

CITY OF KERRVILLE, TEXAS
ORDINANCE NO. 2023-15

**AN ORDINANCE AMENDING CHAPTER 46 “ENVIRONMENT”
OF THE CODE OF ORDINANCES, CITY OF KERRVILLE,
TEXAS, BY ADDING A NEW ARTICLE IV “JUNKED VEHICLES”;
SUCH ARTICLE TO REPLACE ARTICLE XI IN CHAPTER 102;
PROVIDING AN EFFECTIVE DATE; AND PROVIDING OTHER
MATTERS RELATING TO THE SUBJECT**

WHEREAS, City Council, pursuant to the constitution and laws of the State of Texas, including Article 11, Section 5 of the Texas Constitution as a home-rule city and Chapter 683 of the Texas Transportation Code regulating junked vehicles, has the authority to adopt regulations and exercise its police powers for the public health, safety, or general welfare of the citizens of Kerrville; and

WHEREAS, City Council previously declared junked vehicles within the City to be a public nuisance and provided for the abatement and removal of such nuisances as codified in Chapter 102, Article XI of the City’s Code of Ordinances; and

WHEREAS, due to changes in state law, it is necessary to amend these regulations to bring those provisions current with the enabling authority of such state law; and

WHEREAS, City Council finds it necessary to amend the City’s junked vehicle regulations to reflect changes and amendments to state law and to further clarify and amend the appeal and hearing process for owners of vehicles that have been declared junked vehicles; and

WHEREAS, the amendments include moving the regulations into Chapter 46 of the Code of Ordinances, which contains regulations applicable to environmental issues and other defined nuisances; and

WHEREAS, City Council finds that the following amendment to the Code of Ordinances is reasonable and beneficial for the public health, safety, and general welfare of the citizens of Kerrville and a proper exercise of the City’s police power;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF
THE CITY OF KERRVILLE, KERR COUNTY, TEXAS:**

SECTION ONE. Chapter 102 “*Traffic and Vehicles*”, Article IX “*Junked Vehicles*”, of the Code of Ordinances of the City of Kerrville, Texas, and its enabling ordinance (Ordinance No. 01-24) are repealed and replaced in their entirety with a new Article IV, of Chapter 46, as follows.

SECTION TWO. Chapter 46 “*Environment*” of the Code of Ordinances of the City of Kerrville, Texas, is amended by adding a new Article IV “*Junked Vehicles*”, which will add the language indicated by blue, underline (added) as follows:

“ARTICLE IV. - JUNKED VEHICLES”

Sec. 46-71. – Junked vehicle declared to be public nuisance.

A vehicle determined to be a junked vehicle, as defined herein, 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 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.

Sec. 46-72. - Definitions.

Antique vehicle means a passenger car or truck that is at least 35 years old.

City means the City of Kerrville, Texas, a home-rule municipality.

City Manager means the City Manager of the City, or designee.

Collector means the owner of one or more antique or special interest vehicles who acquires, collects, or disposes of antique or special interest vehicles or parts of them for personal use in order to restore or preserve an antique or special interest vehicle for historic interest.

Enforcement authority means any full-time, regularly salaried peace officer or code enforcement officer employed by the City.

Inoperable means the inability to start the engine of a motor vehicle and drive the vehicle under its own power a distance of more than 300 feet.

Junked vehicle means a vehicle that:

(1) Is self-propelled; and

(2) Displays an expired license plate or registration sticker or does not display any license plate or registration sticker; and

(3) Is:

- (a) Wrecked, dismantled, 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.
- (c) A junked vehicle includes the following:
 - i. 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; and
 - ii. A watercraft that does not have lawfully on board an unexpired certificate of number and is not a watercraft described by Section 31.055, Parks and Wildlife Code, as applicable to vessels provided with a federal valid marine document.

Special interest vehicle means a motor vehicle of any age that has not been changed from the original manufacturer's specification and, because of its historic interest, is being preserved by a hobbyist.

Sec. 46-73 - Enforcement.

- (a) The enforcement authority is authorized to administer the procedures set forth herein and may enter upon private property, in accordance with federal and state law, for the purposes specified in this article 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 this article.
- (b) The Municipal Court for the City shall have jurisdiction to conduct hearings and issue all orders necessary to enforce this article.

Sec. 46-74. - Applicability.

Nothing in this article affects state or local laws that authorize the immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

Sec. 46-75. - Offense.

- (a) Any person who maintains or permits a public nuisance as defined in Section 46-72 on public or private property commits a misdemeanor, and upon conviction, shall be subject to a fine not to exceed \$200.00. Each day a violation continues constitutes a separate offense.
- (b) The enforcement authority shall emphasize and prioritize abating junked vehicles that present an obvious appearance of not being functional as a means of transportation. As an example, if the visual appearance of such a vehicle from a public place or public right-of-way would cause a reasonable person to believe the vehicle is mechanically unserviceable, then immediate action shall be taken to abate the nuisance. The following examples are provided to give guidance to such enforcement, but is not intended to be an exhaustive list:
 - (1) the vehicle has one or more wheels blocked up from the ground.
 - (2) the vehicle has one or more broken windows, severe body damage, is missing body parts, is dismantled or partially dismantled, has parts out of place such as exhaust or the transmission touching the ground, or has one or more flat tires.
 - (3) the vehicle has grass and weeds growing up around it, making it obvious that it has not moved in some time.
 - (4) the vehicle has junk and debris visible through the windows that would cause a reasonable person to believe it is being used for storage rather than transportation.

Sec. 46-76. - Junked vehicles prohibited on public property.

- (a) It is unlawful for a person to cause or permit a junked vehicle or a part of a junked vehicle to be placed or to remain on any public property or public right-of-way.
- (b) A vehicle that remains in violation of this section for a period of more than 48 hours constitutes an abandoned motor vehicle and may be dealt with under processes defined by state law for removal of abandoned motor vehicles.

Sec. 46-77. - Junked vehicles prohibited on private property.

- (a) It is unlawful for a person that owns or controls real property to maintain, allow, cause, or permit a junked vehicle to be placed or to remain on the property.
- (b) 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.

Sec. 46.78. - Defenses to prosecution.

- (a) The following are defenses to prosecution under Section 46-77:
 - (1) The vehicle or vehicle part is completely enclosed within a building and is not visible from the street or other private or public 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 collector on the collector's property; if the vehicle or part and the outdoor storage area, if any, are maintained in an orderly manner, not a health hazard, and, screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
 - (3) The vehicle is completely covered by a heavy duty, contour-fitting cover, in relatively good condition and without significant holes or tears, so that no part of the vehicle except the tires is exposed to public view and it is the only one on the property; or
 - (4) The vehicle is in an appropriate storage facility maintained by the City or approved by the City.
- (b) This section does not allow a person to leave a junked vehicle on private property without the permission of the owner of the property.

Sec. 46-79. - Notice to abate nuisance vehicle.

- (a) For nuisance vehicles as described in Section 46-77, the enforcement authority shall give written notice by certified mail, five-day return requested to:
 - (1) the last known registered owner of the vehicle;

(2) any lienholder of record; and

(3) the owner or occupant of:

A. the property on which the vehicle is located; or

B. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(b) If the post office address of the owner is unknown, the notice may be placed on the vehicle or hand-delivered to the owner.

(c) The notice must state:

(1) The existence and nature of the nuisance;

(2) That the nuisance must be abated within ten days after receipt of the notice;

(3) That a public hearing must be requested within the ten-day period or it will be automatically waived; and

(4) That if the nuisance is not removed and a hearing is not requested within the ten-day period, the enforcement authority will remove or cause the removal of the nuisance vehicle.

(d) If any notice is returned undelivered, official action to abate the nuisance vehicle shall be continued to a date not less than ten days after the date of return.

(e) For nuisance vehicles on public property as described in Section 46-76 which are not dealt with as abandoned motor vehicles, written notice shall be given as described in subsection (a) of this section, except that the enforcement authority shall mail notice to the owner or manager of the public premises and to the owner or occupant of the premises adjacent to the public right-of-way.

(f) The relocation of a junked vehicle that is a public nuisance to another location within the City or Kerr County 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.

Sec. 46-80. - Public hearing in municipal court.

- (a) Upon the timely request for a hearing of any person to whom a notice was given regarding a nuisance vehicle, a public hearing shall be held before the City's municipal court judge. The court shall provide notice of the time, date, and location of the hearing to each person who submitted a timely request for a hearing.
- (b) The issue at the hearing is whether the vehicle is a nuisance vehicle.
- (c) At the hearing, unless demonstrated otherwise, the vehicle is presumed to be inoperable.
- (d) If the judge finds the vehicle to be a nuisance vehicle, the judge shall order abatement and removal.
- (e) Any order requiring the removal of a junked vehicle or vehicle part shall include a description of the vehicle, the vehicle identification number, and license number, if the information is available at the site. For an aircraft, the information must include the federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47. For a watercraft, the information must include identification number as set forth in the watercraft's certificate of number.

Sec. 46-81. - Removal of nuisance vehicle.

The enforcement authority may remove a nuisance vehicle at any time following a public hearing and order of the judge or following the waiver of a hearing.

Sec. 46-82. - Disposal of nuisance vehicle.

- (a) The City Manager shall dispose of a nuisance vehicle or vehicle part by removal to a scrapyard, demolisher, or any suitable site operated by the City for processing as scrap or salvage, and any reconstruction or work to make the vehicle operable after being removed is prohibited.
- (b) If removal occurs by the City, a junked vehicle is prohibited from being reconstructed or made operable.
- (c) City Council has determined that where the City Manager finds that commercial disposition of junked vehicles are not available or are inadequate, the City may operate its own disposal site and make final disposition of nuisance vehicles or vehicle parts at the disposal site or the City may transfer

the vehicles or vehicle parts to another disposal site if the disposal is only as scrap or salvage.

Sec. 46-83. Notice to state.

The enforcement authority shall give notice to the Texas Department of Transportation of the removal of a nuisance vehicle not later than five days after its removal. The notice shall identify the vehicle or vehicle part.”

SECTION THREE. The provisions of this Ordinance are cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein; provided, however, that all prior ordinances or parts of ordinances inconsistent with or in conflict with any of the provisions of this Ordinance are expressly repealed to the extent of any such inconsistency or conflict. This Ordinance repeals Ordinance No. 01-24.

SECTION FOUR. The terms and provisions of this Ordinance shall be deemed to be severable in that if any portion of this Ordinance is declared to be invalid, the same shall not affect the validity of the other provisions of this Ordinance.

SECTION FIVE. Pursuant to Texas Local Government Code §52.013(a) and Section 3.07 of the City's Charter, the City Secretary is authorized and directed to publish the descriptive caption of this Ordinance in the manner and for the length of time prescribed by the law as an alternative method of publication.

SECTION SIX. This Ordinance shall become effective immediately upon the expiration of ten days following publication, as provided for by Section 3.07 of the City Charter.

PASSED AND APPROVED ON FIRST READING, this the 11 day of April, A.D., 2023.

PASSED, APPROVED, AND ADOPTED ON SECOND AND FINAL READING, this the 25 of April, A.D., 2023.

APPROVED AS TO FORM:



Michael C. Hayes, City Attorney


Judy Eychner, Mayor

ATTEST:


Shelley McElhannon, City Secretary