

ORDINANCE NO. 2021-3320

AN ORDINANCE OF THE CITY OF BEDFORD, TEXAS, AMENDING ARTICLE IX "ABANDONED AND JUNKED MOTOR VEHICLES" OF CHAPTER 114 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TO REFLECT CHANGES IN TEXAS LAW; PROVIDING THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bedford is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and,

WHEREAS, the City of Bedford has adopted regulations pertaining to the operation and movement of motor vehicles, and prohibiting certain storage and display of abandoned and junked vehicles, which laws are consistent with the dictates of the laws of Texas; and,

WHEREAS, abandoned and junked vehicles present public nuisance and a threat to the safety and welfare of the citizens of the City of Bedford, and create a nuisance by reducing the value of private property, inviting vandalism, creating a fire hazard, presenting an attractive nuisance endangering the health and safety of minors, and producing urban blight adverse to the maintenance and development of the City; and,

WHEREAS, the City Council finds it necessary to amend those sections of the City's Code relating to abandoned and junked vehicles to clarify language already codified and reflect current changes and dictates of Texas law since that section was originally passed; and,

WHEREAS, the City Council has determined that the amendments as outlined herein are in the best interest of the health, safety, and general welfare of the citizens of the City of Bedford and the public.

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

SECTION 1. That the findings above are found to be true and correct, and are incorporated herein.

SECTION 2. That Article IX "Abandoned and Junked Vehicles" of Chapter 114 "Traffic and Vehicles" of the Code of Ordinances of the City of Bedford, Texas, is hereby amended to read as follows:

ARTICLE IX. – ABANDONED AND JUNKED MOTOR VEHICLES

Sec. 114-316. - Definitions.

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

Abandoned motor vehicle means a motor vehicle is abandoned if the motor vehicle is:

- (1) Inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours;
- (2) Has remained illegally on public property for more than 48 hours;
- (3) Has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;
- (4) Has been left unattended on the right-of-way of a designated county, state or federal highway for more than 48 (forty-eight) hours; or

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- (5) Has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority or a controlled access highway.

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

Garagekeeper means an owner or operator of a storage facility.

Junked vehicle means a vehicle:

- (1) That is self-propelled, or a trailer or semi-trailer designed for use with a self-propelled vehicle and:
- (2) Does not have lawfully attached to it:
- a. An unexpired license plate; or
 - b. A valid motor vehicle inspection certificate; and
- (3) Is:
- a. Wrecked, dismantled, or partially dismantled, or discarded;
 - 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.

Motor vehicle means a vehicle that is subject to registration under chapter 501, and additionally includes an outboard motor, or watercraft subject to registration under chapter 31, and also additionally including airplanes.

Motor vehicle collector means a person who owns one or more antique or special interest vehicles and 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.

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.

Storage facility includes a garage, parking lot, or establishment for the servicing, repairing, or parking of motor vehicles.

Sec. 114-317. - Findings.

All matters stated in the preamble to Ordinance No. 2281 are found to be true and correct and are incorporated into the body of the Code as if copied in their entirety.

Sec. 114-318. – Authority to take abandoned motor vehicle into custody.

The police department of the city may take into custody an abandoned motor vehicle, watercraft, or outboard motor found on public or private property. The police department may use police department personnel, equipment, and facilities or contract for other personnel, equipment and

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facilities to remove, preserve and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody by the police department.

Sec. 114-319. - Taking abandoned vehicle into custody: notice.

- (a) The police department shall send notice of abandonment to the last known registered owner of each motor vehicle, watercraft, or outboard motor taken into custody by the police department or for which a report is received under section 114-322 of this Code; and each lienholder recorded under chapter 501 of the Texas Transportation Code for the motor vehicle or under Chapter 31, Parks and Wildlife Code, for the watercraft or outboard motor. The notice must be sent by certified mail not later than the 10th (tenth) day after the date the police department takes the abandoned motor vehicle, watercraft, or outboard motor into custody, or receives the report under Section 683.031 of the Texas Transportation Code or Section 114-322 of this Code. The notice shall specify the year, make, model and identification number of the item; give the location of the facility where the item is being held; inform the owner and any lien holders of their right to reclaim the item not later than the 20th (twentieth) day after the date of the notice, on payment of all towing, preservation, and storage charges or garagekeeper's charges and fees. The notice shall also state that the failure of the owner or lien holders to claim the item within the time provided constitutes a waiver by that person of all right, title, and interest in the item and consent to the sale of the item at a public auction.
- (b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the city is sufficient notice. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed in subsection (a) herein for notice by certified mail, and shall have the same contents required for such notice.
- (c) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given in this article.
- (d) In addition to the notice required under subsection (a) herein, if a law enforcement agency takes an abandoned motor vehicle into custody, the agency shall notify a person that files a theft report or similar report prepared by any law enforcement agency for the vehicle of that fact. The notice must be sent by regular mail on the next business day after the agency takes the vehicle into custody. The law enforcement agency shall also provide the name and address of the person that filed the theft report or similar report to the vehicle storage facility or governmental vehicle storage facility that is storing the vehicle.

Sec. 114-320. - Police department use of certain abandoned motor vehicles.

- (a) If an abandoned motor vehicle, has not been reclaimed as provided by this article in section 114-319, the police department may use that vehicle for police department purposes as provided by this section.
- (b) The police department may use the abandoned motor vehicle for police department purposes as long as the department considers it cost effective. If the police department discontinues use of the abandoned motor vehicle, the department shall auction the vehicle as provided by section 114-321 of this article.
- (c) This section does not apply to an abandoned motor vehicle with a garagekeeper's lien.

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Sec. 114-321. - Auction or use of abandoned items; waiver.

- (a) If an abandoned motor vehicle, watercraft, or outboard motor has not been reclaimed as provided by this article in section 114-319, the owner or lienholder waives all rights and interests in the item, and consents to the sale of the item by public auction.
- (b) The police department may sell an item that is not claimed as provide by this article in section 114-319 at a public auction or use the item as provided by section 114-320 of this article.
- (c) Proper notice of the public auction shall be given, and in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction.
- (d) The purchaser of the motor vehicle, watercraft, or outboard motor takes title free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department, and is entitled to register the purchased vehicle, watercraft, or outboard motor and receive a certificate of title.
- (e) The police department is entitled to reimbursement from the proceeds of the sale an abandoned motor vehicle, watercraft, or outboard motor for the cost of the auction, the costs of towing, preserving, and storing the vehicle that resulted from the taking into custody, and all notice and publication costs incurred. Any remainder from the proceeds of the sale shall be held for the owner or lienholder of the vehicle for 90 days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from taking other vehicles, watercraft, or outboard motors into custody, if the proceeds from a sale of the other items are insufficient to meet these expenses and costs.
- (f) The city may transfer funds in excess of \$1,000.00 (one thousand dollars) from the special fund to the general revenue account to be used by the police department.
- (g) The police department may use funds transferred under subsection (f) herein to compensate property owners whose property was damaged as a result of a pursuit involving a law enforcement agency or a federal law enforcement agency, regardless of whether the agency would be liable under the Texas Tort Claims Act, Chapter 101, Civil Practice and Remedies Code, as amended.

Sec. 114-322. - Garagekeeper's duty: abandoned motor vehicles.

- (a) A motor vehicle is abandoned if the vehicle is left in a storage facility operated for commercial purposes after the 10th day after the date on which: the garagekeeper gives notice by registered or certified mail, return receipt requested, to the last known registered owner of the vehicle and to each lienholder of record of the vehicle under Chapter 501, Transportation Code, to remove the vehicle; or a contract for the vehicle to remain on the premises of the facility expires; or the vehicle was left in the facility, if the vehicle was left by a person other than the registered owner or a person authorized to have possession of the vehicle under a contract of use, service, storage, or repair. If required notice sent under this subsection is returned unclaimed by the post office, substituted notice is sufficient if published in one newspaper of general circulation in the city.

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- (b) If a garagekeeper who acquires custody of a motor vehicle for a purpose other than repair is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for each day, not to exceed five days, until notification is mailed to the last known registered owner and all lien holders of record as provided by subsection (a) of this section. After such notice is mailed, until the vehicle and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned motor vehicle to the police department within seven days after the date it becomes abandoned may not claim reimbursement for storage of the vehicle.
- (c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this section shall follow the notification procedures provided by section 114-319 of this article, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee of \$10.00 shall accompany the report of the garagekeeper to the police department. The \$10.00 fee shall be retained by the police department and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle.
- (d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by section 114-319 of this article shall be taken into custody by the police department and used for police department purposes as provided section 114-320 of this article or sold in the manner provided by section 114-321 of this article. The proceeds of a sale under this section shall first be applied to the garagekeeper's charges for providing notice regarding the vehicle, and for servicing, storage, and repair of the vehicle, but as compensation for the expenses incurred by the police department in placing the vehicle in custody and the expense of auction, the police department shall retain 2 percent of the gross proceeds of the sale of each vehicle auctioned, or all proceeds if the gross proceeds are less than \$10.00.
- (e) Except for the termination or limitation of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.
- (f) A person charging fees under this Section commits an offense if the person charges a storage fee for a period of time not authorized by this Section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$200.00 nor more than \$1,000.00.

Sec. 114-323. - Junked vehicles declared to be public nuisance.

- (a) A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way is detrimental to the safety and welfare of the public, tends to reduce the value of private property, invites vandalism, creates a fire hazard, is 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) A person commits an offense if that person maintains a public nuisance as determined under this article.
- (c) A person who commits an offense under this section is, on conviction, subject to a fine not to exceed the maximum fine allowed by law. On conviction, the court shall order removal and abatement of the nuisance.

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Sec. 114-324. - Procedures for abating nuisance.

- (a) All procedures for 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 right-of-way shall be in accordance with this article.
- (b) Any removal or abatement of a public nuisance, as described under section 114-323, must provide not less than ten days-notice stating the nature of the public nuisance. The notice must be personally delivered, or sent by certified mail with a five-day return requested, to the last known registered owner of the nuisance, any lien holder of record of the nuisance, and the owner or occupant of the property on which the public nuisance exists, or if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (c) The notice must state that the nuisance must be abated and removed not later than the tenth day after the date on which the notice was personally delivered or mailed, and any request for a hearing must be made before that ten-day period expires. When a hearing is requested, said hearing shall be held before the municipal judge and shall be public. At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. 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 eleventh day after the date of return.
- (d) A vehicle may not be reconstructed or made operable after it has been removed according to these procedures.
- (e) Notice shall be given to the state department of highways and public transportation not later than the fifth day after the date of removal. The notice shall identify the vehicle or vehicle part.
- (f) These procedures shall not apply to a vehicle or vehicle part that is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property, a vehicle or vehicle part 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 an unlicensed, operable, or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in a manner so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.
- (g) Procedures for abatement and removal of a public nuisance must be administered by regularly salaried, full-time employees of the city, except that any authorized person may remove the nuisance.

Sec. 114-325. - Unattended vehicles.

- (a) It shall be unlawful to leave a vehicle unattended within a public right-of-way or on public property in such a way that the vehicle obstructs traffic.
- (b) Notwithstanding any of the other provisions of this article, any unattended vehicle that obstructs traffic within public right-of-way or on public property may be immediately removed by the police department and stored as provided in Chapter 2308, Occupations Code.

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- (c) The city shall have the authority, to immediately remove any vehicle, which is on public property and causes an immediate threat to human safety, health, welfare, or any governmental function, or creates a public disturbance.

Sec. 114-326. - Enforcement.

A person authorized by the city to administer the procedures authorized by this article may enter private property for the purposes specified in the procedures to examine a public nuisance, obtain information to identify the nuisance, and to remove or direct the removal of the nuisance. The municipal court of the city may issue orders necessary to enforce the procedures.

Sec. 114-327. - Effect of article on other ordinances.

This article does not affect any ordinance or law authorizing the immediate removal, as an obstruction to traffic, of a vehicle left on public property.

Sec. 114-328. - Severability.

If any section, paragraph, sub-division, clause or phrase of this article shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this article as a whole or any part of any provision thereof other than the part so decided to be invalid or constitutional.

Sec. 114-329. - Punishment.

That a person who violates a provision of this article is guilty of a separate offense for each day or portion of a day, during which the violation is committed, continued or permitted, and each offense is punishable by a fine not to exceed the maximum fine allowed by law.

SECTION 3. That this Ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances, City of Bedford, Texas, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such code, in which event the conflicting provisions of such ordinances and such code are hereby repealed.

SECTION 4. That 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 a 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.

SECTION 5. That any person, firm or corporation who violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in the Code of Ordinances, City of Bedford, Texas. Each day any such violation or violations exist shall constitute a separate offense and shall be punishable as such.

SECTION 6. That all rights and remedies of the City of Bedford, Texas, are expressly saved as to any and all violations of the provisions of the Code of Ordinances or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under

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such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 7. That this Ordinance shall take effect and be in full force from and after the date of its passage.

PRESENTED AND PASSED this 26th day of October 2021, by a vote of 7 ayes, 0 nays and 0 abstentions, at a regular meeting of the City Council of the City of Bedford, Texas.

Michael Boyter, Mayor

ATTEST:

Michael Wells, City Secretary

APPROVED AS TO FORM:

Bryn D. Meredith, City Attorney