

Ordinance No. 070607A

AN ORDINANCE DECLARING JUNKED VEHICLES A PUBLIC NUISANCE AND PROVIDING PROCEDURES AND PENALTIES FOR VIOLATION THEREOF

WHEREAS, The City of China Grove believes that junked, abandoned, and/or legally unusable vehicles in public view are a detriment to the quality of life of China Grove residents and inhibit commerce. The presence of these vehicles erodes the integrity of the neighborhoods where they exist and undermines the safety, atmosphere and environment where family life and commerce takes place.

Section 1 Authority

This article is adopted pursuant to the authority provided by the Texas Transportation Code, Chapter 683, Subchapter E, and any successor statutes, to establish procedures for the abatement and removal from private or public property or public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.

Section 2 Definitions

"Antique Vehicle" shall mean a passenger car or truck that is at least 25 years old.

"Junked Vehicle" shall mean a vehicle that:

(1) is self-propelled and

(a) does not have lawfully attached to it an unexpired license plate, or

(b) does have lawfully attached to it an unexpired license plate but does not have lawfully attached to it a valid motor vehicle inspection certificate; and

(2) is:

(a) wrecked, dismantled or partially dismantled, or discarded, or

(b) substantially disfigured, damaged, or disintegrated, or

(c) ruined, destroyed or demolished; or

(d) inoperable and has remained inoperable for more than:

(i) seventy-two (72) consecutive hours, if the vehicle is on public property;

(ii) thirty (30) consecutive days if the vehicle is on private property.

"Motor Vehicle" shall mean any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

"Motor Vehicle Collector" shall mean 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.

"Special Interest Vehicle" shall mean 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.

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

Section 3 Junked Vehicles Declared 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 is detrimental to the safety and welfare of the general public, tends to reduce the value of private property, invites vandalism, creates a fire hazard, is an attractive nuisance creating a hazard to the health and safety of minors, and is detrimental to the economic welfare of the City by producing a condition which is adverse to the maintenance and continuing development of the City, and such vehicles are therefore declared to be a public nuisance.

Section 4 Offense

A. A person commits an offense if the person maintains a public nuisance described by Section 3 of this Chapter.

B. An offense under this section is a misdemeanor punishable by a fine not to exceed Five Hundred and No/100 Dollars (\$500).

C. The court shall order abatement and removal of the nuisance on conviction.

Section 5 Exceptions

The following vehicles or parts thereof are excepted from the provisions of this ordinance:

A. A vehicle or vehicle part which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property.

B. A vehicle or vehicle part which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer, or that is an antique or special interest 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
3. are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

C. An unlicensed, operable or inoperable antique or special interest 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 maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means.

Section 6 Procedure for Disposition of Junked Vehicles

The procedure for the abatement and removal of a junked vehicle or part thereof, as a public nuisance, from private property, public property, or public right-of-way shall be as follows:

- A. After a determination is made by the Mayor or his designee that a particular vehicle is a junked vehicle or after an order issued by the municipal court pursuant to Section 4(C), there shall be furnished not less than ten (10) days notice, stating the nature of the public nuisance on private property and that it must be removed and abated not later than the 10th day after the date on which the notice was personally delivered or mailed and further that a request for a hearing must be made before expiration of said ten (10) day period, such notice to be personally delivered or sent by certified mail with a five (5) day return requested, to the last known registered owner of the junked vehicle and all lien holders of record and to the owner or the occupant of the private premises whereupon such public nuisance exists. 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. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not earlier than the 11th day after the date of such return.
- B. There shall be furnished not less than ten (10) days' notice, stating the nature of the public nuisance on public property or on public right-of-way and that it must be removed and abated not later than the 10th day after the date on which the notice was personally delivered or mailed and further that a request for hearing must be made before expiration of said ten (10) day period, such notice to be personally delivered or mailed by certified mail with a five (5) day return requested, to the last known registered owner of the junked vehicle and all lien holders of record and, if on public right-of-way, to the owner or occupant of the property adjacent to the public right-of-way whereupon such public nuisance exists. 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. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not earlier than the 11th day after the date of such return.
- C. After a vehicle has been removed, it shall not be reconstructed or made operable.
- D. There shall be a public hearing prior to the removal of the vehicle or part thereof as a public nuisance if such hearing is requested by the last known registered owner of the motor vehicle, or by any lien holder of record, or by the owner or occupant of the public or private premises, or by the owner or occupant of the premises adjacent to the public right-of-way on which said vehicle is located, or by the Police Department. The public hearing shall be held before the Mayor of the

City of China Grove, or his designee, not earlier than the 11th day after the date of the service of notice to abate the nuisance. At the hearing, the vehicle which is the subject of the junked vehicle hearing is presumed, unless demonstrated otherwise by the owner, to be inoperable. Any resolution or order requiring the removal of a junked vehicle or part thereof must include the vehicle's description, vehicle identification number, and license plate number if the information is available at the location of the nuisance. A Judge of the Municipal Court of the City of China Grove may issue necessary orders to enforce the procedures for the abatement and removal of a public nuisance under this Article.

E. The relocation of a junked vehicle that is a public nuisance to another location within the City, after a proceeding for the abatement and removal of such junked vehicle has commenced, has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

F. Notice must be given to the State Department of Highways and Public Transportation not later than the fifth (5th) day after the date of removal identifying the vehicle or part thereof. Said Department shall cancel the certificate of title issued for the vehicle immediately on receipt of such notice.

G. The administration of the procedures herein shall be by the Police Department of the City of China Grove, Texas, and by such other regularly salaried, full-time City employees as may be from time-to-time granted authority by the City's governing body to enforce this ordinance, except that the removal of junked vehicles or parts thereof from property may be by any duly authorized person.

H. A citation may be issued and a complaint may be filed in the Municipal Court of the City of China Grove for the violation of maintaining a public nuisance, if the nuisance is not removed and abated and a hearing is not requested within the ten (10) day period provided in Subsections (A) and (B).

Section 7 Disposal of Junked (Inoperable) Vehicles

A junked vehicle 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 Texas Transportation Code, § 683.078 or any successor statute for junked vehicle disposal.

Section 8 Authority to Enforce

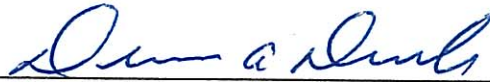
Any peace officer, Code Enforcement officer or other regularly salaried, full-time City employee authorized to enforce this ordinance, may enter the public areas of any building or premises, not a private residence or dwelling, structure or completely enclosed structure on private property, at all reasonable times whenever necessary in the performance of his duties to inspect and investigate for violations of any law, or to enforce any law. The authority to inspect shall include but not be limited to the authority to examine vehicles or parts thereof, obtain information as to identity of vehicles and to remove or cause the removal of a vehicle or part thereof declared to be a nuisance. If such building or premises be occupied and involved in conducting business, he shall first present

proper credentials and demand entry, unless otherwise permitted by law. If such entry is refused, or, if no owner or other person having charge or control of the building or premises can be located, he shall have recourse to every remedy provided by law to secure entry.

Section 9 Effect of Act on Other Laws

Nothing in this Article shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic, or laws that establish procedures for taking possession of abandoned motor vehicles.

PASSED AND APPROVED this 7th day of June, 2007.



Mayor

ATTEST:



City Secretary

Ordinance No. 070607B

AN ORDINANCE DEFINING PUBLIC NUISANCE
AND PROVIDING PROCEDURES FOR ABATEMENT
AND PENALTIES FOR VIOLATION THEREOF

WHEREAS, The City of China Grove believes that the existence of public nuisances are a detriment to the quality of life of China Grove residents and inhibit commerce. The presence of such nuisances erodes the integrity of the neighborhoods where they exist and undermines the safety, atmosphere and environment where family life and commerce takes place.

Section 1 Authority

This article is adopted pursuant to the authority provided by the Texas Local Government Code, Section 217.002, and any successor statutes, to establish procedures for the abatement and removal from private or public property a public nuisance.

Section 2 Definitions

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Attractive Nuisance” shall mean a place where:

- (1) The condition that is maintained is one upon which the possessor knew or should have known that small children would likely frequent the place and play about it;
- (2) The condition was one which the possessor knew, or should have known, involved unreasonable risk of death or bodily harm to children;
- (3) The child, because of its tender years, did not realize the risk involved in exposing itself to the condition; and
- (4) The utility, if any, to the possessor of eliminating the condition was slight as compared to the probability of injury.

“Brush” shall mean all trees or shrubbery under 7 feet in height which are not cultivated, maintained, or cared for by persons owning or controlling the premises on which the trees or shrubbery are growing.

“Nuisance” includes, but is not limited to, whatever is dangerous to human life or health, whatever renders the ground, the water, or the air or the food a hazard or injurious to human life or health, or that is offensive to the senses, or that is or tends to become detrimental to the public health.

“Objectionable, Unsightly, or Unsanitary Matter of Whatever Nature” shall mean all uncultivated vegetable growth, objects, and matter not included within the meaning of the other terms defined in this section, which are liable to produce or tend to produce disease or an unhealthy, unwholesome, or unsanitary condition on the premises or within the general locality where the

growth, objects, or matter is situated, including, without limitation, the accumulation of stagnant water, carrion, filth, impure or unwholesome matter, weeds in excess of 12 inches, rubbish, and brush.

“Rubbish” shall mean all garbage, trash or refuse, discarded or useless articles, discarded clothing or textiles of all sorts, and in general all litter and other things usually included within the meaning of the term.

“Weeds” shall mean uncultivated vegetable growth or matter, including grasses, which has grown to a height of more than 12 inches or which, regardless of height, has become an unwholesome or decaying mass or breeding place for mosquitoes or vermin.

Section 3 Nuisances Enumerated

The following acts, commissions, omissions, conditions, or deeds by any person shall be and hereby are declared to be a nuisance:

- (A) The act of allowing to exist any full or overflowing privy, vault, cesspool, septic tank, garbage can, container, or other receptacle for filth, waste, garbage, and human or animal excrement upon any premises owned or controlled by any person, or the failure to maintain in proper condition any cesspool, septic tank, or other sewage or septic system;
- (B) The act of allowing to be pumped the contents of cesspools or septic tanks so as to flow over, seep up, pool, or otherwise exist on any premises without proper pretreatment for sanitation;
- (C) The act of allowing any imperfect or faulty trap, sink, or water closet, or any other drainage appliance or fixture, to exist in any house or building within the city from which there shall arise any foul or offensive gas or odor;
- (D) The act of casting, draining, throwing, or causing to be cast, drained, thrown, or distributed into any public street or highway, gutter, alley, or other public grounds within the city any kitchen water, water from exhaust pipes, laundry water, air conditioners or other wastewater, slops, swill, or liquid filth, or any other similar unsanitary matter;
- (E) The act of keeping or causing to be kept any animals in pens or enclosed areas upon any premises owned or controlled by a person in a manner so as to produce foul, obnoxious, or other offensive odors or smells to persons living in the vicinity of the premises;
- (F) (1) The act of failing to keep, or the permitting to remain in a condition or manner, any stable, stall, shed, or apartment, or any yard or appurtenance, in which any animal(s) shall be kept, on any premises owned or controlled by any person, in which manure or liquid discharge of the animals shall be collected and accumulate:
 - (a) Which constitutes a breeding place for flies, mosquitoes, or other harmful or disease- carrying insects; or
 - (b) Which is producing foul, obnoxious, or other offensive odors or smells to persons living in the

vicinity of the premises.

(2) Provided, that nothing in this division (F) shall be so construed as to include manure deposits upon private property for the purpose of cultivation or to be used as fertilizer so long as that fertilizer does not otherwise constitute a nuisance under this Ordinance.

(G) (1) The act of keeping or maintaining of a pool, pond, water retention areas, or other accumulation of water upon any premises owned or controlled by any person:

(a) Which is unwholesome, impure, stagnant;

(b) Which constitutes a breeding place for flies, mosquitoes, or other harmful or disease- carrying insects; or

(c) Which produces or is capable of producing foul, obnoxious, or other offensive odors or smells to persons living in the vicinity of the premises.

(2) Nothing in this division (G) shall be construed as to require the removal, drainage, or cleaning of naturally occurring pools, ponds, water retention areas, and accumulation of water upon any premises owned or controlled by any person, unless same constitutes a nuisance under this Ordinance.

(H) The act of failing or refusing by any owner, operator, agent, or driver of any truck, trailer, or other vehicle that is or has been used for the hauling of any livestock, animals, or fowls, which contains manure, excreta, or liquid discharge and which is parked in or on any highway, road, street, alley, lot, tract of land, or other premises, either public or private, to move that truck, trailer, or other vehicle, when notified by the city, to such a location as will not disturb the inhabitants of the city by the reason of the foul, obnoxious, or other offensive odor, gases, or fumes caused by the contents of the truck, trailer, or other vehicle;

(I) The act of failing or refusing to act by any person owning or controlling any premises to keep, maintain, and preserve the premises free and clear from all garbage, trash, discarded building materials, and other debris;

(J) The act of allowing paper, plastic, bottles, tires, discarded lumber, rocks, junk, or other trash or debris to accumulate or remain on any premises by a person owning or controlling the premises:

(1) In such a manner as to create a harborage or breeding place for rats, vermin, or insects;

(2) In such a manner as to be offensive or injurious to the public health; or

(3) In such a manner:

(a) As to be unpleasant and disagreeable in sight; or

(b) As to produce foul, obnoxious, or other offensive odors, gases, or fumes, to persons living in the vicinity of the premises, to persons who may be in a public place or public right-of-way, or to

persons who file an official complaint with the city.

(K) The act of allowing or permitting on any premises owned or controlled by the person the emission of music, sound, or other noise in a continuous, or for extended periods of time, in such a manner as to disturb persons living in the vicinity of the premises. It shall be presumed to be a violation of this Ordinance if the continuous or extended periods of time produce sound or other noise at the property line of the property in excess of 75 decibels between the hours of 6:00 a.m. and 11:00 p.m., or 65 decibels between the hours of 11:00 p.m. and 6:00 a.m.;

(L) The act of creating, maintaining, or allowing on premises owned by, or subject to a person's control:

(1) The continuous, or for extended periods of time in such a manner as to disturb persons living in the vicinity of the premises, operation of motors, or the running or driving of motorized units, including, but not limited to, all-terrain vehicles of either 3 or 4 wheels, motorcycles, go-carts, golf carts, cars, trucks, or any other form of motorized or self-propelled vehicle. It shall be presumed to be a violation of this Ordinance if those continuous or extended periods of operation, either with an individual motorized unit, or in the aggregate with other motorized units at the same time, produce a noise or sound at the property line of the property as follows: 75 decibels between the hours of 6:00 a.m. and 11:00 p.m., or 65 decibels between the hours of 11:00 p.m. and 6:00 a.m.;

(2) The act of operating a motorized unit(s) so as to produce dust, dirt, or other airborne particles, which individually or in the aggregate with other motorized units at the same time substantially interfere with the comfortable enjoyment of adjacent properties;

(3) The act of operating a motorized unit(s) described above, either individually or in the aggregate with other motorized units at the same time, so as to pollute the air at the property line with noxious or offensive odors, gases, smoke, or vapors, or which produce material discomfort and annoyance to those residing in the vicinity, or which injure their health or property; or

(4) Any combination of noise, dust, and pollution emanating from a property as the result of operation of 1 or more motorized units shall also constitute a nuisance if these factors are present on a continuous basis, or for extended periods of time, causing material discomfort and annoyance to those residing in the vicinity, or which injures their health or property.

(M) The ownership, operation, or existence of a track, path, motocross practice area, or other area which is designed for, or which is used by persons operating motorized units in a manner which results in a violation of division (L) of this section is prohibited;

(N) The act of allowing the accumulation of carrion, filth, or other impure or unwholesome matter of any kind on premises owned by, or subject to a person's control;

(O) The act of allowing to exist on developed areas of premises owned by or subject to a person's control, weeds which have grown to a height of more than 12 inches or which, regardless of height, have become an unwholesome or decaying mass or breeding place for mosquitoes, insects,

or vermin;

(P) The act of allowing to exist on premises owned by or subject to a person's control the accumulation of rubbish, or other unsightly, objectionable, or unsanitary matter;

(Q) All common and public nuisances defined by Tex. Civ. Prac. & Rem. Code, Ordinance 125, within the authority and jurisdiction of the city and its Municipal Court are hereby adopted as regulated nuisances by the city, in accordance with that statute;

(R) Any and all elements of the offense of disorderly conduct within the authority and jurisdiction of the city and its Municipal Court pursuant to Tex. Penal Code, Chapter 42, are hereby adopted and prohibited by this Ordinance; and

(S) The act, or the failure to act, resulting in an attractive nuisance on property owned or subject to a person's control.

(T) The possessor and/or owner of property adjacent to a public roadway in the city shall keep the owner or possessor's property, and the property within the public right-of-way, or public easement, abutting the pavement and/or traveled portions of the public roadway, free and clear of high grass and weeds, and other objectionable, unsightly or unsanitary manner of whatever nature. Unsightly or unsanitary matter of whatever nature shall include, without limitation, grass, weeds, brush or other living material in excess of 12 inches in height. Property owners and possessors adjacent to public roadways shall also be responsible for removal of brush and other objectionable unsightly or unsanitary matter and shall be responsible for mowing of the grass in such Bar Ditches and the Parkway. It shall be unlawful for any owner or any occupant of any property within the city to suffer or permit limbs, brush and other vegetation, existing above a public street to hang lower than 12 feet above the public street pavement, gravel, or other street surface. This provision shall not apply to city owned open space, parks, nature or trail areas, nor shall it apply to those portions of property under active cultivation of crops, nor the center median of divided roadways.

Section 4 Nuisances Prohibited; Standards

The foregoing nuisances are prohibited within the city. The standard required for a nuisance would be that its effect upon the person complaining of the nuisance is a person of normal or ordinary sensibilities. The foregoing nuisances shall be presumed in violation of this Ordinance if it is shown that they take place within the city. Any act described in Section 2 shall also include the failure to take action to abate or terminate a nuisance.

Section 5 **Abatement Procedure**

(A) *Notice to owner.* Should the city health officer or other designated representative determine that a nuisance exists on any lot or parcel of real estate within the city, written notice shall be given to the owner of the lot upon which the nuisance exists. The notice shall identify the nuisance, identify the property upon which the nuisance exists, and direct the owner to take action as the city deems reasonable, appropriate, and necessary to remove the nuisance. The notice shall be delivered personally to the owner in writing, by letter addressed to the owner at the owner's address as recorded in the records of the County Appraisal District, or, if personal service cannot be obtained, by publication at least once in the city's official newspaper, by posting the notice on or near the front door of each building on the property to which the violation relates, or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(B) *Abatement by city.* If the owner fails or refuses to remove the nuisance within 7 days following notice as provided in division (A) of this section, the city may do or cause to be done that which will abate the public nuisance, and may pay therefor, and charge the expenses incurred in doing the work or having the work done or improvements made to the person who owns that lot or building. If the work is done or improvements made at the expense of the city, then the expenses shall be assessed on the real estate or lot for which the expense was incurred. In a notice provided under division (A) of this section, the city may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary date of the notice, the city without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by the notice occurs within the 1-year period, and the city has not been informed in writing by the owner of an ownership change, then the city without further notice may cause the work to be done or make the improvements required, and pay for the work done and improvements made and charge the expenses to the owner as otherwise provided herein.

(C) *Collection of expenses.* The Mayor or city official designated by the Mayor shall file a statement of expenses giving the name of the owner, if known, the amount of the expense, the date on which the work was done, and the legal description of the premises upon which the work was done or improvements made, with the County Clerk. The city shall have a privileged lien on the lot or real estate upon which the work was done, or improvements made, to secure the expenditures so made, in accordance with Tex. Health & Safety Code, Chapter 342, which lien shall be second only to tax liens or liens for street improvements, and which amount shall bear interest at the judgment interest rate, from the date of payment by the city. For any such expense and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for the work or improvements

Section 6 **Offense**

A. A person commits an offense if the person maintains a public nuisance described by Section 3

of this Ordinance and fails to abate such nuisance upon notice as provided in Section 5 of this Ordinance.

B. An offense under this section is a misdemeanor punishable by a fine not to exceed Five Hundred and No/100 Dollars (\$500).

C. The court shall order abatement and removal of the nuisance on conviction.

PASSED AND APPROVED this 7th day of June, 2007.



Mayor

ATTEST:


City Secretary