

ORDINANCE NO. 2018-03

AN ORDINANCE OF THE CITY OF RIESEL, TEXAS REGARDING JUNKED VEHICLES; FINDING JUNKED VEHICLES TO BE A PUBLIC NUISANCE; PROHIBITING THE NUISANCE; RECOGNIZING STATUTORY OFFENSE; ESTABLISHING PROCEDURES FOR ABATEMENT AND DISPOSITION OF JUNKED VEHICLES; REPEALING CONFLICTING REGULATIONS; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, a junked vehicle or part thereof that is left in such a location as to be visible from a public place or public right-of-way is detrimental to the safety and welfare of the citizens of Riesel, tends to reduce the value of private property, invites vandalism, creates other dangers, and is a blight adverse to the development of the City; and has been declared a public nuisance by State law; and

WHEREAS, Chapter 683, Subchapter E of the *Transportation Code* (V.T.C.A.) provides the City with the authority to adopt procedures to address this problem; and

WHEREAS, regulation in this area is in the best interest of the citizens of the City.

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

1. Definition of Junked Vehicle.

In this Ordinance, the term Junked Vehicle means a vehicle that:

- (1) is self-propelled; 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.
- (b) For purposes of this Ordinance, “junked vehicle” includes a motor vehicle, aircraft, or watercraft. This Ordinance applies only to:
 - (1) a motor vehicle that displays an expired license plate or does not display a license plate;
 - (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.

2. Nuisance Declared.

(a) A junked vehicle, including a part of a junked vehicle, that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, creates a harborage for vermin and insects, constitutes an attractive nuisance creating a hazard to the health and safety of minors, produces urban blight adverse to the maintenance and continuing development of the City, and is a public nuisance.

(b) Section 683.072 of the *Transportation Code* declares a junked vehicle or part thereof visible from a public place or public right-of-way a public nuisance, which declaration is adopted in this Ordinance.

3. Recognition of Statutory Offense.

a) A person commits an offense under the *Transportation Code* when he or she maintains a junked vehicle or vehicle part in a manner declared a public nuisance. [Source Law: §683.072, §683.073, *Transportation Code*]. Section 683.073 of the *Transportation Code* makes such an offense (misdemeanor) punishable by a fine not to exceed \$200.00.

b) Section 683.073(c) of the *Transportation Code* requires the court in which the case is tried to order abatement and removal of the nuisance upon conviction.

4. City Procedures for Abating Nuisance.

a) *Procedures.* The following procedures for the abatement, removal and disposal of a junked vehicle or a part of a junked vehicle maintained as a public nuisance are adopted by the City. These procedures conform to the requirements of Chapter 683, Subchapter E of the *Texas Transportation Code*.

1) *Notice.* Prior to the abatement and removal of the public nuisance, the Chief of Police or his/designee shall provide not less than ten (10) days' written notice of the nature of the nuisance, which notice must be personally delivered, mailed by certified mail with a five-day return requested, or by U.S. mail with signature confirmation to:

- A) the last known registered owner of the nuisance;
- B) each lienholder of record of the nuisance;
- 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. [This does not mean that the

adjacent property owner is responsible to abate the nuisance if it is not the property owner's vehicle. However, sometimes the person who left the vehicle will let the closest property owner know his identity and if he intends to return to remove the vehicle]

The notice must state that: the nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was personally delivered or mailed; and that any request for a hearing before the City Council must be made before that ten (10) day period expires. If a hearing is timely requested, abatement shall be continued and be dependent upon the outcome of the hearing. If no hearing is timely requested, action to abate the nuisance may proceed once the ten (10) day period has expired.

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, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

2) *Hearing.*

(A) If a hearing before the City Council is requested by a person to whom notice is required to be sent in accordance with 4 (a) (1) above, the hearing shall be held not earlier than the eleventh (11th) day after the date of service of the notice. A request for a hearing shall be made in writing to the Mayor.

(B) The Mayor shall set a date and time for the hearing, and shall notify the requestor, and all persons entitled to notice under 4 (a) (1) above, of the date and time for such hearing, and the location of the hearing. If the address of persons entitled to notice under 4 (a) (1) above is not available, such notice may be otherwise delivered or posted in accordance with 4 (a) (1) above.

(C) The City Council shall hear the matter at the location, date and time noticed, unless changed by agreement or necessity with notice to the requestor, and shall, based on the information presented by the City representative(s) and the requestor (or any other person with a legal or equitable interest in the matter) at the hearing, make a determination of whether the vehicle or vehicle part is a public nuisance as set forth in this Ordinance.

(D) Pursuant to §683.076(c) of the *Transportation Code*, it is presumed that the vehicle or vehicle part is inoperable unless demonstrated otherwise by the owner.

(E) If the Council finds that the vehicle or vehicle part is a public nuisance as set forth in this Ordinance it shall enter an order in the form of a resolution making such finding, ordering the owner of the vehicle or vehicle part, or owner or occupant of the private premises where the vehicle or vehicle part is located, as the case may be, to abate the public nuisance by removing or causing the removal of the same, and directing that if such public nuisance is not abated within ten (10) days of the order that the Chief of Police, or someone acting under his/her direction, remove or cause

to be removed the vehicle or vehicle part from the public or private property.

(F) The order shall be in writing, and must include, if available at the location of the nuisance, the following:

- i) vehicle description;
- ii) vehicle identification number; and
- iii) license plate number.

A copy of the order shall be mailed by certified mail to all known persons entitled to notice under 4 (a) (1) above, or otherwise provided or posted in accordance with 4 (a) (1) above if the address is unknown.

5. Entry onto Premises.

Pursuant to §683.074(e) of the *Transportation Code*, the Chief of Police or his/her authorized agent(s) may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance in accordance with this Ordinance.

6. Removal.

a) Removal of the nuisance shall be carried out, or caused to be carried out, by the Chief of Police or his/her authorized agent(s), in accordance with this Ordinance and any orders issued hereunder.

b) The Chief of Police or other authorized City official shall give notice to the Texas Department of Transportation identifying the vehicle or vehicle part not later than the fifth (5th) day after the date of removal.

c) A junked vehicle or part may not be reconstructed or made operable by the City after it is removed.

d) Nothing herein shall be construed to affect laws or regulations permitting the immediate removal of a motor vehicle or part left on public property which constitutes an obstruction to traffic or a danger to the traveling public.

e) Junked motor vehicles or vehicle parts may be disposed of in accordance with this Ordinance.

7. Disposal.

The Chief of Police, or his/her authorized agent(s), may dispose of or cause the disposal of the junked motor vehicle or vehicle part by removal to a scrapyard, a motor vehicle demolisher, or a suitable site operated by the city, or as otherwise provided by Chapter 683, Subchapter E of the *Transportation Code*, or amendments or recodifications thereof.

8. Removal to a Non-complying Location Not Abatement.

In accordance with the authority provided by §683.074 of the *Transportation Code*, the relocation of a junked vehicle or vehicle part that is a public nuisance to another location in the City after a proceeding for abatement and removal of the public nuisance has commenced by notice has no effect on the proceeding if the junked vehicle or vehicle part constitutes a public nuisance at the new location.

9. Exemptions.

a) This Ordinance does 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 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:

A) maintained in an orderly manner;

B) not a health hazard; and

C) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery. Screening should generally comply with the following requirements:

i. A solid barrier fence that is at least six (6) feet in height of a natural or earth-tone color constructed of wood or other solid conventional fencing materials. If greater height is necessary to screen the junked vehicles from ordinary public view, such is required. Said fence must be constructed in a good and orderly manner and so that it does not itself create an eyesore;

ii. Planting fast growing plants that maintain foliage year round (shrubs, trees or reeds) and which are well maintained and are kept at a height of at least six (6) feet, except that where a greater height is necessary to screen the junked vehicles from ordinary public view, they will be maintained at that height. The vegetation planted must initially be of a height of at least four (4) feet upon planting and must be of a variety that is reasonably expected to grow to at least six (6) feet in height within one year after planting.

iii. Screening by any method other than as set forth above does not

comply with this Ordinance (for example: car covers, parking operational vehicles in front of junked vehicles, storage in a building not completely enclosed where the junked vehicle is visible to the public, etc.).

3) In this section:


- (A) “Antique vehicle” means a passenger car or truck that is at least 25 years old;
- (B) “Motor vehicle collector” means a person who:
 - (1) owns one or more antique or special interest vehicles; and
 - (2) acquires, collects, or disposes of an antique or special interest vehicles or vehicle parts for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (C) “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.
- (D) “Junkyard” has the definition given in Section 391.001 of the Transportation Code. To be a Junkyard the premises must actually be used for the business of buying and selling junked vehicles or vehicle parts, or scrapping vehicles for the purpose of selling scrap. Such must also have the indicators of an actual business, including having a state sales tax account/payment number. Mere storage of multiple junked vehicles on a property does not constitute a “junkyard” for purposes of this Ordinance.

SECTION 2. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section. This Ordinance supersedes and repeals any other ordinance or part thereof relating to junked vehicles as defined herein to the extent of any conflict.

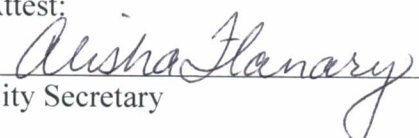
SECTION 3. This ordinance shall become effective upon passage, but enforcement of the abatement process hereunder shall not begin until 90 days after passage. The enforcement delay does not affect enforcement of any state law, including Section 683.073 of the *Transportation Code*. The caption of this Ordinance shall be published in the official newspaper of the City after passage.

SECTION 4. It is found and declared that the City Council meeting at which this Ordinance has been adopted was open to the public and was noticed and held in accordance with Chapter 551 of the Government Code.

PASSED this 26th day of August, 2018 by a vote of 5 AYES to 0 NAYS with 0 Abstentions.



Mayor

Attest:


City Secretary