

ORDINANCE NO. 12-003

AN ORDINANCE OF THE CITY OF SOMERVILLE, TEXAS; REPEALING ORDINANCES 94-003, 86-02 AND OTHER CONFLICTING ORDINANCES AND REGULATING JUNKED AND ABANDONED VEHICLES, INCLUDING WATERCRAFT AND AIRCRAFT; MAKING FINDINGS OF FACT; PROVIDING DEFINITIONS; PROVIDING FOR NOTICE AND IMPOUNDMENT; PROVIDING FOR THE CITY'S USE OF ABANDONED MOTOR VEHICLES; PROVIDING FOR THE DISPOSITION OF VEHICLES AND PROCEEDS; DECLARING JUNKED VEHICLES A PUBLIC NUISANCE; PROVIDING PROCEDURES FOR ABATEMENT OF PUBLIC NUISANCE; PROVIDING A PENALTY; PROVIDING FOR DISPOSAL; PROVIDING FOR SEVERABILITY; AND PROVIDING EFFECTIVE DATE AND OPEN MEETINGS CLAUSES.

WHEREAS, the City Council of the City of Somerville recognizes the need to regulate abandoned motor vehicles and junk vehicles, including watercraft and aircraft, within the City in order to preserve and protect the public health and safety and to preserve the quality of life and property values;

WHEREAS, the provisions of this Ordinance are consistent with *Chapt. 683, Tex. Trans. Code*; and

WHEREAS, the City Council seeks to adopt regulations and give additional emphasis to the regulation of abandoned and junked vehicles by providing procedures for the impoundment, reclamation and sale of such abandoned and junked vehicles in order to maintain the health, safety and welfare of the City; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOMERVILLE, TEXAS, THAT:

Section 1. Findings of Fact. The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life of the citizens of Somerville.

Section 2. Junked and Abandoned Motor Vehicle Regulations Adopted. The City Council hereby adopts regulations for the control and regulation of junked and abandoned vehicles within the City of Somerville to read as set forth in the attachment hereto entitled "Junked and Abandoned Motor Vehicle Regulations", attached to and incorporated in this ordinance as though fully transcribed herein for all purposes.

Section 3. Amendment Of Ordinances. Ordinance No. 94-003 and 86-02 are hereby repealed in their entirety, and all prior ordinances of the City dealing with or applicable to junked or abandoned motor vehicles are hereby repealed. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

Section 4. Savings Clause. All rights and remedies of the City of Somerville are expressly saved as to any and all violations of the provisions of any ordinances affecting junked or abandoned vehicles within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

Section 5. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the *Tex. Loc. Gov't. Code*.

Section 6. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, *Chapt. 551 Tex. Gov't. Code*.

PASSED AND APPROVED on the _____ day of _____, 2012.

_____ Ayes _____ Noes _____ Abstentions

ATTEST:

CITY OF SOMERVILLE, TEXAS

Rose Rosser, City Secretary

Don Murray, Mayor

Junked and Abandoned Motor Vehicle Regulations

A. 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 Ordinance.

B. Definitions.

As used in this Ordinance, the following terms shall have the meaning indicated below:

- (1) Abandoned Motor Vehicle means a vehicle that:
 - (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 a period of more than 48 hours;
 - (c) has remained on private property without the consent of the owner or person in charge or control 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.
- (2) Antique Vehicle means a passenger car or truck that is at least 25 years old.
- (3) 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.
- (4) Motor Vehicle Demolisher means a person in the business of:
 - (a) converting motor vehicles into processed scrap or scrap metal; or
 - (b) wrecking or dismantling motor vehicles.
- (5) Garagekeeper means an owner or operator of a storage facility.
- (6) Junked Vehicle means a vehicle that is self-propelled, and:

- (1) displays an expired license plate or invalid motor vehicle inspection certificate or does not display a license plate or 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 vehicle is on public property; or
 - (ii) 30 consecutive days, if vehicle is on private property.

“Junked Vehicle includes a motor vehicle, aircraft, or watercraft. With respect to aircraft and watercraft, when the term junked vehicle is used, this ordinance applies only to:

- (1) 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
- (2) a watercraft that:
 - (A) does not have lawfully on board an unexpired certificate of number; and
 - (B) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

- (7) Motor vehicle means a vehicle that is subject to registration pursuant to the *Certificate of Title Act, Chapt. 501, Tex. Trans. Code.*
- (8) Outboard Motor means an outboard motor subject to registration under Chapt. 31, Parks & Wildlife Code.
- (9) Police Department means the Somerville Police Department and any other law enforcement agency as defined in § 683.001, *Tex. Trans. Code.*
- (10) 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.
- (11) Storage Facility includes a garage, parking lot, or establishment for the servicing, repairing, or parking of motor vehicles.
- (12) Watercraft means a vessel subject to registration under Chapt. 31, Tex. Parks & Wildlife Code.

C. 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 compensated, 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 junk vehicles. Whoever is so authorized may enter upon private property for the purposes specified in this 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 a nuisance pursuant to this Ordinance. Upon request by the officer designated pursuant to this Ordinance, the municipal court may issue orders necessary to the enforcement of this Ordinance.

D. Effect on Other Statutes or Ordinances.

Nothing in this Ordinance shall affect statutes that permit immediate removal of vehicles left on public property that obstruct traffic or otherwise create an imminent threat to health and safety.

E. Storage Fees.

The Police Department or its designated agent shall be entitled to charge and collect reasonable storage fees for Abandoned and Junked Vehicles, aircraft, watercraft, or outboard motors 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 abandoned motor vehicle, aircraft, watercraft, or outboard motor is taken into custody as follows: (a) for a period of up to ten (10) days prior to the date of the mailing of written notice pursuant to this Ordinance; and (b) beginning on the day after written notice is mailed until the abandoned motor vehicle, aircraft, watercraft, or outboard motor 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.

F. 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. Proof of a culpable mental state shall not be required to establish a violation of this ordinance.

G. Authority To Take Possession.

The Police Department is authorized to take into custody any abandoned motor vehicle, aircraft, watercraft or outboard motor found on public or private property. The Police Department may use personnel, equipment and facilities of the Police Department or other personnel, equipment, and facilities provided by contract with the city to remove, preserve, store, send notice regarding , and dispose of an abandoned motor vehicle, aircraft, watercraft, or outboard motor taken into custody by the Police Department.

H. Notice Of Impoundment Of Abandoned Motor Vehicle.

- (1) When information exists sufficient to permit notice of impoundment of abandoned motor vehicles, aircraft watercraft, or outboard motor to the owner and lien holder, notice shall be given by mail to the last known registered owner and lienholder as follows:
 - (a) 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*, for whom a report is recived under *Section 683.031, Transportation Code*, or, as applicable, *Chapt. 31, Parks & Wildlife Code* with the Federal Aviation Administration or the secretary of state. A law enforcement agency that takes into custody an aircraft shall contact the Federal Aviation Administration in the manner described by Section 22.901 to attempt to identify the owner of the aircraft before sending the notice required by this subsection.
 - (b) Such notice shall be given within ten (10) days after the date the motor vehicle, aircraft watercraft or outboard motor is taken into custody, or the date the police department receives a report of abandonment.
 - (c) 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.
 - (d) 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 in section (c) 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.
- (2) 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 lienholders, notice by one publication in a newspaper of general circulation in the City shall be made within 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 more than one motor vehicle, aircraft, watercraft or outboard motor may be included in the same publication.

I. Use Of Abandoned Motor Vehicles.

- (1) Provided that a garagekeeper's lien has not attached to the vehicle, if an abandoned motor vehicle has not been reclaimed as provided in Section H hereof, the Police Department may use such abandoned motor vehicle for Police Department purposes if such use is cost-effective or transfer the vehicle to any other municipal or county agency, a groundwater conservation district governed by Chapter 36, Water Code, or a school district for the use of that agency or district.
- (2) If the Police Department discontinues use of the abandoned motor vehicle, the Police Department shall auction such abandoned motor vehicle as provided herein.

J. Auction Sales; Disposition Of Proceeds Generally.

- (1) If an abandoned motor vehicle, aircraft 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 may 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 garagekeeper's lien, the garagekeeper shall be notified of the time and place of such auction.
- (2) The Police Department shall furnish a sales receipt for each motor vehicle, aircraft, watercraft, or outboard motor to the purchaser thereof at the public auction.
- (3) The proceeds shall be applied first to reimburse the Police Department for the expenses of the auction, costs of towing, preserving and storage fees resulting from the taking into custody, and all notice and publication costs. Any remaining 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 that may be used for the payment of auction, towing, preserving, storage and all notice and publication costs which result from placing other abandoned aircraft, vehicles, watercrafts, and outboard motors into custody, if the proceeds from the sale of such items are insufficient to meet these expenses and costs. In the event the special fund on deposit with the City Treasurer accumulates in 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.

K. Custody, Reports and Proceeds Of Abandoned Motor Vehicles.

- (1) 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 H 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.
- (2) A fee of ten dollars (\$10.00) 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.
- (3) Abandoned vehicles left in storage facilities, which are not reclaimed after notice is given in accordance with this section, 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 providing notice regarding the vehicle and for servicing, towing, impoundment, 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 auctioned, or all the proceeds if the gross proceeds of the sale are less than ten dollars (\$10.00), to be used to defray expenses of custody, auction, and storage fees accrued according to Section E.
- (4) 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 H. 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, as amended, or Chapter 2303, Occupations Code, if the storage facility is a vehicle storage facility.

L. 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*, as amended from time to time.

M. Junked Vehicles A Public Nuisance.

Section 683.072, Tex. Trans. Code, declares that 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 fire hazards, is 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 a public nuisance. The City Council hereby adopts such findings and declarations, and declares that junked vehicles are a public nuisance.

N. Maintaining A Public Nuisance.

It shall be unlawful for any person to maintain a public nuisance, as defined in Section M above, within the City. Any person found guilty of maintaining a public nuisance as defined in Section M shall be guilty of a misdemeanor and be subject to a fine not to exceed two hundred dollars (\$200.00) for each offense and, upon the municipal court finding any person guilty of maintaining a public nuisance as defined in Section M, the court shall order removal and abatement of the nuisance.

O. Procedures For Abatement Of Public Nuisance.

The Police Department, Code Enforcement Officer, or other authorized official, when desiring for the abatement and removal of a junked vehicle or part of a junked vehicle from private property, public property or public rights-of-way, shall comply with the following procedures:

- (1) A written notice stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days of the date the letter was mailed or personally delivered, and further stating that any request for a hearing must be made before the expiration of said ten (10) day period, shall be mailed, by certified mail with a five (5) day return receipt requested, delivered by United States Postal Service with signature confirmation service, or personally delivered, to the last known registered owner of the nuisance, each lienholder of record of the nuisance and the owner or occupant of the property on which the nuisance is located; or if the nuisance is located on a public right-of-way, to the owner or occupant of the property adjacent to the right-of-way. If the notice is returned undelivered by the United States Post Office, official action to abate such nuisance shall be continued to a date not earlier than the eleventh (11) day after the date of the return.
- (2) The requirements of subsection (1) above shall also apply to the case of a public nuisance on public property and similar notice shall be sent to the owner or the occupant of the public premises and to the owner or the occupant of the premises adjacent to the public property whereupon such public nuisance exists.
- (3) If sufficient information is not available to determine the registered owner of the nuisance, after reasonable effort to locate the owner, notice may be placed on the nuisance.

- (4) Once a vehicle has been removed under the provisions of this section, it shall not be reconstructed or made operable.
- (5) If the vehicle is not removed or otherwise brought into compliance, a public hearing will be held after the expiration of ten (10) days or more after mailing or personal delivery of notice to abate the nuisance. A hearing will be held prior to the removal of the vehicle, or part thereof as a public nuisance, before the City Administrator or before the Municipal Court Judge as provided in Section O(8) below. At the hearing, the junked motor vehicle is presumed to be inoperable, unless demonstrated by the owner to be operable. Should the City Administrator find that such vehicle is a public nuisance as defined herein, he/she shall enter an order requiring the removal of the vehicle or part thereof from the public or private property or public right-of-way where it is situated, and such order shall, if available, include a description of the vehicle, aircraft or watercraft as appropriate, and the identification number and license number of the vehicle, the federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations 14 C.F.R. Part 47, as amended from time to time, in the case of aircraft, or the identification number as set forth in the watercraft's certificate number in the case of an aircraft. Any aggrieved city officer, owner or lienholder may appeal any such decision of the City Administrator to the City Council.
- (6) The Police Department or other authorized official shall give notice to the Texas Department of Transportation within five (5) days after the date of the removal of a junked vehicle by the department, identifying the vehicle or part thereof.
- (7) The administration of the procedures of this Ordinance shall be carried out by officers of the police department or by a Code Enforcement Officer designated by the City Administrator, provided that such person or persons are regularly salaried, full-time employees of the City except that the removal of vehicles or parts thereof from property may be accomplished by any other duly authorized person, including authorized wrecker service operators acting at the direction of the City.
- (8) If the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided, in addition to any other procedure authorized by the Ordinance, a complaint may also be filed in municipal court for the violation of maintaining a public nuisance. Notice of the complaint shall be given in accordance with the municipal court's procedures. If the Municipal Court Judge renders a judgment finding the defendant guilty of violating Section M of this ordinance, including placing the defendant on deferred adjudication and/or accepting the defendant's plea of guilty or no contest, the Municipal Court Judge may order the removal of the motor vehicle, watercraft, aircraft, or outboard motor, or part thereof, from public or private property and authorize the City to remove or cause such vehicle to be removed if the defendant fails to do so within the timeframe specified

in the order.

P. Exception to Junked Vehicle.

The procedures set out in this Ordinance shall not apply to 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; 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 a junkyard; or to an antique and special interest vehicle stored by a motor vehicle collector on the motor vehicle collector's property; provided that the vehicle or vehicle part and outdoor storage areas 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.

Q. Disposal Of Junked Vehicles.

Junked vehicles or parts thereof may be disposed of by removal to a scrapyard, demolisher or any to suitable site operated by a city or county for processing as scrap or salvage. Relocation of a junked vehicle, for which a notice has been issued or the procedures provided in this Ordinance have been otherwise initiated, to another location shall have no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.