

ARTICLE 8.05 JUNKED VEHICLES*

Sec. 8.05.001 Definition

Junked vehicle. 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.

Sec. 8.05.002 Declaration of public nuisance

- (a) A junked vehicle, including a part of a junked vehicle, that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the

* **State law reference**—Regulation of abandoned and junked motor vehicles, V.T.C.A., Transportation Code, ch. 683.

general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and produces urban blight adverse to the maintenance and continuing development of the city, and is hereby declared a public nuisance. Section 683.072 of the Transportation Code declares a junked vehicle or part thereof visible from a public place or public right-of-way a public nuisance.

(b) A person commits an offense when he or she maintains a junked vehicle or vehicle part in a manner declared a public nuisance, and it is the city council's intent that the municipal police enforce the Transportation Code to discourage the creation and/or maintenance of such a public nuisance [source law: sections 683.072, 683.073, Transportation Code (V.T.C.A.)]. Section 683.073 of the Transportation Code makes such an offense (misdemeanor) punishable by a fine not to exceed \$200.00. Section 683.073(c) of the Transportation Code also requires the court in which the case is tried to order abatement and removal of the nuisance upon conviction.

Sec. 8.05.003 Notice

(a) Prior to the abatement and removal of the public nuisance, the chief of police or his designee shall provide not less than ten (10) days' written notice of the nature of the nuisance, which notice must be personally delivered or mailed by certified mail with a five-day return requested to:

- (1) The last known registered owner of the nuisance;
- (2) Each lienholder of record of the nuisance;
- (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) The notice must state that:

- (1) The nuisance must be abated and removed not later than the tenth day after the date on which the notice was personally delivered or mailed; and
- (2) Any request for a hearing must be made before that ten-day period expires.

(c) 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.

(d) If the 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. 8.05.004 Hearing

(a) If a hearing is requested by a person to whom notice is required to be sent in accordance with section 8.05.003, the hearing shall be held not earlier than the eleventh (11th) day after the date of service of the notice. A request for a hearing shall be made in writing to the mayor. The

mayor will transmit the request to the municipal judge. Upon receiving a request for hearing, the clerk of the municipal court or the municipal judge himself/herself shall set a date and time for the hearing, and shall notify the requestor, and all persons entitled to notice under section 8.05.003, of the date and time for such hearing and the location of the hearing. If the address of persons entitled to notice under section 8.05.003 is not available, such notice may be otherwise delivered or posted in accordance with section 8.05.003. The municipal judge shall hear the matter at the location, date and time noticed, unless changed by agreement or necessity with notice to the requestor, and shall, based on the information presented by the city representative(s) and the requestor (or any other person with a legal or equitable interest in the matter) at the hearing, make a determination of whether the vehicle or vehicle part is a public nuisance under this article. Pursuant to section 683.076(c) of the Transportation Code, it is presumed that the vehicle or vehicle part is inoperable unless demonstrated otherwise by the owner. If the municipal judge so finds, he/she shall enter an order making such finding, ordering the owner of the vehicle or vehicle part, or owner or occupant of the private premises where the vehicle or vehicle part is located, as the case may be, to abate the public nuisance by removing or causing the removal of the same, and directing that if such public nuisance is not abated within ten days of the order that the chief of police, or someone acting under this direction, remove or cause to be removed the vehicle or vehicle part from the public or private property. The order shall be in writing and must include, if available at the location of the nuisance, the following:

- (1) Vehicle description;
- (2) Vehicle identification number; and
- (3) License plate number.

A copy of the order shall be mailed by certified mail to all known persons entitled to notice under section 8.05.003, or otherwise provided or posted in accordance with section 8.05.003 if the address is unknown.

(b) If a hearing is not requested by a person entitled to notice pursuant to section 8.05.003 above, the matter will be placed on the agenda of a regular or special meeting of the city council for public hearing and action. A public hearing will be held to receive information from city staff as to the alleged public nuisance. Any interested person (having a legal or equitable interest in the vehicle or vehicle part, or the property on which it is located) may also be heard. Comments from the public may be received within limits set by the city council. At the conclusion of the public hearing, the city council shall take action on the item. If the council determines that the vehicle or vehicle part constitutes a public nuisance within the purview of this article, it shall pass a written resolution making such determination, and directing that if such nuisance is not abated within ten (10) days of the resolution that the chief of police, or his authorized agent, remove or cause the removal of the nuisance from the private or public property, as the case may be. The resolution shall include the following, if available from the location of the nuisance:

- (1) Vehicle description;
- (2) Vehicle identification number; and
- (3) License plate number.

A copy of the resolution shall be mailed by certified mail to all known persons entitled to notice under section 8.05.003, or otherwise provided or posted in accordance with section 8.05.003 if the address is unknown.

Sec. 8.05.005 Entry onto premises for enforcement of article

Pursuant to section 683.074(e) of the Transportation Code, the chief of police or his authorized agent(s) 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 in accordance with this article.

Sec. 8.05.006 Removal of nuisance

(a) Removal of the nuisance shall be carried out, or caused to be carried out, by the chief of police or his authorized agent(s), in accordance with this article, and the orders and resolutions issued hereunder.

(b) The chief of police or other authorized city official shall give notice to the state department of transportation identifying the vehicle or vehicle part not later than the fifth (5th) day after the date of removal.

(c) A junked vehicle or part may not be reconstructed or made operable by the city after it is removed.

(d) Nothing herein shall be construed to affect laws or regulations permitting the immediate removal of a motor vehicle or part left on public property which constitutes an obstruction to traffic or a danger to the traveling public.

(e) Junked motor vehicles or vehicle parts may be disposed of in accordance with this article.

Sec. 8.05.007 Disposal

The chief of police, or his authorized agent(s), may dispose of or cause the disposal of the junked motor vehicle or vehicle part by removal to a scrap yard, a motor vehicle demolisher, or a suitable site operated by a county or a municipality, or as otherwise provided by chapter 683, subchapter E of the Transportation Code, or amendments or recodifications thereof.

Sec. 8.05.008 Removal to noncomplying location not abatement of nuisance

In accordance with the authority provided by section 683.074 of the Transportation Code, as amended effective September 1, 1999, the relocation of a junked vehicle or vehicle part that is a public nuisance to another location in the city after a proceeding for abatement and removal of the public nuisance has commenced by notice has no effect on the proceeding if the junked vehicle or vehicle part constitutes a public nuisance at the new location.

Sec. 8.05.009 Exemptions

(a) This article does not apply to a vehicle or vehicle part:

- (1) That is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or

- (2) That 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.

(b) In this section:

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

Motor vehicle collector. 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 vehicles or vehicle parts for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special interest vehicle. 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.

(Ordinance 03-05-06 adopted 5/6/03)

ARTICLE 8.06 ABANDONED MOTOR VEHICLES*

Sec. 8.06.001 Impoundment authority

Any motor vehicle which has been abandoned may be impounded by the city police without prior notice to the owner or lienholders, and placed in private storage or other place designated by or maintained by the city.

Sec. 8.06.002 Definition

An abandoned motor vehicle may be defined as:

- (1) A motor vehicle that is inoperable and over eight (8) years old and is left unattended on public property for more than forty-eight (48) hours;

* **State law reference**—Regulation of abandoned and junked motor vehicles, V.T.C.A., Transportation Code, ch. 683.

- (2) A motor vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours;
- (3) A motor vehicle that has remained on private property without the consent of the owner or person in control for more than forty-eight (48) hours; or
- (4) A motor vehicle left unattended on the right-of-way of any designated county, state or federal highway within this state in excess of forty-eight (48) hours.

Sec. 8.06.003 Impoundment without notice

(a) Any vehicle which shall be or remain standing or parked on any public street, alley, right-of-way or other public place may be impounded without prior notice to the owner or lienholder by or upon order of the city police and placed in a privately operated garage or other place designated by or maintained by city, under the following circumstances:

- (1) When any vehicle is found upon a street, right-of-way or public place, including private property generally open to the public, and a report has been previously made that such vehicle has been stolen or complaint has been filed and a warrant issued thereon charging that such vehicle has been stolen or converted in violation of law;
- (2) When a police officer arrests any person driving or in control of a vehicle for an alleged offense and such officer is or may be required by law to take the one arrested immediately before a magistrate, and when the arrested one is the sole occupant or the owner of the vehicle and is immediately placed in custody;
- (3) When a vehicle is so disabled that its normal operation is impossible or impracticable and the person in charge of the vehicle is incapacitated by reason of physical injury or other causes to such an extent as to be unable to provide for its removal or custody, or cannot be found or is not in the immediate vicinity of such vehicle; or
- (4) When in the opinion of the police such vehicle constitutes a hazard or interferes with the normal function of a governmental agency, or by reason of any catastrophe, emergency or unusual circumstances the safety of such vehicle is imperiled.

(b) A vehicle may be impounded by the police when such vehicle is involved in or in some way related to a criminal investigation, with or without a warrant, as provided by state law.

Sec. 8.06.004 Notification of impoundment

After a motor vehicle is impounded, the police shall notify within ten (10) days thereof, by registered or certified mail, return receipt requested, the last known registered owner of the motor vehicle and all lienholders, of record pursuant to the Certificate of Title Act, as amended (Texas Revised Civil Statutes, article 6687-1), that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lienholder of the right to reclaim the motor vehicle within twenty (20) days after the date of the notice upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody. Further, the said notice shall state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle within the time provided shall be deemed

a waiver by the owner and lienholders of all right, title and interest to the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

Sec. 8.06.005 Notification by publication

If the identity of the last-registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice by publication in one newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this article. Such notice by publication can contain multiple listings of abandoned vehicles. Any such notice shall be published within the time requirement prescribed for notice by registered or certified mail and shall have the same contents required of a notice by registered or certified mail.

Sec. 8.06.006 Failure to reclaim abandoned vehicle

The consequences and effect of failure to reclaim an abandoned vehicle shall be as set forth in a valid notice given pursuant to this article.

Sec. 8.06.007 Impoundment fees

The city council, by minute entry or through adoption of the city budget, shall approve and establish a schedule of fees to be charged for the impoundment of vehicles. This schedule may include fees to cover the towing of vehicles, storage of vehicles and any special services which may have been rendered. All impoundment fees, storage fees and special fees shall be paid before such vehicle shall be released from the city impoundment facility. The city shall have a lien on the impounded vehicle for these fees. Payment of the fees charged under this section shall not excuse the owner or driver of the impounded vehicle from any charge of violating any ordinance of the city or state law.

Sec. 8.06.008 Claiming impounded vehicle

To claim a vehicle which has been impounded, satisfactory evidence of ownership or right of possession to the vehicle must be presented. No vehicle shall be released from the city impoundment facility, except upon written order of release from the city.

Sec. 8.06.009 Sale of unclaimed vehicles at auction

If an abandoned motor vehicle has not been reclaimed as provided for in this article, the vehicle shall be sold by the city at a public auction. Proper notice of the public auction shall be given. The purchaser of the motor vehicle shall take title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the city and shall be entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle the city shall reimburse itself for the expenses of the auction, the costs of towing, preserving and storing the vehicle which resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to this article. Any remainder from the proceeds 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 which shall remain available for the payment of auction, towing, preserving and storage and all notice and publication costs which result from placing other abandoned vehicles in custody, whenever the proceeds from a sale of such abandoned motor vehicles are insufficient to meet these expenses and costs.

Sec. 8.06.010 Notice of auction

Thirty (30) days' notice of the time and place of the public auction and a descriptive list of the motor vehicles to be offered for sale shall be posted in city hall. All sales made pursuant to the provisions of this article shall be made for cash at a public auction to the highest bidder for each piece of property. However, the city reserves the right to reject all bids. The auction held pursuant to this article shall be conducted by the mayor or his authorized representative.

(Ordinance 31-B adopted 5/10/90)

