

ORDINANCE NO. 09-2017

AN ORDINANCE AMENDING CHAPTER 19, "NUISANCES AND ILLEGAL DUMPING," ARTICLE III, "NUISANCE ENFORCEMENT," SECTION 19-34, "ADMINISTRATIVE PROCEDURE FOR JUNKED VEHICLES," AND SECTION 19-35, "PENALTIES, COSTS AND FEES FOR SECTION 19-1: JUNKED VEHICLE", OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING A PENALTY

WHEREAS, the Texas Transportation Code, Chapter 683, provides for a procedure that a municipality may adopt for the abatement of junked vehicles; and

WHEREAS, the City has previously adopted an alternative procedure, in Section 19-34 of its ordinances, in compliance with Chapter 54 of the Texas Local Government Code, for the abatement of junked vehicles, as defined in by State Law; and

WHEREAS, in order to comply with requirements of State Law for the procedure for the abatement of junked vehicles, certain amendments to Section 19-34 are required; and

WHEREAS, the heading of section 19-35 references an incorrect previous section, which needs to be corrected, but otherwise the substance of section 19-35 will remain unchanged.

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

PART 1: That Chapter 19, "Nuisances and Illegal Dumping", Sections 19-34 and 19-35 of the Abilene Municipal Code be amended as set out in Exhibit "A", attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provisions of any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way effect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force or effect.

PART 3: That any persons, firm, or corporation violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than Two Hundred Dollars (\$200.00). 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 23rd day of February, A.D., 2017.

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 the 19 day of March, 2017, 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 23rd day of March, 2017, to permit the public to be heard.

PASSED ON SECOND AND FINAL READING this 23RD day of March, A.D., 2017.

ATTEST:



City Secretary



Mayor

APPROVED:



City Attorney

EXHIBIT "A"

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.

(1) Notice. A person charged with violating section 19-2 of this ordinance shall be entitled to request a hearing within ten (10) days of the date of citation or notice to the person charged. A citation issued as part of a procedure adopted under this section must: (a) notify the person charged with violating the ordinance that the person has the right to a hearing and (b) provide information as to the time and place of the hearing.

(2) Hearing. If timely requested in accordance with subsection (1), a hearing shall be held within 21 calendar days after such request, but not earlier than the 11th day after the date of citation or notice to the person charged. 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 chapter 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 chapter 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 section 19-2 of this chapter 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. After removal, a vehicle is prohibited from being reconstructed or made operable. Notice identifying the vehicle or part of the vehicle shall be given to the department not later than the fifth day after the date of removal.

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 the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(3) Appeal. A person who is found by a hearing officer to have violated section 19-2 of this chapter 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 19-2: 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) 1st offense of failure to abate each junked vehicle in authorized time limit . . . \$50.00

(2) 2nd offense of failure to abate each junked vehicle within a six (6) month period . . . 75.00

(3) 3rd and all subsequent offenses of failure to abate each junked vehicle within a six (6) month period . . . 100.00

(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.