

**ORDINANCE NO. 67-2006**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE AMENDING CHAPTER 19, "NUISANCES," AND CHAPTER 18, "MOTOR VEHICLES AND TRAFFIC," ARTICLE XII, OF THE ABILENE MUNICIPAL CODE AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY; AND CALLING FOR A PUBLIC HEARING.**

WHEREAS, there is a need to protect the health, safety, and welfare of the citizens of the City of Abilene; and

WHEREAS, the current provisions of Chapter 19, "Nuisances", are no longer adequate to meet the needs of the community; and

WHEREAS, junked vehicles as currently regulated by Article XII of Chapter 18, Motor Vehicles and Traffic, are declared to be a nuisance; and

WHEREAS, there is a need to address illegal dumping within the City of Abilene;

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

**PART 1:** That Chapter 19, "Nuisances" of the Code of Ordinances, City of Abilene, Texas, is hereby replaced as set out in Exhibit A, attached and made a part of this ordinance for all purposes.

**PART 2:** That Chapter 18, "Motor Vehicles and Traffic", Article XII Junked Cars, is revised and relocated in Chapter 19 as set out in Exhibit A.

**PART 3:** That if the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not effect or invalidate the remainder of any section, subsection, paragraph, subdivision, or clause of this ordinance.

**PART 3:** That any person, firm, or corporation violating the provisions of this Ordinance, other than those provisions relating to Junked Vehicles or Illegal Dumping, shall be deemed to have committed a misdemeanor, and upon conviction thereof shall be fined in accordance with Chapter 1 (Section 1-9) of this Code.

Any person, firm or corporation violating the provisions of this Ordinance relating to Junked Vehicles shall be assessed a civil penalty as provided for in Sections 19-34 and 19-35.

Any person, firm or corporation violating the provisions of this Ordinance relating to Illegal Dumping shall be deemed guilty of offenses as set forth in Chapter 365 of the Texas Health and Safety Code, and as amended.

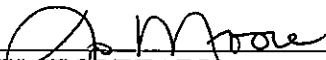
Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON FIRST READING this 16th day of November, 2006.**

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on 14<sup>th</sup> day of November, 2006, the same being more than 24 hours prior to a public hearing being held in the Council Chamber of City Hall in Abilene, Texas, at 8:30 a.m. on the 7<sup>th</sup> day of December, 2006, to permit the public to be heard. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

**PASSED ON SECOND AND FINAL READING this 7th day of December, 2006.**

ATTEST:

  
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CITY SECRETARY

  
\_\_\_\_\_  
MAYOR

APPROVED:

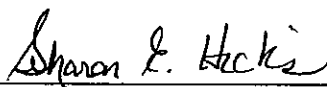
  
\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT A

Revise and relocate CHAPTER 18, MOTOR VEHICLES AND TRAFFIC, ARTICLE XII, Junked Cars to Chapter 19:

Replace CHAPTER 19, NUISANCES in its entirety with the following

CHAPTER 19

NUISANCES & ILLEGAL DUMPING

Art. I.	In General,	§§ 19-1 – 19-14
Art. II.	Prohibitions,	§§ 19-15 – 19-24
Art. III.	Nuisance Enforcement,	§§ 19-25 – 19-44
Art. IV.	Illegal Dumping,	§§ 19-45 – 19-60

ARTICLE I. IN GENERAL

**Sec. 19-1. Purpose and Intent.**

The purpose of this Ordinance is to protect the public health, safety, environment and general welfare of the citizens of the City of Abilene through the regulation of nuisances and illegal dumping.

**Sec. 19-2. Texas Junked Motor Vehicles Provisions Adopted.**

Whereas, it is the desire of the City of Abilene Texas, to prevent the accumulation of abandoned or junked motor vehicles within the City, to eliminate the health and safety hazards associated with said vehicles and to abate the nuisances attributable to such vehicles, the City of Abilene hereby adopts Chapter 683 of the Texas Transportation Code regarding Junked Motor Vehicles in its entirety herein, and as amended, and it shall serve as the City's ordinance for said vehicles. An alternative administrative procedure as outlined in Section 19-34 will be used in enforcing this Section.

**Sec. 19-3. Definitions**

The following definitions shall apply in the interpretation and enforcement of this Chapter:

*Administrator.* City of Abilene Peace Officers and Firefighters, Code Enforcement Officers, Environmental Enforcement Officers, Public Health Authority or designee, or City Manager or designee who administer, implement, and enforce the provisions of this Chapter.

*Fences in Deteriorated Condition.* A fence that:

- (a) is out of vertical alignment more than one (1) foot from the vertical measured at the top of the fence, except for fencing four (4) feet or less in height, the vertical alignment shall not be more than six (6) inches from the vertical measured at the top of the fence; or
- (b) has broken, loose, damaged, removed or missing parts including but not limited to pickets, slats, posts, wood rails, bricks, and panels; or
- (c) is braced by guy wires, braces or any other material that may be viewable from any public streets, rights-of-way, alleyways, or property and easements over which the City or general public has dominion and control.

*Graffiti.* Any unauthorized inscription, word, signature, symbol, design or other marking of any sort that is etched, written, painted, drawn, or applied in any other way to any structure, building, tree, vehicle, or property of any sort or to any portion or element thereof, whether the property is public or private.

*Improved Parking Surface.* Concrete, asphalt, or any accepted all-weather base material.

*Nuisance.* Any unlawful act, or omission to perform a duty, or any condition or thing permitted to exist, where such act, omission, condition or thing:

- (a) Injures or endangers the comfort, health, safety or welfare of others; or
- (b) Offends decency; or
- (c) Is offensive to the senses; or
- (d) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, path, alley, stream, ditch or drainage pathway; or
- (e) In any way renders other persons insecure in life or the use of property; or
- (f) Interferes with the comfortable enjoyment of life and property, or tends to diminish the quality of the property of others.

*Vehicle.* Shall include but not be limited to cars, trucks, trailers, recreational vehicles, travel trailers, boats or other watercraft or motorcycles.

Secs. 19-4 – 19-14. Reserved.

## ARTICLE II. PROHIBITIONS.

### Sec. 19-15. Prohibited Acts or Conditions Which Constitute a Nuisance.

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance and are therefore prohibited and unlawful; provided, however, this list shall not be deemed or construed to be conclusive, limiting or restrictive:

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- (a) Noxious weeds and other rank vegetation.
- (b) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, stagnant water or of any object or matter that may cause injury, death or disease to human beings.
- (c) Any condition that provides harborage for rats, mice, snakes and other vermin.
- (d) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a heightened fire hazard in the vicinity where it is located.
- (e) All excessive or unauthorized noises and annoying vibrations, including animal noises.
- (f) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches including dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (g) The carcasses of animals or fowl not disposed of within 24 hours after death.
- (h) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, industrial wastes or other substances.
- (i) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (j) All appliances intended for indoor use, working or nonworking, used, stored, abandoned or junked anywhere in the public view.
- (k) Dead, diseased, or insect harboring trees when such trees constitute a hazard to life or property.
- (l) Fences in a deteriorated condition or subject to falling down due to lack of maintenance or damage or that are repaired with materials that are not comparable to the original.
- (m) Graffiti that is visible from public view or any private property other than that on which the same exists.
- (n) Excessive accumulation of items intended for use outdoors that are not screened from the public view.

- (o) Items on a porch, in a yard, under a carport, or within any area visible from the public view that are not intended for use outdoors or are not made of material that is resistant to damage or deterioration from exposure to the outdoors.
- (p) Furniture intended for indoor use that is used, stored, abandoned or junked outside, including on a porch, in a yard, or under a carport.
- (q) Human waste or wastewater that is deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission.
- (r) Violations of Chapter 683 of the Texas Transportation Code regarding Junked Vehicles, and as amended.
- (s) Grasses, weeds or brush at a height greater than twelve (12) inches on any lot, tract or parcel of land, including the adjacent parkway and alleys, unless excepted by Sec. 19-16 of this Chapter.
- (t) Vehicles in the yard of any residence excluding improved parking surfaces, or areas screened from the public view by an opaque fence.

**Sec. 19-16. Exceptions.**

Any provision in this article related to grasses, weeds or brush shall not apply to the following areas:

- (a) Certain portions of improved and unimproved creeks; drainage channels; detention and retention ponds; borrow ditches; and any other conveyances subject to water drainage that are maintained by the City of Abilene.
- (b) The portion of any lot, tract or parcel of land greater than five acres, which is more than fifty (50) feet from the curb of any street, the edge of pavement, or any traveled portion of a street or roadway.
- (c) Cultivated low-water use landscaping.

Secs. 19-17 – 19-24. Reserved.

**ARTICLE III. NUISANCE ENFORCEMENT**

**Sec. 19-25. Notice to Abate and Service of Notice.**

Except as otherwise provided in Sections 19-29, 19-33 and 19-34, whenever a nuisance is found to exist the Administrator shall give ten (10) days written notice by certified mail or hand delivery with signed receipt to the owner or occupant of the property upon which such nuisance exists or to the person causing or maintaining the nuisance. If the notice is returned unclaimed by the United States Post Office, official

action to abate such nuisance shall be continued to a date not less than ten (10) days from the date of such return

**Sec. 19-26. Contents of notice.**

The notice to abate a nuisance shall contain:

- (a) The location of the nuisance, if the same is stationary.
- (b) A description of what constitutes the nuisance.
- (c) An order to abate the nuisance within a stated time, which shall be reasonable under the circumstances, or to request a hearing within ten (10) days after service of notice to abate the nuisance. Request for a hearing shall be in writing and shall be addressed to the Municipal Court Judge in which court the procedure to abate the nuisance is pending.
- (d) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the City may abate such nuisance and assess the cost of abatement against such person.

**Sec. 19-27. Hearing on nuisance.**

Except as provided by Section 19-34, a hearing must be held prior to the abatement of the nuisance by the City only if such a hearing is requested by the owner or occupant of the property upon which such nuisance exists or by the person causing or maintaining the nuisance. The hearing shall be held before the Judge of the Municipal Court. The Judge of the Municipal Court shall determine at the hearing whether or not a nuisance exists. If a nuisance is found to exist, the Judge may order the abatement of the nuisance and/or assess a fine as provided for under Chapter 1 (Section 1-9) of this Code. Any ruling or order by the Judge of the Municipal Court at this hearing shall become final unless appealed within ten (10) days to a competent court of law of the State of Texas.

**Sec. 19-28. Abatement by City.**

Except as provided by Section 19-34, upon the failure of the person, firm or corporation upon whom notice to abate a nuisance was served pursuant to the provisions of this Chapter to abate the same, or to request a hearing before the Judge of the Municipal Court, the Administrator may proceed to enter upon the property to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

**Sec. 19-29. Abatement of an Immediate Danger to Health and Safety.**

Except as provided by Section 19-34, in the event of an immediate danger to the health and safety of the public, the Administrator may go upon the property where the nuisance(s) is found, and abate or cause to be abated such nuisance(s), **without notice** to the property owner. No later than the tenth day after the date the City abates or causes to

be abated the nuisance(s) upon the property, the City shall send notice to the property owner in the manner required by Section 19-25. The notice shall contain:

- (a) A description of the nuisance(s) that was found on the property;
- (b) A statement that the nuisance(s) was abated by the City;
- (c) An itemized statement of the costs and fees incurred by the City for work done to abate the nuisance(s); and
- (d) An explanation of the property owner's right to request a hearing before the Municipal Court Judge concerning the City's abatement of such nuisance(s).

**Sec. 19-30. Assessment of City's expenses; billing.**

Except as provided by Section 19-34, expenses incurred due to the action taken by the City to correct any condition coming under the nuisance provisions of this Chapter, including service charges to cover administrative costs and penalty charges, shall be assessed against the owners of all outstanding interests in the lot or parcel of land involved. An itemized bill of such costs will be mailed to each such owner if the address is known.

**Sec. 19-31. City's expenses declared lien.**

Except as provided by Section 19-34, any and all expenses incurred by the City in the abatement of a nuisance under the provisions of this Chapter shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the legal rate thereafter until satisfied.

**Sec. 19-32. Penalties in addition to abatement.**

- (a) Except as provided in Sections 19-34 19-35 and 19-45, violations of provisions of this Chapter or failure to comply with any of its requirements shall constitute a Class C misdemeanor. Any person, firm or corporation violating any of the provisions of this Chapter or any parent or legal guardian of a child under 17 years of age who intentionally, knowingly, recklessly, or with criminal negligence allows the child to place graffiti upon any structure or property or to otherwise violate this chapter shall be deemed to have committed a misdemeanor and upon conviction shall be fined in accordance with Chapter 1 (Section 1-9) of this Code. In case the owner or occupant of any lot, lots or premises under the provisions of this Chapter shall be a corporation and shall violate any provision of this Chapter, the president, vice president, secretary, treasurer of such corporation or any manager, agent or employee of such corporation with actual or apparent authority to manage or control the actions of such corporation related to the alleged violations, shall also be severally liable for the penalties herein provided.



- (b) Each day the violation continues to exist, shall constitute a separate and distinct offense.
- (c) Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.
- (d) It is further the intent and declared purpose of this chapter that no offense committed, and no liability, penalty, or forfeiture, either civil or criminal, incurred prior to the time that the existing ordinance was repealed and such ordinance adopted shall be discharged or affected by such repeal, but prosecutions and suits for such offenses, liabilities, penalties, or forfeitures may be instituted, and causes presently in process may be prosecuted in all respects as if such prior ordinance had not been repealed.

**Sec 19-33. Exceptions to Notice and Enforcement Provisions**

- (a) *Graffiti.* Whenever graffiti is found to exist the owner will have thirty (30) days after notice under this Article to remove all graffiti from the property that is visible from the public view or from private property other than that on which the same exists.
- (b) *High grasses, weeds or brush.* When any violation of high grasses, weeds or brush is found to exist, a notice by letter as allowed under this Article will be addressed to the owner of the property in question. If the address of the property owner is unknown, then notice may be given by publication one time in a local, daily newspaper of general circulation. The property owner will have ten (10) days from the date of the notice to correct the violation. Annual notice may be given to the property owner anytime during the calendar year and no further notices shall be required for a period of one year from the date of the notice.
- (c) *High grasses, weeds or brush in excess of forty-eight inches.* In the event that high grasses, weeds or brush is higher than forty-eight (48) inches the City may go upon the property found in violation of this article and abate such violation without notice to the property owner. No later than the tenth day after the City causes the work to be done under this Section, the City shall send notice, pursuant to Sec. 19-29, and a bill to the property owner by certified mail.

**Sec. 19-34. Administrative Procedure for Junked Vehicles.**

Pursuant to Chapter 683 of the Texas Transportation Code, the following alternative procedure for administrative hearings will be used.

- (a) *Notice.* A person charged with violating Section 19-2 of this ordinance shall be entitled to a hearing within 10 days of the date of citation. A citation issued as

part of a procedure adopted under this Section must: (1) notify the person charged with violating the ordinance that the person has the right to a hearing and (2) provide information as to the time and place of the hearing.

- (b) *Hearing.* The hearing will be conducted by a hearing officer appointed by the Municipal Court Clerk with authority to administer oaths and issue orders compelling the attendance of witnesses and the production of documents. The original or a copy of the citation shall be kept as a record in the ordinary course of business of the municipality and is rebuttable proof of the facts it states. The person who issued the citation is not required to attend a hearing under this Section.

The Judge of the Municipal Court may enforce an order of a hearing officer compelling the attendance of a witness or the production of a document. A person charged with violating Section 19-2 of this ordinance who fails to appear at a hearing authorized under this Section is considered to admit liability for the violation charged.

The hearing officer shall issue an order stating: (1) whether the person charged with violating Section 19-2 of this ordinance is liable for the violation and (2) the amount of a penalty, cost, or fee assessed against the person. A determination by the hearing officer that Sec 19-2 of this ordinance has been violated may result in the removal of the vehicle by the City of Abilene and the assessment of all related penalties, costs, and fees including towing charges. An order issued under this Section will be filed with the Municipal Court Clerk, and the order shall be kept in a separate index and file from other Municipal Court citations.

- (c) *Appeal.* A person who is found by a hearing officer to have violated Section 19-2 of this ordinance may appeal the determination by filing a petition in Municipal Court before the 31st day after the date the hearing officer's determination is filed. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond in the amount set forth in the hearing officer's order with the Municipal Court.

#### **Sec. 19-35. Penalties, Costs and Fees for Section 19-1: Junked Vehicles**

- (a) Any person, firm, or corporation who violates any provision of this Code related to junked vehicles shall be assessed a civil penalty in an amount not exceeding five hundred dollars (\$500.00) for each offense, the amount to be determined by the hearing officer in his reasonable discretion, subject to review on appeal.
- (b) Unless higher amounts are required by state law or a lesser amount is determined by the hearing officer or Judge of the Municipal Court, the minimum penalties for junked vehicle violations shall be as follows:
- (1) 1<sup>st</sup> offense of failure to abate each junked vehicle in authorized time limit.....\$50

- (2) 2<sup>nd</sup> offense of failure to abate each junked vehicle within a 6 month period ....\$75
- (3) 3<sup>rd</sup> and all subsequent offenses of failure to abate each junked vehicle  
within a six month period .....\$100

- (c) In addition to the minimum penalty, charges for towing of the vehicle shall be added.
- (d) All penalties, costs, and fees shall be deposited in the proper account of the general fund of the City, unless otherwise directed by resolution of the City Council.

**Secs. 19-36 – 19-44. Reserved.**

#### **ARTICLE IV. ILLEGAL DUMPING**

**Sec. 19-45. Texas Litter Abatement Act Adopted.**

Whereas, it is the desire of the City of Abilene, Texas to prevent illegal dumping within the City, and to eliminate and abate the health and safety hazards associated with and attributable to such illegal dumping, the City of Abilene hereby adopts Chapter 365, the Texas Litter Abatement Act, of the Texas Health and Safety Code in its entirety herein, and as amended, and it shall serve as the City's ordinance for illegal dumping.

**Secs. 19-46 – 19-60. Reserved.**