

ORDINANCE NO. 11.16.2017-31

AN ORDINANCE OF THE CITY OF SMILEY, TEXAS, DEFINING "JUNKED VEHICLES" DECLARING THE SAME TO BE PUBLIC NUISANCES, WITH CERTAIN EXCEPTIONS; PROVIDING FOR THE ABATEMENT OF SUCH PUBLIC NUISANCES; PROVIDING FOR THE DISPOSITION OF ANY JUNKED VEHICLES IMPOUNDED IN ACCORDANCE WITH THE TERMS HEREOF; PROVIDING A SEVERABILITY CLAUSE; MAKING THIS ORDINANCE CUMULATIVE OF ALL EXISTING ORDINANCES EXCEPT THOSE IN CONFLICT HERewith; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Smiley, Texas is a Type A general-law municipality located in Gonzales County, Texas, created in accordance with the provision of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, the Texas Transportation Code authorizes a municipality to adopt procedures for the abatement and removal of a junked vehicle from private or public property; and

WHEREAS, the City Council of the City of Smiley, Texas finds a large number of junked vehicles, as that term is defined herein, are from time to time left in places where they are visible from the public place or public right-of-way, that said junked vehicles create fire hazards and that the same constitutes an unattractive nuisance, creating a hazard to the health and safety of minors, and the same are detrimental to the economic welfare of the City by producing the urban blight which is adverse to the maintenance and continuing development of the City of Smiley, Texas;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Smiley, Texas:

**SECTION 1.0 SHORT TITLE**

This Ordinance may be cited as "Junked Vehicle Ordinance".

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### SECTION 2.0 DEFINITION

The following terms whenever used or referred to in this Ordinance shall have the same respective meaning unless a different meaning clearly appears from the context:

1. "City" shall mean the City of Smiley, Texas.
2. "Abandoned motor vehicle" means a motor vehicle that:
  - a. Is inoperable, is more than five years old, and has been left unattended on public property for more than seventy-two (72) hours;
  - b. Has remained illegally on public property for more than seventy-two (72) hours;
  - c. Has remained on private property without the consent of the owner or person in charge of the property for more than seventy-two (72) hours.
3. "Enforcement Official" shall mean a regularly salaried, full-time employee of the City of Smiley, designated by the City Council as the individual tasked with the enforcement of this ordinance.
4. "Demolisher" means any person whose business is to convert the motor vehicle into processed scrap or scrap metal or otherwise to wreck or dismantle motor vehicles.
5. "Junked vehicles" means any motor vehicle as defined in the Transportation Code Section 683.0710 and as amended, which vehicle is self propelled; and
  - a. Does not lawfully have attached to it;
    - i. An unexpired license plate; or
    - ii. A valid motor vehicle inspection certificate; and/or
  - b. Is wrecked, dismantled or partially dismantled, or discarded; or
  - c. Is inoperable and 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.

The definition of "Junked Vehicle" as written in this Ordinance is intended to be and remain the same as the definition written in the Texas Transportation Code, section 683.071. An amendment to the definition of "Junked Vehicle" in the Texas Transportation Code, Section 683.071 as now written or as hereafter changed shall

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become the definition of "Junked Vehicle" in this Ordinance upon the effective date of the definition change made in the Texas Transportation Code.

### Exception

A "Junked Vehicle" as defined by this Ordinance, may be placed, maintained or stored on private property and not be subject to this Ordinance IF said vehicle is completely covered by a fitted and secured vehicle cover which cover was manufactured for the intended purpose of covering a vehicle. The vehicle cover must be secured and/or fitted to the vehicle so that said cover will not blow off of the vehicle due the elements. Vehicle Covers shall not include plastic tarps or other similar coverings that are not intended for the purpose of covering a vehicle.

In addition, this exception shall only apply to a maximum of two (2) vehicles, falling under the definition of "Junked Vehicle", per lot or designated property boundaries for a single or adjoining properties owned by the same owner or business entity, within the Corporate City Limits of the City of Smiley, Texas or any Extra-Territorial Jurisdiction (ETJ) of the City of Smiley, Texas.

### **SECTION 3.0 JUNKED VEHICLES DECLARED A PUBLIC NUISANCE**

Junked vehicles which are located in any place where they are visible from a public place or public right-of-way, are detrimental to the safety and welfare of the general public, do tend to reduce the value of private property, do invite vandalism, do create fire hazards, do constitute an unattractive nuisance creating a hazard to the health and safety to minors, and are detrimental to the economic welfare of the State which is adverse to the maintenance and continuing development of the municipalities in the State of Texas, and such vehicles are, therefore, declared to be a public nuisance.

### **SECTION 4.0 MAKING IT UNLAWFUL TO CREATE OR TO MAINTAIN SUCH NUISANCE**

It shall be unlawful for any individual, company or corporation to leave or permit to remain upon public or private property (except as hereinafter provided), within the City of Smiley, Texas any junked vehicles or parts or portion thereof.

### **SECTION 5.0 NOTICE**

A. Upon determination by the Enforcement Official of this Ordinance, that a nuisance, as defined herein, exists in the City of Smiley, the Enforcement Official shall give or

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cause to be given to the person maintaining or suspected of maintaining such nuisance, in writing, a ten (10) day notice, stating the nature of the public nuisance and that it must be removed and abated within said ten (10) day period, such notice to be mailed, by certified or registered mail, with a five (5) day return requested to:

1. The last known registered owner of the nuisance;
2. Each lienholder of record of the nuisance; and
3. The owner or occupant of:
  - a. The property on which the nuisance is located; or
  - b. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

B. The notice must state that:

1. The nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was mailed; and
2. Any request for a hearing must be made before that ten (10) day period expires.

C. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed **ON** the nuisance (i.e., the vehicle) or, if the owner is located, hand delivered.

D. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.

If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lien holders, notice by one publication in the local newspaper is sufficient notice. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail, and shall have the same contents required for notice by certified mail.

E. A public hearing shall be held prior to the removal of the vehicle or the part thereof as a Public nuisance, the same should be held before the Municipal Court Judge of the City of Smiley, when such hearing is requested by the owner or occupant of the premises on which said vehicle is located, within ten (10) days after service of notice to abate the nuisance. Should the owner or occupant of the premises on which said vehicle is located fail to request a hearing, a public hearing shall be conducted in absentia

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before the Municipal Court Judge who shall determine if the vehicle or vehicle part is a nuisance. At a hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:

1. Description;
2. Vehicle identification number; and
3. License plate number.

### SECTION 6.0 ORDER BY MUNICIPAL JUDGE

After the hearing is held by the Judge of the Municipal Court of the City of Smiley, as herein provided, if said Municipal Judge finds that such a nuisance is herein defined exists, he shall order the owner or occupant of the premises on which said vehicle is located to remove such junked vehicle within ten (10) days after said order is given to such owner or occupant of the premises on which said vehicle is located.

If the owner or occupant of the premises on which said vehicle is located fails to attend the public hearing where the order is issued, the Enforcement Official shall delivery or cause to be delivered said order to the last known address of the owner or occupant of the premises on which said vehicle is located. It shall be unlawful and a violation of this Ordinance for any such person, to whom such person to whom such order is given, to fail or refuse to comply therewith to remove such junk vehicle within the time provided by said order.

### SECTION 7.0 DUTY OF OWNER OR OCCUPANT OF THE PREMISES

In the event the owner or occupant of the premises does not request a hearing, as hereinabove provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

### SECTION 8.0 VEHICLES NOT TO BE MADE OPERABLE

After a vehicle has been removed in accordance with or under the terms and provisions of the Ordinance, it shall not be reconstructed or made operable.

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**SECTION 9.0 NOTICE TO TEXAS HIGHWAY DEPARTMENT**

Notice shall be given to the Texas Highway Department within five (5) days after the date of removal identifying the vehicle or part thereof.

**SECTION 10.0 RELOCATION**

The relocation of a Junked Vehicle that is a public nuisance to another location to the City, after 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.

**SECTION 11.0 WHERE ARTICLE DOES NOT APPLY**

This Ordinance shall not apply to a vehicle or a vehicle part:

1. That is completely enclosed in a building in a lawful manner and it is not visible from the street or other public or private property; or
2. That is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or 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 and the outdoor storage area, if any are:
  - a. Maintained in any orderly manner;
  - b. Not a health hazard; and
  - c. Screened from ordinary public view by appropriated means, including fence approved by the City, rapidly growing trees, or shrubbery.

As used in this Ordinance:

1. **"Antique Vehicles"** means a passenger car or truck that is at least 25 years old.
2. **"Motor vehicle collector"** means a person who:
  - a. Owns one or more antique or special vehicles; and
  - b. Acquires, collects, or disposes of any 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.

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3. **"Special Interest Vehicle"** means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

### SECTION 12.0 ADMINISTRATION OF THIS ORDINANCE

The administration of this Ordinance shall be by regularly salaried, full-time employees of the City of Smiley, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person.

### SECTION 13.0 REMOVAL OF VEHICLE

Within ten (10) days after notice has been delivered to the owner or occupant of the premises on which a junked vehicle is located if a hearing is not requested, or if a hearing is requested, within ten (10) days after an order requiring the removal of such junked vehicle has been served upon or delivered to the last known owner or occupant of the premises on which said vehicle is located, the Enforcement Official of this ordinance, may, if said nuisance has not been abated, petition the Municipal Court judge for an order to remove or cause to be removed the vehicle which was the subject of such notice to the scrap yard, a motor vehicle demolisher, or a suitable site operated by the City. The person authorized to administer the procedures may only remove or cause to be removed vehicles after an order is received from the Municipal Court Judge. A person authorized to administer the 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.

### SECTION 14.0 REMOVAL WITH PERMISSION OF OWNER OR OCCUPANT

If, within 10 days after receipt of notice from the City in accordance with Section 4 to abate the nuisance, the owner or occupant of the premises shall give his written permission to the City for removal of the junked motor vehicle from the premises, the giving of such permission shall be considered compliance with provisions of the Ordinance.

### SECTION 15.0 RIGHT OF REMOVAL FROM STREET PRESERVED

Nothing in this Ordinance shall affect ordinances or other laws that permit immediate removal of a vehicle left on public property which is abandoned or which constitutes an obstruction to traffic.

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**SECTION 16.0 SALE OR DISPOSAL OF VEHICLES**

Any junked vehicle that has been removed may be disposed of by sale to a demolisher for the highest bid or offer received therefor or be processed as scrap or salvage by demolisher or be demolished.

**SECTION 17.0 PENALTY**

Any person who shall violate the terms and provisions of this Ordinance shall, upon conviction thereof, be punished by a fine of not less than One Dollar (\$1.00) and not more than Two Hundred Dollars (\$200.00) and each and every day this Ordinance is violated shall constitute a separate offense. The Court hearing a case under this Ordinance shall order abatement and removal of this nuisance on conviction.

**SECTION 18.0 SAVINGS CLAUSE**

If any article, paragraph or part of a paragraph of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not invalidate or impair the validity, force or effect of any other article, paragraph or part of a paragraph of this Ordinance which shall remain in full force and effect.

**SECTION 19.0 CUMULATIVE REPEALER CLAUSE**

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof, in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance. Provided however, that any complaint, action, claim or lawsuit which has been initiated or has arisen under or pursuant to such other Ordinances on the date of this Ordinance shall continue to be governed by the provisions of such Ordinance and for that purpose the Ordinance shall remain in full force and effect.

**SECTION 20.0 PUBLICATION**

The City Secretary of the City of Smiley is directed to publish the caption, penalty clause, publication clause and effective date of this Ordinance in accordance with the provisions of the Local Government Code.



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PASSED AND APPROVED on this 16th day of November 2017.

CITY OF SMILEY, TEXAS

BY: Ellis Villasana  
Ellis Villasana, Mayor

ATTEST:

Rebecca R. Mign  
City Secretary

APPROVED AS TO FORM:

Eduardo "Eddie" Xavier Escobar  
Eduardo "Eddie" Xavier Escobar  
City Attorney