

ORDINANCE NO. 2005-08

AN ORDINANCE OF THE TOWN OF NEW HOPE, COLLIN COUNTY, TEXAS, REPEALING ORDINANCE NO. 89-04; DECLARING JUNKED VEHICLES TO BE A PUBLIC NUISANCE; PROVIDING FOR THE ABATEMENT OF JUNKED VEHICLES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of New Hope, Texas, finds a large number of junked vehicles, as that term is defined therein, are from time to time left in places where they are visible from a public place or public right-of-way, that said junked vehicles create fire hazards and that the same constitutes an attractive nuisance, creating a hazard to the health and safety of minors, and the same are detrimental to the economic welfare of the Town by producing the urban blight which is adverse to the maintenance and continuing development of the Town of New Hope, Texas; and

WHEREAS, the Town Council desires to amend the Town's junked vehicle regulations to bring them into compliance with state law.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF NEW HOPE, COLLIN COUNTY, TEXAS, AS FOLLOWS:

SECTION 1. Enacting Clause. The previous junked vehicle ordinance of the Town, Ordinance No. 89-04, adopted on January 31, 1989, together with all amendments thereto, is hereby repealed and replaced in its entirety by this Ordinance to read as follows:

SECTION 2. Junked Vehicles.

(a) **Short title.** This Ordinance may be cited as the "Junked Vehicle Ordinance".

(b) **Definitions.** The following terms whenever used or referred to in this Ordinance shall have the same respective meaning unless a different meaning clearly appears for the context:

(1) "Administrator" shall mean the Town employee or official designated by the Town Council as the individual tasked with enforcement of this Ordinance.

(2) "Antique vehicle" means a passenger car or truck that is at least 25 years old.

(3) "Demolisher" means any person whose business is to convert the

motor vehicle into processed scrap or scrap metal or otherwise to wreck or dismantle motor vehicles.

(4) "Inoperable" means incapable of being propelled on its own power due to dismantling, disrepair, or some other cause.

(5) "Junked vehicle" means a vehicle as defined in Texas Transportation Code § 683.071, as amended, which vehicle is self-propelled and:

- (A) does not have lawfully attached to it:
 - (i) an unexpired license plate; or
 - (ii) a valid motor vehicle inspection certificate; and
- (B) is wrecked, dismantled or partially dismantled, or discarded; or
- (C) is 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.

(6) "Motor vehicle collector" means a person who: (i) owns one or more antique or special vehicles; and (ii) 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.

(7) "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.

(8) "Town" shall mean the Town of New Hope, Texas.

(c) Junked vehicles declared a public nuisance. A junked 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) detrimental to the safety and welfare of the general public;
- (2) tends to reduce the value of private property;
- (3) invites vandalism;
- (4) creates fire hazards;

(5) constitutes 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 municipalities; and

(7) is a public nuisance.

(d) Notice.

(1) Prior to any official action being taken to abate and remove a junked vehicle constituting a public nuisance, from private property, public property or public right-of-way, not less than 10 days notice shall be given, except as hereinafter provided, to the following parties:

(A) the last known registered owner of the junked vehicle as shown on the certificate of title;

(B) any lienholder of record; and

(C) the owner or occupant of the property upon which the junked vehicle is located or the owner or occupant of the premises adjacent to the public right-of-way on which the junked vehicle is located.

(2) The notice shall be mailed, by certified mail with a 5-day return requested, and if the vehicle is reasonably accessible, also by posting a copy of such notice to the front windshield of the vehicle, and shall state the following:

(A) the nature of the public nuisance;

(B) that it must be removed and abated not later than the 10th day after the date on which the notice was mailed;

(C) that any request for a hearing must be made in writing before the 10 day period expires;

(D) that failure to abate the nuisance, request a hearing or attend the hearing, if requested, constitutes a waiver by the owner and lienholders of all right, title and interest in the vehicle and their consent to disposal for the junked vehicle under the terms of the Texas Transportation Code concerning the disposal of junked vehicles.

(3) If the post office address of the last known registered owner of the junked vehicle is unknown, notice may be placed on the junked vehicle, or, if the owner is located, hand delivered.

(4) If any notice is returned undelivered by the United States Postal Service, the validity of the notice is not affected, and the notice is considered as

delivered, however, official action to abate the nuisance shall be continued to a date not earlier than 11 days after the date of the return of the notice.

(e) Hearing.

(1) The owner of the vehicle or occupant of the premises may, within the 10-day period after the service of notice required by the preceding Subsection (d)(2) to abate the nuisance, request the Town Secretary of the Town, either in person or in writing to set a date and time to appear before the Administrator for a public hearing to determine whether the person is in violation of this Ordinance. If a hearing is requested within 10 days after service of notice to abate the nuisance, the junked vehicle shall not be abated by the Town until ordered to do so by the Administrator.

(2) At the public hearing, the Administrator shall hear and consider all relevant evidence, objections or protests and shall receive testimony from owners, witnesses, town employees and interested persons relative to such alleged public nuisance. The hearing may be continued from time to time.

(3) At the hearing the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(4) At the conclusion of the public hearing, the Administrator shall consider all evidence and determine whether the vehicle, or any part thereof, constitutes a public nuisance as alleged. If the Administrator finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, and that notice requirements provided in this Ordinance have been met, the Administrator shall make a written order setting forth his findings and ordering that the nuisance be abated.

(5) If the information is available at the location of the nuisance, the order requiring removal of the nuisance must include the vehicle's:

(A) description;

(B) vehicle identification number;

(C) license plate number; and

(D) a statement that the vehicle will be disposed of in accordance with the Texas Transportation Code.

(f) Abatement of nuisance. If no hearing is requested prior to the expiration of 10 days after the notice required by Subsection (d)(2) above was served or in the event the Administrator orders abatement of the nuisance, the Town's code enforcement officer or any duly authorized person may abate such public nuisance by removal and disposal of the junked vehicle after the issuance of an order meeting the requirements of the preceding Subsection (e)(5).

(g) Junked vehicles not to be made operable after removal. After any junked vehicle has been removed under the authority of this Ordinance, it shall not be reconstructed or made operable again.

(h) Notice to department of transportation. No later than the 5th day after the date of removal of a junked vehicle pursuant to this Ordinance, notice must be given to the Texas Department of Transportation. Such notice must identify the vehicle.

(i) Relocation of junked vehicles. After the Town has sent notice in accordance with Subsection (d) above, the relocation of a junked vehicle that is a public nuisance to another location in the Town has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(j) Disposal of junked vehicles. Any junked vehicle taken into custody by the Town or any duly authorized person pursuant to a provision of this Ordinance may be disposed of by removal and sale to a scrapyard, a motor vehicle demolisher, or a suitable site operated by a municipality or county. The removal of a junked vehicle or parts thereof from property may be by any duly authorized person.

(k) Application of this ordinance. The provisions of this Ordinance shall not apply to a vehicle or vehicle part that is:

(1) completely enclosed within a building in a lawful manner where it 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:

(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.

(l) Offense.

(1) In lieu of or in addition to the abatement proceedings set forth in this Ordinance, the Town may pursue the filing of a criminal complaint against the owner or occupant of the property in the municipal court for violation of this Ordinance or Chapter 683, Subchapter E, Texas Transportation Code.

(2) A person commits an offense if the person maintains a public nuisance described by Subsection (c) above. An offense under this section is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). Each day an offense occurs shall be a separate offense.

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

(m) Removal with permission of owner or occupant. If, within 10 days after receipt of notice from the Town in accordance with Subsection (d) to abate the nuisance, the owner or occupant of the premises shall give his written permission to the Town for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with provisions of this Ordinance.

(n) Right of removal from streets preserved. Nothing in this Ordinance shall affect ordinances or other laws that permit immediate removal of a vehicle left on public property which is abandoned or which constitutes an obstruction to traffic.

SECTION 3. Savings and Repealing Clause. All provisions of any ordinance of the Town in conflict with this Ordinance are hereby repealed, but such repeal shall not abate any pending prosecution for violation of a repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of an ordinance. Any remaining provisions of an ordinance not so repealed are hereby retained in full force and effect.

SECTION 4. Severability. It is the intent of the Town Council that each section, subsection, sentence, clause and phrase of this Ordinance be deemed severable, and should any such section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid for any reason by a court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not be construed to effect the validity of those provisions of this Ordinance left standing.

SECTION 5. Publication and Effective Date. In accordance with Local Government Code § 52.012, the caption of this Ordinance shall be published in two (2) issues of the McKinney Courier-Gazette, a weekly newspaper with general circulation in the Town, and this Ordinance shall take effect upon such publication.

PASSED, APPROVED and ADOPTED by the Town Council of the Town of New Hope, Texas on this the 26th day of July, 2005.



ATTEST:

Raynese Woody
Raynese Woody, Town Secretary

APPROVED:

By: Johnny Hamm

Johnny Hamm, Mayor

APPROVED AS TO FORM:

James W. Wilson
RAPIER, WILSON, & WENDLAND, P.C.
James W. Wilson, Asst. Town Attorney