

ORDINANCE 71
ABANDONED VEHICLES AND PROPERTY AND JUNK VEHICLES

AN ORDINANCE PROVIDING FOR THE REMOVAL AND DISPOSAL OF ABANDONED VEHICLES AND PROPERTY AND JUNK VEHICLES; DEFINING ABANDONED VEHICLES AND PROPERTY AND JUNK VEHICLES; DECLARING ABANDONED VEHICLES AND PROPERTY AND JUNK VEHICLES A PUBLIC NUISANCE; EXCEPTIONS; PROVIDING FOR A PUBLIC HEARING; PROVIDING FOR AN ORDER TO ABATE SUCH NUISANCES; ASSESSMENTS OF COST; PROVIDING FOR A PENALTY; SEPARABILITY CLAUSE; PROVIDING FOR PUBLICATION OR NOTICE; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the abandonment and junking of motor vehicles constitute a public health and safety hazard to the citizens of the Town of Bayside,

WHEREAS, the City Council of the Town of Bayside is authorized to regulate junked vehicles under Articles 6687-6688 of Vernon's R.C.S.;

WHEREAS, the City Council of Town of Bayside wishes to protect its citizens from undue health and safety hazards and to improve the appearance of the community;

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF BAYSIDE:

ARTICLE I
DEFINITIONS

ABANDONED MOTOR VEHICLE For the purposes of this Ordinance, a motor vehicle is abandoned if the motor vehicle:

- (A) Is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
- (B) Has remained illegally on public property for more than 48 hours;
- (C) Has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours; or
- (D) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours.

ABANDONED PROPERTY means personal property, other than a motor vehicle, that is left unattended in a public place: in violation of law for more than 48 continuous hours; or in a manner that interferes with vehicular or pedestrian traffic.

ANTIQUE VEHICLE means a passenger car or truck that is at least 25 years old.

INOPERABLE MOTOR VEHICLE means a motor vehicle that because of mechanical failure, breakdown, or disrepair cannot be started, driven, operated, steered, or stopped under its own power and without causing damage to the vehicle.

JUNK VEHICLE In this Ordinance, "junked vehicle" means a vehicle that is self-propelled and:

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

(B) is:

- (1) wrecked, dismantled or partially dismantled, or discarded; or
- (2) inoperable and has remained inoperable for more than:
 - (a) 72 consecutive hours, if the vehicle is on public property; or
 - (b) 30 consecutive days, if the vehicle is on private property.

The provisions hereof shall not apply to vehicles in operable conditions especially adapted or constructed for racing or operation on privately owned drag strips or raceways, vehicles retained by the owner for antique collection purposes rather than for salvage or for

transportation, nor vehicles stored as property of a member of the armed forces of the United States who is on active duty assigned outside the continental and territorial limits of the United States.

LAW ENFORCEMENT AGENCY means:

The Department of Public Safety;

The police department of a municipality;

A sheriff deputy or constable.

MOTOR VEHICLE means a vehicle that is subject to registration under Texas Department of Transportation Chapter 501.

MOTOR VEHICLE COLLECTOR means a person who:

(A) Owns one or more antique or special interest vehicles; and

(B) 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.

OUTBOARD MOTOR means an outboard motor subject to registration under chapter 31, Parks and Wildlife Code

PERSON. Any individual, firm, partnership, association, corporation, company, or organization of any kind.

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.

STORAGE FACILITY includes a garage, parking lot, or establishment for the servicing, repairing, or parking of motor vehicles.

WATERCRAFT means a vessel subject to registration under chapter 31, Parks and Wildlife Code.

ARTICLE II GENERAL

SEC. 1 NUISANCE DECLARED; IMPOUNDMENT AUTHORIZED

Any personal property, other than a motor vehicle or trash receptacles, which is placed, left standing, parked, erected or lying in violation of any City Ordinance or any State Law; or left unattended for more than forty-eight (48) continuous hours in or on any public street, alley, sidewalk, public property or public place in the city; or which is placed, left standing, parked, erected or lying in or on any public street, alley or sidewalk in such a manner as to substantially interfere with, obstruct or constitute a barrier to vehicular or pedestrian traffic, is declared a public nuisance. Any such property, when so found by an employee or Law Enforcement Agency of the city, shall be removed or caused to be removed summarily to the police pound or any other place of impoundment designated by the City.

SEC. 2 PUBLIC NUISANCE; OFFENSE

(A) Abandoned property, an abandoned motor vehicle, or a junked vehicle, including a part of a junk vehicle, that is visible from a public place or public right-of-way is a public nuisance.

(B) An inoperable motor vehicle left on public property for more than 48 continuous hours is a public nuisance.

(C) A person commits an offense if the person creates or maintains a public nuisance described by this Ordinance. Each day that the nuisance persists is a separate offense.

(D) A culpable mental state is not required, and need not be proved, for an offense under this section.

(E) It is an affirmative defense to Section 2 of this Article that:

- (1) It is completely enclosed in a building or solid fence in a lawful manner or is not visible from the street or other public or private property; or
- (2) It 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:
 - (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.

SEC. 3 AUTHORITY TO ABATE NUISANCE; PROCEDURES

- (A) The City may abate a nuisance, take custody of a vehicle, and dispose of a vehicle as provided in this Ordinance.
- (B) An appropriate court of the municipality or county may issue necessary orders to enforce the procedures of this Ordinance.
- (C) A person authorized to administer the procedures 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.
- (D) The relocation of a junked vehicle that is a public nuisance to another location in the same municipality or county after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

SEC. 4 REMOVAL WITH PERMISSION OF OWNER OR OCCUPANT

If, within ten (10) days after receipt of notice from the City to abate the nuisance as herein provided, 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 this article.

SEC. 5 INTERFERENCE WITH IMPOUNDMENT PROHIBITED.

A person commits an offense if the person knowingly interferes with the impoundment of property under this Ordinance. An offense under this section is a Class C misdemeanor punishable in accordance with ARTICLE VI.

ARTICLE III

ABANDONED VEHICLES

SEC. 1 NOTICE BEFORE IMPOUNDMENT OF AN ABANDONED MOTOR VEHICLE.

- (A) Not later than 48 hours before impounding an abandoned motor vehicle under this Ordinance, a Law Enforcement Agency or a civilian employee designated by the City shall securely affix a visible, dated, brightly colored notice to the vehicle. The City shall maintain a record of the date and time each notice is affixed.
- (B) Proof that the motor vehicle was not removed from the public or private property after the notice was attached to the vehicle is prima facie proof in any court that:
 - (1) The vehicle was left unattended and abandoned for the period of time between the affixing of the notice and the impounding of the motor vehicle; and
 - (2) The owner of the vehicle allowed the motor vehicle to remain at the place where the motor vehicle was impounded for the period of time between the affixing of the notice and the impounding of the motor vehicle.

SEC. 2 AUTHORITY TO TAKE ABANDONED MOTOR VEHICLE INTO CUSTODY.

- (A) A Law Enforcement Agency may take into custody an abandoned motor vehicle, watercraft, or outboard motor found on public or private property.

- (B) A Law Enforcement Agency may use agency personnel, equipment, and facilities or contract for other personnel, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody by the agency under this Ordinance.

ARTICLE IV JUNKED VEHICLE

SEC. 1 A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

- (A) Is detrimental to the safety and welfare of the public;
- (B) Tends to reduce the value of private property;
- (C) Invites vandalism;
- (D) Creates a fire hazard;
- (E) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (F) Produces urban blight adverse to the maintenance and continuing development of municipalities; and
- (G) Is a public nuisance.

SEC. 2 If a junked vehicle is located on property in violation of this Ordinance, the Town of Bayside shall mail by certified or registered mail, with a five-day return receipt requested, a written order to the last known registered owner or the occupant of the property, or if the vehicle is located on a public right-of way, to the owner or occupant of the property adjacent to the right-of-way, that;

- (A) States the nature of the public nuisance;
- (B) Orders the owner or occupant to remove and abate the vehicle within ten days after receipt of the notice;
- (C) Describes the right to request a hearing, and the consequence of a failure to request a hearing as set forth in SEC. 4 and 5.

SEC. 3 In addition to the order mailed under SEC. 2, a City Inspector shall securely affix to the vehicle a visible, dated, brightly colored notice to the vehicle. The notice must be of a color other than the color used for a notice under ARTICLE III 1 (A).

(A) The notice shall state:

- (1) The information required in SEC. 2; and
- (2) The date the notice was affixed.

(B) The notice described in SEC. 3 is not a condition or requirement precedent to any proceeding or official action to abate a public nuisance, and a proceeding or action is not void, voidable, or in any way affected by a failure to affix the notice. The time within which a hearing must be requested is controlled by the order under SEC. 4.

SEC. 4 An owner or occupant who receives a notice under SEC. 2 may request a hearing to determine whether a vehicle is a junked vehicle. The owner or occupant must make the request to the Clerk of the Municipal Court not later than the tenth day after the date the owner or occupant receives the notice. The request may be made in person or in writing, without the requirement of bond.

SEC. 5 If an owner or occupant does not timely request a hearing under SEC. 4:

- (A) It is conclusively presumed that the vehicle is a junked vehicle; and
- (B) The Law Enforcement Agency shall:

- (1) Have the vehicle removed; and
- (2) Take possession of the vehicle.

SEC. 6 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, personally

delivered. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

SEC. 7 If a hearing is requested under SEC. 4, the Clerk of the Municipal Court shall notify the owner or occupant of a date and a time when the owner or occupant may appear before the Judge of the Municipal Court for a hearing to determine whether a vehicle is a junked vehicle.

SEC. 8 The Judge of the Municipal Court shall determine by a preponderance of the evidence whether or not a vehicle is a junked motor vehicle. The hearing is civil in nature and shall be as summary as due process and orderly procedure allow.

SEC. 9 On a finding that a vehicle is a junked vehicle, the Judge shall order that:

- (A) The owner or occupant shall remove and abate the vehicle within ten days; and
- (B) If the owner or occupant fails or refuses to abate or remove the vehicle as ordered, the Law Enforcement Agency shall:
 - b. Have the vehicle removed; and
 - c. Take possession of the vehicle.

SEC. 10 The Clerk of the Municipal Court shall deliver notice of a hearing set under this section to the City Council and the Law Enforcement Agency.

ARTICLE V

PROPERTY OTHER THAN A MOTOR VEHICLE

SEC. 1 The City may remove abandoned property to a place of impoundment designated by the City Council.

SEC. 2 If the person's name and address is known, the City shall, not later than the 10th business day after the date of the impoundment, notify a person whose property is impounded under this section that the property has been impounded.

SEC. 3 The City has a lien against the impounded property for the fees provided by ordinance and for costs incurred by the City in impounding, storing, advertising the property, and providing required notices. The lien is prior and superior to all other liens of every kind, except a lien for ad valorem taxes. The City may retain possession of the property until all costs are paid and may sell the property as provided in this ARTICLE.

SEC. 4 A person legally entitled to possession of impounded property may redeem the property by paying the fees and costs described in SEC. 3.

SEC. 5 If the property has been sold, a person legally entitled to possession of impounded property may redeem the property from the buyer of the property by paying the buyer double the amount paid by the buyer of the property, and any reasonable expenses incurred by the buyer for keeping the property. Property may not be redeemed under this subsection after the 30th day after the date of the sale.

SEC. 6 The City Council may sell impounded property as provided in this ARTICLE.

SEC. 7 Before selling impounded property the City shall post notices at the county courthouse and at the city hall, and shall have the notice published once a week for two consecutive weeks in the official newspaper used by the City. The date of the posted notices and of the first published notice must be no later than the 14th day before the date of the sale. The notice must describe the impounded property, state that the property is unredeemed and will be sold, and state the date, time, place, and manner of sale.

SEC. 8 If impounded property is not redeemed by the date and time stated in the notice, property shall be sold as provided in the notice. The buyer takes the property conditioned on the right of redemption under SEC. 5.

SEC. 9 The City shall deduct the fees and costs described in SEC. 3 from the proceeds of the sale and hold the balance, if any, for the owner of the property. If the owner fails to claim the proceeds by the 31st day after the date of the sale, the proceeds become the property of the City.

ARTICLE VI PENALTIES

SEC.1 Whenever in this Code or in any ordinance of the City an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or Ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not exceeding Two Thousand Dollars (\$2,000.00) for violations of municipal ordinances that govern fire safety, sanitation (not including vegetation and litter violations), public health or as the Legislature may amend from time to time. For traffic-related offenses and other violations not included in the classes enumerated above, the maximum permissible fine will be Five Hundred Dollars (\$500.00) or as the Legislature may amend from time to time. Further, that the above mentioned violations shall be subject to a minimum fine of One Hundred Dollars (\$100.00). PROVIDED, however, that no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense. A culpable mental state is not required for the commission of an offense under this Code of Ordinances, unless the provision defining the conduct expressly requires a culpable mental state. Notice of such a penalty shall be sent to said owner at their last known address by certified and regular first class mail.

SEC.2 Any person violating any of the provisions of this ordinance shall become liable to the Town of Bayside for any expense, loss, or damage occasioned by the Town of Bayside by reason of such violation.

ARTICLE VII VALIDITY

Sec. 1 Ordinance 46 and all ordinances and or parts of ordinances in conflict herewith are hereby repealed.

Sec. 2 The validity of any section, clause, sentence, or provision of this ordinance shall not effect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

ARTICLE VIII EFFECTIVE DATE

Sec.1 This ordinance shall be effective upon adoption and, in addition, if any penalty, fine or forfeiture is imposed by this ordinance, then this ordinance shall be effective only after publication of this ordinance in its entirety or in summary form once in the official newspaper of the Town of Bayside.

Date Published in Official Newspaper Oct. 30, 2002
1st Hearing Date Nov. 12, 2002

Passed, ordained, approved and adopted this the 12th day of November, 2002.

Attest:
Carrie Cravner
City secretary

By: Fithy P. Frost
Mayor Town of Bayside, Texas