

JUNKED AND ABANDONED VEHICLES

AN ORDINANCE PROVIDING FOR REMOVAL, NOTIFICATION AND AUCTION OF ABANDONED MOTOR VEHICLES; PROHIBITING JUNKED MOTOR VEHICLES THAT CONSTITUTE A PUBLIC NUISANCE; PROVIDING FOR ABATEMENT; PROVIDING A PENALTY; REPEALING ORDINANCE NO. 23; AND PROVIDING FOR SEVERABILITY.

Section 1. Definitions. For the purposes of this ordinance, the following words and phrases shall have the meanings respectively ascribed to them by this paragraph:

(a) Abandoned motor vehicle: A motor vehicle that is

- (1) inoperable and more than eight (8) years old and left unattended on public property for more than forty-eight (48) hours;
- (2) a motor vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours;
- (3) a motor vehicle that has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours; or
- (4) a motor vehicle left unattended on the right-of-way of a city street or designated county, state, or federal highway within the City for more than forty-eight (48) hours.

(b) 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.

(c) Garagekeeper: Means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the service, repair, or maintenance of a motor vehicle.

(d) Junked vehicle: Means a motor vehicle that:

- (1) is inoperative and does not have lawfully affixed to it either an unexpired license plate or a valid motor vehicle safety inspection certificate, that is wrecked, dismantled, partially dismantled, or discarded; or

(2) remains inoperable for a continuous period of more than forty-five (45) days.

(e) Storage facility: Means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

(f) Motor vehicle: Means a motor vehicle subject to registration under the Certificate of Title, Article 6687-1, Vernon's Texas Civil Statutes.

(g) Antique auto: Means a passenger car, or truck that is at least thirty-five (35) years old.

(h) 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.

(i) Collector: Means the owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Section 2. Authority to Take Possession of Abandoned Motor Vehicles.

(a) The police department may take into custody an abandoned motor vehicle found on public or private property.

(b) The police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle it takes into custody.

Section 3. 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 (10th) day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lienholders of record pursuant to the Certificate of Title Act, Article 6687-1, Vernon's Texas Civil Statutes, 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, set forth 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 (20th) 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 is under Section 5 of this ordinance. 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 addresses of all lienholders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this ordinance. 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.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given under this section.

Section 4. Auction of Abandoned Motor Vehicles. If an abandoned motor vehicle has not been reclaimed as provided by Section 3 of this ordinance, the police department shall sell the abandoned motor vehicle at a public auction. The public auction shall be preceded by a notice published once in one newspaper of general circulation in the county where the auction is to take place, at least three (3) weeks prior to the date of the auction, and in the case of a garagekeeper's lien, the garagekeeper shall be notified by certified mail. The notice shall describe the year

make, model, and vehicle identification number of the abandoned motor vehicle, and set forth the time and place of the auction.

The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department of the City, and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred under Section 3 of this ordinance. Any remainder from the proceeds of a 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 that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs.

Section 5. Garagekeepers and Abandoned Motor Vehicles.

(a) A motor vehicle is considered an abandoned vehicle and shall be reported by the garagekeeper to the police department, if:

- (1) left for more than ten (10) days in a storage facility operated for commercial purposes, after notice is given to the owner as provided by this Section; or
- (2) left for more than ten (10) days after the expiration of a period under a contract pursuant to which the vehicle was to remain on the premises of the storage facility; or
- (3) left for more than ten (10) days in a storage facility by someone other than the registered owner or by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair.

(b) A garagekeeper who fails to report the possession of an abandoned vehicle within ten (10) days after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this Section, shall follow the notification procedures provided by Section 3 of this ordinance, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee of two dollars (\$2.00) shall accompany the report of the garagekeeper to the police department. The two dollar (\$2.00) fee shall be retained by the police department and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle.

(d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by Section 3 of this ordinance shall be taken into custody by the police department and sold in the manner provided by Section 4 of this ordinance. The proceeds of such sale shall first be applied to the garagekeeper's charges for servicing, storage, and repair, but as compensation for the expense incurred by the police department in placing the vehicle in custody and expense of auction, the police department shall retain two percent (2%) of the gross proceeds of the sale of each vehicle auctioned, unless the gross proceeds are less than ten dollars (\$10.00). If the gross proceeds are less than ten dollars (\$10.00), the department shall retain the ten dollars (\$10.00) to defray expenses of custody and auction. Surplus proceeds remaining from an auction shall be distributed in accordance with Section 4 of this ordinance.

(e) Except for the termination of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.

Section 6. Junked Vehicle As Public Nuisance.

(a) A junked vehicle that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the City by producing urban blight adverse to the maintenance and continuing development of the City, and is a public nuisance.

The provisions of this Section shall not apply to:

- (1) a vehicle or vehicle part that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) a vehicle or vehicle part 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
- (3) an unlicensed, operable or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in a manner so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery, or other appropriate means.

(b) A person commits an offense if that person maintains a public nuisance as determined under this section.

Section 7. Procedures for Abating Nuisance.

(a) For a nuisance on private property, not less than ten (10) days' notice is required stating the nature of the public nuisance on private property, that it must be removed and abated within ten (10) days, and that a request for a hearing must be made before expiration of the ten (10) day period. The notice shall be sent by certified mail, with a five (5) day return requested,

to the owner or occupant of the private premises on which the public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than ten (10) days after the date of the return.

(b) For a nuisance on public property, not less than ten (10) days' notice is required stating the nature of the public nuisance on public property or on a public right-of-way, that the nuisance must be removed and abated within ten (10) days, and that a request for a hearing must be made before expiration of the ten (10) day period. The notice shall be sent by certified mail, with a five (5) day return requested, to the owner or occupant of the public premises or to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not less than ten (10) days after the date of the return.

(c) A vehicle removed under these procedures shall not be reconstructed or made operable after it has been removed.

(d) A public hearing is required before the removal of the vehicle or vehicle part as a public nuisance, if requested as provided in subsections (a) and (b) of this section. The hearing shall be held before the City Council, or before an official of the City designated by the City Council, if a hearing is requested by the owner or occupant of the public or private premises or by the owner or occupant of the premises adjacent to the public right-of-way on which the vehicle is located, within ten (10) days after service of notice to abate the nuisance. A resolution or order requiring the removal of a vehicle or vehicle part must include a description of the vehicle and the correct identification number and license number of the vehicle if the information is available at the site.

(e) Notice shall be given to the State Department of Highways and Public Transportation not later than the fifth (5th) day after the date of removal of the vehicle or vehicle part. The notice must identify the vehicle or vehicle part. The department

shall immediately cancel the certificate of title to the vehicle pursuant to the Certificate of Title Act, Article 6687-1, Vernon's Texas Civil Statutes.

Section 8. Disposal of Junked Vehicles. A junked vehicle or vehicle part may be disposed of by removal to a scrapyard, demolisher, or any suitable site operated by the City for processing as scrap or salvage. The process of disposal must comply with the provisions of Article 4477-9a, Vernon's Texas Civil Statutes.

Section 9. Authority to Enforce. A person authorized by the City to administer the procedures established by this ordinance may request permission to enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance. The municipal court of the City may issue orders necessary to enforce these procedures.

Section 10. Removal of Vehicle as Obstruction to Traffic. This ordinance does not affect any law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property.

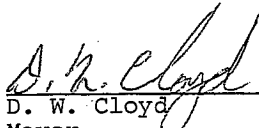
Section 11. Penalty. Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed two hundred dollars (\$200.00). Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

Section 12. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this ordinance as a whole or any part or provision hereof other than the part declared

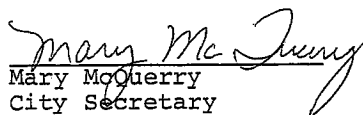
to be invalid or unconstitutional, and the City Council of the City of Magnolia, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

Section 13. Repeal. Upon the effective date of this ordinance, prior Ordinance No. 23 is repealed.

PASSED and APPROVED on this 8 day of April, 1986.


D. W. Cloyd
Mayor

Attest:


Mary McQuerry
City Secretary

Approved as to form:


Burke Martin
City Attorney

THE POTPOURRI NEWSPAPER, APRIL 16, 1986,

LEGAL NOTICES

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ORDINANCE NO. 127
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