

ORDINANCE NO. 2022-32

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AMENDING THE CODE OF ORDINANCES CHAPTER 106 (ENTITLED "TRAFFIC AND VEHICLES") BY AMENDING AND RETITLING ARTICLE V AS "ABANDONED, JUNKED, AND THE TOWING AND IMPOUNDMENT OF, VEHICLES"; PROVIDING FOR PENALTY; PROVIDING CUMULATIVE, CORRELATIVE, REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, City Council finds that the storage or parking of junked or abandoned in public view is a detriment to the quality of life of the citizens of Burnet by causing visual blight, being a potential cause of vehicular accidents and criminal activity, and eroding the integrity of the city's neighborhoods and environs; and

WHEREAS, Texas Transportation Code, chapter 683, Subchapter B, establishes regulations and procedures a municipality may use to regulate "Abandoned Vehicles"; and

WHEREAS, Texas Transportation Code, chapter 683, Subchapter E, establishes regulations and procedures a municipality may use to regulate "Junk Vehicles"; and

WHEREAS, City Council desires to codify procedures for towing and impoundment of unlawfully parked and abandoned vehicle, as well as vehicles obstructing public streets; and

WHEREAS, City Council in accordance with said statutory authority and the city's inherent home rule powers adopted regulations abandoned and junked, codified as City Code Chapter 106, Article V; and,

WHEREAS, City Council deems it appropriate and necessary, for the promotion of the public health, safety, and general welfare, to amend City Code Chapter 106 in order to designate the Chief of Police as the Junked Vehicle Hearing Officer and to make other revisions thereto as provided herein; and

WHEREAS, City Council, finds, determines, and declares that publication of notice of this Ordinance, as required by Section 3.14 of the City Charter and the laws of the State of Texas, was made by the City Secretary within the period prescribed by Section 3.14; and.

WHEREAS, City Council, finds, determines, and declares that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given as required by Chapter 551 of the Texas Government Code.

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

Section one. Findings. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

Section two. Amendment. The Code of Ordinances, Chapter 106 (entitled "Traffic and Vehicles") is hereby amended by retitling Article V as "Abandoned and Junked Vehicles") and replacing the existing language in said Article in its entirety with the language contained within Exhibit "A" attached hereto and incorporated herein for all purposes as if fully set forth herein.

Section three. Penalty. A violation of this ordinance is unlawful and subject to the penalties prescribed herein.

Section four. Cumulative. This ordinance shall be cumulative of all provisions of all ordinances and codes, or parts thereof, except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinances, in which event the more restrictive provision shall apply.

Section five. Repealer. All ordinances and codes, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section six. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City hereby declares that this Ordinance would have been enacted without such invalid provision.

Section eight. Publication. The publishers of the City Code are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing Code.

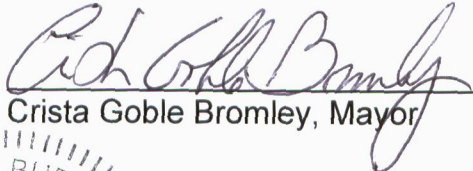
Abandoned, junked, and the towing and impoundment of, vehicles

Section nine. Effective Date. This Ordinance shall be effective upon the date of final adoption hereof and publication as required by law.


Passed and approved on first reading on the 12th day of April 2022

Passed, approved and adopted on the 26th day of April 2022

CITY OF BURNET


Crista Goble Bromley, Mayor

ATTEST:



Kelly Dix, City Secretary



The remainder of this page intentionally blank and Attachment "A" follows.

EXHIBIT A

ARTICLE V – ABANDONED, JUNKED, AND THE TOWING AND IMPOUNDMENT OF, VEHICLES.

Division One. Generally.

Sec. 106-121 – Purpose. The purpose of this Article is to protect the general welfare, health, and safety of the public by providing rules and regulations addressing Abandoned and Junk Vehicles and by authorizing the towing and or impoundment of any vehicles found standing or parked in violation of any city ordinance, or any vehicle that may be abandoned or left in any public place, or any wrecked or disabled vehicle that constitutes a traffic hazard.

Sec. 106-122. Definitions

In this Article, the terms in bold italics (***bold italics***) have the meanings ascribed to them below:

Abandoned Vehicle means a motor vehicle that is either:

- (a) inoperable, more than five years old, and has been left unattended on public property for more than 48 hours;
- (b) has remained illegally on public property for more than 48 hours;
- (c) remained on private property without the consent of the owner or person in charge of the property for more than 48 hours;
- (d) has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours;
- (e) has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a limited-access or controlled-access highway (as defined in State Code Section 541.302); or
- (f) is considered an abandoned motor vehicle under State Code Section 644.153(r).

Note: State law source: Tex. Transp. Code § 683.002

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

Appellee means a Notice Recipient who timely requests a hearing before the Hearing Officer.

Enforcement Authority means any peace officer or code enforcement officer employed by the City; but shall not be the City's Chief of Police or person designate by the Chief of Police to be the Hearing Officer.

City Secretary means the City Secretary of the City of Burnet, or his or her designee.

Hearing Officer means the City's Chief of Police or his or her designee.

Inoperable means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled, or partially dismantled it is presumed to be inoperable.

Junked vehicle means a vehicle that is self-propelled or was manufactured to be self-propelled, or any part thereof, in ordinary public view, which remains inoperable for a continuous period of ten (10) days.

Mail means United States Postal Service certified mail with a five-day return request; or United States Postal Service mail with signature confirmation service.

Motor Vehicle Collector means a person who owns one or more antique or special interest vehicles and who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for his own use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

Motor Vehicle Demolisher means any person in the business of converting motor vehicles into processed scrap or scrap metal, or to otherwise wreck or dismantle motor vehicles.

Notice means a written statement to abate a Public Nuisance described in **City Code Section 116-143**.

Notice Recipient means a party who is sent notice by the Enforcement Administrator under this Section.

Public Nuisance means a Junked Vehicle.

Real Property Owner/Occupant means the owner or occupant of the real property on which a junked vehicle is located; or, if the junked vehicle is located on public

property, the owner or occupant of the real property adjacent to the public property on which the junked vehicle is located.

Special Interest Vehicle means a motor vehicle of any age which has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

State Code means the Texas Transportation Code, as same may be amended, revised, or recodified from time to time.

Storage Facility means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

Vehicle Owner means the vehicle's owner of record.

Sec. 106-123 *Offense*

- (a) A person commits an offense if the person causes a vehicle to either become an Abandoned Vehicle, or a Junked Vehicle.
- (b) An offense under this section is a misdemeanor punishable by a fine not to exceed Five Hundred and No/100 Dollars (\$500.00). In the event, a defendant has once previously been convicted under this article; the defendant shall be fined an amount not less than One Hundred and No/100 Dollars (\$100.00) for each conviction thereafter. Each day a violation is permitted to exist shall constitute a separate offense.
- (c) The enforcement of this Section by Abatement Proceedings or by criminal fine are not exclusive remedies. The City may impose both Abatement Proceedings and criminal prosecution against a violator; and, avail itself to such other remedies as are available under law or equity.

Sec. 106-124 *Conflict with other laws*

- (a) This Article does not affect a law authorizing the immediate removal of a vehicle left on public property that is an obstruction to traffic.
- (b) The authority to take possession of Abandoned or Junk Vehicles, and the procedures relating thereto, as adopted under this Article are to be construed in a manner consistent with the laws of the State of Texas. If the provisions or procedures adopted by the city should conflict with the laws of the State of Texas, the laws of the State of Texas shall control.

Secs. 116-124 through 116-130 are reserved.

Abandoned, junked, and the towing and impoundment of, vehicles

Division Two. Abandoned vehicles.

Sec. 116-131 *Seizure, auction, storage, and demolition of an abandoned vehicles*

The Enforcement Administrator may take any and all actions authorized in State Code Chapter 683, including contracting for services, equipment, or facilities to remove and dispose of an Abandoned Vehicle in accordance with Division Four herein.

Secs. 116-132 through 116-140 are reserved.

Division Three Junked Vehicle.

Sec. 116 – 141. *Junked Vehicles declared a Public Nuisance*

It is hereby declared that a Public Nuisance is create by 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, and said Junked Vehicle, or part thereof:

- (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; or
- (f) Produces urban blight adverse to the maintenance and continuing development of the city.

Sec. 116-142 *Defenses*

It is a defense to the application of this Article that a vehicle or vehicle part is:

- (a) completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; or
- (b) 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 Motor Vehicle or part thereof stored by a Motor Vehicle Collector on the collector's property, provided that the vehicle or part and the outdoor storage area, if any, are:
 - (1) maintained in an orderly manner;
 - (2) do not constitute a health hazard, and

Abandoned, junked, and the towing and impoundment of, vehicles

- (3) screened from ordinary public view by means of a fence that is consistent with building regulations and zoning requirements applicable to the property.

Sec. 116-143 *Notice to abate Public Nuisance*

Service of Notice of a Public Nuisance shall be given as provided in this Section as follows:

- (a) An Enforcement Officer shall serve the Abatement Notice by hand delivery to the Vehicle Owner and the Real Property Owner/Occupant. If the Vehicle Owner and Real Property Owner/Occupant are one and the same only one notice shall be required.
 - (1) If service by hand deliver to the Vehicle Owner is not possible the notice shall be served by Mail to the Vehicle Owner's last known address and placed conspicuously on the Vehicle.
 - (2) If service by hand deliver to the Real Property Owner/Occupant is not possible the notice shall be served by Mail to the Real Property Owner/Occupant's last known address and placed on the front door of the main structure on the property and if the property is undeveloped conspicuously stake in the ground so it is visible from the street.
- (b) The notice must include:
 - (1) A statement as to the nature of the Public Nuisance;
 - (2) An order that the Vehicle Owner or the Real Property Owner/Occupant abate the nuisance no later than ten days after the date the Notice was delivered;
 - (3) A description of the right to request a hearing before the expiration of the ten-day period; and
 - (4) A statement of the consequences for failing to abate the nuisance or timely request a hearing.
- (c) A Notice Recipient may request a hearing to contest the Enforcement Officer's determination. The hearing request must be made to the City Secretary not later than the tenth day after the date the Notice is delivered. The request shall be in writing without the requirement of bond.

Sec. 116-144 *Abatement Proceedings*

- (a) With the delivery of the Notice, Abatement Proceedings commence.
- (b) Once Abatement Proceedings have commenced, the relocation of the Public Nuisance to another location in the city has no effect on the proceedings.

Abandoned, junked, and the towing and impoundment of, vehicles

- (c) A Public Nuisance removed under these Abatement Proceedings may not be reconstructed or made operable.

Sec. 116-145 *Abatement Public Hearing Not Requested*

- (a) On or after the eleventh day after the commencement of Abatement Proceedings the Enforcement Administrator shall inquiry with the City Secretary and verify no hearing was requested. Upon such verification, and verification the Notice Recipient did not abate the Public Nuisance, the Enforcement Administrator shall report same to the Hearing Officer.
- (b) If Notice was served by Mail, and the Notice was returned as undeliverable, the Enforcement Administrator shall include such information in his or her report to the Hearing Officer. In such instance the Hearing Officer shall verify the Mail was addressed in accordance with the requirements of City Code Section **116-143(a)(1)** and **(2)**
- (c) Upon the Hearing Officer's verification that Notice was properly delivered and the time to request a hearing expired, the Hearing officer may issue an Order to abate the Public Nuisance pursuant to **City Code Section 116-147**.

Sec. 116-146 *Hearing*

- (a) If timely requested by a Notice Recipient, the City Secretary shall schedule the Hearing not earlier than the eleventh day after the date of delivery of Notice. The City Secretary shall provide written notice of the date, time, and location of the Hearing to the Appellee. The date of the Hearing may be rescheduled one time on the request of an Appellee; provided if both the Vehicle Owner and the Real Property Owner/Occupant request a hearing the City Secretary shall give the Vehicle Owner preference when setting the date of the Hearing.
- (b) The Hearing Officer shall conduct the Hearing as summarily and informally as due process and orderly procedure will allow; and, in a manner, consistent with the following:
 - (1) In accordance with State Code Section 683.076(c) the Junked Vehicle is presumed to be inoperable, unless demonstrated otherwise by the owner.
 - (2) The Enforcement Officer and Appellee shall each be given up to thirty minutes to present their case. The Hearing Officer may extend

such time equally if he or she feels such additional time is necessary to make a just and impartial decision.

- (3) Neither the Enforcement Officer nor the Appellee may cross examine the other; but the Hearing Officer shall ask such questions of both he or she finds reasonably necessary to make a just and impartial decision.
- (4) At the conclusion of the Hearing the Hearing Officer shall render a decision.
- (5) Should the Hearing Officer determine that a question of law arises during the Hearing he or she may continue the hearing, for no more than 30 days in order to consult with the City Attorney before rendering a decision.

Sec. 116-147 *Hearing Officer Order*

- (a) Upon rendering a decision, the Hearing Officer shall enter a written order and copies shall be given by hand at the Hearing, or by mail within five business days of the hearing, to Appellee, Enforcement Officer. and City Secretary.
- (b) The Order shall become final as of the date of issuance.
- (b) The Order shall include the following information:
 - (1) For a motor vehicle, the vehicle's description, VIN Number and license plate number
 - (2) For an aircraft, the aircraft's description, federal aircraft identification number as described in 14 C.F.R. Part 47; and
 - (3) For a watercraft, the watercraft's description; and identification number as set forth in the watercraft's certificate of number.
- (c) On a finding affirming the Enforcement Administrator's determination that a Junked Vehicle is a Public Nuisance, the Hearing Officer shall order the Notice Recipient to remove the Junked Vehicle and abate the Public Nuisance; and, further order that if the Public Nuisance is not abated within the thirty-day Judicial Appeal period prescribed in **City Code Section 116-148** the Enforcement Administrator shall take action to abate the Public Nuisance.

Section 116.148 Judicial Appeal.

- (a) Any party aggrieved by an Order of the Hearing Officer shall have 30 days after the date the Order is issued to appeal the Order to a court of competent jurisdiction.
- (b) All abatement actions by the City shall be stayed until the thirty-first day after the date the Order was issued; or, if an appeal is perfected, until such time a decision upholding the Order, or dismissing the appeal, by the court becomes final.

Section 116.149 Disposal of Junked Vehicles

- (a) Upon the finality of an Order under this Article:
 - (1) a Junked Vehicle declared a Public Nuisance or part thereof may be disposed of by removal to a scrapyard, a motor vehicle demolisher, or any suitable site operated by the City, for processing as scrap or salvage pursuant to authority provided in the State Code, § 683.078 or any successor statute for junked vehicle disposal;
 - (2) the Enforcement Administrator shall give notice to the Texas Department of Motor Vehicles of the removal no later than the 5th day after removal; and
 - (3) the Junked Vehicle may not be reconstructed or made operable after removal.

Sec. 116.150 through 106.160 is reserved.

Division IV – Towing and Impoundment of Vehicles.

Sec. 106.161 – Enforcement. Any police officer or persons duly authorized and acting under and by authority and direction of any member of the police department may order the tow and/or impoundment of a vehicle in violation of this Division.

Sec. 106.162 – Violating Vehicles. A vehicle is in violation of this Division and subject to being immediately towed and or impounded if the vehicle is found to be:

- (a) standing or parked in violation of any city ordinance where “no parking” signs are authorized in said ordinance and posted in accordance with said ordinance; or
- (b) abandoned as defined in **Division I of this Article**; or

Abandoned, junked, and the towing and impoundment of, vehicles

- (c) is wrecked or disabled and constitutes a traffic hazard on a public street or highway.

Sec. 106.163 – Procedures.

- (a) Any vehicle found in violation of this Division shall be immediately removed and impounded in such storage facility that may be authorized by the City Manager for such purpose.
- (b) Any vehicle towed and/or impounded shall be retained and held by the storage facility operator until all charges for towing and storage described in **Section 106-164** have been paid in full.
- (c) Notice of impoundment of Abandoned Vehicles shall be in the manner prescribed in State Code 683.012

Sec. 106.164 – Authorized Fees. Fees for each vehicle taken into the control and custody of the police department or its duly authorized operator shall be collected by the police department before the impounded vehicle is released. Said fees are stated in the Fee Schedule incorporated in this Article as **Appendix A**.

Sec. 106.165 - Release of impounded vehicles.

- (a) Impounded motor vehicles shall be released by the police department or the operator of the police department's vehicle storage facility, after payment is made of any towing or storage charges or fees, only upon receipt of one (1) of the following:
- (1) Submission of certificate of title or other satisfactory proof that the person applying for the release is the owner of the vehicle.
 - (2) Submission of the certificate of title and of a current power of attorney duly executed by the owner requesting release to the person named therein and presenting same.
 - (3) Release of impounded vehicle to lienholder. A motor vehicle which has not been claimed by the owner after ten (10) days of impoundment (including the day the vehicle arrived at the storage facility) and after the mortgage note is thirty (30) days delinquent, shall be released to the claimant identifying himself as lienholder or agent of the lienholder named on the certificate of title upon the submission of a surety bond, from a firm authorized by the Texas Department of Insurance to provide such surety, and which maintains a physical office in this state, and which shall indemnify, save and hold harmless the city from all damage, liability, costs, attorney's fees, expenses, actions, judgments and special proceedings that may arise, accrue or be brought against the city by reason of releasing the vehicle to the bonded vehicle claimant, up to the amount of the bond, and upon payment of towing charges and storage fees. The form of the surety bond must be approved by the City Attorney and shall be in either the original mortgage amount of the vehicle or an amount equal to the current National Automobile Dealers Association book value plus ten (10) percent. A separate indemnification agreement shall be signed by the vehicle claimant who appears at the vehicle storage facility to take possession of the vehicle, and said claimant shall identify himself or herself as the lienholder or the lienholder's agent, and shall state that said claimant holds the City of Burnet harmless and fully indemnified against any claims of loss of property which may arise out of the release of the vehicle.
The surety bond shall include a statement that: (i) the title owner is in default of his mortgage contract by virtue of being delinquent in a scheduled payment by at least thirty (30) days, that the person

named in the bond is the lienholder or the legal agent of the lienholder being bonded, that the named lienholder has paramount right of possession of the vehicle, and is legally entitled to repossess same, or (ii) the title owner is in default of his mortgage contract by virtue of the seizure of the mortgaged vehicle by peace officers who have identified it as contraband and subject to confiscation under Chapter 59 of the Code of Criminal Procedure, thus entitling the lienholder to exercise a contractual right of repossession to preserve the mortgage collateral.

The signatory of the indemnification agreement and the surety bond, if signing as agent for a principal or as agent for or officer of a corporation, shall certify in writing and under oath before a notary public that he or she has full authority to execute the document on behalf of the corporation.

- (b) Nothing herein shall prevent the release of any motor vehicle by any person upon the service of an order or judgment directing such release by a court of competent jurisdiction.

- (1) **Impound Fee.** An Impound Fee in the amount of \$25.00 shall be imposed at the time of impoundment of a vehicle.

- (2) **Notification Fee.** A notification fee in the amount of \$10.00 shall be imposed on the registered owner to notify the registered owner and the primary lien holder that said vehicle will be sold at auction if the vehicle is not retrieved by the vehicle owners within a designated period of time and such other information as required by law.

- (3) **Tow Fee.** Tow fees shall be such amount charged by the tow truck operator.

- (4) **Storage fees.** Pre-notice and post notice storage fees shall be such amount charged by the storage facility operator.

Note: Pre-notice storage fees may only be charged for ten days. Once notice is sent post-notice storage fees can be charged until the vehicle is returned to owner.