

ORDINANCE #298

AN ORDINANCE AMENDING CHAPTER 9, SECTION 9.2100, CODE OF ORDINANCES OF THE CITY OF STAGECOACH, TEXAS TO CAUSE SUBSECTION 9.2103 OF THE CODE OF ORDINANCES, REGULATING JUNKED VEHICLES, TO BE CONSISTENT WITH THE LAWS OF THE STATE OF TEXAS GOVERNING JUNKED VEHICLES; PROVIDING FOR A SAVINGS CLAUSE AND REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS.

WHEREAS, a Texas General Law municipality may adopt ordinances that are for the good government, peace, or order of the municipality; and

WHEREAS, the City of Stagecoach, Texas has previously enacted provisions in its Code of Ordinances relating to junked vehicles, and

WHEREAS, it is necessary to amend certain provisions of the Code of Ordinances to cause the provisions related to junked vehicles to be consistent with the state law governing junked vehicles; Now Therefore

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STAGECOACH, TEXAS,

9.2103 JUNKED VEHICLES

(1) Definitions

As used in this subsection, the following words and phrases shall have the meaning ascribed below, except where the context in which the word or phrase is used clearly indicates a different meaning is intended:

Antique Vehicle means a passenger car or truck that is at least thirty-five (35) years old.

Chief of Police means the chief of police of the City of Stagecoach or any duly commissioned police officer of the City of Stagecoach.

Junked Vehicle means a motor vehicle that is self-propelled, inoperable and:

- (a) does not have lawfully attached to it:
  - i) an unexpired license plate; or
  - ii) a valid motor vehicle inspection certificate; or
- (b) is wrecked, dismantled or partially dismantled, or discarded; or
- (c) has remained inoperable for more than forty-five (45) consecutive days,

The term "junked vehicle" does not include (a) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, (b) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or (c) an unlicensed, operable or inoperable antique and special interest vehicle stored by a collector on his property, provided that the vehicle and the outdoor storage area are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery or other appropriate means.

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.

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.

(2) Junked Vehicles Declared a Public Nuisance;  
Duty of Property Owners;  
Unlawful to Interfere With Impounding

- (a) Junked vehicles are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an unattractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the city and state by producing urban blight which is adverse to the maintenance and continuing development of the City of Stagecoach, and such vehicles are declared to be a public nuisance and subject to abatement as set out hereunder,
- (b) The owner or occupant of any real property within the City of Stagecoach shall keep such property free of and shall not permit or suffer the presence of junked vehicles on such property,
- (c) It shall be unlawful for any person to knowingly or intentionally interfere with or attempt to prevent the physical impounding of any junked vehicle by the chief of police or his delegate pursuant to this subsection.

(3) Notice to Owner to Abate Nuisance When on Occupied Premises

- (a) Whenever any such junked vehicle is located on occupied premises within the city in violation of paragraph (2)(b), above, the chief of police shall order the owner of the premises, if in possession thereof, or the occupant of the

premises whereon such public nuisance exists, to abate or remove the same. Such order shall:

- (i) Be in writing.
- (ii) State the nature of the public nuisance and that it must be removed and abated within ten (10) days after the date of mailing or personal service of notice.
- (iii) State that a request for a hearing to determine whether or not the motor vehicle is a junked motor vehicle as defined herein must be made to the clerk of the municipal court, either in person or in writing and without the requirement of bond, before expiration of said ten (10) day period.
- (iv) State that in the event that no request for a hearing is received before the expiration of said ten (10) day period it shall be conclusively presumed that said vehicle is a junked vehicle as defined under state law and this subsection.

The order must be mailed, by certified mail with a five (5) day return requested, to the last known registered owner of the junked motor vehicle, any lien holder of record, and to the owner or occupant of the premises on which the public nuisance exists. If the post office address of the last known registered owner of the junked motor vehicle is unknown, notice to the last known registered owner may be placed on the motor vehicle, or, if the last known registered owner is physically located, the notice may be hand delivered. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.

- (b) If the owner or occupant of the premises does not request a public hearing and either fails or refuses to comply with the order of the chief of police within the ten (10) day period after service thereof, as provided herein, the chief of police or his delegate shall take possession of such junked motor vehicle and remove it from the premises upon the issuance of an appropriate order of the judge of the municipal court.

(4) Notice to Owner to Abate Nuisance -  
When on Unoccupied Premises or on Public Property or Public Right-of-Way

- (a) Whenever any such junked vehicle is located on unoccupied premises within the city in violation of paragraph (2)(b) of this subsection, the chief of police shall order the owner of the premises, as shown on the current tax rolls of the city whereon such public nuisance exists, to abate or remove the same. Such order shall contain the same information as for the order required under paragraph (3)(a)(i)-(iv) of this subsection.

The order must be mailed, by certified mail with a five (5) day return requested, to the last known registered owner of the junked motor vehicle, any lien holder of record, and to the owner of the premises, as shown on the city tax rolls, on which the public nuisance exists. If the post office address of the last known registered owner of the junked motor vehicle is unknown, notice to the last known registered owner may be placed on the motor vehicle, or, if the last known registered owner is physically located, the notice may be hand delivered. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.

- (b) If the owner of the premises does not request a public hearing and either fails or refuses to comply with the order of the chief of police within the ten (10) day period after service thereof, as provided herein, the chief of police or his delegate shall take possession of such junked motor vehicle and remove it from the premises upon the issuance of an appropriate order of the judge of the municipal court.
- (c) Whenever any such junked vehicle is located on public property or on a public right-of-way within the city in violation of paragraph (2)(b), the chief of police shall order the owner or occupant of the public premises or the owner or occupant of the premises adjacent to the public right-of-way whereupon said public nuisance exists, to abate or remove the same. Such order shall contain the same information as for the order required under paragraphs (3)(a)(i)-(iv) and (4)(a) of this subsection.
- (d) The order must be mailed, by certified mail with a five (5) day return requested, to the last known registered owner of the junked motor vehicle, any lien holder of record, and to the owner or occupant of the public premises or to the owner or occupant of the premises adjacent to the public right-of-way on which the public nuisance exists. If the post office address of the last known registered owner of the junked motor vehicle is unknown, notice to the last known registered owner may be placed on the motor vehicle, or, if the last known registered owner is physically located, the notice may be hand delivered. If any notice is returned undelivered by the United States Post Office, official action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.

(5) Visible Notice to Abate Nuisance

- (a) At the time a junked vehicle is located by the chief of police on either occupied or unoccupied private or public property or public right-of-way, in addition to any other notices required herein, a visible notice, brightly colored but of a color different from that used for notices of abandonment, shall be securely affixed to such vehicle. Such notice shall:
  - (i) State that the vehicle is a public nuisance and that it must be removed and abated within ten (10) days from the date on such notice.

- (ii) State that a request for a hearing to determine whether or not the motor vehicle is a junked motor vehicle as defined herein must be made to the clerk of the municipal court, either in person or in writing and without the requirement of bond, before the expiration of said ten (10) day period.
  - (iii) Shall state that in the event that no request for a hearing is received before the expiration of said ten (10) day period, it shall be conclusively presumed that said vehicle is a junked vehicle as defined under state law and this subsection.
  - (iv) Shall state the date it was affixed.
- (b) Affixing the notice set out herein shall not be a condition or requirement precedent to any proceeding or official action to abate such public nuisance and such preceding or action shall not be rendered void or voidable nor in any way affected by failure to affix the visible notice prescribed herein.
  - (c) In the event the ten (10) day period set out on the visible notice is different from that prescribed in any other notice served as provided for herein, then official action or proceedings to abate such public nuisance shall not be commenced until after the expiration of both periods of time.

(6) Public Hearing; Finding and Orders of Judge

- (a) The owner or occupant of any premises on which a junked vehicle is located may, within ten (10) days after service of a notice to abate said nuisance, request of the clerk of the municipal court of the city, either in person or in writing, and without the requirement of the bond, that a date and a time be set when he may appear before the judge of the municipal court for a hearing to determine whether or not the motor vehicle is a junked motor vehicle.
- (b) The judge of the municipal court shall hear any case brought before such court, as set out herein, and shall determine by a preponderance of the evidence whether or not the motor vehicle is a junked motor vehicle and in violation of this subsection. At the hearing, the motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. Such hearing shall not be criminal in nature and shall be as summary due process and orderly procedure allows. Rules of evidence as in civil suits shall be followed. Upon finding that such motor vehicle is in violation of this subsection, the judge of such court shall order such defendant to remove and abate such nuisance within ten (10) days, to abate or remove the nuisance, the judge of the municipal court may issue an order directing the chief of police to have the same removed, and the chief of police or his delegate shall take possession of such junked motor vehicle and remove it from the premises. Such order shall

include a description of the vehicle, and the current identification number and license number of the vehicle, if available at the site.

(c) Notice of any hearing set under this subsection shall be delivered to the chief of police.

(7) Abatement Under Court Order

If there is a junked motor vehicle, as herein defined, on premises that are occupied or unoccupied, and (a) neither the owner nor the occupant of the premises can be found and notified to remove same, or, (b) the notice required by paragraphs (3) or (4) of this subsection is returned undelivered by the United States Post Office and ten (10) days after the return of such notice the nuisance has not been abated, then upon a showing of such facts to the judge of the municipal court, the court may issue an order directing the chief of police to have the same removed, and the chief of police or his delegate shall take possession of such junked motor vehicle and remove it from the premises.

(8) Notice to Texas Department of Transportation

Notice shall be given to the Texas Department of Transportation that a junked vehicle has been impounded within five (5) days after the removal of the junked motor vehicle as provided in this subsection, identifying the vehicle or part thereof impounded.

(9) Disposition of Impounded Junked Vehicles

The chief of police or his delegate shall dispose of all impounded junked vehicles in such manner as the city council may designate, consistent with state law, provided such vehicle shall not be reconstructed or made operable. Disposal may be by removal or sale, with or without competitive bidding, to a scrap yard or demolisher.

II.

- A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.
- B. The invalidity of any section or provision of this ordinance shall not invalidate other sections or provisions thereof.

READ and APPROVED on first reading this the 7<sup>th</sup> day of July, 1998.

READ, APPROVED and ADOPTED on second reading this the 7<sup>th</sup> of July, 1998.

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Mic Macmanus, Mayor  
City of Stagecoach, Texas

ATTEST: \_\_\_\_\_  
Kathryn McNew, City Secretary