

Chapter 87

JUNKED AND ABANDONED MOTOR VEHICLES

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JUNKED AND ABANDONED MOTOR VEHICLES

ARTICLE I. GENERAL PROVISIONS

Sec. 87-1. State Law Applicable. The Texas Transportation Code Chapter 683, as amended, is adopted by reference and the provisions of said Chapter shall control and take precedence over any conflicting provisions of this Chapter.

Sec. 87-2. Definitions. As used in this Chapter, the following terms shall have the meaning indicated below:

Abandoned Motor Vehicle means a vehicle that:

- (i) is inoperative and over five years old and is left unattended on public property for more than 48 hours; or
- (ii) has remained illegally on public property for a period of more than 48 hours;
- (iii) has remained on private property without the consent of the owner or person in control of the property for more than 48 hours; or
- (iv) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours.

Junked Vehicle 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:
 - (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 Federal Aviation Administration aircraft registration regulations in 14 C.F.R. 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.

Junked Vehicle Parts means parts from a junked vehicle.

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

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.

Demolisher means a person whose business is to convert a motor vehicle into proceed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

Motor Vehicle means any motor vehicle subject to registration pursuant to the Certificate of Title Act, *Chapt. 501, Tex. Trans. Code*.

Outboard Motor means an outboard motor subject to registration under *Chapt. 31, Parks & Wildlife Code*.

Officer means any person designated by the City Council as authorized to investigate and enforce suspected violations of City ordinances or regulations.

Person means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

City means the City of Lexington, Texas.

City Council means the city council of the City of Lexington, Texas.

City Secretary means the City Secretary of the City of Lexington, Texas.

Sec. 87-3. 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, sections and provisions of this Ordinance applying to abandoned and junk vehicles. Whoever is so authorized may enter upon private property for the purposes specified in the s 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 nuisance pursuant to this Ordinance. Upon request by the officer designated pursuant to this Section, the municipal court may issue orders necessary to the enforcement of this Ordinance.

Sec. 87-4. Effect on Other Statues of Ordinances. Nothing in this Chapter shall affect statues that permit immediate removal of vehicles left on public property that obstruct traffic or otherwise create an imminent threat to health and safety.

Sec. 87-5. Storage Fees. The Police Department shall be entitled to charge and collect reasonable storage fees for Abandoned and Junked Vehicles removed and stored pursuant to this ordinance. Such fees shall be established by the City Council and, absent the City Council having established such fees, the Police Department. Such fees may be charged beginning the day the vehicle is taken into custody as follows:

- (a) For a period of up to ten (10) days prior to the date of mailing of written notice pursuant to this ordinance;
- (b) 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 garagekeeper, the Police Department shall not charge an additional fee for any day that the garagekeeper charges a fee.

Sec. 87-6. 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.

Secs. 87-7—87-9. Reserved.

ARTICLE II. ABANDONED VEHICLES

Sec. 87-10 Authority to Take Possession. The police Department is authorized to take into custody any abandoned motor vehicle, watercraft or outboard motor found on public or private property. The police Department may use personnel, equipment and facilities or the Police Department or other personnel, equipment, and facilities provided by contract with the city to remove, preserve, and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody of the Police Department.

Sec. 87-11 Notice of Impoundment of Abandoned Motor Vehicles.

- (a) When information exists sufficient to permit notice of impoundment of abandoned motor vehicles, watercraft, or outboard motor to the owner and lien holder, notice shall be given by mail to the registered owner and lienholder as follows:
- (i) The police Department shall send notice of abandonment to each registered owner and lienholder showing of record pursuant to the *Certificate of Title Act, Chapt. 501, Tex. Trans. Code*, or as applicable, *Chapt. 31, Parks & Wildlife Code*.
 - (ii) Such notice shall be given within (10) days after the date motor vehicle, watercraft or outboard motor is taken into custody, or the date the police department receives a report of abandonment.
 - (iii) The notice shall be by certified mail, return receipt requested, specifying the year, make, model and identification number of the item, set forth the location of the facility where the item is being held, inform the owner and any lienholder of the right to reclaim the item not later than the 20th day after the date of the notice, on payment of all towing, preservation, storage and/or garage keeper charges.
 - (iv) The notice shall state that the failure of the owner or lienholder(s) to exercise the right to reclaim the item within the time provided shall be deemed a waiver of all right, title, and interest in the item and their consent to the sale of the item 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 lienholder, notice by one publication in a newspaper of general circulation in the City shall be made with ten (10) days from the date the item was taken into custody, or from the date the report of abandonment was received. The published notice shall be sufficient if it contains the information otherwise required to be included in the notice by mail. A list of motor vehicles, watercraft or outboard motors may be included in the same publication.

Sec. 87-12 Use of Abandoned Motor Vehicles.

- (a) Provided that a garagekeepers lien has not attached to the vehicle, if an abandoned motor vehicle has not been reclaimed as provided in Section 87.011 hereof, the Police Department may use such abandoned motor vehicle for Police Department purposes if such use is cost-effective.

- (b) If the Police Department is discontinues use of the abandoned motor vehicle, the Police Department shall auction such abandoned motor vehicle as provided herein.

Sec. 87-13 Auction Sales; Disposition of Proceeds Generally.

- (a) If an abandoned motor vehicle, watercraft or outboard motor has not been reclaimed within twenty (20) days after the date of notice and payment of all towing, preservation and storage charges resulting from its impoundment, the Police Department shall sell the item at a public auction. Proper notice of the public auction shall be given and, in the event a vehicle is to be sold in satisfaction of a gargekeeper's lien, the garagekeeper shall be notified of the time and place of such auction.
- (b) The Police Department shall furnish a sales receipt for each vehicle to the purchaser thereof at the public auction.
- (c) The proceeds shall be applied first to reimburse the Police Department for the expenses of the auction, costs of towing, preserving and storing the vehicle, and all notice and publication costs, and any remainder from the proceeds of the 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 with the City Treasurer which shall remain available for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned motor vehicles are insufficient to meet these expenses and costs. In the event the special fund on deposit with the City Treasurer accumulates to an excess of \$1,000, the City Council may transfer the balance of such fund that exceeds \$1,000, to the general fund for use by the Police Department as budgeted.

Sec. 87-14 Custody, Reports and Proceeds of Abandoned Motor Vehicles.

- (a) The Police Department, upon receipt of a report from a garagekeeper that a motor vehicle has been deemed abandoned pursuant to §683.031, *Tex. Trans. Code*, shall follow the notification procedures set forth in Section 87.011 herein for the giving of notice to owners and lienholders of abandoned vehicles, except that custody of the vehicle shall remain with the garagekeeper until after the notification requirements have been satisfied.
- (b) A fee of five dollars (\$5.00) shall accompany the report of the garagekeeper and such fee shall be retained by the Police department receiving the report and used to defray the cost of notification or other costs incurred in the disposition of such vehicles, and such fee shall be deposited in the general fund of the City.

- (c) Abandoned vehicles left in storage facilities, which are not reclaimed after notice is given in accordance with this subchapter, shall be taken into custody by the Police Department and sold at auction, as in the cases of other abandoned motor vehicles. The proceeds of the sale shall first be applied to the garagekeeper's charges for servicing, repair, and storage, provided the garagekeeper properly notified the Police Department within seven days of the abandonment; however the Police Department shall retain an amount of two percent (2%) of the gross proceeds of the sale for each vehicle auction, but in no event shall it retain less than ten dollars (\$10.00), to be used to defray expenses of custody, auction, and storage fees accrued according to Section 87.005.
- (d) The Police Department shall not take custody of a motor vehicle, watercraft, or outboard motor more than thirty-one days after the notices are sent according to Section 87.011. After the thirty first day, the storage facility having custody of the abandoned vehicle shall dispose of the vehicle pursuant to the requirements of Chapter 70, Property Code.

Sec. 87-15 Disposal of Abandoned Motor Vehicle to Demolisher. The Police Department is authorized to apply to the Texas Department of Transportation for authority to sell, give away or dispose of any abandoned motor vehicle in its possession to a demolisher in accordance with the provisions of *Chapt. 683, Tex. Trans. Code*.

Sec. 87-16—87-19 Reserved.

ARTICLE III. JUNK VEHICLES.

Sec. 87-20. Junked Vehicles a 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, is detrimental to the safety and welfare of the general public; tends to reduce the value of private property; invites vandalism; creates a fire hazard; is 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 which is adverse to the maintenance and continuing development of the City. As such, these vehicles are declared to be a public nuisance.

Sec. 87-21. Nuisance Prohibited. It shall be unlawful for any person to maintain, possess, or locate a junked vehicle or parts or portions thereof, within the City of Lexington, in violation of this Article.

Sec. 87-22. Complaint and Investigation.

- (a) Any person may file a complaint alleging the existence of a junked vehicle, or part thereof, as a public nuisance in the City. The complaint must:

- (1) Be in writing;
 - (2) Provide sufficient details about the alleged nuisance so that its location can be determined;
 - (3) Be signed by the complainant; and
 - (4) Be filed with the City Secretary, Municipal Court Clerk, or other individual designated by the City Council.
- (b) On his/her own knowledge or on the basis of a written complaint, an officer shall investigate the alleged existence of a junked vehicle, or part thereof, on private or public property or a public right-of-way within the City.
- (c) The officer may enter private property where the alleged junked vehicle, or part thereof, is located in order to examine the public nuisance, to obtain information to identify the nuisance and to remove or direct removal of the nuisance.

Sec. 87-23. Notice and Hearing.

- (a) If it is determined by the officer that a nuisance, as defined herein, exists in the City, the officer shall give notice or cause notice to be given in writing. The notice shall state: the nature of the public nuisance; that the nuisance must be removed and abated not later than the tenth (10th) day after the date on which the notice was personally delivered or mailed and that a request for a hearing must be made before that ten (10) day period expires. The notice must be personally delivered, sent by certified mail with a five (5) day return requested, or delivered by the United State Postal Service with signature confirmation service to:
- (1) The last known registered owner of the nuisance;
 - (2) Each lien holder of record of the nuisance; and
 - (3) The owner or occupant of:
 - (A) The property on which the nuisance is located; or
 - (B) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (b) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance, or if the owner is located by other means, personally delivered.

- (c) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.
- (d) A hearing must be held, prior to the removal of the junked vehicle or the part thereof as a public nuisance, before the Municipal Court Judge, when such hearing is requested by the owner or occupant of the premises on which said vehicle is located, not earlier than the eleventh (11th) day after service of notice to abate the nuisance. At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include:
 - (1) for a motor vehicle, the vehicle's:
 - (A) description;
 - (B) vehicle identification number; and
 - (C) license plate number;
 - (2) for an aircraft, the aircraft's:
 - (A) description; and
 - (B) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
 - (3) for a watercraft, the watercraft's:
 - (A) description; and
 - (B) identification number as set forth in the watercraft's certificate of number.
- (e) If, after written notice has been given, as described in this Article, and continuing through the hearing, the owner relocates the junked vehicle, or a part thereof, to another location in the City of Lexington, Texas the relocation has no effect on the hearing if the vehicle, or a part thereof, constitutes a public nuisance at the new location.

Sec. 87-24. Order by Judge.

- (a) After the hearing is held by the Municipal Court Judge as herein provided, if the Judge finds that such a nuisance as herein defined exists, the Judge shall order the owner or occupant of the premises on which said vehicle is located to remove such junked

vehicle within ten (10) days after said order is given to such owner or occupant of the premises on which said vehicle is located.

- (b) It shall be unlawful and a violation of this Article for any person to whom such order is given to fail or refuse to comply therewith and to fail to remove such junked vehicle within the time provided by said order.

Sec. 87-25. Duty of Owner or Occupant. In the event the owner or occupant of the premises does not request a hearing, as herein provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

Sec. 87-26. Vehicles not to be Made Operable. After a vehicle has been removed in accordance with or under the terms and provisions of this Article, it shall not be reconstructed or made operable.

Sec. 87-27. Notice to TXDOT. Notice shall be given by the officer to the Texas Department of Transportation (“TXDOT”) within five (5) days after the date of removal identifying the vehicle or part thereof.

Sec. 87-28. Affirmative Defenses. It is an affirmative defense to prosecution under this Article if a junked vehicle or junked vehicle part:

- (a) Is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (b) Is 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.
- (c) Is farm machinery or equipment whose primary purpose is for agricultural or ranching activities.

Sec. 87-29. Administration. The administration of this Article shall be by regularly salaried, full-time employees of the City of Lexington, except that the removal of junked vehicles or parts thereof from property may be by any other duly authorized person.

Sec. 87-30. Removal. After ten (10) days after notice has been delivered to the owner or occupant of the premises on which a junked vehicle is located if a hearing is not requested, or if a hearing is requested, after ten (10) days after an order requiring the removal of such junked vehicle has been served upon or delivered to the owner or occupant of the premises on which said vehicle is located, the officer, if said nuisance has not been abated, may remove or cause to be removed the vehicle which was the subject of such notice to a scrap yard, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

Sec. 87-31. Enforcement.

- (a) The City of Lexington, Texas, shall have the power to administer and enforce provisions of this Article as may be required by governing law. Any person violating any provision of this Article is subject to suit for injunctive relief as well as prosecution for criminal violations.
- (b) Any person who violates any provision of this Article shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined a sum not to exceed Two Hundred and No/100 Dollars (\$200.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
- (c) No culpable mental state shall be required for a conviction under this Article.
- (d) Nothing in this Article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Article and to seek remedies as allowed by law, including but not limited to the following:
 - (1) Injunctive relief to prevent specific conduct that violates the Article or to require specific conduct that is necessary for compliance with the Article;
 - (2) A civil penalty up to one hundred dollars (\$100.00) a day when it is shown that the defendant was actually notified of the provisions of this Article and after receiving notice committed acts in violation of the Article or failed to take action necessary for compliance with the Article; and
 - (3) Other available relief.

Chapters 88 through 89 Reserved

Chapter 90. Solid Waste³⁵

³⁵ **Cross references**--Administration, ch. 2; fire prevention and protection, ch. 46; burning trash within fire zones, § 46.3; health and sanitation, ch. 54; utilities, ch. 110. **State law reference**--Municipal powers relating to public health, *Tex. Health and Safety Code* § 122.005, *Tex. Loc. Gov't. Code*, § 51.012; minimum standards of sanitation and health protection measures, *Tex. Health and Safety Code* § 341.001 *et seq.*; local regulation of