

Legal Q&A

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What is a junked vehicle?

A junked vehicle is defined as an inoperable vehicle that does not have a current license plate and vehicle inspection certificate or a vehicle that has remained inoperable for 30 consecutive days on private property or three consecutive days on public property. *Id.* § 683.071; Tex. S.B. 350, 80th Leg. R.S. (2007). A city can adopt a broader definition of junked vehicle, so long as such vehicle would still be considered a public nuisance. *Id.* § 683.0711. To be declared “junked,” a vehicle must be visible from a public place or right-of-way. The city determines whether a vehicle is “visible” or not. Tex. Att’y Gen. Op. No. GA-0034 (2003).

Can a city regulate junked vehicles?

A city may adopt an ordinance under Chapter 683 of the Transportation Code for the abatement and removal from private or public property or a public right-of-way of a junked vehicle as a public nuisance. TEX. TRANSP. CODE § 683.074. As part of its ordinance, a city can adopt a broader definition of junked vehicle, as long as such vehicle would still be considered a public nuisance. *Id.* § 683.0711. The ordinance must prohibit a junked vehicle from being reconstructed or made operable after removal. *Id.*; Tex. S.B. 350, 80th Leg. R.S. (2007). The ordinance may provide that relocation of a junked vehicle to another location in the same city where the junked vehicle remains a public nuisance has no effect on a proceeding of abatement or removal. Also, a city can operate a disposal site if the city determines that commercial disposal is unavailable or inadequate. *Id.* § 683.078.

Is there any procedure a city must follow before removing a junked vehicle?

A city’s procedures must provide for appropriate notice under Section 683.075 to possible owners of the vehicle and then allow for a public hearing on request of the individual given notice. The procedures for abatement and removal of the junked vehicle must be administered by a regularly salaried, full-time employee of the city, but the actual removal of the nuisance can be made by any person designated. The administrator of the junked vehicle ordinance may “enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.” *Id.* § 683.074(e).

Once a vehicle is found that may be a public nuisance, the city must provide for no less than ten days notice to the last known registered owner, each lienholder, and the owner of the property, if the vehicle is located on private property, or the adjacent property owner, if the vehicle is located on public right-of-way. The notice must state that the nuisance must be abated or removed within ten days and any request for a hearing must be made before the ten-day period expires. *Id.* § 683.075; Tex. S.B. 351, 80th Leg., R.S. (2007). The notice must be 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: (1) the last registered owner; (2) each lienholder; and (3) the property owner or occupant of the property on which the nuisance is located or the nuisance

is adjacent to. TEX. TRANSP. CODE § 683.075; Tex. S.B. 351. If a person who receives notice under Section 683.075 requests a hearing, the governing body of the city must conduct a public hearing before removing the vehicle. *Id.* § 683.074(b)(2); Tex. S.B. 350.

If the city needs to remove or abate the junked vehicle after notice and a possible hearing, the junked vehicle may be sent to a scrapyard or demolisher. A Texas Department of Transportation (TxDOT) form for transferring a vehicle to a demolisher can be found at http://www.dot.state.tx.us/forms/vehicle_titles.htm and on the TML Web site. On receipt of notice of removal, TxDOT will immediately cancel the certificate of title issued for the vehicle. *Id.* The form for giving notice to TxDOT of the abatement of the vehicle can be found at http://www.dot.state.tx.us/forms/vehicle_titles.htm and on the TML Web site. A city's junked vehicle ordinance must require that notice identifying the vehicle be given to TxDOT not later than the fifth day after removal of the vehicle. *Id.* § 683.074.

Can a city fine an owner of a junked vehicle?

An offense under an ordinance adopted under Chapter 683 is a misdemeanor punishable by a fine of up to \$200. *Id.* § 683.073. The municipal court can issue the necessary orders to enforce the law, including the removal of the nuisance on conviction. *Id.* §§ 683.073; 683.074(c).

Are there any junked vehicles that a city cannot regulate or remove?

A city's junked vehicle ordinance and procedures do not apply to vehicles that are completely enclosed in a building and not visible from the street or other properties. Also, vehicles that are 35 years old or special interest vehicles owned by a hobbyist can be kept outside on private property as long as the vehicle is maintained in an orderly manner, does not pose a health hazard, and is screened from public view by a fence, trees, or shrubs. *Id.* § 683.077.

What is an abandoned vehicle?

A motor vehicle is considered abandoned when: (1) it is inoperable, more than five years old, and has been left unattended on public property for more than 48 hours; (2) has remained illegally on public property for 48 hours; or (3) remained on private property without the owner's consent for 48 hours. TEX. TRANSP. CODE § 683.002; *see also* TEX. TRANSP. CODE § 683.001; ch. 501.

What is the difference between an abandoned vehicle and a junked vehicle?

A junked vehicle is usually an inoperable or unregistered vehicle that presents a public nuisance. An abandoned vehicle does not have to be inoperable or unregistered; it simply must be left unattended without permission on private property or on public property.

Is there any procedure a city must follow before removing an abandoned vehicle from private or public property?

A city police department or other law enforcement agency may take an abandoned vehicle into custody from private or public property. *Id.* § 683.011. When a police department does take an abandoned vehicle into custody, the department must follow procedures outlined in Chapter 683.

The police department must send notice to the last known registered owner of the vehicle and each lienholder of the vehicle. *Id.* § 683.012. This notice must be sent by certified mail not later than the tenth day after the department takes the abandoned motor vehicle into custody and must: (1) specify the year, make, model, and identification number of the vehicle; (2) give the location of the facility where the motor vehicle is being held; (3) inform the owner and lienholder that they have the right to claim the motor vehicle within 20 days; and (4) inform the parties that failure to pay the required charges and retrieve the motor vehicle within the applicable period will be a waiver by the owner or lienholder of all interest in the vehicle, and the vehicle can then be sold by the city police department at a public auction. Under a 2007 amendment, the police department that takes in an abandoned vehicle must also notify any person who has previously filed a theft report on the vehicle. *Id.* § 683.012(f)(Tex. H.B. 2094 80th R.S.).

A police department that takes an abandoned vehicle into custody is entitled to reasonable storage fees. *Id.* § 683.013.

What can a city do with a vehicle that is not claimed?

If, after 20 days of sending the appropriate notice under Section 683.012, an abandoned motor vehicle is not claimed, the police department may sell the vehicle at public auction, transfer the vehicle, use the vehicle for the agency, or transfer the vehicle to any city, county, or school district. *Id.* § 683.016; *see also* Tex. H.B. 195, 80th Leg. R.S. If the police department, or other entity that the vehicle is transferred to, stops using the vehicle, the vehicle must be auctioned as provided by Chapter 683. Proper notice of the auction must be given. *Id.* § 683.014. The money received in the auction should be used by the police department for the cost of the auction, the towing and storage fees, and the cost of notice or publication. *Id.* § 683.015. After deducting those expenses, the police department must keep the sale proceeds for 90 days for the owner or lienholder of the vehicle, and then, if not claimed, must deposit the money in an account for towing, preservations, storage, and other fees resulting from taking other vehicles. However, if the amount is more than \$1,000, the excess can be deposited in the city's general revenue account for use by the police department.

Are there different procedures if a vehicle is left at a commercial storage facility?

If a vehicle is abandoned at a commercial storage facility (by being left there for ten days after the garage keeper gives notice by registered or certified mail), the garage keeper must report the abandonment to the police department in which jurisdiction the garage is located and pay a ten-dollar fee for the city police department to use to pay for notice. *Id.* § 683.031. If the vehicle is not claimed, the police department must take custody of the vehicle and may use the vehicle for its own purposes or transfer the vehicle to the city, county, or school district. *Id.* § 683.034. If the vehicle is sold, the sale proceeds first are applied to the garage keeper's charges for providing notice, vehicle service, and towing. *Id.* As compensation for taking the vehicle into custody, the

city police department can retain two percent of the gross proceeds or ten dollars, whichever is greater, with the remainder being used as described in Section 683.016. *Id.* § 683.034.

What if the city cannot locate the vehicle owner or lienholder?

If the police department cannot locate the last registered owner or lienholders, the department may make notice by publication, which must contain the same information as the notice by certified mail.