

ORDINANCE NO. 286

AN ORDINANCE AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES AND REPEALING ORDINANCE NO. 75 BY AMENDING REGULATIONS APPLICABLE TO JUNK AND ABANDONED VEHICLES, WATERCRAFT AND OUTBOARD MOTORS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city of Seven Points is a General Law Type A city and Chapter 6 of the Local Government Code; and

WHEREAS, portions of the City's Code of Ordinances pertaining to Junk and Abandoned Vehicles, Watercraft and Outboard Motors is confusing and unclear; and

WHEREAS, the City Council deems it advisable and in the public interest to amend Chapter 9 to clarify regulation of Junk and Abandoned Vehicles, Watercraft and Outboard Motors.

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

SECTION XXIII

THAT CHAPTER 9, SECTION 5 OF THE CODE OF ORDINANCES IS HEREBY AMENDED TO READ AS FOLLOWS:

SECTION 5: JUNKED VEHICLES: PUBLIC NUISANCE; ABATEMENT

A. DEFINITIONS

- (1) Antique Auto - Passenger cars or trucks that become twenty-five (25) or more years old.
- (2) Chopped / Modified Auto - A motor vehicle of any age which has been altered or modified from original manufacturer's specifications and, is being preserved by hobbyists.
- (3) Classic Auto - Passenger cars or trucks that become twenty (20) or more years old.
- (4) Collector - The owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve and maintain an antique or special interest vehicle for historic interest.

- (4) Collector - The owner of one or more antique or special interest vehicles who collects, purchases, acquires, trades or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve and maintain an antique or special interest vehicle for historic interest.
- (5) Demolisher - Any person whose business is to convert a motor vehicle into processed scrap or scrap metal or otherwise to dismantle motor vehicles.
- (6) Garage keeper - Any owner or operator of a parking place or establishment, motor vehicle storage facility, or any establishment for the service, repair or maintenance of motor vehicles.
- (7) Junked Vehicle - A vehicle that is self-propelled and :
 - (1) does not have lawfully attached to it:
 - (A) an unexpired license plate or
 - (B) a valid motor vehicle inspection certificate;
 - (2) is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) is inoperable and has remained inoperable for more than:
 - (A) 72 consecutive hours, if the vehicle is on public property; or
 - (B) 30 consecutive days, if the vehicle is on private property.
- (8) Motor Vehicle - Any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.
- (9) Special Interest Vehicle - A motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and , because of its historic interest, is being preserved by hobbyists.
- (10) Storage Facility - A garage, parking lot or any type of facility or establishment for the servicing, storing or parking of motor vehicles.

B. ENFORCEMENT GENERALLY

The administration of this section shall be the responsibility of the chief of police, or his designee. Whoever is so authorized may enter upon private property for the purposes specified in the procedures adopted in this section to examine vehicles or parts thereof, obtain information as to the identity of vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to the procedures. The municipal court shall have authority to issue any order necessary to enforce the procedures set out in this section. Nothing in this section shall affect parking or other ordinances of the City of Seven Points which permit the immediate removal of a vehicle left upon public property or on public right-of-way when such vehicle constitutes an obstruction of traffic.

C. JUNKED VEHICLE DECLARED TO BE PUBLIC NUISANCE

A junked vehicle, including a part of a junked vehicle, that is visible 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.

D. OFFENSE

- (A) A person commits an offense if the person maintains a public nuisance described by Section 683.072 of the Texas Traffic Law and Related Statutes: 1999
- (B) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.00.
- (C) The court shall order abatement and removal of the nuisance on conviction.

E. PROCEDURES FOR ABATING NUISANCE

The Police Department of the City of Seven Points, when desiring to remove and dispose of junked vehicles as public nuisances from private property, public property or public rights-of-ways, shall comply with the following procedures:

- A. A notice of not less than ten (10) days, stating the nature of the public nuisance on private property and that it must be removed and abated within ten (10) days, and further, that a request for a hearing must be made before the expiration of said ten (10) days period, such notice to be mailed, by certified mail with a five (5) day return receipt requested, must be sent to the owner or the occupant of the private premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate such nuisance shall be continued to a date not less than eleven (11) days from the date of such return;
- B. If the post office address of the last known registered owner to the nuisance or, if the owner is located, hand deliver.
- C. The requirements of paragraph (1) above shall also apply to the case of public nuisance on public property or on a public right-of-way and such notice shall be sent to the owner or the occupant of the public premises, or to the owner or the occupant of the premises adjacent to the public right-of-way whereupon such public nuisance exists;
- D. Once a vehicle has been removed under the provisions of this section, it shall not be reconstructed or made operable;
- E. If a hearing is requested by a person for whom notice is required, the

hearing shall be held not earlier than the 11th day after the date of the service of notice.

- F. At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable
- G. If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicles's:
 - A. description
 - B. vehicle identification number and
 - C. license plate number.

F. INAPPLICABILITY OF SUBCHAPTER

- (a) Procedures adopted may not apply to a vehicle or vehicle part:
 - (1) that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
 - (2) that is stored or parked in a lawful manner on private property in connection with the business of a licenses vehicle dealer or junkyard, or that is an antique or special interest vehicles stored by a motor vehicle collector on the collector's property, if the vehicle of 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.

G. JUNKED VEHICLE DISPOSAL

- (a) A junked vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by a municipality or county.
- (b) A municipality or county may operated a disposal site if its governing body determines that commercial disposition of junked vehicles in not available or is inadequate. A municipality or county may;
 - (1) finally dispose of a junked vehicle or vehicle part; or
 - (2) transfer it to another disposal site if the disposal is scrap or salvage only.

ABANDONED VEHICLES

AUTHORITY TO TAKE POSSESSION OF ABANDONED VEHICLES

A. DEFINITIONS

- (a) "Department" means the Texas Department of Transportation

- (b) "Garage Keeper" means an owner or operator of a storage facility.
- (c) "Law enforcement agency" means:
 - A. the Department of Public Safety;
 - B. the police department of a municipality;
 - C. the police department of an institution of higher education; or
 - D. a sheriff or a constable.
- (d) "Motor vehicle" means a vehicle that is subject to registration under Chapter 501.
- (e) "Motor vehicle demolisher" means a person in the business of:
 - A. converting motor vehicles into processed scrap or scrap metal; or
 - B. wrecking or dismantling motor vehicles.
- (f) "Outboard motor" means an outboard motor subject to registration under Chapter 31, Parks and Wildlife Code.
- (g) "Storage facility" includes a garage, parking lot or establishment for the servicing repairing, or parking of motor vehicles.
- (h) "Watercraft" means a vessel subject to regulations under Chapter 31, Parks and Wildlife Code.

B. ABANDONED MOTOR VEHICLE

For the purpose of this chapter, a motor vehicle is abandoned if the motor vehicle:

- (a) is inoperable, is more than five years old, and had been left unattended on public property for more than 48 hours;
- (b) has remained illegally on public property for more than 48 hours.;
- (c) has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours.;
- (d) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours; or
- (e) has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Turnpike Authority or controlled access highway.

C. CONFLICT OF LAWS; EFFECT ON OTHER LAWS

This chapter does not affect a law authorizing the immediate removal of a vehicle left on public property that is an obstruction to traffic.

D. ABANDONED MOTOR VEHICLES: SEIZURE AND AUCTION

Authority to take abandoned motor vehicle into custody.

- (a) A law enforcement agency may take into custody an abandoned motor vehicle, water craft, or outboard motor found on public or private property.
- (b) A law enforcement agency may use agency personnel, equipment, and facilities or contract for other personnel, equipment, and facilities to remove, preserve, and

store an abandoned motor vehicle, water craft, or outboard motor taken into custody by the agency under this section.

E. TAKING ABANDONED MOTOR VEHICLE INTO CUSTODY: NOTICE

- (a) A law enforcement agency shall send notice of abandonment to:
 - (1) the last known registered owner of each motor vehicle, water craft, or outboard motor taken into custody by the agency or for which a report is received under Section 683.031; and
 - (2) each lienholder recorded under Chapter 501 for the motor vehicle or under Chapter 31, Parks and Wildlife Code, for the water craft or outboard motor.
- (b) The notice under Subsection (a) must:
 - (1) be sent by certified mail not later than the 10th day after the date the agency:
 - (A) takes the abandoned motor vehicle, water craft, or outboard motor into custody.
 - (2) specify the year, make, model, and identification number of the item;
 - (3) give the location of the facility where the item is being held;
 - (4) inform the owner and lienholder of the right to claim the item not later than the 20th day after the date of the notice on payment of:
 - (A) towing, preservation, and storage charges.
 - (5) state that failure of the owner or lienholder to claim the item during the period specified by Subdivision (4) is:
 - (A) a waiver by that person of all right, title, and interest in the item; and
 - (B) consent to the sale of the item at public auction.
- (c) Notice by publication on one newspaper of general circulation in the area where the motor vehicle, water craft, or outboard motor was abandoned is sufficient notice under this section if:
 - (1) the identity of the last registered owner cannot be determined;
 - (2) the registration has no address for the owner; or
 - (3) the determination with reasonable certainty of the identity and address of all lienholders is impossible.
- (d) Notice by publication:
 - (1) must be published in the same period that is required by Subsection (b) for notice by certified mail and contain all of the information required by that subsection; and
 - (2) may contain a list of more than one abandoned motor vehicle, watercraft, or outboard motor.

F. STORAGE FEES

A law enforcement agency or the agent of a law enforcement agency that takes into custody an abandoned motor vehicle, water craft, or outboard motor is entitled to reasonable storage fees;

- (a) for not more than 10 days, beginning on the day the item is taken into custody and

- ending on the day the required notice is mailed; and
- (b) beginning on the day after the day the agency mails notice and ending on the day accrued charges are paid and the vehicle, water craft, or outboard motor is removed.

G. AUCTION OR USE OF ABANDONED ITEMS; WAIVER OF RIGHTS

- (a) if an abandoned motor vehicle, water craft, or outboard motor is not claimed under Section 683.012;
 - (1) the owner or lienholder;
 - A. Waives all rights and interests in the item; and
 - B. Consents to the sale of the item by public auction; and
 - (2) the law enforcement agency may sell the item at a public auction or use the item as provided by Section 683.016.
- (b) Proper notice of the auction shall be given . A garage keeper who has a garage keeper's lien shall be notified of the time and place of the auction.
- (c) The purchaser of a motor vehicle, water craft, or outboard motor;
 - (1) takes title free and clear of all liens and claims of ownership;
 - (2) shall receive a sales receipt from the law enforcement agency; and
 - (3) is entitled to register the motor vehicle, water craft, or outboard motor and receive a certificate of title.

H. AUCTION PROCEEDS

- (a) A law enforcement agency is entitled to reimbursement from the proceeds fo the sale of an abandoned motor vehicle, watercraft, or outboard motor for:
 - (1) the cost of the auction;
 - (2) towing, preservation, and storage fees resulting from the taking into custody; and
 - (3) the cost of notice or publication as required by Section 683.012.
- (b) After deducting the reimbursement allowed under Subsection (a), the proceeds of the sale be held for 90 days for the owner or lienholder of the vehicle.
- (c) After the period provided by Subsection (b) proceeds unclaimed by the owner or lienholder shall be deposited in an account that may be used for the payment of auction, towing, preservation, storage, and notice and publication fees resulting from taking other vehicles, water craft, or outboard motors into custody if the proceeds from the sale of the other items are insufficient to meet those fees.
- (d) A municipality or county may transfer funds in excess of \$1,000.00 from the account to the municipality's or county's general revenue account to be used by the law enforcement agency.

I. LAW ENFORCEMENT AGENCY USE OF CERTAIN ABANDONED MOTOR VEHICLES.

- (a) The law enforcement agency that takes an abandoned motor vehicle into custody that is not claimed under Section 683.012 may use the vehicle for agency purposes.
- (b) The law enforcement agency shall auction the vehicle as provided by this subchapter if the agency discontinues use of the vehicle.
- (c) This section does not apply to an abandoned vehicle on which there is a garage keeper's lien.
- (d) This section does not apply to a vehicle that is:
 - (1) taken into custody by a law enforcement agency located in a county with a population of 2.4 million or more; and
 - (2) removed to a privately owned storage facility.

SECTION XXIV

That all ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

That it is hereby declare to be the intention of the city council that the section, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrases, 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 be 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 of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION XXVI

That whenever in this ordinance an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such ordinance the doing of an act is required or the failure to do any act is declared to be unlawful, the violation of any such provision shall be punished by a fine as provided for in Chapter 1, Section 5 of the City Code of Ordinances; provided, however, that no penalty shall be greater of less than the penalty provided for the same or similar offense under the laws of the state. Each day any violation of this ordinance shall continue shall constitute a separate offense.

SECTION XXVII

That this ordinance will take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

JOHN H. MINTON
RANDALL L. ROBERTS
MICHAEL E. JONES
FIN G. PAYNE
JULIAS R. McSWANE, JR
JHN F. BUFE
JAY N. GREEN
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CINDY M. ALLEN
BLAKE E. ARMSTRONG
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POTTER MINTON

A Professional Corporation

ATTORNEYS AT LAW

March 28, 2001

received
3-29-01

500 PLAZA TOWER
110 N. COLLEGE
TYLER, TEXAS
75702
TELEPHONE
903.597.8311
FACSIMILE
903.593.0846
MAILING ADDRESS
P.O. BOX 359
TYLER, TEXAS
75710

Ms. Debbie Mosley
City Secretary
City of Seven Points
P. O. Box 43233
Seven Points, Texas 75143

RE: *Notice Requirements Regarding Zoning Changes*

Dear Debbie:

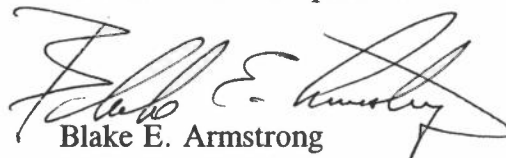
I have reviewed the amended junk and abandoned vehicle ordinance. This ordinance appears to be fine and legally sound. I have signed the ordinance accordingly.

Please contact me should you have any questions or comments.

With best regards, I am

Very truly yours,

POTTER MINTON
A Professional Corporation


Blake E. Armstrong

BEA:vld
Enclosure