

TOWN OF LAKEWOOD VILLAGE

ORDINANCE NO. 13-01

AN ORDINANCE OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS ESTABLISHING REGULATIONS RELATING TO JUNKED AND ABANDONED VEHICLES; PROVIDING DEFINITIONS; PROVIDING A PROCEDURE FOR THE REMOVAL OF ABANDONED MOTOR VEHICLES, NOTICE OF SUCH ABANDONMENT, AND THE SALE AT AUCTION OR USE OF SUCH MOTOR VEHICLES; DECLARING JUNKED VEHICLES AS A NUISANCE, PROVIDING FOR THE REMOVAL OF JUNKED VEHICLES, AND PROVIDING FOR A HEARING BY AN OWNER OR LIENHOLDER; PROHIBITING STORING OF A MOTOR VEHICLE, WATERCRAFT OR TRAILER ON ANY SURFACE OTHER THAN AN APPROVED PAVED SURFACE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY NOT TO EXCEED THE SUM OF TWO HUNDRED DOLLARS (\$200.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING SEVERABILITY CLAUSE; PROVIDING A SAVINGS/REPEALER CLAUSE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lakewood Village, Texas (the “Town”) is authorized and empowered pursuant to Chapter 683, Tex. Transportation Code, to establish rules and regulations regarding abandoned or junked motor vehicles; and

WHEREAS, the Town is further authorized and empowered under § 51.001, Tex. Loc. Gov. Code, and §122.005, Tex. Health & Safety Code, to do all acts and make all regulations which may be necessary or expedient for the public health; and

WHEREAS, Texas Local Government Code, §431.001, grants municipalities the authority to regulate the parking of motor vehicles on private property; and

WHEREAS, the Town Council finds that the adoption of this Ordinance is in the best interests of the health, safety and welfare of the citizens and the owners of real property within the Town .

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LAKEWOOD VILLAGE, TEXAS :

Section 1. Definitions. When used in this Ordinance, the following words and phrases shall mean as follows :

Abandoned motor vehicle means a motor vehicle that :

- A. is in operable and more than five (5) years old and has been left unattended on public property for more than 48 hours;
- B. has remained illegally on public property for more than 48 hours;
- C. has remained on private property without the consent of the owner or person in charge 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 within the Town for more than 48 hours.

Antique auto means a passenger car or truck that is at least 35 years old.

Approved paved surface means a surface which is concrete base or gravel (which includes a liner to prevent vegetation growth). Approved surfaces do not include sidewalks, porches, or patios.

Garage keeper means an owner or operator of a storage facility.

Junked vehicle means a vehicle that is self-propelled and 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.

Motor vehicle shall be as defined under Chapter 501, Texas Transportation Code.

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.

Motor vehicle demolisher means a person in the business of :

1. converting motor vehicles into processed scrap or scrap metal; or
2. wrecking or dismantling motor vehicles.

Park or stand means to halt an occupied or unoccupied vehicle other than temporarily while loading or unloading merchandise or passengers.

Police department means the police department of the Town of Lakewood Village, Texas, or any law enforcement agency, including Denton County Sheriff's office, or the Town acting by and through its Mayor, utilized by the Town to enforce law within the Town.

Special interest vehicle means a motor vehicle of any age that has not been charged from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Storage facility includes a garage, parking lot, or establishment for the servicing, repairing, or

parking or motor vehicles.

Trailer means a vehicle that (i) is designated or used to carry a load wholly on its own structure, and (ii) is drawn or designed to be drawn by a motor vehicle.

Watercraft means a vessel subject to registration under Chapter 31, Texas Parks and Wildlife Code.

Section 2. Abandoned motor vehicles.

A. *Taking into custody.* The police department may take into custody an abandoned motor vehicle, watercraft, or outboard motor found on public or private property. The police department may use its own personnel equipment, and facilities or, when specifically authorized by the Town council, hire persons, equipment, and facilities to remove, preserve and store an abandoned motor vehicle, watercraft or outboard motor it takes into custody.

B. *Notice.* The police department shall send notice of abandonment of a vehicle, watercraft, or outboard motor taken into custody to :

. the last known registered owner of each motor vehicle, watercraft, or outboard motor (I) taken into custody, or (ii) for which a garage keeper's report is received pursuant to Section 683.031, Texas Transportation Code; and

. each lienholder recorded under Chapter 501, Texas Transportation Code for the motor vehicle or under Chapter 31, Texas Parks and Wildlife Code, for the watercraft or outboard motor.

C. *Contents of notice.* The notice under Section 2 B. must :

1. be sent by certified mail not later than the 10th day after the date the police department :

. Takes the abandoned motor vehicle, watercraft, or outboard motor into custody; or
. receives the garage keeper's report under Section 683.031;

. specify the year, make, model, and identification number of the abandoned motor vehicle, watercraft, or outboard motor;

. give the location of the facility where the abandoned motor vehicle, watercraft, or outboard motor is being held;

. inform the owner and lienholder of the right to claim the abandoned motor vehicle, watercraft, or outboard motor of the right to claim the item not later than

the 20th day after the notice on payment of :

- . towing, preservation, and storage charges; or
- . garage keeper's charges and fees under Section 683.032, Texas Transportation Code; and

- . state that failure of the owner or lienholder to claim the abandoned motor vehicle, watercraft, or outboard motor during the period specified by Section 2, Subsection C, paragraph 4 is :

- . a waiver by that person of all right, title, and interest in the item; and
- . consent to the sale of the item at a public auction.

D. Notice by publication. Notice by publication in one newspaper of general circulation in

the Town is sufficient notice under this Section 2 if :

- . the identity of the last registered owner cannot be determined;
- . the registration has no address for the owner; or
- . the determination with reasonable certainty of the identity and address of all lienholders is impossible.

Notice by publication:

1. must be published in the same period that is required by Section 2, Subsection C, paragraph 4 for notice by certified mail and contain all of the information required by that subsection, and
2. may contain a list of more than one abandoned motor vehicle, watercraft, or outboard motor.

E. Storage fees. The police department or the agent of the police department that takes into custody an abandoned motor vehicle, watercraft, or outboard motor is entitled to reasonable storage fees :

- . for not more than 10 days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed; and

- . beginning on the day the police department mails notice and ending on the day accrued charges are paid and the vehicle, watercraft, or outboard motor is removed.

F. Auction or use of abandoned item; waiver of rights.

- . If abandoned motor vehicle, watercraft, or outboard motor is not claimed before the 21st day after the date of notice provided in Section 2, Subsections B and C:

- . the owner or lienholder :
 - . waives all rights and interests in the item; and
 - . consents to the sale of the item by public auction; and
- . the police department may sell the item at a public auction or used the item as provided by paragraph (h) of this Section 2.

. Proper notice of the auction shall be given. A garage keeper who has a garage keeper's lien shall be notified of the time and place of the auction.

. The purchase of an abandoned motor vehicle, watercraft, or outboard motor :

- . takes title free and clear of all liens and claims of ownership;
- . shall receive a sales receipt from the police department; and
- . is entitled to register the motor vehicle, watercraft, or outboard motor and receive a certificate of title.

G. Auction proceeds.

. The police department is entitled to reimbursement from the proceeds of sale of an abandoned motor vehicle, watercraft, or outboard motor for :

- . the cost of the auction;
- . towing, preservation, and storage fees, resulting from the taking into custody; and
- . the cost notice or publication as required by subsection (B), (C) and (D) of this Section 2.

. After deducting the reimbursement allowed under paragraph (1) of this subsection (G) of Section 2, the proceeds of sale shall be held for 90 days for the owner or lienholder of the item.

. After the 90-day period provided in paragraph (2) of this subsection (G), proceeds unclaimed by the owner or lienholder shall be deposited in an account that may be used for the payment of auction, towing, preservation, storage, and notice and publication fees resulting from taking abandoned motor vehicles, watercraft, or outboard motors into custody if the proceeds from the sale of other items are insufficient to meet those fees.

. The Town may transfer funds in excess of \$1,000 from the account described in paragraph (3) of this subsection (G) to the Town's general revenue

account to be used by the police department.

H. Police department use of certain abandoned motor vehicles.

1. The police department may use an abandoned motor vehicle, watercraft, or outboard motor for department purposes if the item is not claimed as provided for in this Section 2.

. If the police department discontinues the use of such abandoned motor vehicle, watercraft, or outboard motor, the department shall auction the item.

. This subsection (h) does not apply to a vehicle on which there is a garage keeper's lien.

I. Disposal of vehicle abandoned in storage facility.

. The police department shall take into custody and abandoned vehicle, watercraft, or outboard motor left in a storage facility that has not been claimed in the period provided by the notice required under subsection (b) of this Section 2.

. The police department may use such a vehicle as authorized by subsection (h) or sell the vehicle at auction as provided by subsection (f). If the vehicle is sold, the proceeds of the sale shall first be applied to a garage keeper's charges for service, storage, and repair of the vehicle.

. As compensation for expenses incurred in taking the vehicle into custody and selling it, the police department shall retain :

. two percent (2%) of the gross proceeds of the sale of the vehicle; or

. all proceeds if the gross proceeds of the sale are less than \$10.

. Surplus proceeds from the sale shall be distributed as provided by subsection (g).

J. Demolition of abandoned motor vehicles. The procedures for handling the demolition of an abandoned motor vehicle shall be in accordance with Subchapter D of Chapter 683, Texas Transportation Code.

Section 3. Junked Vehicles.

Applicability "junked vehicle" includes a motor vehicle, aircraft, or watercraft. This ordinance applies only to:

- (1) a motor vehicle that does not have lawfully attached to it:
 - (A) an unexpired license plate; and

(B) a valid motor vehicle inspection certificate;

(2) 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

(3) 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

1. Public nuisance.

(A) A junked vehicle, including a part of a junked vehicle, that is visible 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 Town; and
- (7) is a public nuisance.

(B) This Section shall 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 that antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or the outdoor storage area, if any, are :

is an collector on vehicle part and

- . maintained in an orderly manner;
- . not a health hazard; and
- . screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

2. Offense

(a) A person commits an offense if the person maintains a public nuisance described by subsection (1) of this Section 3.

(b) An offense under this section is a misdemeanor punishable by a fine exceed \$200.

not to

(c) The court shall order abatement and removal of the nuisance on conviction.

3. *Abatement and removal of nuisance; administration.* Abatement and removal of a junked vehicle or vehicle part shall be administered by regular salaried, full time employees of the Town; provided, however, that any person authorized by the Town may remove the public nuisance. A junked vehicle or part thereof constituting a public nuisance may be abated and removed by the Town in accordance with the following :

Notice of removal.

At least 10 days prior to the abatement and removal of the junked vehicle or part of a junked vehicle, the Town shall provide notice of the public nuisance. The notice must be sent certified mail with a five (5) day return requested to :

- . the last known registered owner of the public nuisance;
- . each lienholder of record of the public nuisance; and
- . the owner or occupant of :
 - a. the property on which the public nuisance is located; or
 - b. if the public nuisance is located on a right-of-way, the property adjacent to the right-of-way.

If the post office address of the last known registered owner of the public nuisance is unknown, notice may be placed on the public nuisance or, if the owner is located, hand delivered.

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.

The notice must state that :

1. the public nuisance must be abated and removed not later than the 10th day after the date on which the notice was mailed; and
2. any request for a hearing must be made before that 10 day period expires.

Hearing.

If a hearing is requested by a person for whom notice is required, the hearing shall be held before Town Council not earlier than the 11th day after the date of the service of the notice.

At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner or other person to whom notice of hearing was provided, to be in operable.

If, after such public hearing, the Town Council determines that the vehicle or part thereof is a public nuisance as defined herein, the Town Council shall enter an order requiring the removal of the junked vehicle or part thereof and in such order shall include, if the information is available at the location of the public nuisance, the junked vehicle's :

1. description;
2. vehicle identification number; and
3. license plate number.

Removal; authority of administrator; disposal.

In the event that the notice provided pursuant to Section 3(a) (3) (I) or an order issued by the Town Council pursuant to Section 3(a)(3)(ii) above is not complied with, the Town may remove or cause the removal of the junked vehicle or part thereof. A person authorized to administer the terms of this Section 3 may enter private property in accordance with law to examine a public nuisance, or to remove or direct the removal of the nuisance.

A junked vehicle that has been removed from either public or private property shall not be reconstructed or made operable. The Town may finally dispose of a junked vehicle or part thereof or may transfer the junked vehicle or part to another disposal site if the disposal is scrap or salvage only.

Section 4. Parking on Approved Paved Surface. A person commits an offense if:

(1) the person stores or parks a motor vehicle or watercraft in front of the rear-most line of any residential dwelling unless the motor vehicle or watercraft is on a concrete surface connected to and accessible from the existing driveway or street; or

(2) the person stores or parks a motor vehicle or watercraft behind the rear-most line of any residential dwelling unless it is on an approved surface; or

(3) the property owner allows a motor vehicle or watercraft to be parked or stored on the resident property's front, side, or back yard, or vacant lot (excluding Town right-of-ways and easements) not on an approved paved surface.

The first offence each calendar year shall result in a warning, which may be delivered either in writing or orally.

Section 5. Savings/ Repealer. This Ordinance shall be cumulative of all other ordinances of the Town affecting junked and abandoned vehicles and the parking of vehicles. Ordinance 12-11 is repealed.

Section 6. Penalty. It shall be unlawful for any person to violate any provision of this Ordinance, and any person violating or failing to comply with any provision hereof shall be fined, upon conviction, in an amount not more than Two Hundred Dollars (\$200.00), and a separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 7. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the Town Council hereby declares that it would have passed such remaining portions of this Ordinance, and the Town Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 8. Effective date. This Ordinance shall become effective from and after its date of passage and publication as provided by law.

PASSED AND APPROVED by the Town Council of the Town of Lakewood Village, Texas this the 14th day of February, 2013.

Mike Schnittker
Mayor

ATTEST :

Linda Asbell
Town Secretary