

ORDINANCE NO. O-2023-003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHAVANO PARK, TEXAS, REGULATING JUNKED VEHICLES WITHIN THE CITY; PROVIDING FOR PENALTIES; PROVIDING FOR A CUMULATIVE & CONFLICTS CLAUSE, PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Shavano Park in accordance with the authorization of Texas statutes, including but not limited to Texas Transportation Code Chapter 683, Subchapter E, is authorized to regulate junked vehicles; and

WHEREAS, Texas Transportation Code Chapter 683, Subchapter E authorizes the City of Shavano Park to declare certain vehicles meeting the definition of a junked vehicle as a public nuisance and abatement them in accordance with State Law; and

WHEREAS, Texas Transportation Code Section 683.0711 authorizes a governing body of a municipality to provide for a more inclusive definition of a junked vehicle subject to regulation under Texas Transportation Code Chapter 683, Subchapter E; and

WHEREAS, Texas Transportation Code Section 504.502 requires specialty license plates issued by the Texas Department of Motor Vehicles for a passenger car, truck, motorcycle, bus, or former military vehicle be used exclusively for exhibitions, club activities, parades, and other functions of public interest and is not used for regular transportation; and

WHEREAS, the City Council finds that its existing ordinances regulating junked vehicles should be amended as provided for herein; and

WHEREAS, the City Council desires to amend the City's regulations relating to the storing of junked vehicles within the City's corporate limits to better protect the health, safety, and general welfare of the residents of the City:

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHAVANO PARK, TEXAS, THAT:

**I
FINDINGS**

The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

II

CODE AMENDMENT

Chapter 32, Article VI. – TRUCK TRAFFIC of the City of Shavano Park Code of Ordinances is hereby amended to reserve the following sections:

Secs. 32-146—32-154. - Reserved.

III

CODE AMENDMENT

Chapter 32, Article VII. - REGULATION OF JUNKED VEHICLES of the City of Shavano Park Code of Ordinances is hereby created to read as follows:

Sec. 32-155. - Definitions.

Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

City means the City of Shavano Park, Texas

Code Official means the City Manager or their designee who is a regularly salaried, full-time employee of the City and who is designated to enforce this article.

Inoperable means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

Junked vehicle means a vehicle that is:

(1) Self-propelled; and

(2) Is:

(a) Wrecked, dismantled or partially dismantled, or discarded; or

(b) Inoperable and has remained inoperable for more than:

(i) Seventy-two consecutive hours, if the vehicle is on public property; or

(ii) Thirty consecutive days, if the vehicle is on private property;

(3) And is:

(a) A motor vehicle that displays an expired license plate or does not display a license plate; or is an inoperable vehicle with specialty license plates

which is not used solely for exhibition, club activities, parades, and other functions of public interest as defined by the Transportation Code Sec. 504.502; 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:

(i) Does not have lawfully on board an unexpired certificate of number;

and

(ii) Is not a watercraft described by Parks and Wildlife Code § 31.055.

(4) The definition of "junked vehicle" includes a part or parts of such a vehicle.

Junked Vehicle Board of Appeals means a board of the City of Shavano Park appointed by the City Council of the City of Shavano Park and, who shall conduct hearings as authorized by this Article and the Texas Transportation Code Sec. 683.076.

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 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.

Ordinary public view means a vehicle or any part thereof or the tarp or cover thereon that is visible at any time of the year from any public right-of-way, or adjacent land or the first-floor level of a building thereon, which is owned or occupied by a person other than the property owner or occupant of the property on which the vehicle is located or parked.

Property owner means the owner of any premises, as listed in the real property tax records of the City.

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.

Sec. 32-156. - Declaration of junked vehicle to be a public nuisance.

A junked vehicle, including a part of a junked vehicle that is visible at any time of the year from an ordinary public view 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.

Sec. 32-157. - Offense.

- (1) A person commits an offense if the person maintains a public nuisance as described by this Ordinance. An offense under this Ordinance is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). Each day a violation is permitted to exist constitutes a separate offense.
- (2) The municipal court shall order abatement and removal of the nuisance on conviction.

Sec. 32-158. - Procedures for abating nuisance.

- (1) *Generally.* The City's procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private property, public property or public rights-of-way are set out in this section.
 - (a) Procedures for abatement and removal of a public nuisance must be administered by the Code Official, except that any authorized person may remove the nuisance.
 - (b) Pursuant to the procedures established by this section, the person authorized to administer these procedures 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.
 - (c) The municipal court may issue necessary orders to enforce an action taken by the Code Official, the Junked Vehicle Board of Appeal, under this section, pursuant to Tex. Transp. Code § 683.074.
 - (d) Once a proceeding for the abatement and removal of the public nuisance has commenced under this section, the relocation of a junked vehicle that is a public nuisance to another location within the City has

no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

- (e) In the event that the City removes a junked vehicle from private or public property pursuant to this section, the Code Official shall provide notice to the Texas Department of Transportation, identifying the vehicle or part of the vehicle being removed, not later than the fifth day after the date of removal.
- (f) A junked vehicle removed pursuant to the provisions of this section may not be reconstructed or made operable after removal.

(2) *Notice of Nuisance.*

- (a) The Code Official shall give not less than 10 days written notice, stating the nature of the public nuisance before an abatement action commences. 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:
 - (i) the last known registered owner of the nuisance;
 - (ii) each lienholder of record of the nuisance; and
 - (iii) the owner or occupant of:
 - (A) the property on which the nuisance is located; or
 - (B) if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (b) The notice must state:
 - (i) 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; and
 - (ii) any request for a hearing before the Junked Vehicle Hearing Official must be made before the 10th day after the date on which the notice was personally delivered, or mailed.
 - (iii) 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.
 - (iv) 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.

(3) *Junked Vehicle Board of Appeals.* The Junked Vehicle Board of Appeals shall conduct all appeal hearings under this article.

- (a) *Rules of Procedure.* The Junked Vehicle Board of Appeals shall establish rule of procedure for the conduct of hearings in a manner

that is consistent with this Article and that provides due process to all parties to the Appeal.

(4) Hearing. A hearing may be requested by the registered owner of the nuisance, by any lienholder of record, or by any owner or lawful occupant of the property on which the nuisance is located by written request submitted to the City Secretary. Upon receipt of the request, the City Secretary shall notify the Junk Vehicle Board of Appeals, who shall conduct a public hearing pursuant to the procedures that follow:

- (a) The Junk Vehicle Board of Appeals shall convene to conduct a hearing as soon as practical, but not earlier than the eleventh (11th) day following service of notice to remove the vehicle.
- (b) The decision of the Code Official shall not be overturned unless the Junk Vehicle Board of Appeals determines that a preponderance of the presented evidence proves that the Code Official's decision was in error.
- (c) If the Junk Vehicle Board of Appeals upholds the Code Official's determination that the junked motor vehicle is a nuisance, the Junk Vehicle Board of Appeals shall issue an order requiring removal of the nuisance, which, if such information is available, must include:
 - (i) for a motor vehicle, the vehicle's:
 - 1. description;
 - 2. vehicle identification number; and
 - 3. license plate number;
 - (ii) for an aircraft, the aircraft's:
 - 1. description; and
 - 2. federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
 - (iii) for a watercraft, the watercraft's:
 - 1. description; and
 - 2. identification number as set forth in the watercraft's certificate of number.
- (d) An order shall become final:
 - (i) after the 10th day after the date on which the notice was personally delivered, or mailed, if request for a hearing before the Junked Vehicle Hearing Official; or
 - (ii) after the 11th day after the date of the return if notice is returned undelivered; or

- (ii) after a decision of the Junk Vehicle Board of Appeals is rendered, if a request for hearing is requested.
 - (e) Any party aggrieved by the decision of the Junk Vehicle Board of Appeals shall have 30 days after the date of issuance of the order to appeal the decision to a court of competent jurisdiction.
 - (f) The City shall take no action to remove or destroy a junk vehicle that is the subject of the Order until the thirty-first (31st) day following the date the Order was issued.
 - (g) An appeal of the Junk Vehicle Board of Appeals' Order shall stay all City action regarding said vehicle until such time as the court has rendered its final decision regarding the matter and all appeals have been exhausted or an appeal of the court's decision was not filed and the date for filing such appeals has passed.
- (5) *City Action.* If notice is proper and if a hearing was not requested by the registered owner, lienholder, or owner/occupant, the City may seek an order from the Junk Vehicle Board of Appeals based on the case/evidence presented by the Code Official.

Sec. 32-158. - Removal and disposal of nuisance.

- (1) Compliance with an order for removal of a public nuisance may be carried out by any person or entity so authorized by the Code Official.
- (2) The removal of a vehicle or part of a vehicle determined to be a nuisance, pursuant to a decision of the Code Official or an order of the Junk Vehicle Board of Appeals, as the case may be, shall not commence until the period prescribed for appeal of the decision of the Code Official or the order of the Junk Vehicle Board of Appeals, as the case may be, has passed and the decision or order has become final. Once the decision or Order is final, the vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by the City, or the City may operate a disposal site if the Code Official determines that commercial disposition is not available or is inadequate, and it may make final disposition of the vehicle or vehicle parts, including transferring it or them to another disposal site if the disposal is scrap or salvage only.
- (3) Any proceeds from the transfer of the junked vehicle or part thereof to the site authorized by this section shall be used to reimburse the City for all costs incurred in the notification, investigation, hearing, and disposal procedures (including any and all variable towing and disposal fees from contracted sources) within this

article. Any remaining proceeds shall be transferred to the lienholder of record or, if none, the owner of record.

Sec. 32-159. - Exceptions.

The procedures and penalties authorized by this article shall not apply to a vehicle or vehicle part that is:

- (1) Completely enclosed in a building in a lawful manner and is not visible from the street or public or private property or;
- (2) Stored or parked in a lawful manner on private property in connection with the business for display purposes, and if the vehicle or vehicle part are:
 - (a) Maintained in an orderly manner; and
 - (b) Not a health hazard.

III

CODE AMENDMENT

Chapter 8, Article I. – COMMERCIAL PROPERTY MAINTENANCE, Sec. 8-2 of the City of Shavano Park Code of Ordinances hereby amends following definition to read as:

Inoperable motor vehicle means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

IV

CODE AMENDMENT

Chapter 8, Article I. – COMMERCIAL PROPERTY MAINTENANCE, Sec. 8-3 of the City of Shavano Park Code of Ordinances hereby amended to read as follows:

Sec. 8-3. Maintenance of exterior commercial property.

- (a) *Sanitation*. Exterior property and premises shall be maintained in a clean, safe and sanitary condition. The owner, operator or occupant of every premise shall keep that part of the premise and exterior property that they occupy or control in a clean and sanitary condition.
- (b) *Rubbish and garbage*. Exterior property and premises of every structure, shall be free from any accumulation of rubbish or garbage. The owner of every occupied premises shall supply approved covered containers for rubbish and garbage, and the owner of the premises shall be responsible for the removal of rubbish and garbage. Containers shall be maintained to be leakproof and provided with close-

fitting covers for the storage of rubbish and garbage until removed from the premises for disposal.

- (c) *Grading and drainage.* Except as to approved retention areas and reservoirs, premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon or within any structure located thereon.
- (d) *Sidewalks and driveways.* Sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- (e) *Weeds and grass.* The owner, operator or occupant of a premise shall not allow weeds or grass grow to a height greater than 12 inches in accordance with section 14-80 of the City of Shavano Park Code of Ordinances.
- (f) *Accessory structures, fences and screening devices.* Accessory structures, fences and screening devices, shall be maintained structurally sound and in good repair.
- (g) *Motor vehicles.* Except as provided for in other regulations, inoperable motor vehicles shall not be parked, kept or stored in the open on any premises. Such vehicles may be declared a junked vehicle and abated in accordance with Chapter 32, Article VII. of the City of Shavano Park Code of Ordinances.

V

CODE AMENDMENT

Chapter 20, Article II. – NUISANCES, Sec. 20-22 of the City of Shavano Park Code of Ordinances hereby adds the following definition:

Inoperable motor vehicle means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

VI

CODE AMENDMENT

Chapter 20, Article II. – NUISANCES, Sec. 20-24 of the City of Shavano Park Code of Ordinances hereby amended to read as follows:

Sec. 20-24. Specific nuisances declared.

The following actions are hereby specifically declared to constitute and to be unlawful nuisances hereunder:

- (1) The keeping of horses, donkeys, cows, goats, sheep, or animals of similar size (but excluding domestic cats, dogs and potbellied pigs) on any platted site within the limits of the City west of N.W. Military Highway (FM 1535).
- (2) The keeping of horses, cattle or any large animal anywhere within the limits of the City without first securing a valid permit.
 - a. Application. Large-animal permit applications are available from the City Secretary.
 - b. Completed permit applications together with the following signed statement by the applicant must be filed with the City Secretary: "I (we) hereby agree that if the keeping of the above-named animal creates an annoyance or nuisance, the City Council of Shavano Park may cancel this permit and I (we) will remove promptly such animal from the City."
 - c. The application must indicate thereon or by attachment thereto the area of the property to be dedicated to the pasture and keeping of the animal.
 - d. The permit must be approved by the City Manager.
- (3) The keeping of pigs or hogs within the City limits under any circumstances.
- (4) Open parking of broken down or inoperable motor vehicles of any kind. Such vehicles may be declared a junked vehicle in accordance with Chapter 32, Article VII. of the City of Shavano Park Code of Ordinances.
- (5) The staking of animals on the property of others without permission.
- (6) The sounding of false alarms on emergency (fire or burglar) alarm systems under certain conditions.
- (7) Any littering or illegal dumping. Violations are against State Law and shall be cited under Tex. Health and Safety Code § 365.012(a).
- (8) Any graffiti. Violations are against State Law and shall be cited under Tex. Penal Code § 28.08.
- (9) An animal owner or keeper who allows their animal to defecate on City Hall grounds including the playgrounds, pavilion, and trails without sanitary removal and proper disposal of the animal's fecal matter from the public property.

VII

CODE AMENDMENT

Chapter 20, Article IV. – RESIDENTIAL PROPERTY MAINTENANCE, Sec. 20-72 of the City of Shavano Park Code of Ordinances hereby adds the following definition:

Inoperable motor vehicle means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured,

regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

VIII

CODE AMENDMENT

Chapter 20, Article IV. – RESIDENTIAL PROPERTY MAINTENANCE, Sec. 20-73 of the City of Shavano Park Code of Ordinances hereby amended to read as follows:

Sec. 20-73. Residential property maintenance required.

- (a) *Rubbish and garbage.* Exterior property and premises of every structure, shall be free from any accumulation of rubbish or garbage in accordance. The owner of every occupied premises shall supply approved covered containers for rubbish and garbage, and the owner of the premises shall be responsible for the removal of rubbish and garbage. Containers shall be maintained to be leakproof and provided with close-fitting covers for the storage of rubbish and garbage until removed from the premises for disposal.
- (b) *Weeds and grass.* The owner, operator or occupant of a premise shall not allow weeds or grass grow to a height greater than 12 inches in accordance with section 14-80 of the City of Shavano Park Code of Ordinances.
- (c) *Rodent harborage.* Structures and exterior property shall be kept free from rodent harborage and infestation. Where rodents are found, they shall be promptly removed by processes that will not be injurious to human health. After pest elimination, proper precautions shall be taken to eliminate rodent harborage and prevent reinfestation.
- (d) *Defacement of structure exteriors.* A person shall not willfully or wantonly damage, mutilate or deface any exterior surface of any structure or building on any property by placing thereon any marking, carving or graffiti. It shall be the responsibility of the owner to restore said surface to a state of good repair, structurally sound and sanitary.
- (e) *Junked Vehicles.* The owner, operator or occupant of a premise shall not open park, keep or store inoperable vehicles. Such vehicles may be declared a junked vehicle and abated in accordance with Chapter 32, Article VII of the City of Shavano Park Code of Ordinances.

IX

CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of ordinances of the City of Shavano Park, Texas, except where the provisions of the Ordinance are in direct conflict with the

provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

X

SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections 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.

XI

EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

XII

OPEN MEETINGS

That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meeting Act, Chapter. 551, Local Government Code.

XIII


PUBLICATION

The City Secretary is directed to publish notice of this Ordinance in the City's official newspaper, in substantially the same form as **Exhibit "A"**, attached hereto and incorporated by reference.

PASSED AND APPROVED on the first reading by the City Council of the City of Shavano Park this the 27th day of February, 2023.

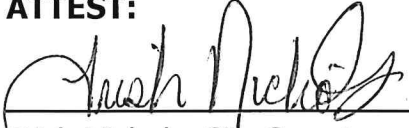
PASSED AND APPROVED on the second reading by the City Council of the City of Shavano Park this the 27th day of March, 2023.

CITY OF SHAVANO PARK, TEXAS



Robert B. Werner, Mayor

ATTEST:



Trish Nichols, City Secretary

**EXHIBIT A
PUBLIC NOTICE**

ON MARCH 27, 2023, THE CITY OF SHAVANO PARK CITY COUNCIL PASSED AND APPROVED AN ORDINANCE REGULATING JUNKED VEHICLES WITHIN THE CITY; PROVIDING FOR PENALTY, NOT TO EXCEED \$200.00 PER DAY PER VIOLATION; PROVIDING FOR A CUMULATIVE & CONFLICTS CLAUSE, PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.