



HEALTH & HUMAN SERVICES
Environmental Health Department
Fort Bend County, Texas

281-342-7469 Office

281-342-5572 Fax

Memorandum

TO: DISTRIBUTION
FROM: TROY SCALCO, DIRECTOR
CC: PAUL STEWART, ASSISTANT COUNTY ATTORNEY
RE: *PROPOSED JUNKED VEHICLE PROCEDURES*
DATE: JUNE 4, 2008

Attachments: 2; (Proposed Fort Bend County Junked Vehicle Abatement Procedures, Texas Transportation Code, Sections §683.071, §683.072, § 683.074, §683.075, §683.076, §683.077 & § 683.078)

As authorized by § 683.074 of the Texas Transportation Code (AUTHORITY TO ABATE NUISANCE; PROCEDURES), a municipality or county may adopt procedures for the abatement and removal of a junked vehicle or part of a junked vehicle as a public nuisance from private and public property.

The Fort Bend County Environmental Health Department (EHD) is requesting the Commissioner Court to review and approve the proposed Junked Vehicle Abatement Procedures.

Copies of the proposed procedures have been reviewed by the County Attorney's Office and are attached for your review.

Additionally, the EHD would request:

- The removal of a junked vehicle to be performed by one awarded contracted wrecker service at no cost accrued to the county. The awarded contractor would pay the county (amount to be determined by bid) per vehicle towed.
- Funds received to be directed to an EHD funding source line. This source line would assist with funding future abatements of abandoned properties.
- The procedures to be effective September 1, 2008.

DISTRIBUTION:

The Honorable Robert E. Hebert, County Judge
Tom Stavinoha, Commissioner Pct. 1
Andy Meyers, Commissioner Pct. 3
Jim Edwards, Budget Officer
Gilbert Jalomo, Purchasing Agent
Dr. Jean Galloway, HHS Director

Dianne Wilson, PhD. County Clerk
Grady Prestage, Commissioner Pct. 2
James Patterson, Commissioner Pct. 4
Ed Sturdivant, County Auditor
Roy Cordes, County Attorney

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**FORT BEND COUNTY JUNKED VEHICLE
ABATEMENT PROCEDURES**

WHEREAS, the purpose of this order is to protect and promote the health, safety, and welfare of the citizens of Fort Bend County by identifying and removing Junked Vehicles from the unincorporated area of Fort Bend County;

WHEREAS, the authority to promulgate and enforce this order is granted to the Fort Bend County Commissioners Court by Chapter 683 of the Texas Transportation Code;

WHEREAS, the Fort Bend County Junked Vehicle Abatement Procedures (hereinafter "Procedures") may be enforced independently or concurrently with actions for injunction, actions for damages, criminal proceedings, or any other claim, suit, or proceeding provided for by law;

NOW, THEREFORE, BE IT RESOLVED that the Fort Bend County Commissioners Court does hereby adopt these Procedures as set forth below:

Article 1. Definitions

In these Procedures:

- 1) "Abate" means to eliminate by removal and disposal.
- 2) "Administrator" means the Director of the Environmental Health Department of Fort Bend County, a regularly salaried, full-time employee of Fort Bend County. The Director may assign any duties imposed by these Procedures to regularly salaried, full-time employees under his/her direction.
- 3) "Antique Vehicle" means a passenger car or truck that is at least 25 years old.
- 4) "Junked Vehicle" means a vehicle that is self-propelled and:
 - a. Does not have lawfully attached to it:
 - i. An unexpired license plate; and
 - ii. A valid motor vehicle inspection certificate; and
 - b. Is:
 - i. Wrecked, dismantled, or partially dismantled, or discarded; or
 - ii. Inoperable and has remained inoperable for more than:
 1. 72 consecutive hours, if the vehicle is on public property; or
 2. 30 consecutive days, if the vehicle is on private property.
- 5) "Motor Vehicle Collector" means a person who:
 - a. Owns one 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.
- 6) "Person" has the meaning assigned to that term by Section 311.05(2) of the Texas Government Code as it presently exists or may hereafter be amended.

- 7) "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.

Article 2. Junked Vehicle Abatement Permitted

- 1) 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:
 - a. Is detrimental to the safety and welfare of the public;
 - b. Tends to reduce the value of private property;
 - c. Invites vandalism;
 - d. Creates a fire hazard;
 - e. Is an attractive nuisance creating a hazard to the health and safety of minors;
 - f. Produces urban blight adverse to the maintenance and continuing development of municipalities; and
 - g. Is a public nuisance.
- 2) A person maintains a public nuisance if that person causes or permits a Junked Vehicle on private property, public property, or a public right-of-way.
- 3) The Administrator may abate and remove from private or public property or a public right-of-way a Junked Vehicle or part of a Junked Vehicle as a public nuisance.

Article 3. Exceptions to the Procedures

- 1) The Procedures do not apply to a vehicle or vehicle part:
 - a. 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
 - b. 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, are:
 - i. Maintained in an orderly manner;
 - ii. Not a health hazard; and
 - iii. Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

Article 4. Abatement Procedures

- 1) The Administrator shall investigate a complaint regarding the existence of a Junked Vehicle or part of a Junked Vehicle and make a determination whether the Procedures apply. The Administrator may enter private property to examine a public nuisance or obtain information to identify the nuisance.
- 2) Notice
 - a. If the Procedures apply, the Administrator shall provide not less than 10 days notice of the existence of the Junked Vehicle or part of Junked Vehicle via personal delivery or certified mail with a 5 day return requested to:
 - i. The last known registered owner of the Junked Vehicle;
 - ii. Each lienholder of record of the Junked Vehicle; and
 - iii. The owner or occupant of:

1. The property on which the Junked Vehicle is located; or
 2. If the Junked Vehicle is located on a public right-of-way, the property adjacent to the right-of-way.
- b. The notice shall state that:
- i. The Junked Vehicle 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 must be made to the Administrator before that 10 day period expires.
- c. If the post office address of the last known registered owner of the Junked Vehicle or part of a Junked Vehicle is unknown, notice may be placed on the Junked Vehicle or part of a Junked Vehicle or, if the owner is located, personally delivered.
- d. If the notice is returned undelivered, action to abate the Junked Vehicle or part of a Junked Vehicle shall be continued to a date not earlier than the 11th day after the date of the return.
- 3) After the expiration of 10 days from the date on which the notice was personally delivered or sent via certified mail, the Administrator shall determine if the Junked Vehicle or part of a Junked Vehicle has been abated and removed.
- a. If the Administrator determines that the Junked Vehicle or part of a Junked Vehicle has been abated and removed, the Administrator shall make a record of this finding and take no further action.
 - b. If the Administrator determines that the Junked Vehicle or part of a Junked Vehicle has not been abated and removed, the Administrator shall:
 - i. Have the vehicle removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by Fort Bend County for final disposal; and
 - ii. Provide notice identifying the Junked Vehicle or part of a Junked Vehicle to the Texas Department of Transportation not later than the fifth day after the date of removal.
 - c. If the Administrator determines that the Junked Vehicle or part of a Junked Vehicle has not been abated and removed, and a hearing has been requested, the Administrator shall schedule a hearing in accordance with Article 5.
 - d. A Junked Vehicle may not be reconstructed or made operable after removal.

Article 5. Hearing

- 1) Request for Hearing
 - a. A party identified in Article 4 Section 2.a. of the Procedures may request a hearing not later than the 10th day after the date on which notice was personally delivered or mailed as required by Article 4 Section 2 of the Procedures.
 - b. If a hearing is requested, the hearing shall be held not earlier than the 11th day after the date of service of notice.
- 2) Hearing Board
 - a. If a hearing is requested, the hearing shall be heard by a Hearing Board
 - b. The Hearing Board shall consist of 3 Fort Bend County representatives, one from each of the following Fort Bend County departments:
 - i. Health and Human Services;
 - ii. Human Resources; and

iii. Risk Management.

3) Conduct of Hearing

- a. The party requesting the hearing may attend the hearing, present testimony and other evidence, examine witnesses, and argue on his/her behalf.
- b. The Administrator may attend the hearing, present testimony and other evidence, examine witnesses, and argue on Fort Bend County's behalf.
- c. The Hearing Officer may question any person testifying.
- d. All testimony at the hearing shall be provided under oath.
- e. At the hearing, the vehicle in question is presumed to be inoperable, unless demonstrated otherwise by the owner.

4) Determination

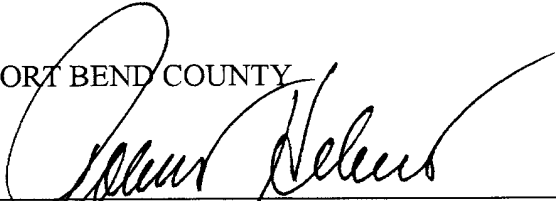
- a. The Hearing Board shall make a written determination whether the vehicle in question is a Junked Vehicle as defined in Article 1 Section 4 of these Procedures.
- b. The Hearing Board shall make a written determination whether the vehicle in question is excepted from these Procedures as provided in Article 3.
- c. If the Hearing Board determines that the vehicle in question is a Junked Vehicle, and the Junked Vehicle is not excepted from these Procedures, the Hearing Board shall issue an order for the abatement and removal of the Junked Vehicle as provided in Article 4 Section 3.
- d. If the information is available at the location of the nuisance, the order for the abatement and removal of the Junked Vehicle shall include the Vehicle's:
 - i. Description;
 - ii. Vehicle identification number; and
 - iii. License plate number.
- e. Copies of the written determinations and order, if applicable, shall be provided to the party requesting the hearing and the Administrator.

Article 6. Effective Date

The effective date of these Procedures shall be September 1, 2008.

PASSED AND APPROVED this the 10 day of June, 2008.

FORT BEND COUNTY

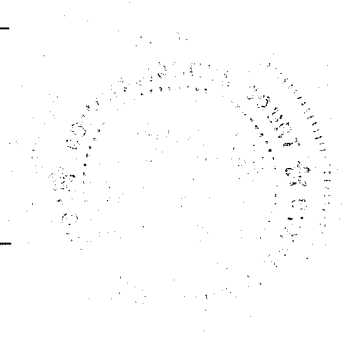


Honorable Robert E. Hebert
County Judge

ATTEST:



Honorable Dianne Wilson
County Clerk



TEXAS TRANSPORTATION CODE

SUBCHAPTER E. JUNKED VEHICLES: PUBLIC NUISANCE; ABATEMENT

§ 683.071. DEFINITION. In this subchapter, "junked vehicle" means 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; and
- (2) is:
 - (A) wrecked, dismantled or 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 746, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 798, § 1, eff. Sept. 1, 2001.

§ 683.0711. MUNICIPAL REQUIREMENTS. An ordinance adopted by a governing body of a municipality may provide for a more inclusive definition of a junked vehicle subject to regulation under this subchapter.

Added by Acts 2003, 78th Leg., ch. 1073, § 1, eff. Sept. 1, 2003.

§ 683.072. JUNKED VEHICLE DECLARED TO BE 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 1073, § 2.

§ 683.073. OFFENSE. (a) A person commits an offense if the person maintains a public nuisance described by Section 683.072.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.

(c) The court shall order abatement and removal of the nuisance on conviction.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 683.074. AUTHORITY TO ABATE NUISANCE; PROCEDURES. (a) A municipality or county may adopt procedures that conform to this subchapter for 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 before removal of the public nuisance; 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) An appropriate court of the municipality or county 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 municipality or county, 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 under Subsection (b)(3), the department shall immediately cancel the certificate of title issued for the vehicle.

(g) The procedures may provide that the relocation of a junked vehicle that is a public nuisance to another location in the same municipality or 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1226, § 1, eff. June 18, 1999.

§ 683.075. NOTICE. (a) The procedures for the abatement and removal of a public nuisance under this subchapter must provide not less than 10 days' notice of the nature of the nuisance. The notice must be personally delivered or sent by certified mail with a five-day return requested 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 413, § 13, eff. Sept. 1, 2001.

§ 683.076. HEARING. (a) The governing body of the municipality or county or a board, commission, or official designated by the governing body shall conduct hearings under the procedures adopted under this subchapter.

(b) If a hearing is requested by a person for whom notice is required under Section 683.075(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 the vehicle's:

- (1) description;
- (2) vehicle identification number; and
- (3) license plate number.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.

§ 683.0765. ALTERNATIVE PROCEDURE FOR ADMINISTRATIVE HEARING. A municipality by ordinance may provide for an administrative adjudication process under which an administrative penalty may be imposed for the enforcement of an ordinance adopted under this subchapter. If a municipality provides for an administrative adjudication process under this section, the municipality shall use the procedure described by Section 54.044, Local Government Code.

Added by Acts 2001, 77th Leg., ch. 413, § 14, eff. Sept. 1, 2001.

§ 683.077. INAPPLICABILITY OF SUBCHAPTER. (a) Procedures adopted under Section 683.074 or 683.0765 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 25 years old.

(2) "Motor vehicle collector" means a person who:
(A) owns one 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995. Amended

by Acts 2001, 77th Leg., ch. 413, § 15, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1431, § 1, eff. Sept. 1, 2001.

§ 683.078. 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 operate a disposal site if its governing body determines that commercial disposition of junked vehicles is 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.

Acts 1995, 74th Leg., ch. 165, § 1, eff. Sept. 1, 1995.