

ORDINANCE NO. 01-14-2019

AN ORDINANCE OF THE CITY OF MERKEL, TAYLOR COUNTY, TEXAS, DECLARING A JUNKED VEHICLE, INCLUDING A PART OF A JUNKED VEHICLE, TO BE A PUBLIC NUISANCE; PROHIBITING A JUNKED VEHICLE FROM BEING VISIBLE FROM A PUBLIC PLACE OR A PUBLIC RIGHT-OF-WAY; PROVIDING FOR DEFINITION OF A JUNKED VEHICLE; PROVIDING PROCEDURES FOR ABATEMENT OF A JUNKED VEHICLE; PROVIDING FOR EXCEPTIONS; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Merkel is a type A general-law municipality located in Taylor County, Texas, created in accordance with the provisions of Chapter 6 of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, it is the desire of the City Council of the City of Merkel, Texas, to prevent the accumulation of junked and abandoned vehicles within the City and its Extra-territorial jurisdiction (ETJ), to eliminate the health and safety hazards associated with said vehicles and to abate the nuisances attributable to such vehicles; and

WHEREAS, the City Council is empowered to enact this Ordinance to promote the health, safety, and general welfare of the City of Merkel; now

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

Part 1: That 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) 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 municipalities; and
- (7) is a public nuisance.

Part 2: That the City of Merkel hereby adopts Chapter 683 of the Texas Transportation Code, as amended, in its entirety herein and it shall serve as the City's authority for the regulation of abandoned and junked vehicles; and

Part 3: That the definition of "junked vehicle" and the procedures for abatement of said vehicles as outlined in Exhibit "A", attached hereto and made a part of this Ordinance for all purposes, is hereby adopted effective immediately upon and after passage of this Ordinance.

Part 4: That any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a class “C” misdemeanor, and upon conviction thereof shall be punished by a fine of not more than two hundred dollars (\$200.00).

Part 5: That the City of Merkel, as an alternative to other available enforcement procedures, hereby adopts an administrative adjudication process, as authorized under Section 683.0765, Transportation Code and described by Section 54.044, Local Government Code, for violations of provisions of this Ordinance. However, the City shall not impose both a criminal fine and a civil penalty for the same offense.

Part 6: That any and all ordinances in conflict herewith are hereby repealed.

Part 7: That if any provision or any section of this ordinance shall for any reason be adjudged invalid or unconstitutional by a court of competent jurisdiction, such judgement shall not affect or invalidate the remaining provisions or sections, which shall remain in full force and effect.

Part 8: That this ordinance, being a penal ordinance, shall become effective ten (10) days after its publication in the local newspaper of general circulation.

PASSED ON FIRST READING this 10th day of December 2018.

A notice of the time and place said ordinance would be given a public hearing and considered for final passage was published in the Merkel Mail, a weekly newspaper of general circulation in the City of Merkel, said publication being on the 19th day of December 2018, the same being more than ten (10) days prior to the public hearing being held at an open meeting of the City Council at Heritage Hall, 111 Taylor, at 7:00PM, January 14, 2019 to allow the public to be heard.

PASSED ON SECOND AND FINAL READING this 14th day of January 2019.

ATTEST:

SIGNED:

City Secretary, Evelyn Morse

Mayor, Mary Schramper

APPROVED:

City Attorney, Claudia Clinton

CITY OF MERKEL JUNKED VEHICLE ORDINANCE

EXHIBIT "A"

CHAPTER 1

ARTICLE I. IN GENERAL; DEFINITIONS.

ARTICLE II. PROHIBITIONS; DEFENSE TO PROSECUTION.

ARTICLE III. NOTICE PROVISIONS.

ARTICLE IV. ENFORCEMENT; PENALTIES

ARTICLE IV. ABANDONED VEHICLES

ARTICLE I. IN GENERAL; DEFINITIONS.

Sec. 1-1. Designation and citation.

The ordinances embraced in this chapter shall constitute and be designated the "Junked Vehicle Ordinance of the City of Merkel, Taylor County, Texas," and may be so cited. Such ordinance may also be cited as the Merkel "Junked Vehicle Ordinance."

(ref. Vernon's Ann. Civ. St., art. 1176a)

Sec. 1-2. Purpose and intent.

The purpose and intent of this chapter is to protect the health, safety, and general welfare of the citizens of Merkel through the regulation of abandoned and junked vehicles.

(ref. Local Gov't Code, Chapter 54)

Sec. 1-3. Definitions

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

Administrator: City of Merkel Peace Officer, Code Enforcement Officer, or City Manager or designee who administer, implement, and enforce the provisions of this chapter.

Aircraft: A device that is invented, used, or designated for air navigation or flight, other than a parachute or other device used primarily as safety equipment.

City: City of Merkel, Taylor County, Texas.

Department: Texas Department of Motor Vehicles.

Improved parking surface: Concrete, asphalt, or any accepted all weather material including gravel or caliche.

Person: Includes and shall be applied to a firm, partnership, association, corporation, club, society, group acting as a unit, or body politic, and corporate, as well as to an individual.

Private property: Real property including lands, tenements and hereditaments not owned by the government or dedicated to public use.

Public place: Includes any public right-of-way, cemetery, school yard, or open space adjacent thereto; and any public lake or stream; and any place or business open to the use of the public in general, open to public view or to which the public has access.

Abandoned motor vehicle: As defined in Chapter 683 of the Texas Transportation Code as amended.

Antique vehicle: A passenger car or truck that is at least 25 years old.

Competition vehicle: Any motor vehicle modified or built for racing or any other competition or similar special purpose that is in regular use with the clear intent that such vehicle will not be restored for use as a motor vehicle.

Hearing officer: The Municipal Court Judge shall act as the hearing officer for purposes of this chapter.

Junked motor vehicle:

- (a) A motor vehicle that does not have lawfully affixed to it both an unexpired license plate and a valid vehicle registration certificate (indicating that a current Vehicle Inspection Report (VIR) has been obtained); and
 - (1) is self-propelled; and
 - (2) is:
 - (A) wrecked, dismantled or partially dismantled, or discarded or has otherwise fallen into disrepair or disuse and has been left outdoors and is not being protected or otherwise preserved to prevent loss or deterioration from weather, theft, or vandalism.
 - (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; or
- (b) 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.
- (c) a watercraft that:
 - (1) does not have lawfully on board an unexpired certificate of number; and
 - (2) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Motor vehicle: A motor vehicle that is subject to regulation under Transportation Code Chapter 501, Certificate of Title Act as amended.

Motor vehicle collector: A person who owns one or more antique or special interest vehicles and acquires, collects, or disposes 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: A person in the business of converting motor vehicles into processed scrap or scrap metal; or wrecking or dismantling motor vehicles.

Outboard motor: An outboard motor subject to registration under Chapter 31, Parks and Wildlife Code.

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

Vehicle owner: A person, other than a manufacturer, importer, distributor, or dealer, claiming title to or having a right to operate under a lien a motor vehicle that has been subject to first sale; a person who has a property interest in or title to a vehicle.

Watercraft: A vessel that is subject to registration under Chapter 31, Parks and Wildlife Code.

ARTICLE II. PROHIBITIONS; DEFENSE TO PROSECUTION

Sec. 1-4. Prohibited.

- (a) It is unlawful for a person to cause or permit a junked vehicle or part of a junked vehicle to be placed or to remain on any public property or public right-of-way.
- (b) It is unlawful for a person to cause or permit a junked vehicle or part of a junked to be placed or to remain on private property where it is visible from a public place or public right-of-way at any time of the year.
- (c) It is unlawful for a person that owns or controls any real property to maintain, allow, cause or permit a junked vehicle or part of a junked vehicle to be placed or to remain on the property.
- (d) It is unlawful for a person to maintain, allow, cause or permit a junked vehicle to be placed or to remain on real property without the permission of the owner of the property.
- (e) It is unlawful for a person to knowingly or intentionally interfere with or attempt to prevent the examination or removal of a junked vehicle or part of a junked vehicle by a person authorized to administer the provisions of this chapter.

(ref. Transportation Code 683)

Sec. 1-5. Defense to prosecution.

- (a) The following are defenses to prosecution under section 1-4:
 - (1) The vehicle or vehicle part is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property, provided that the building is in good repair and does not constitute a nuisance or a health or safety hazard;
 - (2) The vehicle or vehicle part is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard;
 - (3) The vehicle is an unlicensed, operable or inoperable antique or special interest vehicle owned and stored by a motor vehicle collector on the collector's property, if the vehicle or part(s) is:
 - (i) parked on an improved parking surface;
 - (ii) maintained in an orderly manner;
 - (iii) not a health or safety hazard; and
 - (iv) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
 - (4) The vehicle is parked on an improved parking surface, completely covered by a heavy duty, contour-fitting cover so that no part of the vehicle except the tires is exposed to public view and it is the only one on the property.
 - (5) The vehicle is a competition vehicle as herein defined that is in regular use, not in disrepair, is covered by a form fitting cover in good condition and does not constitute a health or safety hazard, or an attractive nuisance, and is parked in a lawful manner consistent with this chapter.

ARTICLE III. NOTICE PROVISIONS

Sec. 1-6. Notice.

- (a) For violations described in section 1-4, the Administrator shall give written Notice of Violation (Notice) by personal delivery, by certified mail with a five-day return requested, or by the United States Postal Service with signature confirmation service to:
 - (1) the last known registered owner of the vehicle;
 - (2) each lienholder of record of the vehicle; and
 - (3) the owner or occupant of:
 - (i) the property upon which the vehicle is located; or
 - (ii) if the vehicle is located on a public right-of-way, the property adjacent to the right-of-way.
- (b) The Notice shall state:
 - (1) that 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;
 - (2) that the person upon whom notice is served is entitled to request a public hearing. Request for a hearing shall be in writing, addressed to the Merkel Municipal Court, 100 Kent St., Merkel, TX 79536 and must be post-marked before that 10-day period expires;
 - (3) the amount of administrative penalties;
 - (4) that if the nuisance is not abated as directed and no request for a hearing is received within the prescribed time, the city may proceed to abate or cause the abatement of such nuisance and assess the administrative penalties and costs of abatement against such person.
 - (5) failure to request a hearing in writing within the time prescribed constitutes a waiver of right to a hearing.
- (c) If the post office address of the last known registered owner of the vehicle is unknown, notice may be placed on the vehicle or, if the owner is located, personally delivered.
- (d) A notice issued under this article is presumed to have been received on the fifth day after the date the notice is mailed unless the notice is returned to the City for reasons other than refused or unclaimed by the United States Postal Service. Official action to abate and remove the junked vehicle shall be continued to a date not earlier than the 11th day after the date of such return.

Sec. 1-7 Exceptions to notice procedures.

- (a) Relocation of a junked vehicle to another location within the city or its ETJ after notice or a proceeding for the abatement and removal of a nuisance has commenced has no effect on the proceeding if the vehicle constitutes a nuisance at the new location. No additional notice shall be required.
- (b) No notice is required for the issuance of a citation or for a complaint to be filed in municipal court for an offense under this chapter.

ARTICLE IV. ENFORCEMENT PROCEDURES; PENALTIES

Sec. 1-8. Authorization to administer provisions; authority to enter private property.

- (a) A person authorized to administer the provisions of this chapter shall be a regularly salaried, full time employee of the city, except that any authorized person may remove the vehicle.
- (b) A person authorized to administer the provisions of this chapter may enter private property for the purpose of examining a junked motor vehicle or parts thereof, to obtain information to identify said vehicle and to remove or direct the removal of said vehicle.

Sec. 1-9. Criminal offense.

- (a) A person commits an offense if the person causes or permits a junked vehicle or part of a junked vehicle to be placed or to remain on any public or private property in violation of this ordinance. An offense is a Class "C" misdemeanor and upon conviction thereof the person shall be subject to a fine not to exceed two hundred dollars (\$200.00).
- (b) Each day a violation continues to exist constitutes a separate and distinct offense.
- (c) The court shall order abatement and removal of the vehicle upon conviction.

Sec. 1-10. Civil penalty.

As an alternative to other available enforcement procedures, an administrative adjudication procedure, as outlined in section 1-13, provides that a person who permits a junked vehicle or part of a junked vehicle to be placed or to remain on any public or private property in violation of this ordinance is liable to the City for an administrative penalty not to exceed two hundred dollars (\$200.00). The imposition of an administrative penalty may be contested at an administrative adjudication hearing upon written request.

Sec. 1-11. Double jeopardy.

The City shall not impose both a criminal fine and civil penalty pursuant to this chapter for the same occurrence.

Sec. 1-12. Culpable mental state not required.

A culpable mental state is not required for the commission of an offense under this chapter unless the provision defining the conduct expressly requires a culpable mental state, otherwise the requirement of a culpable mental state is expressly dispensed with for purposes of constituting, alleging, or proving a violation of a provision of this chapter.

Sec. 1-13. Administrative adjudication.

- (a) Upon determination by the Administrator that a junked vehicle constitutes a public nuisance as herein defined and as prohibited in section 1-4, a Notice of Administrative Adjudication shall be provided in the manner outlined in Sec. 1-6.
- (b) Notice of Administrative Adjudication under this section shall include the amount of the administrative penalty imposed for the violation.
- (c) Notice under this section shall be notarized by the court clerk.

- (d) Failure to pay the administrative penalty or to request an administrative hearing to contest liability within the time prescribed in the notice is an admission of liability for the full amount of the administrative penalty assessed in the notice.
- (e) The Notice of Administrative Adjudication shall serve as the summons and charging instrument for violations under this section.
- (f) The original or a copy of the Notice of Administrative Adjudication shall be kept as a record in the ordinary course of business of the city and is rebuttable proof of the facts it states, but it shall not, in and of itself, constitute a prima facie case of the violation alleged.

Sec. 1-14. Hearing.

- (a) A hearing required under section 683.076, Transportation Code, described by Section 54.044, Local Government Code, shall be conducted upon timely request by any person receiving a Notice of Violation under Section 1-6 of this chapter, or a Notice of Administrative Adjudication under Section 1-13 of this chapter.
- (b) A request for hearing is considered timely if the request is deposited in the United States Post Office, properly addressed and stamped, on or before the last date for filing as specified in the notice, or hand delivered to the Municipal Court on or before the last date for filing.

Sec. 1-15. Hearing in Municipal Court.

- (a) A hearing for the Administrative Adjudication of a violation of this chapter, or a hearing requested prior to abatement and removal of a junked vehicle shall be held before the Municipal Court Judge.
- (b) If a hearing is requested by a person for whom notice is required under this chapter, the hearing shall not be held earlier than the 11th day after the date of the service of notice.
- (c) At a hearing under this chapter, a junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (d) In an Administrative Adjudication under this chapter, the alleged violation must be proven by a preponderance of the evidence and may not be proven merely by the allegations contained in the Notice of Administrative Adjudication alone.
- (e) The proceedings of the hearing shall be recorded electronically. The person charged with the violation may, at their own expense, have a certified court reporter present in the hearing room during the proceedings provided that the electronic recording shall constitute the official record of the proceedings. A recording of an administrative proceeding under this article shall be preserved for not less than one hundred eighty (180) days after the conclusion of the administrative hearing, until final disposition of the proceeding, or as otherwise provided by law.
- (f) A scheduled hearing may not be continued or reset at the request of the person charged with a violation more than once unless the person charged deposits with the clerk an amount equal to the applicable civil penalty for the alleged violation. The clerk shall issue a receipt for any amount so deposited. After presentation of the receipt, all amounts so deposited shall be refunded to the person charged if the Municipal Court Judge finds that the person is not liable for the violation.
- (g) Failure to appear at an administrative adjudication hearing, including a continued or rescheduled hearing, is an admission of liability in the full amount of the civil penalty assessed and hearing costs.
- (h) The Administrator is not required to attend a hearing under this chapter.

Sec. 1-16. Liability; Assessment and payment of penalties, costs and charges.

- (a) A person shall be deemed liable for administrative penalties assessed in the Notice of Administrative Adjudication upon failure to request a hearing as prescribed.
- (b) A person who is found liable after an administrative adjudication hearing, or requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing, is liable for administrative hearing costs in the amount of fifty dollars (\$50.00) in addition to the amount of the civil penalty assessed for the violation.
- (c) Upon a finding of liability, the Judge shall order abatement of the junked vehicle.
- (d) In addition to the administrative penalty and/or hearing costs, charges for abatement and removal of the junked vehicle shall apply.
- (e) Administrative penalties are due within 31 days of receipt of a Notice of Administrative Adjudication.
- (f) Administrative penalties, costs and charges are due within 31 days of a finding of liability at an administrative hearing.
- (g) Payment of the administrative penalty, costs and charges assessed pursuant to this chapter shall operate as final disposition of the violation charged, except when payment is made to reset a scheduled hearing.
- (h) All penalties, costs and charges shall be deposited into the proper account of the general fund of the city, unless otherwise directed by resolution of the city council.
- (i) An order issued under this section shall be filed with the municipal court clerk. The clerk shall keep the order in a separate index and file and may record the order using microfilm, microfiche, or data processing techniques.

Sec. 1-17. Authority to abate nuisance; procedures.

- (a) Section 683.074 Transportation Code provides the authority for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.
- (b) Prior to abatement by the City, notice as outlined in Sec. 1-6 shall be provided.
- (c) Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the same, or timely request a hearing as prescribed, the administrator may proceed to enter upon the property to abate or cause the abatement of such nuisance and prepare a statement of costs incurred in the abatement thereof.
- (d) A junked vehicle or part of a junked vehicle shall be prohibited from being reconstructed or made operable after removal.
- (e) Notice identifying a junked motor vehicle or a part of a junked motor vehicle shall be given to the Texas Department of Motor Vehicles (Department) not later than the fifth day after the date of removal.
- (f) On receipt of notice of removal of a junked motor vehicle under this chapter the Department shall immediately cancel the certificate of title issued for the vehicle.
- (g) On receipt of removal of a watercraft under this chapter, the Department shall notify the Parks and Wildlife Department (TPWD) of the removal. On receipt of the notice from the Department, TPWD shall immediately cancel the title issued for the watercraft.

ARTICLE IV. ABANDONED VEHICLES.

Sec. 1-18. Texas abandoned motor vehicle provisions adopted.

Whereas, it is the desire of the City of Merkel, Texas to prevent the accumulation of abandoned vehicles within the City, to eliminate the health and safety hazards associated with said vehicles and to abate the nuisances attributable to such vehicles, the City of Merkel hereby adopts *Chapter 683* of the *Texas Transportation Code* regarding abandoned vehicles in its entirety herein, and as amended, and it shall serve as the authority for the City's regulation of said vehicles.

(ref. Transportation Code, Chapter 683)

Sec. 1-19. Inoperable motor vehicles.

It shall be unlawful for any person to park or place an inoperable motor vehicle or to allow an inoperable motor vehicle to remain on any public street, alley, sidewalk, or county, state or federal highway, or public property within the city for a period of more than 48 continuous hours; or on private property without the consent of the owner or person in charge of the property for more than 48 continuous hours; and the presence of such inoperative motor vehicle upon any such public street, alley, sidewalk, or county, state or federal highway, or public or private property after the expiration of such 48-hour period is hereby declared unlawful and to be a public nuisance.

Sec. 1-19. Authority of manager.

The city manager is authorized to provide, by contract or otherwise, for the impoundment, storage and disposition of abandoned motor vehicles and shall establish such administrative procedures as is deemed necessary for the securing of proof of abandonment, collection of fees, distribution of proceeds of sale or redemption, giving of notices, and impoundment and sale of abandoned motor vehicles, consistent with Chapter 683, Texas Transportation Code.

Secs. 1-20 – 1-30. Reserved.