

ORDINANCE NO. 02-12-2024

AN ORDINANCE OF THE CITY OF MERKEL, TEXAS REPEALING AND REPLACING ORDINANCE NO. 01-14-2019; DECLARING JUNKED VEHICLES TO BE PUBLIC NUISANCES; PROHIBITING JUNKED VEHICLES; PROVIDING DEFINITIONS; PROVIDING PROCEDURES FOR ABATEMENT OF JUNKED VEHICLES; 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 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 THAT:

Part 1: 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: 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: 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.

Part 4: 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Part 65: Ordinance No. 01-14-2019, adopted on January 14, 2019, is hereby repealed. Any and all other ordinances or ordinance provisions in conflict herewith are hereby repealed to the extent of such conflict.

Part 6: 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 7: This ordinance, being a penal ordinance, shall become effective after its publication as required by the Texas Local Government Code.

PASSED AND APPROVED this 12th day of February 2024.

ATTEST:

SIGNED:




City Secretary, Evelyn Morse



Mayor, Mary Schramper

APPROVED:



City Attorney, Eileen Hayman

**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 V. 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."

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.

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:

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

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.

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

City: City of Merkel, Taylor County, Texas.

Department: Texas Department of Motor Vehicles.

Enforcement Official: City of Merkel Peace Officer, Code Enforcement Officer, or City Manager or designee who administers, implements, and enforces the provisions of this chapter.

Junked vehicle:

- (a) A motor vehicle that displays an expired license plate or does not display a license plate; and
 - (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; 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; or
- (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: Every mechanical device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, including passenger vehicles, commercial motor vehicles, truck tractors, trailers, and semi-trailers but excluding devices moved by human power or used exclusively upon stationary rails or tracks. The term includes self-propelled off-road vehicles designed and intended to be operated in places other than on public streets, including but not limited to race cars, dirt track vehicles, all-terrain vehicles, go-carts, and golf carts.

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.

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.

Special interest vehicle: 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.

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

ARTICLE II. PROHIBITIONS; DEFENSE TO PROSECUTION

Sec. 2-1. 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.

Sec. 2-2. Defense to prosecution.

The following are defenses to prosecution under section 2-1:

(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;

(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, 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 or safety hazard; and

(c) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

ARTICLE III. NOTICE PROVISIONS

Sec. 3-1. Notice.

(a) For violations described in section 2-1, the Enforcement Official 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 that:

(1) 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) the person upon whom notice is served is entitled to request a public hearing, which must be done 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; and

(3) 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 costs of abatement against such person.

(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. 3-2 Exceptions to notice procedures.

(a) Relocation of a junked vehicle to another location within the city 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. 4-1. Authority to enter private property.

The Enforcement Official 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. 4-2. 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. 4-3. Hearing.

(a) The Municipal Court Judge is hereby designated as the official to conduct hearings under this Chapter.

(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) If notice has been sent as provided in Section 3-1 and the person to whom notice was sent fails to request a hearing within the required time frame, the Enforcement Official may apply to the Judge for an Order, described by Section 4-4, without the necessity of requesting a hearing.

Sec. 4-4. Order.

(a) If, after a hearing, the Judge finds that a vehicle is a junked vehicle or if the Enforcement Official applies for an order as provided in Section 4-3(d), the Judge shall order the junked vehicle's removal. The order shall provide that the owner has ten (10) days to remove the vehicle and that, if the owner fails to do so, the Enforcement Official may arrange for removal of the vehicle.

(b) If the information is available at the location of the junked vehicle, the order must include:

(1) for a motor vehicle, the vehicle's:

(A) description;

(B) vehicle identification number; and

(C) license plate number;

(2) for an aircraft, the aircraft's description and federal aircraft identification number as described by Federal Aviation Administration aircraft regulations in 14 C.F.R. Part 47; and

(3) for a watercraft, the watercraft's description and identification number as set forth in the watercraft's certificate of number.

(c) The order shall also state that the junked vehicle or part of a junked vehicle shall not be reconstructed or made operable after removal.

Sec 4-5. Notice to Department.

Notice identifying a junked motor vehicle or a part of a junked motor vehicle shall be given to the Department not later than the fifth day after the date of removal.

ARTICLE V. ABANDONED VEHICLES.

Sec. 5-1. 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.