

ORDINANCE NO. 1335

AN ORDINANCE PROHIBITING THE MAINTAINING OF JUNKED, ABANDONED AND/OR LEGALLY UNUSABLE VEHICLES IN PUBLIC VIEW WITHIN THE CITY OF ANDREWS, TEXAS; DEFINING "JUNKED, ABANDONED AND LEGALLY UNUSABLE"; DECLARING SAID VEHICLES TO BE NUISANCES AND UNLAWFUL; PROVIDING FOR NOTICE TO REPAIR OR REMOVE; PROVIDING FOR DISPOSITION THEREOF IN THE EVENT OF FAILURE TO COMPLY WITH SUCH NOTICES; PROVIDING FOR THE ASSESSMENT OF THE COST OF SUCH WORK AS A LIEN AGAINST THE PROPERTY; PROVIDING FOR A TEMPORARY WAIVER; PROVIDING A PENALTY FOR VIOLATION OF THIS ORDINANCE; CONTAINING A SAVINGS AND SEVERABILITY CLAUSE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE ARE CUMULATIVE OF ALL OTHER ORDINANCES COVERING THE SAME SUBJECT MATTER, BUT EXPRESSLY REPEALING THOSE IN CONFLICT HEREWITH; AND PROVIDING FOR PUBLICATION.

WHEREAS, the City Council of the City of Andrews finds that there are many junked, abandoned, and/or legally unusable vehicles and parts of vehicles within the City of Andrews in public view which are a detriment to the quality of life of residents and inhibit commerce, constitute fire hazards or erode the integrity of the neighborhoods where they exist, constitute public health menaces due to their unsanitary and/or filthy condition, and which ultimately undermine the safety, atmosphere and environment where family life and commerce takes place; and

WHEREAS, the City Council finds that removal of such vehicles is essential to the safety, health and general welfare of the citizens of Andrews, Texas; and

WHEREAS, Chapter 683, Subchapter E, of the Texas Transportation Code, as amended, establishes procedures for the abatement and removal from private and public property or public right-of-way of a junked vehicles or part of a junked vehicle as a public nuisance; and

WHEREAS, the City Council finds that existing regulations or ordinances of the City of Andrews are insufficient to provide for the satisfactory abatement of nuisances occasioned by the existence of such vehicles.

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

Section 1. Definitions.

"Antique Vehicle" shall mean a passenger car or truck that is recognized by the Antique Automobile Club of America (AACA) and manufactured more than 25 years prior to the current year, which may or may not be maintained in or restored to current professional standards and/or conforming to the manufacturer original build specifications.

"Junked Vehicle" shall mean a vehicle that is self-propelled and

- (1) does not have lawfully attached to it:
 - (a) an unexpired license plate,
 - (b) a valid motor vehicle inspection certificate,
 - (c) a valid motor vehicle registration sticker,

and

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

“Motor vehicle” shall mean any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

“Motor vehicle collector” shall mean a person who owns one or more antique or special interest vehicles and who collects, purchases, acquires, trades or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

“Motor vehicle demolisher” shall mean any person in the business of converting motor vehicles into processed scrap or scrap metal, or to otherwise wreck or dismantle motor vehicles.

“Special interest vehicle” shall mean a motor vehicle of any age which has not been altered or modified from original manufacturer’s specifications and, because of its historic interest, is being preserved by a hobbyist. A special interest vehicle shall be either of the following:

- 1) **“Classic”** - an automobile vehicle of the Classic Era, 1925-48 (no cars built before or after that period are eligible) which is recognized by the Classic Car Club of American (CCCA), exemplifies the best in engineering and workmanship, and possesses timeless and lasting significance and worth; or
- 2) **“Collector”** - a passenger car or truck that has unique characteristics (styling, engineering and features), low production build, and is believed to possess future value, collected by a discernable number of hobbyists, and for which a market has been established and a club formed.

“Storage facility” shall mean a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

Section 2. Junked Vehicles Declared a Public Nuisance.

A junked vehicle which is located in any place where it is visible from a public place or public right-of-way is hereby determined to be detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates a fire hazard, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the City by producing urban blight which is adverse to the maintenance and continuing development of the City; and such vehicles are hereby declared to be a public nuisance and unlawful.

Section 3. Offense.

- A. Any person, firm or corporation who shall maintain a public nuisance described by Section 2 of this Ordinance, and who shall, after notice as provided herein, fail to repair or eliminate the conditions creating the public nuisance or otherwise come into compliance with this Ordinance shall be guilty of a misdemeanor; and upon conviction, said person, firm or corporation shall be fined a sum not to exceed \$200.00 (Two Hundred and No/100 Dollars). Each and every day the violation exists shall constitute a separate and distinct offense. In the event the owner of said property shall be a corporation, each officer of said corporation (president, vice president, secretary and/or treasurer) may be held severally liable for the penalties herein provided.
- B. The court shall order abatement and removal of the nuisance upon conviction.

Section 4. Exceptions.

The following vehicles or parts thereof are exempt from the provisions of this ordinance:

- A. A vehicle or vehicle part which is completely enclosed within a building.
- B. No more than one (1) inoperable vehicle or vehicle part shall be parked in a lawful manner in a fenced backyard on private property zoned or used for residential purposes. Said vehicle shall be a minimum of three (3) feet from adjacent property lines and elevated not less than six (6) inches and no more than twenty (20) inches above ground, (if support by something other than it's chassis) with a clear intervening space underneath, and is not visible from the street or other public or private property.
- C. A vehicle (vehicles) or vehicle part(s) which is stored or parked in a lawful manner on private property in accordance with City Ordinance in connection with the business of a licensed vehicle dealer, junkyard or wrecker service.
- D. Up to three (3) inoperable vehicles or vehicle part(s) stored or parked in a lawful manner on private property and in accordance with Ordinance No. 1080 in the General Commercial, Light Industrial or Industrial Districts.
- E. An unlicensed, operable or inoperable antique or special interest vehicle or vehicle part thereof stored by a motor vehicle collector on the collector's property, provided that the vehicle or vehicle part and the outdoor storage area, if any, 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 non-transparent and appropriate screening material.
- F. Junked vehicle(s) or vehicle part(s) in Retail or Central Business District are expressly prohibited.

Section 5. Procedure for Disposition of Junked Vehicles.

The procedure for the abatement and removal of a junked vehicle or part thereof, as a public nuisance, from private property, public property, or public right-of-way shall be as follows:

- A. PRIVATE PROPERTY. There shall be furnished not less than ten (10) days notice, stating the nature of the public nuisance on private property and that it must be removed and/or abated not later than the 10th day after the date on which the notice was personally delivered or mailed, such notice to be personally delivered or sent by certified mail with a five (5) day return requested, to the last known registered owner of the junked vehicle and all lien holders of record and to the owner or the occupant of the private premises whereupon such public nuisances exists. 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 the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued on a date not earlier than the 11th day after the date of such return. The notice shall afford the person given notice the opportunity to request a public hearing, said request to be received on or before the 10th day after the date on which the notice was personally delivered or mailed.
- B. PUBLIC PROPERTY OR PUBLIC RIGHT-OF-WAY. There shall be furnished not less than ten (10) days' notice, stating the nature of the public nuisance on public property or on public right-of-way and that it must be removed and/or abated not later than the 10th day after the date on which the notice was

personally delivered or mailed, such notice to be personally delivered or mailed by certified mail with a five (5) day return requested, to the last known registered owner of the junked vehicle and all lien holders of record, and, if on public right-of-way whereupon such public nuisance exists, to the property owner adjacent to the right-of-way. 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 the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued on a date not earlier than the 11th day after the date of such return. The notice shall afford the person given notice the opportunity to request a public hearing, said request to be received on or before the 10th day after the date on which the notice was personally delivered or mailed.

- C. There shall be a public hearing prior to the removal of the vehicle or part thereof as a public nuisance if such hearing is requested by the last known registered owner of the motor vehicle, or by any lien holder of record, or by the owner or occupant of the private premises, or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, or by the Chief of Police or his designee. The public hearing shall be held in a timely manner before the City Secretary of the City of Andrews, but not earlier than the 11th day after the date of the service of notice to abate the nuisance. At the hearing, the vehicle which is the subject of the junked vehicle hearing is presumed, unless demonstrated otherwise by the owner, to be inoperable. Any resolution or order requiring the removal of a junked vehicle or part thereof must include the vehicle's description, vehicle identification number, and license plate number if the information is available at the location of the nuisance. A Judge of the Municipal Court of the City of Andrews may issue necessary orders to enforce the procedures for the abatement and removal of a public nuisance under this Article.
- D. After a vehicle has been removed, it shall not be reconstructed or made operable.
- E. The relocation of a junked vehicle that is a public nuisance to another location within the City, after the process for the abatement and removal of such junked vehicle has commenced, has no effect on the process if the junked vehicle constitutes a public nuisance at the new location.
- F. Notice must be given to the State Department of Highways and Public Transportation not later than the fifth (5th) day after the date of removal identifying the vehicle or part thereof. Said Department shall cancel the certificate of title issued for the vehicle immediately on receipt of such notice.
- G. The administration of the procedures herein shall be by the Andrews Building Inspection/Fire Marshal's Office (Code Enforcement) and the Police Department of the City of Andrews, Texas, and by such other regularly salaried, full-time City employees as may be from time-to-time granted authority by the City's governing body to enforce this ordinance, except that the removal of junked vehicles or parts thereof from property may be by any duly authorized person.
- H. A citation may be issued and a complaint may be filed in the Municipal Court of the City of Andrews for the violation of maintaining a public nuisance, if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided herein.

- I. The City may use any and all authority relating to notice, the removal, repair, or abatement of the nuisance and the assessment of liens, as granted by to Chapter 683 of the Texas Transportation Code and other applicable statutes of the State of Texas.

Section 6. Disposal of Junked Vehicles by the City.

A junked vehicle or part thereof may be disposed of by removal to a scrap yard, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in Chapter 683 of the Texas Transportation Code or any successor statute for junked vehicle disposal. The cost of the removal and disposal shall be at the sole cost and expense of the vehicle or property owner, except as provided by the Temporary Waiver below.

Section 7. Authority to Enforce.

Any Peace Officer, Building Inspector, Fire Marshal, Code Enforcement Officer or other regularly salaried, full-time City employee authorized to enforce this ordinance may enter private property and/or public areas of any building or premise that is not a private residence or dwelling, structure or completely enclosed structure on private property, at all reasonable times whenever necessary in the performance of his duties to inspect and investigate for violations of any law, or to enforce any law. The authority to inspect shall include, but not be limited to, the authority to examine vehicles or parts thereof, obtain information as to identity of vehicles and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance. If such building or premises be occupied and involved in conducting business, the person seeking the inspection shall first present proper credentials and request entry, unless otherwise permitted by law. If such entry is refused, or, if no owner or other person having charge or control of the building or premises can be located, the person seeking the inspection shall have recourse to every remedy provided by law to secure entry.

Section 8. Assessment of Liens.

In addition to the foregoing remedies, the City may by filing a statement with the County Clerk, create a privileged lien against the lot or lots on which expenses for removing or abating the public nuisance created by the junked vehicle or vehicle part have been incurred by the City; such liens thereon shall be second only to tax liens and liens for street improvements to secure the expenditure so made. Such lien shall be created at the time the City removes or abates the public nuisance on the lot or lots and at the expiration of ten (10) days after proper notice as herein provided, and City shall file a statement of all expenditures, costs, and charges, plus ten per cent (10%) interest from the date of the filing with the County Clerk of Andrews County, Texas. For such expenditure, costs, and interest, as aforesaid, suit may be instituted in the District Court of Andrews County, Texas; and the statement of expenditure so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in removal or abatement.

Section 9. Temporary Waiver

Notwithstanding any other provision contained herein, the cost for the removal and disposal of a vehicle not in compliance with this Ordinance shall be waived if requested by the vehicle or property owner prior to January 1, 2005. Upon impoundment by the City of Andrews, the vehicle is considered salvage and will not be returned for sale or use by the vehicle or property owner or any other person.

Section 10. Effect of Act on Other Laws.

Nothing in this Article shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic or laws that establish procedures for taking possession of abandoned motor vehicles.

Section 11. Cumulative.

The provisions of this ordinance are to be cumulative of all other ordinances, or parts thereof, governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent of any such inconsistency or conflict.

Section 12. Savings and Severability.

If any section, sub-section, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Andrews hereby declares that it would have passed this ordinance and each section, sub-section, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 13. Publication.

The City Secretary is hereby authorized and directed to publish the descriptive caption of this ordinance, together with the penalty provision contained herein, in the manner and for the length of time prescribed by law.

Section 14. BE IT FURTHER ORDAINED that this ordinance shall take effect and be in force on September 1, 2004, subject to the "Temporary Waiver" provided herein.

PASSED AND ADOPTED on first reading the 10th day of June, 2004.

PASSED AND ADOPTED on second reading the 22nd day of July, 2004.

Robert Zap
Robert Zap, Mayor

ATTEST:

Kitty J. Bristow
Kitty Bristow, City Secretary