

ORDINANCE NO. 2015-002

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, PROVIDING FOR THE ABATEMENT OF ABANDONED AND JUNKED VEHICLES OR PARTS OF JUNKED VEHICLES; ADOPTING PROCEDURES FOR REGULATION AND ABATEMENT OF ABANDONED AND JUNKED VEHICLES, AND PROVIDING FOR POLICIES FOR DEALING WITH ABANDONED AND JUNKED VEHICLES OR PARTS OF JUNKED VEHICLES; ADOPTING DEFINITIONS; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$500; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, the Board of Aldermen of the City of East Bernard desires to adopt regulations and policies pertaining to the control and abatement of junked vehicles, and to implement policies concerning abandoned vehicles, as provided by Chapter 683 of the Texas Transportation Code; and

WHEREAS, the City finds there is a continuing need for the regulation of abandoned and junked vehicles because such vehicles are detrimental to the public health, safety, and welfare; now, therefore,

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EAST BERNARD, TEXAS:

Section 1. The facts and recitations contained in the preamble of this Ordinance are found to be true and correct.

Section 2. Definitions. The following words, terms, and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned Motor Vehicle shall mean a motor vehicle that:

- (a) Is inoperable and more than five (5) years old and left unattended on public property for more than forty-eight (48) hours; or
- (b) Has remained illegally on public property for a period of more than forty-eight (48) hours; or
- (c) Has remained on private property without the consent of the owner or person in charge of the property for more than forty-eight (48) hours; or

- (d) Is left unattended on the right-of-way of a City street or designated county, state, or federal highway within the City for more than forty-eight (48) hours.

Antique Vehicle shall mean a passenger car or truck that is at least twenty-five (25) years old.

Garage keeper shall mean an owner or operator of a garage, parking lot, or establishment for the servicing, repair, or parking of a motor vehicle.

Junked Vehicle shall mean a vehicle that is self-propelled and does not have lawfully attached to it an unexpired license plate or a valid motor vehicle inspection certificate and is: (1) wrecked, dismantled, partially dismantled, or discarded; or (2) inoperable and has remained inoperable for more than 72 consecutive hours, if the vehicle is on public property or 30 consecutive days, if the vehicle is on private property.

Motor Vehicle shall mean a vehicle that is subject to registration under Chapter 501 of the TEXAS TRANSPORTATION CODE, or a watercraft, outboard motor, or vessel subject to registration under Chapter 31 of the TEXAS PARKS AND WILDLIFE CODE.

Motor Vehicle Collector shall mean a person who owns one or more antique or special interest vehicles and 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 shall mean a person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Police Department shall mean the Wharton County Constable, Precinct ____, or his designee, who performs police protection services for and on behalf of the City pursuant to an interlocal cooperation agreement.

Special Interest Vehicle shall mean a motor vehicle of any age that has not been changed from the original manufacturer's specifications and, because of its historical interesting, is being preserved by a hobbyist.

Storage Facility shall mean a garage, parking lot, or establishment for the servicing, repairing, or parking of motor vehicles.

Section 3. Abandoned Motor Vehicles

3.1 Authority to Take Possession of Abandoned Motor Vehicles.

- (a) The police department may take into custody an abandoned motor vehicle found on public or private property.

(b) The police department may employ its own personnel, equipment, and facilities or hire persons, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle it takes into custody.

3.2 Notification of Owner and Lien Holders.

(a) If the police department takes into custody an abandoned motor vehicle it shall notify, not later than the tenth (10th) day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lien holders of record pursuant to Chapter 501 of the TEXAS TRANSPORTATION CODE or Chapter 31 of the TEXAS PARKS AND WILDLIFE CODE, that the vehicle has been taken into custody.

(b) The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle not later than the twentieth (20th) day after the date of the notice, upon payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody, or garage keeper's charges if notice is made under this Ordinance. The notice shall also state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lien holders of all right, title, and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction. The police department is not required to send a notice as otherwise required by this section if the department has received notice from a garagekeeper that an application has or will be submitted to the Texas Department of Transportation for the disposal of the vehicle.

(c) 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 lien holders, notice published once in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this section. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for a notice by certified mail.

(d) In addition to the notice required herein, if the city takes an abandoned motor vehicle into custody, the city shall notify a person that files a theft report or similar report prepared by any law enforcement agency for the vehicle of that fact. The notice shall be sent by

regular mail on the next business day after the city takes the vehicle into custody. The city shall also provide the name and address of the person that filed the theft report or similar report to the vehicle storage facility or governmental vehicle storage facility that is storing the vehicle.

(e) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given under this section.

(f) The police department or agent of the police department that takes custody of an abandoned motor vehicle is entitled to reasonable storage fees for:

(1) a period of not more than ten (10) days beginning on the day the department takes custody and continuing through the day the department mails notice as provided by this section; and

(2) a period beginning on the date after the day the department mails notice and continuing through the day any accrued charges are paid and the vehicle is removed.

3.3 Auction of Abandoned Motor Vehicles.

(a) If an abandoned motor vehicle has not been reclaimed as provided by this Ordinance, the police department may sell the abandoned motor vehicle at a public auction or use the item as allowed pursuant to 683.016 TEXAS TRANSPORTATION CODE or other applicable law. The public auction shall be preceded by a notice published once in one newspaper of general circulation in the municipality, at least three (3) weeks prior to the date of the auction, and in the case of a garage keeper's lien, the garage keeper shall be notified by certified mail. The notice shall describe the year, make, model, and vehicle identification number of the abandoned motor vehicle, and set for the time and place of the auction.

(b) The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department of the City, and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle, the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred under this Section or elsewhere in this Ordinance. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for ninety (90) days and then shall be deposited in a special fund that shall remain available for the payment of

auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody, if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs.

3.4 Garage keepers and Abandoned Motor Vehicles.

(a) A motor vehicle is considered an abandoned vehicle, and shall be reported by the garagekeeper to the police department, if:

(1) Left for more than ten (10) days in a storage facility operated for commercial purposes, after notice is given to the owner as provided by this Ordinance; or

(2) Left for more than ten (10) days after the expiration of a period under a contract pursuant to which the vehicle was to remain on the premises of the storage facility; or

(3) Left for more than ten (10) days in a storage facility by someone other than the registered owner or by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair.

(b) A garagekeeper who fails to report the possession of an abandoned vehicle within ten (10) days after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this section shall follow the notification procedures provided by Section 3.2 of this Ordinance, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee, as adopted by Board of Aldermen, shall accompany the report of the garagekeeper to the police department. The fee shall be retained by the police department and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle.

(d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by Section 3.2 of this Ordinance shall be taken into custody by the police department and sold or otherwise handled in the manner provided by Section 3.3 of this Ordinance. The proceeds of such sale shall first be applied to the garage keeper's charges for servicing, storage, and repair, but as compensation for the expense incurred by the police department in placing the vehicle in custody and expense of auction the police department shall retain two percent (2%) of the gross proceeds of the sale of each vehicle auctioned, unless the

gross proceeds are less than ten dollars (\$10.00). If the gross proceeds are less than ten dollars (\$10.00), the department shall retain the entirety of the proceeds to defray expenses of custody and auction. Surplus proceeds remaining from an auction shall be distributed in accordance with Section 3.3 of this Ordinance.

(e) Except for the termination of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.

3.5 Disposal to Demolishers.

An abandoned motor vehicle may be disposed of by removal to a motor vehicle demolisher in accordance with the provisions of section 683.051 et seq. of the TEXAS TRANSPORTATION CODE.

Section 4. Junked Vehicles as Public Nuisance.

4.1 A junked vehicle, including a part of a junked vehicle, which is visible at any time of the year from a public place or public right-of-way:

- (a) is detrimental to the safety and welfare of the public;
- (b) tends to reduce the value of private property;
- (c) invites vandalism;
- (d) creates a fire hazard;
- (e) is an attractive nuisance creating a hazard to the health and safety of minors;
- (f) produces urban blight adverse to the maintenance and continuing development of the City; and
- (g) is a public nuisance.

4.2 The provisions of this section shall not apply to:

- (a) A vehicle or vehicle part that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
- (b) A vehicle or vehicle part that is 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:

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

4.3 A person commits an offense if that person maintains a public nuisance as defined by this Section.

4.4 Procedures for Abating Nuisance.

(a) Notice.

(1) The procedures for the abatement and removal of a public nuisance under this section must provide not less than 10 days' notice of the nature of the nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to:

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

(2) The notice must state that:

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

(3) 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.

(4) If 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.

(b) Hearing. A public hearing is required before the removal of the vehicle or vehicle part as a public nuisance, if requested by one or more to whom notice was provided as

set forth above. The hearing shall be conducted before the Board of aldermen not less than eleven (11) days after service of notice to abate the nuisance. Following the hearing, if a public nuisance is found by the Board of Aldermen to exist, the Board of Aldermen shall adopt a resolution requiring the removal of the vehicle, or part thereof, and shall state a time for such removal to be accomplished, which in no event shall exceed ten (10) days from the date of the hearing. The resolution shall include a description of the vehicle, or part thereof, and the identification number and license number of the vehicle if the information is available.

(c) No Hearing. When no public hearing is requested as provided in this section, or if the notice is returned undelivered by the United States Post Office, the Board of Aldermen shall adopt a resolution requiring the removal of the vehicle or part thereof. The resolution shall include a description of the vehicle, or part thereof, and the identification number and license number of the vehicle if the information is available.

(d) When the vehicle, or part thereof, remains on the property after ordered removed as provided by this Ordinance, the police department shall cause the same to be disposed of by removal to a scrapyard, demolisher, or a suitable site in compliance with section 683.078 of the TEXAS TRANSPORTATION CODE.

(e) A vehicle removed under these procedures shall not be reconstructed or made operable after it has been removed.

(f) The relocation of a vehicle that is a public nuisance to another location within the City after the proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(g) Notice shall be given to the Texas Department of Transportation not later than the fifth (5th) day after the date of removal of the vehicle or vehicle part. The notice must identify the vehicle or vehicle part.

4.5 Authority to Enforce. Any person authorized by the City to administer the procedures established by this Ordinance may request permission to enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle, and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance. The Municipal Court of the City may issue orders necessary to enforce the procedures in this Ordinance.

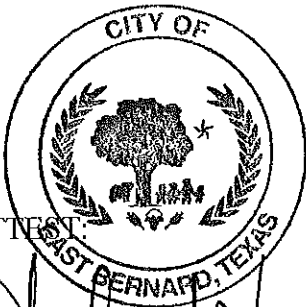
4.6 Removal of Vehicle as Obstruction to Traffic. This Ordinance does not affect any law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property.

Section 5. Penalty. Any person who maintains a nuisance as defined by this Ordinance or who otherwise violates any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than two hundred dollars (\$200.00). Each day during which such violation shall exist or occur shall constitute a separate offense.

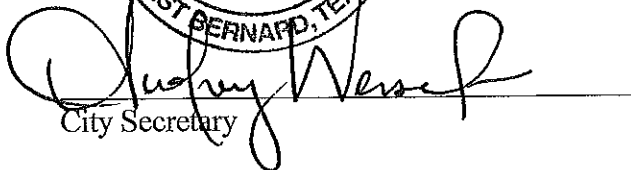
Section 6. Repealer. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

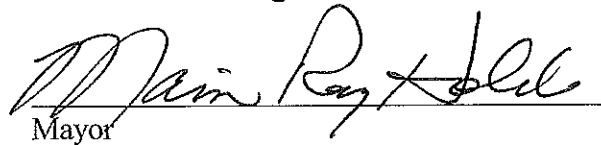
Section 7. Severability. In the event any section, paragraph, subdivision, clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part of provision hereof other than the part declared to be invalid or unconstitutional; and the Board of Aldermen of the City of East Bernard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED on this 16 day of February, 2015.



ATTEST:


City Secretary


Mayor