

**ORDINANCE NO. 2008-\_\_\_\_\_**

**JUNKED VEHICLE ORDINANCE**

**AN ORDINANCE ADOPTING PROCEDURES FOR THE ABATEMENT AND REMOVAL FROM PRIVATE OR PUBLIC PROPERTY OR A PUBLIC RIGHT-OF-WAY WITHIN THE CITY OF EDEN, TEXAS, OR ITS EXTRATERRITORIAL JURISDICTION OF ANY JUNKED VEHICLE OR PART OF A JUNKED VEHICLE AS A PUBLIC NUISANCE AND PROVIDING FOR PENALTIES FOR VIOLATION OF THIS ORDINANCE.**

WHEREAS, the City Council, of Eden, Concho County, Texas (“City”) has the authority and responsibility to establish standards and to assure that the health, safety and welfare of the citizens of the City are not jeopardized by nuisances or unsafe conditions;

WHEREAS Chapter 683, Subchapter E of the Texas Transportation Code (1) declares that a junked vehicle, as defined therein, or a part thereof that is visible from a public place or public right-of-way is a public nuisance, (2) establishes a criminal offense for the maintenance of such a nuisance punishable by a fine not to exceed \$200.00, (3) authorizes municipalities to adopt procedures that conform to said Subchapter for the abatement and removal from private or public property or a public right-of-way of junked vehicles or parts of junked vehicles as a public nuisance and (4) authorizes properly qualified persons to 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; and

WHEREAS the City Council desires to adopt procedures for the abatement and removal of such public nuisances and provide for penalties for violation of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF EDEN, TEXAS, AS FOLLOWS:

**Section 1. Short Title.** This Ordinance may be cited as the City’s “Junked Vehicle Ordinance”.

**Section 2. Authority.** This Ordinance is adopted pursuant to the authority granted in Chapter 683, Subchapter E of the Texas Transportation Code as it currently exists and as it may be hereafter amended or replaced (collectively “Enabling Statutes”).

**Section 3. Replacement of Prior Ordinance.** This Ordinance is adopted in complete substitution, replacement and termination of Ordinance 1982-3, an Ordinance Concerning Junked, Wrecked and Dismantled Vehicles.

**Section 4. Definitions.** Unless otherwise provided for herein, all capitalized terms shall be defined in the manner set forth in the Enabling Statutes.

“**City**” means the City of Eden, Concho County, Texas, a Type A general law municipality.

“**Junked Vehicle**” as used herein shall mean a junked vehicle as that term is defined in the Enabling Statutes<sup>1</sup> or a part of such a junked vehicle.

“**Junked Vehicle Nuisance**” as used herein shall mean a Junked Vehicle that constitutes a public nuisance under the Enabling Statutes.<sup>2</sup>

**Section 5. Criminal Offense.** A person commits a criminal offense if the person maintains a Junked Vehicle Nuisance. Such an offense is a misdemeanor punishable by a fine not to exceed \$200.00. In the event of a conviction of this offense the court from which the conviction issues shall include in its order such terms as may be required by the Enabling Statutes.<sup>3</sup>

**Section 6. Administration of Ordinance.** The abatement and removal of a Junked Vehicle Nuisance shall be administered by a regularly salaried, full-time employee (“Administering Officer”). The City Administrator shall be the Administering Officer unless and until the City Council by a motion passed at a duly called and held meeting appoints another person as Administering Officer. The Administering Officer may delegate some of his/her duties of administration under this Ordinance to other regularly salaried, full-time employees of the City (“Administrative Delegate(s)”). Notwithstanding the foregoing provisions any person, authorized by and acting at the specific direction of the Administering Officer or an Administrative Delegate(s), may remove a Junked Vehicle that constitutes a Junked Vehicle Nuisance. The Administering Officer or an Administrative Delegate(s) may enter private property to examine a Junked Vehicle Nuisance, to obtain information to identify said nuisance, and to remove or direct the removal of said nuisance.

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<sup>1</sup> The Enabling Statutes presently define a junked vehicle as a vehicle that is self-propelled and (1) does not have lawfully attached to it: (A) an unexpired license plate; and (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.

<sup>2</sup> The Enabling Statutes presently declare that a Junked Vehicle that is visible from a public place or public right-of-way to be a public nuisance, subject, however, to certain exceptions listed in Section 683.077 of the Texas Transportation Code.

<sup>3</sup> The Enabling Statutes presently require that upon conviction of such an offense, the court shall order abatement and removal of the nuisance.

## **Section 7. Notice of Junked Vehicle Nuisance.** <sup>4</sup>

(A) In the event the Administering Officer or an Administrative Delegate(s) deems a Junked Vehicle to be a Junked Vehicle Nuisance, then he/she shall give notice by personal delivery, sent by certified mail with five-day return requested, or delivered by the United States Postal Service with signature confirmation service to (1) the last known registered owner of the Junked Vehicle Nuisance or, if said address is unknown, placed on the Junked Vehicle Nuisance; (2) each lienholder of record of the Junked Vehicle Nuisance; and (3) the owner or occupant of: (a) the property on which the Junked Vehicle Nuisance is located or (b) if the Junked Vehicle Nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

(B) Notices given under this Section 7 must state that: (1) the nuisance must be abated and removed not later than the 10<sup>th</sup> 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) In the case where all noticed parties receive the notice and fail to request a hearing on the matter, then the Administrative Officer or an Administrative Delegate(s) shall proceed no earlier than the 11<sup>th</sup> day after notice was received by all noticed parties to abate or remove the Junked Vehicle Nuisance as provided under Section 9 below. In the case where a notice is returned undelivered, then the Administrative Officer or an Administrative Delegate(s) shall proceed no earlier than the 12<sup>th</sup> day after the date of said return to abate or remove the Junked Vehicle Nuisance as provided under Section 9 below.

**8. Right to Hearing.**<sup>4</sup> Any party noticed under Section 7 above shall have a right to a public hearing under the procedures provided under the Enabling Statutes. The Municipal Court of the City shall preside over hearings under this Section unless the City Council passes a motion at a duly called and held meeting designating another hearing authority. In the event the sitting judge of the Municipal Court recuses himself/herself or is otherwise prohibited from presiding over such a hearing, the County Judge of Concho County, Texas, or a sitting municipal judge from any municipality located within 50 miles of Eden, Texas, may preside over such hearing. If, following a hearing conducted under this Section 8, the presiding authority finds that a Junked Vehicle Nuisance exists, then the Administrative Officer or an Administrative Delegate(s) shall proceed to abate or remove the Junked Vehicle Nuisance as provided under Section 9 below.

**9. Abatement or Removal of Junked Vehicle Nuisance.** In the event that a Junked Vehicle Nuisance remains unabated following notice and, if applicable, following a public hearing, the Administrative Officer or an Administrative Delegate(s) shall proceed to remove or abate the Junked Vehicle Nuisance. Subject to the following, the method of removal or abatement shall be in such manner as the Administrative Officer or an Administrative Delegate(s) shall deem reasonable under

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<sup>4</sup> The procedures set forth in Sections 7 and 8 comply with the Enabling Statutes as they are presently in force. See Sections 683.075 and 683.076. The procedures should be compared with the Enabling Statutes for currency after each subsequent legislature convenes.

the circumstances. In the event that the Administrative Officer or Administrative Delegate chooses to remove a Junked Vehicle constituting a Junked Vehicle Nuisance, then:

the Junked Vehicle must be disposed of in accordance with the Enabling Statute(s)<sup>5</sup> ;

he/she must give notice to the Texas Department of Transportation not later than the fifth day after the date of removal identifying the removed Junked Vehicle; and

the Junked Vehicle may not be reconstructed or made operable after removal.

**10. Relocation of Junked Vehicle.** The relocation of a Junked Vehicle that is a Junked Vehicle Nuisance to another location in the City after a proceeding for abatement and removal of the public nuisance has commenced has no effect on the proceeding if the Junked Vehicle constitutes a Junked Vehicle Nuisance at the new location.

**11. Enforcement Orders.** The Municipal Court of the City may, upon written request of the Administrative Officer or an Administrative Delegate(s), issue necessary orders to enforce the procedures adopted in this Ordinance.

This Ordinance will be recorded among the minutes of the City Council of the City of Eden.

Number of Votes FOR: \_\_\_\_\_ Number of Votes AGAINST: \_\_\_\_\_

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

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**Celina Hemmeter, City Secretary**

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**Eugene Spann, Mayor**

<sup>5</sup> See: Texas Transportation Code Section 683.078.