

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF RIESEL, TEXAS, DECLARING JUNKED VEHICLES TO BE A PUBLIC NUISANCE, ESTABLISHING PROCEDURES FOR ABATEMENT AND DISPOSITION OF JUNKED VEHICLES, REPEALING CONFLICTING ORDINANCES, , PROVIDING A SEVERABILITY CLAUSE, AND PROVIDING AN EFFECTIVE DATE

WHEREAS, a junked vehicle or part thereof that is left in such a location as to be visible from a public place or public right-of-way is detrimental to the safety and welfare of the citizens of Riesel, Texas, tends to reduce the value of private property, invites vandalism, creates other dangers, and is a blight adverse to the development of Riesel, Texas; and has been declared a public nuisance by State law; and

WHEREAS, Chapter 683, Subchapter E of the Transportation Code (V.T.C.A.) provides the City with the authority to adopt procedures to address this problem; and

WHEREAS, municipal regulation in this area is in the best interest of the citizens of the City of Riesel.

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

**I.
DEFINITION OF JUNKED VEHICLE**

1.01 In this Ordinance, the term " " shall mean a vehicle that is self-propelled and:

(1) does not have lawfully attached to it:

an unexpired license plate; OR

a valid motor vehicle inspection certificate;

AND IS:

(2) wrecked, dismantled or partially dismantled, or discarded; **or**

(3) 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

II.

DECLARATION OF JUNKED VEHICLE AS A PUBLIC NUISANCE

2.01 (A) Automotive vehicles or trailers not bearing current license plates and state motor vehicle inspection stickers, excluding racing cars, and cars belonging to members of armed forces who are on active duty, shall be parked or stored on and residential area only in completely enclosed buildings.

(B) A junked vehicle, including a part of a junked vehicle, that is located in a place where it is visible from a public place or public right-of-way is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors, and produces urban blight adverse to the maintenance and continuing development of the City, and is hereby declared a public nuisance.

(C) Section 683.072 of the Transportation Code declares a junked vehicle or part thereof visible from a public place or public right-of-way a public nuisance.

2.02 A person commits an offense under the Transportation Code when he or she maintains a junked vehicle or vehicle part in a manner declared a public nuisance, and it is the City Council's intent that the Municipal Police of Riesel enforce the Transportation Code to discourage the creation and/or maintenance of such a public nuisance. [Source Law: §683.072, §683.073, Transportation Code . Section 683.073 of the Transportation Code makes such an offense (misdemeanor) punishable by a fine not to exceed \$200.00. Section 683.073(c) of the Transportation Code also requires the court in which the case is tried to order abatement and removal of the nuisance upon conviction.

III.

CITY PROCEDURES FOR ABATING NUISANCE

3.01 Adoption of Procedures. The City of Riesel has, by this Ordinance, adopted procedures for the abatement, removal and disposal of a junked vehicle or a part of a junked vehicle as a public nuisance. These procedures conform to the requirements of Chapter 683, Subchapter E of the Texas Transportation Code.

3.02 Notice.

- (A) Prior to the abatement and removal of the public nuisance, the Chief of Police or his designee shall provide not less than ten (10) days' written notice of the nature of the nuisance, which notice must be personally delivered, or mailed by certified mail with a five-day return requested to:

- (1) the last known registered owner of the nuisance;
 - (2) each lienholder of record of the nuisance;
 - (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 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 Ten 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 or, if the owner is located, personally delivered.
- (D) If the 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 the return.

3.03 Hearing.

- (A) If a hearing is requested by a person to whom notice is required to be sent in accordance with §3.02, the hearing shall be held not earlier than the Eleventh (11th) day after the date of service of the notice. A request for a hearing shall be made in writing to the Mayor. The Mayor will transmit the request to the Municipal Judge. Upon receiving a request for hearing, the Clerk of the Municipal Court or the Municipal Judge himself/herself shall set a date and time for the hearing, and shall notify the requestor, and all persons entitled to notice under §3.02, of the date and time for such hearing, and the location of the hearing. If the address of persons entitled to notice under §3.02 is not available, such notice may be otherwise delivered or posted in accordance with §3.02. The Municipal Judge shall hear the matter at the location, date and time noticed, unless changed by agreement or necessity with notice to the requestor, and shall, based on the information presented by the City representative(s) and the requestor (or any other person with a legal or equitable interest in the matter) at the hearing, make a determination of whether the vehicle or vehicle part is a public nuisance under this Ordinance.

Pursuant to §683.076(c) of the Transportation Code, it is presumed that the vehicle or vehicle part is inoperable unless demonstrated otherwise by the owner. If the Municipal Judge so finds, he/she shall enter an order making such finding, ordering the owner of the vehicle or vehicle part, or owner or occupant of the private premises where the vehicle or vehicle part is located, as the case may be, to abate the public nuisance by removing or causing the removal of the same, and directing that if such public nuisance is not abated within Ten days of the Order that the Chief of Police, or someone acting under his direction, remove or cause to be removed the vehicle or vehicle part from the public or private property. The Order shall be in writing, and must include, if available at the location of the nuisance, the following:

- (1) vehicle description;
- (2) vehicle identification number; and
- (3) license plate number.

A copy of the Order shall be mailed by certified mail to all known persons entitled to notice under §3.02, or otherwise provided or posted in accordance with §3.02 if the address is unknown.

- (B) If a hearing is not requested by a person entitled to notice pursuant to §3.02 above, the matter will be placed on the agenda of a regular or special meeting of the City Council of the City of Riesel for public hearing and action. A public hearing will be held to receive information from City staff as to the alleged public nuisance. Any interested person (having a legal or equitable interest in the vehicle or vehicle part, or the property on which it is located) may also be heard. Comments from the public may be received within limits set by the City Council. At the conclusion of the public hearing, the City Council shall take action on the item. If the Council determines that the vehicle or vehicle part constitutes a public nuisance within the purview of this Ordinance, it shall pass a written Resolution making such determination, and directing that if such nuisance is not abated within ten (10) days of the Resolution that the Chief of Police, or his authorized agent, remove or cause the removal of the nuisance from the private or public property, as the case may be. The Resolution shall include the following, if available from the location of the nuisance:

- (1) vehicle description;
- (2) vehicle identification number; and
- (3) license plate number.

A copy of the Resolution shall be mailed by certified mail to all known persons entitled to

notice under §3.02, or otherwise provided or posted in accordance with §3.02 if the address is unknown.

IV.

ENTRY ONTO PREMISES FOR ENFORCEMENT OF THIS ORDINANCE

4.01 Pursuant to §683.074(e) of the Transportation Code, the Chief of Police or his authorized agent(s) 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 in accordance with this Ordinance.

V.

REMOVAL OF THE NUISANCE

5.01 Removal of the nuisance shall be carried out, or caused to be carried out, by the Chief of Police or his authorized agent(s), in accordance with this Ordinance, and the orders and resolutions issued hereunder.

5.02 The Chief of Police or other authorized City official shall give notice to the Texas Department of Transportation identifying the vehicle or vehicle part not later than the fifth (5th) day after the date of removal.

5.03 A junked vehicle or part may not be reconstructed or made operable by the City after it is removed.

5.04 Nothing herein shall be construed to affect laws or regulations permitting the immediate removal of a motor vehicle or part left on public property which constitutes an obstruction to traffic or a danger to the traveling public.

5.05 Junked motor vehicles or vehicle parts may be disposed of in accordance with this Ordinance.

VI.

DISPOSAL

6.01 The Chief of Police, or his authorized agent(s), may dispose of or cause the disposal of the junked motor vehicle or vehicle part by removal to a scrapyard, a motor vehicle demolisher, or a suitable site operated by a county or a municipality, or as otherwise provided by Chapter 683, Subchapter E of the Transportation Code, or amendments or recodifications thereof.

VII.

REMOVAL TO NONCOMPLYING LOCATION NOT ABATEMENT OF THE NUISANCE

7.01 In accordance with the authority provided by §683.074 of the Transportation Code, the relocation of a junked vehicle or vehicle part that is a public nuisance to another location in the

City after a proceeding for abatement and removal of the public nuisance has commenced by notice has no effect on the proceeding if the junked vehicle or vehicle part constitutes a public nuisance at the new location.

VIII. **EXEMPTIONS**

8.01 This Ordinance does not apply to a vehicle or vehicle part:

- (A) that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
- (B) 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 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, are:
 - (1) maintained in an orderly manner;
 - (2) not a health hazard; and
 - (3) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

8.02 In this Article:

- (A) "Antique vehicle" means a passenger car or truck that is at least 25 years old;
- (B) "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 vehicles or vehicle parts for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (C) "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.

IX. **REPEAL OF CONFLICTING ORDINANCES**

9.01 This Ordinance Riesel .This Ordinance shall not affect any Ordinance of the City regarding dilapidated buildings, unlawful accumulation of rubbish or excessive growth of

vegetation or brush.

X.

SEVERABILITY CLAUSE

10.01 If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portions of this Ordinance, and all the remainder of this Ordinance not so declared to be invalid shall continue to be in full force and effect. The City Council of the City of Riesel, Texas, hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

XI.

EFFECTIVE DATE

11.01 This Ordinance shall be effective upon publication of the Ordinance or a summary thereof as provided by §52.011 of the Local Government Code.

PASSED this _____ day of _____, 2005.

CITY OF RIESEL, TEXAS

By: _____
_____, Mayor

ATTEST:

City Secretary