

ORDINANCE NO. 2004-03-01

AN ORDINANCE OF THE CITY OF WESTON, TEXAS, REPEALING ORDINANCE 2003-03-03 REGARDING ABANDONED AND JUNKED VEHICLES; ADOPTING NEW REGULATIONS DECLARING JUNKED VEHICLES A NUISANCE; PROVIDING PROCEDURES FOR THE ABATEMENT OF JUNKED VEHICLES; PROVIDING FOR THE DISPOSAL OF JUNKED VEHICLES; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SEVERABILITY CLAUSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Weston, Texas is a Type A general-law municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the City Council has previously adopted Ordinance 2003-03-03 regarding abandoned and junked vehicles;

WHEREAS, the Texas Legislature has enacted numerous amendments to Subchapter E of Chapter 683 of the Texas Transportation Code governing junked vehicles; and

WHEREAS, abandoned vehicles are governed by Chapter 683 of the Texas Transportation Code and may be abated, transferred, or stored by a law enforcement agency only and without the necessity of an ordinance authorizing such;

WHEREAS, the City Council desires to repeal Ordinance 2003-03-03 and adopt new regulations governing junked vehicles consistent with Subchapter E of Chapter 683 of the Texas Transportation Code.

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

Section 1. Purpose and Authority

The procedures set forth herein are adopted for the purpose of promoting the public safety and general welfare are adopted pursuant to the provisions of Subchapter E of Chapter 683 of the Texas Transportation Code, as they may be amended.

Section 2. Definitions

For the purposes of this Ordinance, the following definitions shall have the meanings ascribed to them below:

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

Junked vehicle means a vehicle that is self-propelled and:

- (1) does not have lawfully attached to it:
 - (A) an unexpired license plate; or
 - (B) a valid motor vehicle inspection certificate; 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.

Motor vehicle collector means a person who:

- (1) owns one or more antique or special interest vehicles; and
- (2) 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.

Section 3. Junked Vehicles Declared Public Nuisance

A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way:

- (1) is detrimental to the safety and welfare of the general public;
- (2) tends to reduce the value of private property;
- (3) invites vandalism;
- (4) creates fire hazards;
- (5) constitutes 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 City; and
- (7) is a public nuisance.

Section 4. Notice

(a) Prior to any 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 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; and
- (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, personally 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 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.

Section 5. 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 4 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 Municipal Court for a public hearing to determine whether the person is in violation of this Ordinance. 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 Municipal Court.

(b) At the public hearing, the Municipal Court 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 Municipal Court shall consider all evidence and determine whether the vehicle, or any part thereof, constitutes a public nuisance as alleged. If the Municipal Court finds that a public nuisance

does exist and that there is sufficient cause to abate the nuisance, and that notice requirements provided in this Ordinance have been met, the Municipal Court shall make a written order setting forth his or her 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.

Section 6. Abatement of Nuisance

If no hearing is requested prior to the expiration of 10 days after the notice required by Section 4 was served or in the event the Municipal Court orders abatement of the nuisance, the 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 5.

Section 7. Junked Vehicles Not to Be Made Operable after Removal

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

Section 8. Notice to Department of Transportation

No later than the 5th day after the date of removal of a junked vehicle pursuant to this Ordinance, notice must be given to the Texas Department of Transportation. Such notice must identify the vehicle.

Section 9. Relocation of Junked Vehicles

After the City has sent notice in accordance with Section 4, 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.

Section 10. Disposal of Junked Vehicles

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

Section 11. Application of Ordinance

The provisions of this Ordinance shall not apply to a vehicle or vehicle part that 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; 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 motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:
 - (A) maintained in an orderly manner;
 - (B) not a health hazard; and
 - (C) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

Section 12. Offense

(a) In lieu of or in addition to following the abatement proceedings set forth in this Ordinance, 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 Ordinance 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 3 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 constitute a separate offense.

Section 13. Removal With Permission of Owner or Occupant

If, within 10 days after receipt of notice from the City in accordance with Section 4 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 Ordinance.

Section 14. Right of Removal from Streets Preserved

Nothing in this Ordinance 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 15. Provisions Cumulative

This ordinance shall be cumulative of all provisions of ordinances of the City of Weston, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Ordinance number 2003-03-03, regulating junked and abandoned vehicles, is hereby repealed in its entirety.

Section 16. Provisions Severable

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 17. Savings Clause

All rights and remedies of the City of Weston are expressly saved as to any and all violations of the provisions of ordinances of the City of Weston, Texas relating to junked or abandoned vehicles or any other ordinances affecting nuisances 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 18. Publication

The City Secretary of the City of Weston is directed to publish the caption, penalty clause, publication clause and effective date of this Ordinance in accordance with the provisions of Section 52.011 of the Local Government Code.

Section 19. Publication in Book or Pamphlet Form

The City Secretary of the City of Weston is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

Section 20. 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.

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

PASSED AND APPROVED this 9th day of March, 2004

Patti Harrington
Patti Harrington, Mayor

ATTEST:

Michele Smith
Michele Smith, City Secretary

March 18, 2004
Effective



After Recording Return to:
Michele Smith
City of Weston
P O Box 248
Weston TX 75097

5661 01595

The City Secretary of the City of Weston is directed to publish the ordinance in the City of Weston in accordance with the provisions of Section 52.011 of the Local Government Code.

Section 19. Publication in Book or Pamphlet Form

The City Secretary of the City of Weston is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

Section 20. Effective Date

This ordinance shall be published in the City of Weston and after its passage and publication as required by law, and it is so ordered.

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

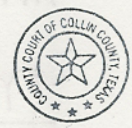
PASSED AND APPROVED this 4th day of March 2004

[Signature]
Patricia Hamilton, Mayor

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (THE STATE OF TEXAS) (COUNTY OF COLLIN)
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

MAY 04 2004

Brenda Taylor



Filed for Record in:
Collin County, McKinney TX
Honorable Brenda Taylor
Collin County Clerk

On May 04 2004
At 10:30am

Doc/Num : 2004- 0063733
Recording/Type: OR 30.00
Receipt #: 17256