

ORDINANCE NO. O-2020-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING CHAPTER 18, "ABATEMENT OF JUNKED VEHICLES OR VEHICLE PARTS," ARTICLE III. "CITY CODE," OF THE CODE OF ORDINANCES OF THE CITY OF TYLER, TEXAS, BY AMENDING AND CLARIFYING JUNKED VEHICLE PROVISIONS; 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, it is the intent of the City Council to comply with all applicable Federal and State laws; and

WHEREAS, municipalities may, under their police powers, enact reasonable regulations not in conflict with Federal or State law to promote the health, safety and welfare of citizens; and

WHEREAS, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of local self-government; and

WHEREAS, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent, by implication or otherwise, the municipality from exercising the authority incident to local self-government; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City of Tyler may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City, and all nuisances and causes thereof; and

WHEREAS, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

WHEREAS, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether expressed or implied, shall be exercised and enforced, in the manner prescribed by the Charter, or when not prescribed in the Charter, in such manner as shall be provided by ordinances or resolutions of the City Council; and

WHEREAS, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the

constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

WHEREAS, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by the State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

WHEREAS, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for the good government, peace, or order of the municipality; and

WHEREAS, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

WHEREAS, Texas Local Government Code Section 217.042(a) provides that a home rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

WHEREAS, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, Texas Transportation Code Section 311.001(a) provides that a home-rule municipality has exclusive control over and under the public highways, streets, and alleys of the municipality; and

WHEREAS, Texas Local Government Code Section 341.903 provides that a home rule municipality may police areas owned by and located outside of the municipality, such as parks and grounds, lakes and land contiguous to and used in connection with a lake, and speedways and boulevards.

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the municipality; and

WHEREAS, Texas Local Government Code Section 54.004 provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, State law authorizes municipalities to establish by ordinance an abatement process to remove and abate junked vehicles; and

WHEREAS, it is important to amend and clarify the current junked vehicle provisions in City Code Chapter 18;

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

PART 1: That Tyler City Code Chapter 18, "Abatement of Junked Vehicles or Vehicle Parts," Article III. "City Code," is hereby amended by amending City Code Sections 18-30 through 18-34 to read as follows, with no changes to Sections 18-35 and 18-36:

Sec. 18-30. Definitions.

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

- a. *Antique vehicle* means a passenger car or truck that is at least twenty-five (25) years old.
- b. *Motor Vehicle 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 to restore and preserve an antique or special interest vehicle for historic interest.
- c. *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.
- d. *Inoperable* means incapable of being propelled on its own power.
Junked vehicle or *vehicle part* means a motor vehicle, aircraft, or watercraft that:
 1. Is self-propelled; and,
 2. Is
 - a. wrecked, dismantled, or partially dismantled, or discarded; or,
 - b. 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; and,
 3. Is either
 - a. a motor vehicle that displays an expired license plate or does not display a license plate; or,
 - b. an aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under the Federal Aviation Administration aircraft regulations in 14 CFR Part 47; or,
 - c. a watercraft that
 - i. does not have lawfully on board an unexpired certificate of number; and,
 - ii. is not a watercraft described by Section 31.055, Texas Parks and Wildlife Code.
- e. *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.
- f. *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. 0-98-20, 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) (Ord. 0-2015-49, 5/13/15) (Ord. 0-2020-33; 03/25/20)

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 at any time of the year from a public place or public right-of-way is deemed a public nuisance and is unlawful.
- 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 at any time of the year from a public place or public right-of-way is deemed a public nuisance and is unlawful.
- c. 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, or stored at a commercial storage facility, provided that the vehicle and any outdoor storage area, if any, are maintained in an orderly manner, do not constitute a health hazard, and are screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, shrubbery, or a fitted car cover. A tarp is not appropriate means.

3. stored at 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)(Ord. No. 0-2012-24, 3/28/12) (Ord. 0-2020-33; 03/25/20)

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.

b. 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)

c. 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 written notice set forth in this subsection Section.

d. The written notice described in Section 18-32(c) shall state

1. A description of the public nuisance;
2. That the nuisance must be abated and removed not later than the 10th day after the date on which the written notice was personally delivered or mailed;
3. That the person receiving the written notice may request a hearing before the 10th day after the date on which the written notice was personally delivered or mailed; and,
4. A warning that failing to abate the nuisance may result in criminal charges being filed under Section 18-37.

e. The written notice described in Section 18-32(c) shall be either personally delivered, sent by certified mail with a five day return requested, or delivered by the United States Postal Service with signature confirmation service to the following persons:

1. The last known registered owner of the junked vehicle or vehicle part;
2. Each lienholder of record;
3. The owner, occupant, or person in control of:
 - i. the property on which the junked vehicle exists; or,
 - ii. if the junked vehicle is located on a public right of way, the owner, occupant, or person in control of the property adjacent to the public right of way

f. 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.

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

h. Any person receiving the written notice described in Section 18-32(c), before the deadline contained therein, 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 18-31c., if approved by the junked vehicle owner; or
4. File with the Municipal Court Administrator a written request for a public hearing; 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)
 - i. If a person receiving written notice pursuant to Section 18-32(c) does not otherwise correct the violation and fails to make a written request for a hearing before the deadline described therein, the Code Enforcement Department or Police Officer may 1) seek a public hearing on the matter before the Municipal Court; or 2) present a criminal complaint to the City Attorney or designee for prosecution in the 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) (Ord. 0-2020-33; 03/25/20)

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

- a. If a public hearing before a Municipal Court Judge is requested notice of the hearing shall be sent by Certified mail, return receipt requested or personal service to the persons listed in Section 18-32(e). Notice of the hearing shall be sent via email or inter-office mail to the Legal Department, Code Enforcement Department, and Tyler Police Department.
- b. 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 18-32(e). 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.
- c. 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.
- d. If the a Municipal Court Judge authorizes removal of the junked vehicle or vehicle part, the Municipal Court Judge shall issue a written order of removal that contains the following

1. If the information is available at the location of the junked vehicle, a description of the vehicle or vehicle part, the vehicle identification number, and license plate number of the vehicle or vehicle part;
2. If the information is available at the location of the junked vehicle, the aircraft's description and federal aircraft identification number as described by Federal Aviation Administration aircraft regulations in 14 C.F.R. Part 47;
3. If the information is available at the location of the junked vehicle, the watercraft's description and the identification number as set forth in the watercraft's certificate of number;
4. A finding that the junked vehicle is a junked vehicle that is visible at any time of the year from a public place or public right of way;
5. A finding that the junked vehicle is a public nuisance;

6. An order that the junked vehicle or vehicle part be removed immediately by a contractor employed in the manner prescribed by law, the Code Enforcement Department, or the Tyler Police Department;
7. An order that whoever removes the junked vehicle or vehicle part prepare a certified statement of charges to remove the junked vehicle or vehicle part;
8. An order that the costs of removal are the personal obligations of the owner, agent, or person in control of such junked vehicle or vehicle part on the date of the order and the name and contact information, if known, of such person;
9. An order that a certified copy of the order is to be sent by certified mail, return receipt requested, to the last known address of each person described in Section 18-32(c);
10. An order that the vehicle must be prohibited from being reconstructed or made operable after removal; and,
11. An order that a notice identifying the junked vehicle or vehicle part be sent to the Texas Department of Transportation within five (5) days of removal of the junked vehicle or vehicle part.

e. Any money received by the City of Tyler for disposal of a junked vehicle or vehicle part shall be used as reimbursement for costs 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) (Ord. 0-2020-33; 03/25/20)

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 timely file a written request for a hearing before the deadline contained in the written notice described by Section 18-32, then the City may proceed with removal of the junked vehicle..

b. Removal of a junked vehicle or vehicle part under this Article may be made by an employee of the Code Enforcement Department, by Police Officers of the Tyler Police Department, or by a contractor employed in the manner prescribed by law.

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 abatement and removal 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. (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) (Ord. 0-2020-33; 03/25/20)

Sec. 18-35. Authorization to enter premises.

No changes...

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

No changes...

PART 2: That Tyler City Code Chapter 18, "Abatement of Junked Vehicles or Vehicle Parts," Article III. "City Code," is hereby amended by adding a new Section 18-37 to read as follows:

Sec. 18-37. Offense

- a. A person commits an offense if the person maintains a public nuisance described by Section 18-31.
- b. An offense under this section is punishable by a fine not to exceed \$200.
- c. Upon conviction, the Court shall order the abatement and removal of the junked vehicle.

The order under this subsection shall meet the requirements of Section 18-33(d).

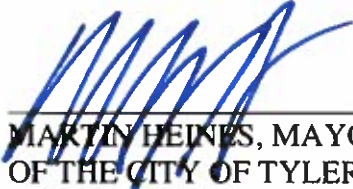
(Ord. 0-2020-33; 03/25/20)

Secs. 18-38 - 18-39. Reserved.

PART 3: 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 4: That any person, firm, or corporation convicted of violating any of the provisions of this ordinance shall be punished by a fine as provided in Section 18-37 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 March 27, 2020.

PASSED AND APPROVED this 25th day of March, A. D., 2020.



MARTIN HEINES, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:



CASSANDRA BRAGER, CITY CLERK



APPROVED:



DEBORAH G. PULLUM,
CITY ATTORNEY