



ORDINANCE 2005-03

AN ORDINANCE TO CONTROL THE PRESENCE OF JUNK, RUBBISH, REFUSE, ABANDONED OR JUNKED VEHICLES OR ANY OFFENSIVE OR UNWHOLESOME SUBSTANCE OR MATTER TO REMAIN OR ACCUMULATE ON ANY LOT, TRACT, OR PARCEL OF LAND WITHIN THE CITY LIMITS OF TOM BEAN, TEXAS.

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

Whereas: The health and welfare of all citizens of Tom Bean is the primary concern and responsibility of the City, and;

Whereas: The keeping of refuse, trash, junk, abandoned or junk vehicles can be a health hazard by allowing an environment that breeds rodents, snakes, or unhealthy animals, and is a habitat for disease.

Section 1 Short title of this ordinance is to be called the **Offensive Premises and Junked/Abandoned Vehicles.**

Section 2: DEFINITIONS. For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. ABANDONED MOTOR VEHICLE. Any motor vehicle which:

- (1) Is inoperable and more than 5 years old and left unattended on public property for more than 48 hours;
- (2) Has remained illegally on public property for a period of more than 48 hours;
- (3) Has remained on private property without the consent of the owner or person in control of the property for more than 48 hours; or

- (4) Is left unattended on a right-of-way of any designated county, state, or federal highway, or any street, alley, or public right-of-way within the municipality for more than 48 hours.
- B. **AUTOMOBILE.** Means a device in, on, or by which a person or a property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer, but does not include a device moved by human power or used exclusively on a stationary rail or track.
- C. **ANTIQUE AUTOMOBILE.** A car or truck that was manufactured in 1925 or before, or a car or truck that is at least 35 years old.
- D. **COLLECTOR.** The owner of one or more antique or special interest vehicles, who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.
- E. **DEMOLISHER.** Any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.
- F. **IN ORDINARY PUBLIC VIEW.** Means that the vehicle or part thereof or the tarp or cover thereon is visible from any public right-of-way, or adjacent land, or the first floor level of a building thereon which is owned or occupied by a person other than the owner or occupant of the property on which the junked vehicle or part thereof is located or parked.
- G. **JUNKED VEHICLE.** Any junked vehicle as defined in Tex. Transp. Code § 683.071 as amended, which:
- (1) is inoperative; and
 - (2) does not have lawfully affixed to it, either an unexpired license plate or a valid motor vehicle safety inspection certificate and is wrecked, partially dismantled or discarded or that remains inoperable for a continuous period of more than 45 days. Evidence that a vehicle in public view has not been driven under its own power for a period of 45 days or more shall constitute prima facia evidence that the vehicle was inoperative for the same period.
- H. **MOTOR VEHICLE.** A motor vehicle subject to registration under the Certificate of Title Act, being Tex. Transp. Code §~ 501.001 et seq., except that for purposes of this chapter, the term also includes a motorboat, outboard motor, or vessel subject to registration under Tex. Parks & Wildlife Code Chapter 31.
- I. **PERSON.** Any individual, firm, partnership, association, corporation, company, or organization of any kind.
- J. **Rubbish and Debris** shall mean all waste, refuse, and rejected matter and material whether animal, vegetable, or mineral, manufactured or natural.
- K. **Offensive premises** shall mean the accumulation of junk, rubbish, and debris that facilitates rodent, pest and vermin harborage, compromises public health, resulting from dangerous and

unsanitary conditions, constitutes a fire hazard and threats to public safety and general welfare and otherwise erodes the aesthetic conditions of the community, degrading the quality of life of the citizens of Tom Bean, Texas.

Section 3: PRESENCE OF JUNKED VEHICLES, RUBBISH, DEBRIS, CREATION OF OFFENSIVE PREMISES. No person shall accumulate junk, rubbish, debris or create an offensive premises or store, maintain or park outdoors or permit the storage, maintenance or collection of any inoperable, unregistered, abandoned or junked motor vehicles on their premises or property, or any premises or property under their control, or in any other place of ordinary public view within the City of Tom Bean.

- (A) The location or presence of any junked motor vehicle, abandoned motor vehicle (including a part of a junked or abandoned automobile), rubbish, debris or offensive premises on any private or public property, occupied or unoccupied, improved or unimproved, within the municipality shall be deemed a public nuisance.
- (B) It shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning, or discarding any motor vehicle or creating of offensive premises by accumulation of junk, rubbish or debris on the real property of another or to suffer, permit, or allow the same to be placed, located, maintained, or exist upon his or her own real property.
- (C) No person shall park, store, keep or have in public view on any premises any motor vehicles in a state of major disrepair, or in the process of being stripped or dismantled.
- (D) This section shall not apply to:
 - (1) 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;
 - (2) 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;
 - (3) A vehicle in an appropriate storage place or depository maintained in a location officially designated and in a manner approved by the municipality;
 - (4) An unlicensed, inoperable antique vehicle stored on property, provided that the vehicle and outdoor storage area are maintained so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, or other appropriate means; approved by the City Counsel.
 - (5) A vehicle defined as an antique automobile or maintained by a collector or demolisher in a properly zoned as business, stored or parked in a lawful manner on private property in connection with a lawfully zoned business.

Section 4: ABATEMENT ORDER.

- (A) Whenever such public nuisance as described in Section 3 exists on private or public property within the municipality, the Chief of Police or other designated official enforcing this chapter

shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same. Such order shall:

- (1) Be in writing;
 - (2) Specify the public nuisance and its location;
 - (3) Specify the corrective measure required;
 - (4) Provide for compliance within ten days from service thereof; and
 - (5) Inform the owner or occupant of his right to a hearing before the Council if notice of a demand for hearing is given in writing within ten days of the issuance of the order.
- (B) Such order shall be served upon the owner of the vehicle and any lien holder of record thereof by sending the order by certified United States mail with a five-day return receipt request to the address listed on the certificate of title of the offending vehicle, and the address of any lien holder.
- (C) If the owner of the offending vehicle fails and refuses to comply with the notice stating the order of the Chief of Police or his or her duly authorized agent within ten days after service thereof, the Chief of Police or his or her duly authorized agent shall take possession of the junked motor vehicle and remove it from the premises.
- (D) If the notice is returned undelivered by the United States Postal Service, official action to abate the nuisance shall be continued to a date not less than ten days from the date of such return.
- (E) The Chief of Police or his or her duly authorized agent shall thereafter dispose of the junked motor vehicle in such a manner as the Council may provide.
- (F) The owner of the vehicle may, within the ten day period after service of notice to abate the nuisance, request of the Chief of Police, either in person or in writing and without the requirement of bond, that a date and time be set when he or she may appear before the municipal judge for a hearing to determine whether he or she is in violation of this chapter.
- (G) If a request is made under the provisions of division (F) above, no action to remove the vehicle shall be taken pending the hearing.
- (H) Nothing in this section shall affect laws that permit immediate removal of a vehicle left on public property that constitutes an obstruction to traffic.

Section 5: PUBLIC HEARING.

- (A) Upon receipt of a request for a hearing made pursuant to the Chief of Police or his or her duly authorized agent shall set a date and time for such hearing before the municipal judge. The Chief of Police or his or her duly authorized agent shall notify the owner of the vehicle or the owner or occupant of the premises, as the case may be, in writing as to the date and time of such hearing.
- (B) The municipal judge shall hear any case brought before it and as set out herein determine whether the subject vehicle is a junked vehicle under the provisions of this chapter. The judge may summon any witnesses or solicit any information it deems necessary in determining the status of the vehicle.
- (C) If the judge determines that the subject vehicle is junked, under the provisions of this chapter,

the owner of the vehicle or the owner or occupant of the premises, as the case may be, shall be ordered to remove or cause to be removed the vehicle from either public or private property within five days from the date of the order of the judge. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, the correct vehicle identification number, and license number of the vehicle, if available.

Section 6: FILING COMPLAINT.

If the order of the municipal judge is not complied with, the Municipal Attorney shall forthwith cause to be prepared, filed, and served on the defendant a written complaint charging that the owner of the vehicle or the owner or occupant of the premises, as the case may be, has violated the provisions of this chapter.

Section 7: TRIAL.

- (A) The judge of the municipal court shall hear any case brought before the court and shall determine whether the defendant is in violation of this chapter. Upon finding that the defendant is in violation of this chapter, the defendant shall be found guilty of a misdemeanor and subject to a fine as provided herein. Each day that the nuisance continues shall be considered a separate occurrence.
- (B) The judge shall further order such offense removed and the nuisance abated within ten days, same being a reasonable time.
- (C) If the defendant shall fail and refuse to abate and remove the nuisance within ten days, the judge may issue an order directing the Chief of Police or his or her duly authorized agent to have the same removed and the Chief of Police or his or her duly authorized agent shall take possession of the junked motor vehicle and remove it from the premises.
- (D) The Chief of Police or his or her duly authorized agent shall thereafter dispose of the junked motor vehicle in such manner as the Council may provide.

Section 8: REMOVAL OF JUNKED VEHICLE WITH PERMISSION.

The owner of the vehicle or the owner or occupant of the premises, as the case may be, if after receipt of ten day's notice from the Chief of Police or his or her duly authorized agent to abate the nuisance as herein provided, may give his or her written permission to the Chief of Police or his or her duly authorized agent for removal of the junked motor vehicle and the giving of such permission shall be considered in compliance with the terms and provisions of this chapter. Once a vehicle has been removed, it shall not be reconstructed or made operable.

Section 9: REMOVAL FROM UNOCCUPIED PREMISES.

If a junked vehicle, as defined in Section 2, is located on premises that are unoccupied and the owner of the premises is notified to remove same but cannot be found, 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 or his or her duly authorized agent to have the same removed, and the Chief of Police or his or her duly authorized agent shall take possession of the junked motor vehicle and remove it from the premises. The Chief of Police or his or her duly authorized agent shall thereafter dispose of the junked motor vehicle in such manner as the Council may provide.

Section 10: NOTICE TO DEPARTMENT OF TRANSPORTATION REQUIRED.

When a junked motor vehicle is removed from any premises by the Chief of Police or his or her duly authorized agent, notice shall be given to the state Department of Transportation within five days after the date of removal of the junked vehicle or part thereof and identifying the junked vehicle or part thereof.

Section 11: DECLARATION OF NUISANCE; DUTY TO IMPOUND.

When an abandoned motor vehicle is placed, left standing, parked, or erected in violation of any ordinance or code of the municipality or left unattended for more than 24 continuous hours in or on any public street, alley, sidewalk, park, or other public place of the municipality, it is declared to be a nuisance. Any such vehicle when so found shall be removed summarily by any officer of the municipality and taken to the municipal pound and shall be kept there until redeemed or sold as herein provided.

Section 12: LIEN ON IMPOUNDED PROPERTY.

The municipality shall have a lien on such impounded personal property for all costs incurred in impounding, storing, and advertising such property and such lien shall be prior and superior to all other liens of every kind, save and except liens for ad valorem taxes. The municipality may retain possession thereof until all costs are paid and may sell the same as herein provided.

Section 13: REDEMPTION.

The owner or any person legally entitled to possession of such impounded personal property may redeem the same as follows:

- (A) Before sale. By paying to the Chief of Police the impounding fee and any other actual expenses incurred by the municipality in impounding and keeping the impounded property, as determined by the Chief of Police.
- (B) After sale. By paying to the buyer at the auction sale double the amount paid by him or her for such personal property and any reasonable expenses incurred by him for keeping same; provided that the property must be redeemed from the auction buyer within 30 days after the date of auction sale, excluding the date of sale. If not redeemed within 30 days after the date of auction sale, title to the property shall become absolute in the auction buyer.

Section 14: SALE OF PROPERTY.

- (A) Sale. When any personal property, other than a motor vehicle, is not redeemed within 60 days after being impounded, and when any motor vehicle, other than a junked motor vehicle, is not redeemed after compliance by the Chief of Police with the provisions of this chapter, the Chief of Police shall sell the same at public auction to satisfy the lien of the municipality.
- (B) Procedures for sale of property other than motor vehicles.
 - (1) Before selling such personal property, other than motor vehicles, the Chief of Police shall post two notices thereof, one at the United States Post Office, and one at the entrance to the Municipal Hall, and shall cause a copy thereof to be published in a newspaper published in the municipality once a week for two consecutive weeks, the date of the first publication to be at least 14 days prior to the day of the auction sale.

- (2) The notice of sale shall describe the impounded property, state that the same is unredeemed, state that the same shall be sold at public auction, and designate the place of sale, and state a time and date of sale which shall not be less than 14 days from the date of posting such notices as herein required.

(C) Procedures for sale of motor vehicles.

- (1) When any motor vehicle has not been redeemed within 30 days from the date of its impounding, it shall be the duty of the Chief of Police to submit to the Texas Department of Transportation, and similar agency of the proper state when the vehicle is registered in another state, all information that the department supply to him or her all information the records of the department contained on the vehicle.
- (2) Immediately upon receipt of such information from the Department, the Chief of Police shall notify the owner and lien holders as shown by the records of the Department by registered mail with return receipt requested that the vehicle has been impounded and of the provisions of this division in regard to redemption and sale of impounded property.
- (3) In the event a motor vehicle has not been redeemed within 15 days from receipt of the return receipt or notice of nondelivery of registered mail, the Chief of Police shall prepare a notice of sale of such vehicle, in the manner described in division (B) (2) above, and shall send a copy of the notice to owner and lien holders, as shown by the records and advertise the notices in the manner required in division (B) (1) above. Notice by registered mail to the address shown on the records of the Department of Transportation shall constitute notice of the pending sale to such owner and lien holders.
- (4) When the Chief of Police is unable to ascertain the names of the owner and lien holders, and the motor vehicle has not been redeemed with 45 days from its impounding, no notice of sale other than posting and advertising as herein prescribed shall be required.

- (D) Public Auction. When any impounded property, including motor vehicles, is not redeemed by the date and time designated in the notice of sale, the Chief of Police shall sell such property at public auction, and, as auctioneer, shall execute bill of sale of the property to the purchaser thereof. He or she shall not execute or deliver any but a conditional bill of sale unless and until the title of the buyer has become absolute by an expiration of 30 days, exclusive of the date of sale, without being redeemed by the owner of the impounded property.

(E) Disposition of proceeds.

- (1) After deducting the impounding fee and all other actual expenses incurred by the municipality in impounding, storing, and selling of the property, as determined by the Chief of Police, not to exceed a reasonable amount for each impounded article, he or she shall pay the balance of the proceeds of such sale, if any, to the owner of the property.
- (2) If the owner fails to call for such proceeds, they shall be paid into the general fund. Within six months after such auction sale, the owner may apply in writing to the Chief

of Police and, upon satisfactory proof of ownership, shall be entitled to receive the amount of the proceeds delivered to the general fund.

- (F) Junk property. Impounded property which is offered for sale at public auction in accordance with the procedures herein prescribed and upon which no person bids shall thereafter be sold or otherwise disposed of as junk. Money received for junk property shall be disposed of in the same manner as proceeds from an auction under this section.

Section 15. RECORDS; FEES.

- (A) The Chief of Police shall keep a record book which shall contain a description of all property impounded, the date and time of such impounding, the date notices of sale were posted and advertised and mailed to owners and lien holders, the return of receipts of registered notices, the date of the sale at auction, the amount realized for each article at such sale, the name and address of the owner and lien holders, if known, the name and address of the auction buyer, and any such other information as he or she may deem necessary

Section 16. PENALTIES.

- (A) Any person who violates any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than TWO HUNDRED DOLLARS (\$200.00) for each occurrence.
- (B) The Court shall order abatement and removal of the nuisance on conviction.

Section 17: SEVERABILITY.

- (A) This ordinance and the various parts, sections, subsections, sentences, phrases and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section, subsection, phrase or clause is adjudged unconstitutional or invalid, it is hereby declared that the remainder of this ordinance shall not be affected thereby.

Section 18: CONFLICTS.

- (A) All ordinances or parts thereof which are in conflict, in whole or in part, with any of the provisions of this ordinance as of the effective date of this ordinance are hereby repealed to the extent of such conflict, except that, terms defined herein for purposes of interpretation, administration, and enforcement of this ordinance only, will in no way, manner or form repeal, notify or otherwise change the definition of any such terms as used in other ordinances of the City of Tom Bean.

Section 19: PUBLISHING.

- (A) That the City Secretary shall publish this ordinance as required by law and that this ordinance will become law upon publication.

THIS ORDINANCE SHALL BE IN EFFECT UPON its READING AND PASSAGE BY THE CITY COUNCIL OF TOM BEAN, TEXAS.

Duly passed and approved by the City Council of Tom Bean, Texas this 11th day of April, 2005. A.D.

Mayor

Attest:

City Secretary