

## ORDINANCE

Motion was made by Shannon Bailey seconded by Amanda Addison, that the following Ordinance be adopted. The vote was unanimous. Because this ordinance addresses a safety factor there is no grandfather clause.

### ORDINANCE NO. :319-2019

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHEPHERD, TEXAS, DECLARING JUNKED VEHICLES TO BE A PUBLIC NUISANCE; ESTABLISHING PROCEDURES FOR REMOVAL; PROHIBITING THE RECONSTRUCTION OR REPAIR OF REMOVED JUNKED VEHICLES; PROVIDING A PENALTY OF UP TO \$200 FOR EACH DAY OF VIOLATION THEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING A TEXAS OPEN MEETINGS CLAUSE.**

**WHEREAS**, it is the desire of the City Council of the City of Shepherd, Texas, to adopt, in all respects, a certain ordinance as established by the State of Texas V.T.C.A., Transportation Code, Chapter 683, Subchapter E, Section 683.071 to 683.078, as relating to junk vehicles: public nuisance; abatement; and

**WHEREAS**, the adoption of this Ordinance is done to promote the public health, safety and general welfare; to protect property values; reduce vandalism; and promote property maintenance within the corporate limits of said City of Shepherd, San Jacinto County, Texas, and relating to public safety, health, and general welfare;

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

### SECTION I.

#### DEFINITIONS:

As used in this ordinance, the following terms shall have the following meanings:

*Antique auto* means a passenger car or truck that is at least 25 years old.

*Carport* means a covered shelter as defined in the International Residential Code; used for automobiles and other motor vehicles which is open on at least two sides and is attached to or in close proximity to a residence. Carport floor surfaces shall be of approved noncombustible material and shall be sloped to facilitate adequate drainage towards the main vehicle entry doorway.

**Code Enforcement Official** means the law enforcement officer, or authorized designee, appointed by the City of Shepherd to enforce building code violations within the City.

**Junked vehicle** means a motor vehicle as defined in V.T.C.A., Transportation Code § 683.071 et seq., that is self-propelled and:

(1) does not have lawfully attached to it an unexpired license plate or a valid motor vehicle safety inspection certificate attached to it;

and

(2) 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.

**Motor vehicle** means a motor vehicle subject to registration under the Certificate of Title Act, V.T.C.A., Transportation Code § 501.001 et seq., except that such term shall include a motorboat, outboard motor or vessel subject to registration under V.T.C.A., Parks and Wildlife Code § 31.001 et seq.

**Special interest vehicle** means a motor vehicle of any age that has not been altered or modified from the original manufacturer's specifications and is being preserved by hobbyists because of the historic interest of such vehicle.

## SECTION II.

### JUNKED VEHICLE DECLARED TO BE PUBLIC NUISANCE; AUTHORITY TO REMOVE; EXCEPTIONS.

1. The City Council finds and determines that a junked vehicle, including a part of a junked vehicle, which 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. Pursuant to the terms of this division and in accordance with the procedures herein established, the Code Enforcement Official is hereby authorized to remove, or cause the removal of, a vehicle, or part thereof, that constitutes a public nuisance, and which is located on a public right-of-way, or public or private property.

3. This division shall not apply to a vehicle or vehicle part that is completely enclosed within a

building in a lawful manner where it is not visible from the street or other public property, a vehicle that is parked or stored in a lawful manner on private residential property under a carport, a vehicle or vehicle part 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 an unlicensed operable or inoperable antique or special interest vehicle stored by a collector on the collector's property, if the vehicle and the outdoor storage area are maintained in a manner so that they do not constitute a public health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means. A tarp is not an appropriate means of cover.

### **SECTION III.**

#### **PROCEDURES FOR REMOVAL.**

1. No junked vehicle constituting a public nuisance may be removed except upon the order of the Municipal Judge of the City of Shepherd, Texas, following written notice. The notice must state the nature of the public nuisance, that it must be removed and abated before the expiration of the tenth (10th) day following the receipt of such notice, and that a request for a hearing must be made before the expiration of the ten (10) day period. The notice must be mailed by certified mail with a five (5) day return receipt requested, to the last known registered owner of the junked vehicle and any lien holder of record. If the post office address of the last known registered owner of the junked vehicle is unknown, notice to the last known registered owner may be placed on the junked vehicle.
2. In addition to the notice required by subsection (1) of this section, for a nuisance located upon private property, like notice shall be sent to the owner or occupant of the private premises upon which the junked vehicle is located.
3. In addition to the notice required by subsection (1) of this section, for a nuisance located upon public property or upon a public right-of-way, like notice shall be sent to the owner or occupant of the public premises upon which the junked vehicle is located, or to the owner or occupant of the private premises adjacent to the public right-of-way upon which the junked vehicle is located.
4. In addition to the required contents, the notice may set forth the time, date and location at which the public hearing shall be conducted if requested. If so included, notice of the public hearing shall be deemed given.
5. If any notice required by this section is returned undelivered by the United States Post Office, or in the event notice shall be given by placement on the junked vehicle, official action to abate the nuisance shall be continued to the tenth (10th) day following the date of return. Notice given by placement on the junked vehicle shall be deemed returned on the tenth (10th) day following the date upon which such notice was placed upon the junked vehicle.

## **SECTION IV.**

### **REMOVAL HEARING.**

1. If required by the owner or lien holder of the motor vehicle, or by the owner or occupant of the premises upon which the motor vehicle is located, or if located upon a public right-of-way by the owner or occupant of the adjacent premises, a public hearing shall be held before the Municipal Judge to determine if the motor vehicle constitutes a public nuisance as provided in this Ordinance. At the hearing, it is presumed unless otherwise demonstrated by the owner, that the vehicle is inoperable. If, at the conclusion of such hearing, the Municipal Judge shall find and determine that the motor vehicle constitutes a public nuisance as provided by this Ordinance, he shall order the immediate removal of such vehicle by the Code Enforcement Official.
2. Where actual notice of certified mail shall be received by all persons entitled thereto pursuant to this Ordinance, the public hearing may be waived in the event of the failure of such persons to make timely request for hearing. In the event actual notice by certified mail shall not be received by any such party, such public hearing shall be conducted before the Municipal Judge prior to ordering the removal of the motor vehicle.
3. Each order of removal shall include a description of the vehicle and the correct identification number and license number if the information is available at the site. In addition, such order shall require the demolition of the junked vehicle and shall prohibit it from being reconstructed or made operable following its removal.

## **SECTION V.**

### **ENFORCEMENT AUTHORITY.**

1. The Code Enforcement Official or the designated representative shall be authorized to administer the procedures authorized by this Ordinance and may enter upon private property for the purposes of examining a motor vehicle or vehicle part for the purposes of determining whether or not any such vehicle constitutes a public nuisance as provided by this Ordinance, or for the purposes of obtaining information relevant to the identity of the vehicle or to place any notice upon such vehicle authorized by this Ordinance.
2. Removal of any such motor vehicle shall be supervised by the Code Enforcement Official and/or the Police department, whose officers may enter upon private property for the purposes of such removal and which may employ the service of private wreckers or towing equipment to affect such removal.
3. Not later than the fifth (5th) day following removal of the motor vehicle, the Code Enforcement Official shall give notice of such removal to the State Department of Highways and Public Transportation and shall request the immediate cancellation of the certificate of title to the vehicle.

## **SECTION VI.**

### **PENALTY:**

Any person or persons who violate any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction of any such violation, shall be fined not less than ten dollars (\$10.00) and not more than two hundred (\$200.00) dollars; and each day during which any violation shall constitute a separate and distinct offense.

## **SECTION VII.**

### **SAVINGS CLAUSE:**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not 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 in this Ordinance of any unconstitutional or invalid phrase, clause, sentence, paragraph or section.

## **SECTION VIII.**

### **REPEALING CLAUSE.**

Any matters in this Ordinance which are contrary to existing Ordinances of the City of Shepherd, San Jacinto County, Texas and all other Ordinances in conflict are hereby repealed to the extent of any conflict.

## **SECTION IX.**

### **TEXAS OPEN MEETINGS ACT.**

It is hereby officially found and determined that the meeting at which this Ordinance was considered was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, of the Texas Government Code.

## **SECTION X.**

### **EFFECTIVE DATE.**

This Ordinance shall take effect from and after the date of its publication in the official

publication of the City of Shepherd, Texas, which publication shall be sufficient if it contains the title of this Ordinance and states a penalty provided therein for violation thereof.

**PASSED AND APPROVED** this the 9th day of December 2019.

**THE CITY OF SHEPHERD, TEXAS**

  
**CHARLES MINTON, Mayor**

**ATTEST:**

  
**DEBRA HAGLER, City Secretary**

**APPROVED AS TO FORM:**

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**LARRY L. FOERSTER, City Attorney**