

ORDINANCE B-674

AN ORDINANCE AMENDING CHAPTER 7 OF THE BURLESON CODE OF ORDINANCES (1983), AS AMENDED, BY AMENDING ARTICLE II PROVIDING FOR THE ABATEMENT OF JUNKED VEHICLES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson (the "city") is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, pursuant to the authority of Chapter 683 of the Texas Transportation Code, the City of Burleson has adopted regulations governing junked vehicles within the city limits;

WHEREAS, Chapter 683 of the Texas Transportation Code has been amended by the legislature, effective September 1, 2001; and

WHEREAS, the City Council desires to amend the junked vehicle regulations to bring them into compliance with state law; and

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

SECTION 1.

Sections 7-30 through 7-39 of Chapter 7, Article II, Division 2, of the Burleson Code of Ordinances, are deleted in their entirety and are replaced with new Sections 7-30 through 7-39.3 to read as follows:

DIVISION 2. JUNKED MOTOR VEHICLES

Sec. 7-30. Definitions.

The terms used in this Division 2 shall have the following meanings ascribed to them:

Antique vehicle means a passenger car or truck that is at least 25 years old.

Hearing officer means the City Manager of the City of Burleson or

designated representative.

Inoperable means incapable of being propelled on its own power due to dismantling, disrepair, or some other cause.

Junked vehicle means any motor vehicle, as defined in Subchapter E of Chapter 683 of the Texas Transportation Code, as amended, that:

(a) does not have lawfully attached to it:

(1) an unexpired license plate; 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:

(i) 72 consecutive hours, if the vehicle is on public property; or

(ii) 30 consecutive days, if the vehicle is on private property.

Motor vehicle collector means a person who:

(a) owns one or more antique or special interest vehicles;

and

(b) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

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.

Sec. 7-31. Junked vehicles declared public nuisance

A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

A. is detrimental to the safety and welfare of the general public;

B. tends to reduce the value of private property;

C. invites vandalism;

- D. creates fire hazards;
- E. constitutes an attractive nuisance creating a hazard to the health and safety of minors;
- F. produces urban blight adverse to the maintenance and continuing development of municipalities; and
- G. is a public nuisance.

Sec. 7-32. Notice.

- (a) Prior to any official action being taken to abate and remove a junked vehicle constituting a public nuisance, from private property, public property or public right-of-way, not less than 10 days notice shall be given, except as hereinafter provided, to the following parties:
 - (1) The last known registered owner of the junked vehicle as shown on the certificate of title;
 - (2) Any lienholder of record; and
 - (3) The owner or occupant of the property upon which the junked vehicle is located or the owner or occupant of the premises adjacent to the public right-of-way on which the junked vehicle is located.
- (b) The notice shall be mailed, by certified mail with a five-day return requested, and if the vehicle is reasonably accessible, also by posting a copy of such notice to the front windshield of the vehicle, and shall state the following:
 - (1) The nature of the public nuisance;
 - (2) That it must be removed and abated not later than the 10th day after the date on which the notice was mailed;
 - (3) That any request for a hearing must be made in writing before the 10 day period expires;
 - (4) That failure to abate the nuisance, request a hearing or attend the hearing, if requested, constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to disposal for the junked vehicle under the terms of the Texas Transportation Code concerning the disposal of junked vehicles.
- (c) If the post office address of the last known registered owner of the junked vehicle is unknown, notice may be placed on the junked vehicle, or, if the owner is located, hand-delivered.

- (d) If any notice is returned undelivered by the United States post office, the validity of the notice is not affected, and the notice is considered as delivered, however, official action to abate the nuisance shall be continued to a date not earlier than 11 days after the date of the return of the notice.

Sec. 7-33. Hearing.

- (a) The owner of the vehicle or occupant of the premises may, within the 10-day period after the service of notice required by Section 7-32(b) to abate the nuisance, request the City Secretary of the City, either in person or in writing to set a date and time to appear before the hearing officer for a public hearing to determine whether the person is in violation of this Division 2. If a hearing is requested within 10 days after service of notice to abate the nuisance, the junked vehicle shall not be abated by the city until ordered to do so by the hearing officer.
- (b) At the public hearing, the hearing officer shall hear and consider all relevant evidence, objections or protests and shall receive testimony from owners, witnesses, city employees and interested persons relative to such alleged public nuisance. The hearing may be continued from time to time.
- (c) At the hearing the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (d) Following the public hearing, the hearing officer shall consider all evidence and determine whether the vehicle, or any part thereof, constitutes a public nuisance as alleged. If the hearing officer finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, and that notice requirements provided in this Division 2 have been met, the hearing officer shall make a written order setting forth his findings and ordering that the nuisance be abated.
- (e) If the information is available at the location of the nuisance, the order requiring removal of the nuisance must include the vehicle's:
 - (1) description;
 - (2) vehicle identification number;
 - (3) license plate number; and
 - (4) a statement that the vehicle will be disposed of in accordance with the Texas Transportation Code.

Sec. 7-34. Abatement of nuisance.

If no hearing is requested prior to the expiration of 10 days after the notice required by Section 7-32(b) was served or in the event the hearing officer orders abatement of the nuisance, the city code enforcement officer or any duly authorized person may abate such public nuisance by removal and disposal of the junked vehicle after the issuance of an order meeting the requirements of Section 7-33(e).

Sec. 7-35. Junked vehicles not to be made operable after removal.

After any junked vehicle has been removed under the authority of this Division 2, it shall not be reconstructed or made operable again.

Sec. 7-36. Notice to department of transportation.

No later than the fifth day after the date of removal of a junked vehicle pursuant to this Division 2, notice must be given to the state Department of Transportation. Such notice must identify the vehicle.

Sec. 7-37. Relocation of junked vehicles.

After the city has sent notice in accordance with Section 7-32, the relocation of a junked vehicle that is a public nuisance to another location in the city has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

Sec. 7-38. Disposal of junked vehicles.

Any junked vehicle taken into custody by the city or any duly authorized person pursuant to a provision of this Division 2 shall be disposed of in accordance with applicable provisions of Chapter 683, subchapter E of the Texas Transportation Code.

Sec. 7-39. Application of Division.

The provisions of this Division 2 shall not apply to a vehicle or vehicle part that is:

- (a) completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
- (b) 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 motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, 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.

Sec. 7-39.1 Offense.

- (a) In lieu of or in addition to following the abatement proceedings set forth in this Division 2, the city may pursue the filing of a criminal complaint against the owner or occupant of the property in the municipal court for violation of this Division 2 or Chapter 683, Subchapter E of the Texas Transportation Code.
- (b) A person commits an offense if the person maintains a public nuisance described by Section 7-31 hereof. An offense under this section is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). Each day an offense occurs shall be a separate offense.

Sec. 7-39.2 Removal with permission of owner or occupant.

If, within 10 days after receipt of notice from the city in accordance with Section 7-32 to abate the nuisance, the owner or occupant of the premises shall give his written permission to the city for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with provisions of this Division 2.

Sec. 7-39.3 Right of removal from streets preserved.

Nothing in this Division 2 shall affect ordinances or other laws that permit immediate removal of a vehicle left on public property which is abandoned or which constitutes an obstruction to traffic.

SECTION 2.
CUMULATIVE CLAUSE

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas (1983), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3.
SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections 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.

SECTION 4.
PENALTY CLAUSE

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Two Hundred Dollars (\$200.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.
SAVINGS CLAUSE

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of Chapter 7 of the Burleson Code of Ordinance (1983), as amended, or any other ordinances affecting junked and abandoned vehicles which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until

final disposition by the courts.

SECTION 6.
PUBLICATION CLAUSE

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two times within 14 days after the passage of this ordinance as required by Section 36 of the Charter of the City of Burleson.

**SECTION 7.
EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS _____ DAY OF _____, 2002.

MAYOR

ATTEST:

CITY SECRETARY

First reading: _____