

ORDINANCE NO. 2010-06-23-2

AN ORDINANCE  
DEFINING JUNK OR ABANDONED VEHICLES;  
DECLARING SUCH NUISANCES; PROVIDING FOR  
ABATEMENT OF SUCH NUISANCES; PROVIDING FOR NOTICE  
AND HEARING; PROVIDING FOR DISPOSITION AND RIGHT OF ENTRY;  
PROVIDING A PENALTY AND COSTS; PROVIDING FOR SEVERANCE; AND  
PROVIDING FOR PUBLICATION

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF AUSTWELL:

Section 1.

Abatement and removal; definitions.

- (a) Under the authority of the Texas Transportation Code declaring junked or abandoned vehicles a public nuisance, the City of Austwell hereby establishes procedures to abate and remove such junked vehicles or parts thereof from private property or public property under the provisions of this Ordinance.
- (b) "Junked vehicle" or "Abandoned vehicle" means 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.
- (c) A junked or abandoned 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:
- (1) is detrimental to the safety and welfare of the public;
  - (2) tends to reduce the value of private property;
  - (3) invites vandalism;
  - (4) creates a fire hazard;
- (5) is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) produces urban blight adverse to the maintenance and continuing development of the City of Austwell; and
- (7) is a public nuisance and a violation of this Ordinance.

Section 2.

Notice of abatement and removal.

Any report of a junked or abandoned vehicle shall be referred to the City of Austwell who shall investigate such complaint. If it is determined that a violation of this Ordinance exists the following procedure shall be followed:

- (a) Notice of the pending abatement and removal of the junk or abandoned vehicle shall be sent by certified mail, with a five (5) day return requested and shall provide not less than ten (10) days' notice of the nature of the nuisance and requiring the owner to abate or remove the nuisance. Such notice must be sent to:
  - (1) The last known registered owner of the nuisance;
  - (2) Each lien holder of record of the nuisance; and
- (3) The owner and/or occupant of the property on which the nuisance is located or if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
  - (b) The notice shall state that:
    - (1) The nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was mailed; and
    - (2) Any request for a hearing must be made before the 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, hand delivered.
- (d) If the notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of return.

### Section 3.

#### **Hearing.**

- (a) No junk or abandoned vehicle may be removed as a public nuisance without a public hearing. Hearings required under this Ordinance shall be held in the municipal court, if available, and if not available such hearing shall be before the City Commission
- (b) When a hearing is requested by a person for whom notice is required under Section 2 of this Ordinance, the hearing shall be held not earlier than the eleventh (11th) day after the date of the service of notice.
- (c) At the hearing, the junked or abandoned motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (d) If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's description, vehicle identification number and license plate number.

(e) At the conclusion of the hearing if it is determined this Ordinance has been violated or a nuisance exists, a resolution or order shall be entered ordering the abatement and removal of the nuisance.

Section 4.  
**Compliance.**

The owner shall dispose, abate and/or remove the nuisance within five (5) calendar days from the date of entry of the order or resolution ordering the abatement and removal of the nuisance. Absent compliance within this time, the City of Austwell shall arrange for the prompt abatement and removal of the nuisance. A junked or abandoned vehicle, or parts thereof, may be disposed of by removal to a scrap yard, demolishers or any suitable site operated by a commercial facility, a facility owned or operated by a governmental agency, a facility owned or operated by the City of Austwell or any other suitable facility, any of which is for the processing as scrap or salvage. The City of Austwell may operate such disposal site if the City Commission determines that commercial channels of disposition are not available or are inadequate; and the City may transfer such vehicles or parts to another, provided that such disposal shall be only as scrap or salvage consistent with this article.

Section 5.  
**Reconstruction or operation of removed vehicle.**

No vehicle that has been removed under provisions of this Ordinance shall be reconstructed or made operable.

Section 6.  
**Notice to State.**

Within five (5) days after the date of removal, notice of same shall be given to the Texas Department of Transportation with sufficient information identifying the vehicle or part thereof with a request that the Department forthwith cancel the certificate of title to such vehicle pursuant to Section 683.074(f), Texas Transportation Code.

Section 7.  
**Exemptions.**

- (a) This Ordinance shall not apply to a vehicle or vehicle part that is:
- (1) Completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
  - (2) 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:

- i. Maintained in an orderly manner;
- ii. Not a health hazard; and
1. Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, and/or shrubbery.

(b) In this Section:

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

(2) "Motor vehicle collector" means a person who:

- i. Owns one (1) or more antique or special interest vehicles; and
1. 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.

(3) "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.

Section 8.  
Right of entry.

An employee authorized by the City of Austwell to administer the provisions of this Ordinance may enter upon private property for the purposes specified in this Ordinance to examine vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this Ordinance. The municipal court, if applicable, or if the municipal court is not applicable the City Commission of the City of Austwell, shall have authority to issue all orders necessary to enforce this Ordinance.

Section 9.  
Penalty and costs.

A person commits an offense if the person maintains a public nuisance described in this Ordinance. An offense under this section is a misdemeanor punishable by a fine not to exceed \$200. Each day until abatement and/or removal that the violation continues is a separate offense and each separate offense is punishable upon conviction by a fine not to exceed \$200. The municipal court, if applicable, or if the municipal court is not applicable the City Commission shall order abatement and removal of the nuisance on conviction. In addition, the City Attorney is authorized to pursue the remedies available including seeking a mandatory injunction from a court of competent jurisdiction requiring the abatement and removal of the nuisance. In addition, each nuisance abated or removed shall be at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.

Section 10.    **Remedy cumulative.**

The remedies and procedures established in this Ordinance are cumulative to any other right, remedy or procedure. Nothing in this Ordinance shall affect any rule, regulation, law or ordinance that permits immediate removal of a vehicle left on public property that constitutes an obstruction to traffic.

Section 11.    **Severance.**

If any sentence, paragraph or section or any part thereof of this Ordinance is held invalid or unenforceable for any reason by a court of competent jurisdiction then the remaining sentences, paragraphs or sections or parts thereof shall remain in full force and effect, it being the intention of the City Commission to enact each sentence, paragraph or section or any part thereof without any other portion of this Ordinance.

Section 12.    **Publication.**

This Ordinance shall become effective from any after its publication, such publication to be in the official newspaper of the City of Austwell and made by publishing the caption hereof in accordance with State law.

PASSED and approved this the 14<sup>th</sup> day of July, 2010.

Mustafa Curtess  
Mayor

ATTEST:

Mary Julia Flores  
City Secretary