Derelict Motor Vehicle Regulations" for the control and regulation of abandoned and derelict vehicles within the City of Kempner to read as set forth in the attachment hereto entitled "Abandoned and Derelict Motor Vehicles Regulations" attached to and incorporated in this ordinance as though fully transcribed herein for all purposes.

Section 3. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't Code.

Section 4. Severability. 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, sentence,

paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity 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 of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 5. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

PASSED AND APPROVED on the _____ day of _____, 2008.

ATTEST:

CITY OF KEMPNER, TEXAS

Frances Spinney, City Secretary

Gene Isenhour, Mayor

Abandoned and Derelict Motor Vehicles Regulations

A. This Ordinance Provides Specific Guidance for Implementation of the Texas Transportation Code, as amended. Applicable Chapters of the Code are cited herein. The Ordinance clarifies definitions used within the Code to eliminate any possible duplicity of interpretation, adds definitions that are specifically applicable within the jurisdiction of the City, and specifies additional regulations that apply within the jurisdiction of the City.

B. Clarification of terms and language of the Transportation Code:

Within the Transportation Code, certain terms are used to define motor vehicles which have been abandoned, wrecked, junked, or otherwise fallen into disuse. Those terms are clarified as follows:

1. Junked Vehicle. Texas Transportation Code, 683.0711, states, “MUNICIPAL REQUIREMENTS. An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of a junked vehicle subject to regulation.”

a. CHAPTER 396. AUTOMOBILE WRECKING AND SALVAGE YARDS

396.001. DEFINITIONS. In this chapter:

- (1) "Automotive wrecking and salvage yard" means an outdoor place where a person stores three or more vehicles for the purpose of dismantling or wrecking the vehicles to remove parts for sale or for use in automotive repair or rebuilding.
- (2) "Junk" means copper, brass, iron, steel, rope, rags, batteries, tires, or other material that has been discarded or sold at a nominal price by a previous owner of the material. The term does not include a wrecked vehicle.
- (3) "Junkyard" means a place where a business that owns junk, and is operated to store, buy, or sell junk, keeps all or part of the junk outdoors until the business disposes of the junk.
- (4) "Recycling business" means a business primarily engaged in the business of:
 - (A) converting metal or other material into raw material products that have:
 - (i) prepared grades; and
 - (ii) an existing or potential economic value;
 - (B) using raw material products described by Paragraph (A) in the production of new products; or
 - (C) obtaining or storing metal or other material for a purpose described by Paragraph (A) or (B).
- (5) "Wrecked vehicle" means a discarded, junked, damaged, or worn-out automotive vehicle that is not in a condition to be lawfully operated on a public road.

b. Clarification by the City: Paragraph 396.001 (2) excludes “wrecked vehicles” from the definition of “junk” but in 396.001 (5) includes “junked” as a category of “wrecked vehicle”. This language introduces the possibility of duplicity of interpretation. The City therefore rejects the term “junked vehicle” wherever it appears in Applicable Chapters of the Transportation Code and hereafter uses the term, “derelict vehicle” as including all vehicles formerly referred to as “junked vehicles”.

NOTE: The Lampasas County “Junked Vehicles” and “Junkyards and Automotive Wrecking and Salvage Yards” ordinances use the terms, “wrecked vehicle” and “junked vehicle” interchangeably.

2. Wrecked Vehicle. 396.001 (1) describes a wrecking and salvage yard as a place where “dismantling or wrecking the vehicles to remove parts for sale or for use in automotive repair or rebuilding” takes place.

The City concurs and defines a “wrecked vehicle” as one that:

- a. has had parts removed for sale or for use in automotive repair or rebuilding, and
- b. is located within the confines of a wrecking and salvage yard, and
- c. has been lawfully transferred to the wrecking and salvage yard.

3. Abandoned Motor Vehicle. Texas Transportation Code, CHAPTER 683. ABANDONED MOTOR VEHICLES specifically deals with the removal, impoundment, and disposal of Abandoned Vehicles and defines them as follows:

“(a) For the purposes of this chapter, a motor vehicle is abandoned if the motor vehicle:

- (1) is inoperable and over five years old and is left unattended on public property for more than 48 hours; or
- (2) has remained illegally on public property for a period of more than 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 48 hours; or
- (4) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours.
- (5) has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway; or
- (6) is considered an abandoned motor vehicle under Section 644.153(r).”

Chapter 683.001 DEFINITIONS. (3) "Law enforcement agency" means: (B) the police department of a municipality. Chapter 683 authorizes and directs all Law Enforcement Agencies to comply with all provisions of that Chapter relevant to the removal, impoundment, and disposal of Abandoned Vehicles. Chapter 683 applies within the City and is not repeated in this ordinance.

C. Additional Definitions that apply within the City

1. Antique Auto means a passenger car or truck that is at least 25 years old, and is not registered or used for regular transportation.
2. Competition Vehicle means any motor vehicle modified or built for racing or any other competition or similar special purpose with the clear intent that such vehicle will not be restored for use as a Motor Vehicle as defined in C.5.
3. Derelict Vehicle. A Derelict Vehicle is any motor vehicle that
 - a. is no longer registered, inspected, or maintained for use as a Motor Vehicle, or
 - b. is no longer being used as originally intended, or
 - c. is inoperable and has remained inoperable for a continuous period of more than:

- (A) 72 consecutive hours, if on public property; or
 - (B) 30 consecutive days, if on private property, or
 - d. wrecked, dismantled, partially dismantled, or discarded and is in public view on private property that is not a wrecking and salvage yard or a junk yard, or
 - e. has otherwise fallen into disuse and has been left outdoors and is not being protected or otherwise preserved to prevent loss or deterioration from weather, theft, and vandalism, and for which no safeguards are in place to prevent injury or loss of life to any person who has inadvertent access to that vehicle, and
 - f.. includes watercraft and outboard motors that meet the criteria of a. through e. of this paragraph
4. Junked Vehicle This term is not used in this ordinance. See “Derelict Vehicle”.
 5. Motor vehicle means any motor vehicle subject to registration pursuant to the Certificate of Title Act, Chapt. 501, Tex. Trans. Code.
 6. Motor Vehicle Collector means a person who owns one or more antique or special interest vehicles and collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of an antique or special interest vehicle for personal use in order to restore and preserve an antique or special interest vehicle for historic interest.
 7. Outboard motor means an outboard motor subject to registration under Chapter 31, Parks & Wildlife Code.
 8. Police Department means the Kempner Police Department and any other law enforcement agency as defined in 683.001, Tex. Trans. Code.
 9. 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.
 10. Watercraft means a vessel subject to registration under Chapt. 31, Tex. Parks & Wildlife Code.
 11. Transportation Code or “the Code” means the Texas Transportation Code as amended.

D. Enforcement. The administration of this ordinance shall be the responsibility of the Police Department or such department, officer or employee of the City designated by the City Council; provided that the Chief of Police, or such other salaried, full-time employee of the City as designated by the City Administrator, is authorized to administer and supervise the procedures and provisions of this ordinance applying to abandoned and derelict vehicles. Whoever is so authorized may enter upon private property for the purposes specified in this ordinance to examine motor vehicles or parts thereof, obtain information as to the identity of motor vehicles and to remove or cause the removal of a motor vehicle or parts thereof declared to be a nuisance pursuant to this ordinance. Upon request by the officer designated pursuant to this ordinance, the municipal court may issue orders necessary to the enforcement of this ordinance.

E. Effect on Other Statutes or Ordinances. Nothing in this ordinance shall affect statutes that permit immediate removal of vehicles left on public property that obstruct traffic or otherwise create an imminent threat to health and safety.

F. Storage Fees. The City shall be entitled to charge and collect reasonable storage fees for Abandoned and Derelict Vehicles removed and stored pursuant to this ordinance. Such fees shall be established by the City Council. Such fees may be charged beginning the day the vehicle is taken into custody as follows: (1). for a period of up to ten (10) days prior to the date of the mailing of written notice pursuant to this ordinance; and (2). beginning on the day after written notice is mailed until the vehicle is reclaimed or disposed of pursuant to this ordinance. If any such vehicle is stored with a commercial storage facility, the City shall not charge an additional fee for any day that the commercial storage facility charges a fee.

G. Penalties. Any person convicted of violating any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine in an amount not to exceed Two Hundred dollars (\$200.00) and each day of such violation shall be a separate violation.

H. Authority To Take Possession. The Police Department is authorized to take into custody any abandoned or derelict motor vehicle, watercraft or outboard motor found on public or private property. The Police Department may use personnel, equipment and facilities of the Police Department or other personnel, equipment, and facilities provided by contract with the city to remove, preserve, and store an abandoned or derelict motor vehicle, watercraft, or outboard motor taken into custody of the Police Department.

I. Derelict Vehicles A Public Nuisance. Derelict vehicles, including a part of a derelict vehicle, are hereby declared to be a Public Nuisance if that vehicle or part is visible at any time of the year from a public place or public right-of-way. The presence of a derelict vehicle:

1. is detrimental to the safety and welfare of the public;
2. tends to reduce the value of private property;
3. invites vandalism;
4. creates a fire hazard;
5. is an “attractive nuisance” creating a hazard to the health and safety of minors;
6. produces urban blight adverse to the maintenance and continuing development of the municipality; and
7. thereby is a public nuisance.

J. Maintaining A Public Nuisance. It shall be unlawful for any person to maintain a public nuisance, as defined in paragraph N above, within the City. Any person found guilty of maintaining a public nuisance as defined in paragraph N shall be guilty of a misdemeanor and be subject to a fine not to exceed two hundred dollars (\$200.00) for each offense and, upon the municipal court finding any person guilty of maintaining a public nuisance as defined in paragraph N, the court shall order removal and abatement of the nuisance.

K. Procedures For Abatement Of Public Nuisance. The Police Department or the Code Enforcement Officer, when desiring to remove and dispose of derelict vehicles from private property, public property, or public rights-of-way, shall comply with the following procedures:

1. A written notice stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days of the date the letter was mailed, and further stating that any request for a hearing must be made before the expiration of said ten (10) day period, shall be mailed,

by certified mail with a five (5) day return receipt requested or personal delivery, to the last known registered owner of the derelict vehicle, any lienholder of record and the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate such nuisance shall be continued to a date not less than ten (10) days from the date of such return.

2. The requirements of paragraph 1 above shall also apply to the case of a public nuisance on public property and similar notice shall be sent to the owner or the occupant of the public premises and to the owner or the occupant of the premises adjacent to the public property whereupon such public nuisance exists.

3. If sufficient information is not available to determine the registered owner of the nuisance, after reasonable effort to locate the owner, notice may be placed on the nuisance.

4. Once a vehicle has been removed under the provisions of this ordinance, it shall not be reconstructed or made operable.

5. If the vehicle is not removed or otherwise brought into compliance, a public hearing will be held after the expiration of ten (10) days or more after mailing or personal delivery of notice to abate the nuisance. A hearing will be held prior to the removal of the vehicle, or part thereof as a public nuisance, before the Chief of Police. At the hearing, the derelict motor vehicle is presumed to be inoperable, unless demonstrated by the owner to be operable. Should the Chief of Police find that such vehicle is a public nuisance as defined herein, he/she shall enter an order requiring the removal of the vehicle or part thereof from the public or private property, or public right-of-way where it is situated, and such order shall include a description of the vehicle, identification number, and license number of the vehicle, if available. Any aggrieved city officer, owner or lienholder may appeal any such decision of the Chief of Police to the City Council.

6. The Police Department shall give notice to the Texas Department of Transportation within five (5) days after the date of the removal of a derelict vehicle by the department, identifying the vehicle or part thereof.

7. The administration of the procedures of this section shall be carried out by regularly salaried, full time employees of the City, except that the removal of vehicles or parts thereof from property may be accomplished by any other duly authorized person, including authorized wrecker service operators acting at the direction of the City.

8. If the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided, in addition to any other procedure authorized by the ordinance, a complaint may also be filed in municipal court for the violation of maintaining a public nuisance; provided that such notice shall not be a requirement for any such complaint being filed in municipal court.

L. Exception to Derelict Vehicle. The procedures set out in this section shall not apply to a vehicle or part thereof which is:

1. Completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, provided that the building is in good repair and does not, in itself, constitute a health or safety hazard; or is

2. Stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or is

3. An antique or special interest vehicle stored by a collector on his or her property; provided that the vehicle and outdoor storage areas are maintained in such a manner 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, except that when such vehicles are displayed as a function of a collection, they need not be screened from view provided that the display area is organized and maintained in a manner that enhances the collection and the experience of visitors to the display; or is

4. A complete vehicle being offered for sale which is clearly identified with an appropriate “for sale” sign that includes the name of the seller, the seller’s phone number, and the asking price for the vehicle, and which vehicle is displayed in an area that is maintained in a manner that enhances the marketability of that vehicle. The vehicle need not be operable, need not have a current registration, or need not have a current inspection certificate, but must be in such a condition that it does not present any health or safety hazard. If such a vehicle is driven or towed from that private property on its own wheels, it must be in compliance with all applicable laws of the State of Texas. No more than two (2) inoperable vehicles may be offered for sale at one time on any single private property. An inoperable vehicle that has remained unsold for sixty (60) days is hereby deemed to be unmarketable and this exception is terminated. All such vehicles placed on public property are subject to being declared abandoned as prescribed in this Ordinance.

5. Vehicles modified or built for racing or any other competition or similar special purpose that are in regular use may be stored on their transporters provided they are afforded reasonable protection from pilfering and vandalism and to eliminate their constituting an attractive nuisance creating a hazard to the health and safety of minors. As a minimum, this protection shall consist of an adequately secured suitable cover.

M. Disposal Of Derelict Vehicles. Derelict vehicles or parts thereof may be disposed of by removal to a scrapyard, demolisher or any to suitable site operated or contracted by the city for processing as scrap or salvage. Relocation of a derelict vehicle, for which a notice has been issued under or the procedures provided in this Section have been otherwise initiated, to another location shall have no effect on the proceeding if the derelict vehicle constitutes a public nuisance at the new location.