

**CITY OF COCKRELL HILL, TEXAS**

**ORDINANCE NO. 2016-01262016 O-A**

**AN ORDINANCE OF THE CITY OF COCKRELL HILL, TEXAS, AMENDING THE CITY OF COCKRELL HILL CODE OF ORDINANCES, CHAPTER 94, BY REPEALING THE EXISTING CHAPTER 94, ESTABLISHING A NEW CHAPTER 94, COMPRISED OF SECTIONS 94.01 – 94.07, TO ADDRESS THE DEFINITION, PENALTY, VIOLATION, AND ABATEMENT OF JUNKED VEHICLES ON PUBLIC OR PRIVATE PROPERTY, PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE, PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Sections 683.0711 and 683.074 of the Texas Transportation Code authorize a Texas municipality to adopt an ordinance for the definition and abatement of junked vehicles; and

**WHEREAS**, Chapter 94 of the Code of Cockrell Hill, Texas (“Code”), sets forth the abandoned vehicles regulations of the City, including regulations relating to public nuisances such as junked vehicles; and

**WHEREAS**, the City has adopted regulations consistent with state law regarding junked vehicles within the City in 1997, and has amended those regulations through City Ordinances 2000-H, 2005-L, and 2008-B; and

**WHEREAS**, the definition of junked vehicles has been amended by the Texas Legislature’s recent changes to Section 683.071 of the Texas Transportation Code; and

**WHEREAS**, the City Council of the City of Cockrell Hill desires to prevent junked vehicles in all parts of the City; and

**WHEREAS**, junked vehicles are being maintained in public view within the City in business and commercial areas;

**WHEREAS**, the City Council has determined that it is in the best interest of the health, safety and general welfare of the public to provide for a new Chapter 94 of the Code by repealing the existing Chapter 94 and establishing a new Chapter 94 incorporating all prior amendments listed above and including new definitions of the term “junked vehicle” to conform to the new Texas Transportation Code definition and declaring junked vehicles in all parts of the City a public nuisance and providing procedures for abatement of said public nuisance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COCKRELL HILL, TEXAS:**

**Section 1.** That all of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**Section 2.** The Code of Cockrell Hill, Chapter 94: ABANDONED VEHICLES is hereby repealed, and a new Code of Cockrell Hill, Chapter 94: JUNKED VEHICLES is hereby established as follows:

**“CHAPTER 94: JUNKED VEHICLES**

Section

- 94.01. Definitions
- 94.02 Junked vehicles declared a public nuisance
- 94.03 Maintaining a public nuisance
- 94.04 Abatement of nuisance
- 94.05 Affirmative defense to prosecution
- 94.06 Authority to enforce
- 94.07 Effect of other regulations

**§ 94.01 DEFINITIONS.**

**ANTIQUE AUTO.** Passenger cars or trucks that were manufactured more than thirty-five (35) years ago.

**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 or her own use in order to restore, preserve and maintain an antique or special interest vehicle for historic interest.

**JUNKED VEHICLE.** A vehicle that:

- (1) is self-propelled; and
- (2) is:
  - (a) wrecked, dismantled or partially dismantled, or discarded; or
  - (b) inoperable and has remained inoperable for more than:
    - (i) Seventy-two (72) consecutive hours, if the vehicle is on public property; or
    - (ii) Thirty (30) consecutive days, if the vehicle is on private property.
- (3) For purposes of this section, any vehicle shall be presumed to be inoperable, if the owner cannot or refuses to start and operate the vehicle upon request by authorized City law enforcement or code enforcement personnel.

**MOTOR VEHICLE.** (1) Any vehicle subject to registration under Texas Transportation Code, Chapter 501 that displays an expired license plate or does not display a license plate; (2) an aircraft that does not have lawfully printed on it an unexpired federal aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R Part 47; or (3) a watercraft that (a) does not have lawfully on board an unexpired certificate of number; and (b) is not a watercraft described in Texas Parks & Wildlife Code, Section 31.055.

**SPECIAL INTEREST VEHICLE.** A motor vehicle of any age which has not been altered or modified from the original manufacturer's specifications and, because of its recognized historic interest, is being preserved by a collector.

**§ 94.02 JUNKED VEHICLE DECLARED A PUBLIC NUISANCE**

- (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 is: (a) 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 the municipality; and (g) is a public nuisance.

**§ 94.03 MAINTAINING A PUBLIC NUISANCE**

- (1) It shall be unlawful and a violation of this chapter for any person to:
  - a. maintain a junked vehicle public nuisance if the nuisance is not removed and abated within ten (10) days after service of notice, and a hearing is not requested within the ten (10) day period provided for in Section 94.04;
  - b. maintain a junked vehicle public nuisance if the nuisance is not removed and abated in compliance with an order of the City Council following a hearing.
- (2) A City code enforcement or law enforcement officer may file a complaint in the Cockrell Hill Municipal Court for a violation of this Chapter. A violation of this Chapter may be punished by fine as set forth in Code of Cockrell Hill, Section 10.99, and the Municipal Court may also order removal and abatement of the junked vehicle public nuisance.

**§ 94.04 ABATEMENT OF NUISANCE**

- (1) A code enforcement or law enforcement officer of the City may initiate action as follows to remove and abate a junked vehicle public nuisance, either by complaint or upon his or her own initiative:
  - (a) When it is determined by a code enforcement officer or a law enforcement officer that there exists a junked vehicle public nuisance pursuant to Section 94.02 on private

property, that officer shall prepare a notice stating: (i) the nature of the junked vehicle public nuisance; (ii) that the junked vehicle public nuisance must be removed and abated within (10) ten days of the date of notice, and that (iii) a request for public hearing must be made before the expiration of the ten-day period. The notice under this Section shall be sent via certified United States mail, return receipt requested, to the last known registered owner or occupant of the premises on which the junked vehicle public nuisance exists. If any notice is returned undelivered by the United States mail, any official action to abate the nuisance shall not occur prior to the eleventh day after the date of the return.

(b) When it is determined by a code enforcement officer or a law enforcement officer that there exists a junked vehicle public nuisance pursuant to Section 94.02 on public property or on a public right-of-way, that officer shall prepare a notice stating: (i) the nature of the junked vehicle public nuisance; (ii) that the junked vehicle public nuisance must be removed and abated within (10) ten days of the date of notice, and that (iii) a request for public hearing must be made before the expiration of the ten-day period. The notice under this Section shall be sent via certified United States mail, return receipt requested, to the last known registered owner of the junked vehicle, any lien holder of record, and the owner or occupant of the public property or the property adjacent to the public right-of-way on which the junked vehicle public nuisance exists. If any notice is returned undelivered by the United States mail, any official action to abate the nuisance shall not occur prior to the eleventh day after the date of the return.

(c) When a hearing is requested by an owner, lien holder, or occupant entitled to notice under this Section within ten (10) days after service of the notice to abate the junked vehicle nuisance, the matter shall be set for hearing before the City Council at the next regular session that will provide at least ten (10) days between the date of the request and the public hearing. After a public hearing, at which the City Council may accept testimony and receive evidence from both the City code enforcement and law enforcement personnel and any party entitled to notice under this Section, the City Council shall make a finding as to whether or not the junked vehicle constitutes a public nuisance, and if so found, may by resolution or order require the removal of the vehicle from its location in order to abate or remove the nuisance. Any resolution or order under this Section shall include a description of the vehicle, including vehicle identification number and license number, if available.

(d) It is declared unlawful to reconstruct or to make any vehicle operable after it has been removed from its location under the terms of an order or resolution finding the same to be a public nuisance, and a code enforcement officer or law enforcement officer shall give notice to the Texas Department of Highways and Public Transportation not later than the fifth day after the date of removal, identifying the junked vehicle and requesting that the Department cancel the certificate of title to the vehicle pursuant to the Texas Transportation Code Chapter 501, as amended.

**§ 94.05            EXCEPTION AND AFFIRMATIVE DEFENSE TO PROSECUTION**

- (1) It shall be an exception to prosecution that:
  - (a) the vehicle is stored or parked on private property zoned Commercial District in connection with the business of a licensed vehicle dealer or a junkyard.
  
- (2) It shall be an affirmative defense to prosecution that the vehicle:
  - (a) is an antique or special interest vehicle stored by a collector on private property;
  - (b) does not constitute a health hazard; and
  - (c) is screened from ordinary view by means of a fence, trees, or shrubbery.
  
- (3) It shall not be a defense to prosecution that the vehicle is located or parked at a commercial or business establishment for repair:

**§ 94.06            AUTHORITY TO ENFORCE**

The City Inspector or Code Enforcement Officer as the officer of the city authorized to administer the procedures of this Chapter, may enter upon private property for the purpose of examining one or more potential junked vehicles, to obtain information as to the identifying information of the vehicle and the owner, lienholder, or property owner where the vehicle is located, and to remove or cause the removal of a vehicle declared to be a nuisance pursuant to this Chapter. The Municipal Court shall have the authority to issue all orders necessary to enforce the procedures set forth in this Chapter.

**§ 94.07            EFFECT OF OTHER REGULATIONS**

Nothing in this Chapter shall affect statutes or ordinances that permit immediate removal of a vehicle left on public property or public right-of-way that constitutes an obstruction or a safety hazard to traffic.”

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**Section 3.** All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed insofar as they conflict with the provisions hereof; however, any complaint pending in the Municipal Court and filed under the previous version of Chapter 94 prior to the Effective Date of this Ordinance shall not be affected by anything herein.

**Section 4.** If any section, article, paragraph, sentence clause, phrase or word in this ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 5.** Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum in accordance with Code of Cockrell Hill, Section 10.99 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

**Section 6.** This ordinance shall become effective, and be in full force and effect, from and after the date of its passage, and it is accordingly so ordained.

**PASSED AND APPROVED** the 26th day of January, 2016.



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Luis D. Carrera, Mayor

ATTEST:

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Bret Haney, City Administrator

APPROVED AS TO FORM:



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Robert F. Brown, City Attorney