

ORDINANCE NO. 3952

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTIONS 10-165 AND 10-166 IN THEIR ENTIRETY AND ADDING NEW SECTIONS 10-165 AND 10-166; THEREBY ESTABLISHING REGULATIONS FOR JUNKED VEHICLES; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO HUNDRED (\$200.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite, Texas, is hereby amended by deleting Sections 10-165 through 10-166 in their entirety and adding new Sections 10-165 through 10-166 to read as follows, in all other respects said Code, Chapter and Section to remain in full force and effect:

Sec. 10-165. Junked vehicles.

Definitions. The following words, terms and phrases, when used in Section 10-166, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Antique auto* means a passenger car or truck that is at least 25 years old.
- (b) *Junked vehicle* means any vehicle as defined in V.T.C.A., Transportation Code § 683.071, 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.
 - (2) Is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) Is and has remained inoperable for more than 30 consecutive days, if the vehicle is on private property, or 72 consecutive hours if the vehicle is on public property.

Junked vehicle also includes self-propelled vehicles not subject to state motor vehicle inspection, including but not limited to off-road vehicles designed and intended to be operated in places other than on public streets, race cars, dirt track vehicles, all-terrain vehicles and golf carts. For these self-propelled vehicles not subject to state motor vehicle inspection, "inoperable" means not usable for the vehicle's designed and intended purpose.

- (c) *Motor vehicle collector* means a person who:
- (1) Owns one or more antique or special interest vehicles; and
 - (2) 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.
- (d) *Special interest vehicle* means a motor vehicle of any age that has not been changed from the original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Sec. 10-166. Same – Abatement; removal.

- (a) *Declared to be a 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 the municipality; and
 - (7) Is a public nuisance.
- (b) *Offense.* A person commits an offense if the person maintains a public nuisance described in Section 10-166. An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.00. The Mesquite Municipal Court shall order abatement and removal of the nuisance on conviction.
- (c) *Procedures to abate nuisance.*
- (1) The procedures for abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private or public property or a public right-of-way shall be in accordance with V.T.C.A., Transportation Code, Section 683.074.
 - (2) A vehicle removed under the provisions of this section shall not be reconstructed or made operative.

- (3) Within 10 days after a notice of nuisance was personally delivered or sent by certified mail, the registered owner or a lien holder of record of the vehicle, or owner or occupant of the private premises upon which the vehicle is located, or if the vehicle is located on a public right-of-way, the owner or occupant of the property adjacent to the right-of-way; may request a public hearing to be held before the Mesquite Municipal Court for determination of the existence of a junked motor vehicle as a public nuisance and for the purpose of entering an order requiring the removal of the same if found to be so. The Mesquite Municipal Court Judge shall be the designated official to make such a determination and upon the finding that the vehicle is a junked vehicle and constitutes a public nuisance, he shall enter an order requiring the removal of the vehicle and the City of Mesquite shall give to the Texas Department of Transportation notice identifying the vehicle including the correct identification number and license number of the vehicle if the information is available at the site.
 - (4) The notice identifying the vehicle or part of the vehicle shall be given to the Texas Department of Transportation not later than the fifth day after the date of removal. On receipt of notice of removal, the Texas Department of Transportation shall immediately cancel the certificate of title issued for the vehicle.
 - (5) A Mesquite Code Enforcement Officer or person authorized to administer these 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.
 - (6) The provisions of this article shall be carried out and enforced by regularly salaried, full-time employees of the City, except that the removal of vehicles or parts thereof from property may be done by any duly-authorized person, including persons with whom the City may have a valid contract for the removal of such vehicles.
- (d) *Notice of the junked vehicle and nature of the nuisance.*
- (1) Prior to any official action being taken to abate and remove a junked vehicle from private or public property or a public right-of-way, not less than 10 days notice shall be personally delivered, mailed by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to the following parties:
 - a. The last known registered owner of the junked vehicle;
 - b. Each lien holder of record of the junked vehicle;
 - c. The owner or occupant of the private property on which the junked vehicle is located; or
 - d. The owner or occupant of the premises adjacent to the public right-of-way on which the junked vehicle is located.

- (2) The notice must state that:
 - a. The junked vehicle is a public nuisance; and
 - b. 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
 - c. Any request for a public hearing must be made before the expiration of the same 10-day period with the Mesquite Municipal Court; and
 - d. That failure to abate and remove the nuisance or failure to attend the hearing after notice constitutes a waiver by the owner and lien holders of all right, title and interest in the vehicle and their consent to disposal of the junked vehicle in accordance with the provisions of Chapter 683, Subchapter E of the Texas Transportation Code.
- (3) If the post office address of the last known registered owner of the junked vehicle [nuisance] is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.
- (4) 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 return.
- (5) No notice is required for issuance of a citation for an offense in this section.

(e) *Hearing.*

- (1) The Mesquite Municipal Court Judge (“Judge”) shall conduct hearings relative to the abatement of junked vehicles.
- (2) A public hearing must be conducted prior to the removal of the public nuisance not earlier than the 11th day after the date of the service of notice.
- (3) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.
- (4) Following the public hearing, the Judge shall consider all evidence and determine whether the vehicle or any part thereof, constitutes a public nuisance as alleged. If the Judge finds that a nuisance does exist and that there is sufficient cause to remove the nuisance, and that the notice requirements provided in this section have been met, the Judge shall make a written order setting forth his findings and ordering that the nuisance be removed and that the vehicle be disposed of in accordance with the provisions of Chapter 683, Subchapter E of the Texas Transportation Code.
- (5) If the information is available at the location of the nuisance, a resolution order requiring removal of the nuisance must include the vehicle’s:
 - a. Description;

- b. Vehicle identification number (VIN); and
 - c. License plate number.
- (6) The Municipal Court shall have full authority to enforce the abatement procedures including, but not limited to, issuing all necessary orders.
- (7) The relocation of the junked vehicle that is a public nuisance to another location within the City, 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.
- (f) *Inapplicability of junked vehicle: Public nuisance.*
- (1) Procedures adopted in Sections 10-165 through and including 10-166, shall not apply to a vehicle or vehicle part that is:
- a. Completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
 - b. Stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer of a junk yard, 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, is:
 - 1. Maintained in an orderly manner;
 - 2. Does not constitute a health hazard; and
 - 3. Is screened from ordinary public view by appropriate means, including a fence, rapidly growing trees or shrubbery. A vehicle or part, covered by a tarp, car blanket or similar covering does not meet the requisite screening requirements for this section.
- (2) For purposes of this section, the term "ordinary public view" means the view from private or public property, or public right-of-way from average grade surrounding the property.
- (3) All vehicle parking shall be in compliance with the Mesquite Zoning Code as it relates to parking on a required sealed surface and Section 10-14 of this Code.
- (g) *Junked vehicle disposal.*

A Mesquite Code Enforcement Officer or duly authorized person, including persons with whom the City may have a valid contract for the removal of junked vehicles, may remove the junked vehicle first to the location of the wrecker service and then to the location of a demolisher for disposal.

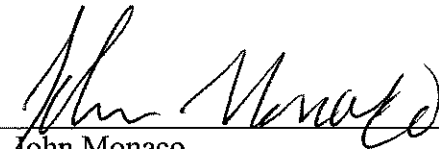
SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 4. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Hundred (\$200.00) Dollars for each offense.

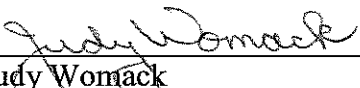
SECTION 5. That the present ordinances of the City of Mesquite are inadequate to provide for the proper regulation of junked vehicles creates an urgency and an emergency for the preservation of the public health, safety and welfare, and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of May, 2008.



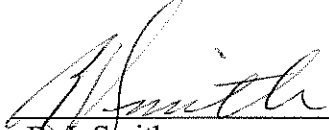
John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B.J. Smith
City Attorney