

ORDINANCE NO. 05012018-01

AN ORDINANCE OF THE CITY OF POTEET, TEXAS (CITY) AMENDING THE POTEET MUNICIPAL CODE OF ORDINANCES REGULATING JUNK VEHICLES AS PUBLIC NUISANCES; REPEALING ALL PRIOR ORDINANCES INCONSISTENT WITH THIS AMENDMENT; PROVIDING FOR A SAVINGS CLAUSE;; DECLARING A PUBLIC PURPOSE, SETTING A PENALTY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Poteet has determined a municipal need to clarify, define and set forth acts in the municipal code of ordinances which constitute a junk vehicle as a public nuisance and are necessary to maintain the health, safety, governance and good order of the City; and

WHEREAS, the City wishes to amend the junk vehicle as a public nuisance ordinance of its municipal code in order to address a declared public need; and

WHEREAS, after publication in the manner prescribed by law the governing body of the City wishes to amend the Municipal Code of Ordinances of the City in the manner and form set forth below;

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

Effective immediately following the publication of this ordinance in the local newspaper as required by Section 52.011 of the Texas Local Government Code, the following rules will apply within the corporate city limits the City of Poteet.

Section 1: Amendment

ARTICLE I - JUNKED VEHICLES: PUBLIC NUISANCE ; ABATEMENT

(a) Under authority of the Texas Transportation Code declaring junked vehicles a public nuisance, the City of Poteet by and through its duly authorized officials have established procedures to abate and remove such junked vehicles or parts thereof from private property or public property under the provisions of this article.

Section 1. Definition and Applicability of a "junked vehicle".

- (a) "Junked vehicle" means a vehicle that is self-propelled and is:
- (1) wrecked, dismantled or partially dismantled, or discarded; or
 - (2) 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.
- (b) "Junked vehicle" includes a motor vehicle, aircraft, or watercraft. This ordinance applies only to:
- (1) a motor vehicle that displays an expired license plate or does not display a license plate;
 - (2) a watercraft that:
 - (a) does not have lawfully on board an unexpired certificate of number; and

(b) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Section 2. Junked Vehicle Declared 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 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.

Section 3. Authority To Abate Nuisance; Procedures.

- (a) The City of Poteet may order 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) The procedures must:
 - (1) prohibit a vehicle from being reconstructed or made operable after removal;
 - (2) require a public hearing on request of a person who receives notice as provided by Section 3. **Notice** if the request is made not later than the date by which the nuisance must be abated and removed; and
 - (3) require that notice identifying the vehicle or part of the vehicle be given to the department not later than the fifth day after the date of removal.
- (c) The City of Poteet Municipal Court may issue necessary orders to enforce the procedures.
- (d) Procedures for abatement and removal of a public nuisance must be administered by regularly salaried, full-time employees of the City of Poteet, except that any authorized person may remove the nuisance.
- (e) A person authorized to administer the 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.**
- (f) On receipt of notice of removal of a motor vehicle under Subsection (b)(3), the Poteet Police Department shall immediately cancel the certificate of title issued for the vehicle.
- (g) The relocation of a junked vehicle that is a public nuisance to another location in the City of Poteet after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
- (h) On receipt of notice of removal of a watercraft under Subsection (b)(3), the Poteet Police Department shall notify the Parks and Wildlife Department of the removal. On receipt of the notice from the Police Department, the Parks and Wildlife Department shall immediately cancel the certificate of title issued for the watercraft.

Section 4. Notice & Abatement.

- (a) The procedures for the abatement and removal of a public nuisance under this ordinance must provide not less than 10 days' notice of the nature of the nuisance. 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:

- (1) the last known registered owner of the nuisance;
 - (2) each lienholder of record of the nuisance; and
 - (3) 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 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; and
 - (2) any request for a hearing must be made before that 10-day period expires.
- (c) 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.
- (d) 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.

Section 5. Hearing.

- (a) The City of Poteet or official designated by the City of Poteet shall conduct hearings under the procedures adopted under this ordinance.
- (b) If a hearing is requested by a person for whom notice is required under **Section 3. Notice (a)(3)**, the hearing shall be held not earlier than the 11th day after the date of the service of notice.
- (c) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (d) If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance 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:

- (a) description; and
 - (b) federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
- (3) for a watercraft, the watercraft's:
 - (a) description; and
 - (b) identification number as set forth in the watercraft's certificate of number.

Section 6. Application of article.

- (a) This ordinance 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 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 hazard; and
 - (c) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(b) In this section:

- (1) "*Antique vehicle*" means a passenger car or truck that is at least twenty-five (25) years old.
- (2) "*Motor vehicle collector*" means a person who:
 - (a) Owns one (1) or more antique or special interest vehicles; and
 - (b) 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.
- (3) "*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.

Section 7. Junk Vehicle Disposition.

- (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 the City.
- (b) The City of Poteet may operate a disposal site if its governing body determines that commercial disposition of junked vehicles is not available or is inadequate. The City 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.

Section 8. Offense

- (a) A person commits an offense if the person maintains a public nuisance described by Section 2. **Junked Vehicle Declared to Be a Public Nuisance.**
- (b) An offense under this ordinance is a misdemeanor punishable by a fine not to exceed \$200.00 and each day of such violation shall be a separate distinct violation.

Section 9. Penalty

It shall be unlawful to do or perform any act prohibited in this Ordinance, and it shall be unlawful to fail to do or perform any act required in this Ordinance. Hearings under this Ordinance will be held before a Municipal Court Judge. Upon conviction of any violation hereof, the defendant shall be punished by a fine not to exceed Two Hundred dollars (\$200.00). Each day shall constitute a separate distinct violation.

Section 10. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsections, sentences, clauses, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

Section 11. Repealer

All ordinances in effect when this Ordinance becomes effective which as inconsistent with, or in conflict with this Ordinance are hereby expressly repealed insofar as said ordinances are inconsistent with or are in conflict with this Ordinance.

Section 12. Effective date

Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the following rules will apply within the corporate city limits of Poteet.

**PRESENTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF POTEET
TEXAS THIS 1ST DAY OF MAY, 2018.**



Albert Trevino, Mayor

Attest:



Abigayle Frautschi, City Secretary