

CITY OF POTH, TEXAS

COPY

ORDINANCE NO. 012201

**ABANDONED, INOPERABLE AND JUNKED MOTOR VEHICLES**

**SECTION 1. FINDINGS OF CITY OF POTH GOVERNING BODY.** The governing body finds that junked, wrecked, dismantled, inoperative or abandoned vehicles affect the health, safety and general welfare of citizens of the city because they:

- (a) Serve as a breeding ground for flies, mosquitoes, rats and other insects and rodents; and
- (b) Are a danger to persons, particularly children, because of broken glass, sharp metal protrusions, insecure mounting on blocks, jacks or other supports; and
- (c) Are a ready source of fire and explosion; and
- (d) Encourage pilfering and theft; and
- (e) Constitute a blighting influence upon the area in which they are located; and
- (f) Constitute a fire hazard because they frequently block access for fire equipment to adjacent buildings and structures; and
- (g) The open storage of abandoned, unregistered or inoperable motor vehicles seriously and adversely affects surround property values.

**SECTION II. DEFINITIONS.** As used in this ordinance, unless the context clearly indicates otherwise:

- (a) Inoperable means a condition of being junked wrecked, wholly or partially dismantled, discarded, abandoned or unable to perform the function or purpose for which it was originally constructed; and
- (b) Vehicle means, without limitation, any automobile, truck, bus, tractor or motorcycle, which as originally built, contained an engine, regardless of whether it contains an engine at any other time.

**SECTION III. NUISANCES UNLAWFUL; DEFINED; EXCEPTIONS.**

It shall be unlawful for any person to maintain or permit any motor vehicle nuisance within the city.

- (A) A motor vehicle nuisance is described as any motor vehicle which does not currently have lawfully affixed to it an current license plate and a valid motor vehicle safety

inspection sticker, that is wrecked, dismantled, partially dismantled, or discarded, or that remains inoperable for a continuous period of more than forty-five (45) days or parked in violation of city ordinance; or incapable of moving under its own power; or in a junked, wrecked or inoperable condition. 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, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the city, by producing urban blight, with is adverse to the maintenance and continuing development of the city, and such vehicles are therefore declared to be a public nuisance. Any one of the following conditions shall raise the presumption that a vehicle is junked, wrecked or inoperable; and

- (1) Absence of a current registration plate and inspection sticker upon the vehicle;
- (2) Placement of the vehicle or parts thereof upon jacks, blocks, or other supports;
- (3) Absence of one or more parts of the vehicle necessary for the lawful operation of the vehicle upon street or highway.

(B) The provisions of this section shall not apply to:

- (1) Any motor vehicle that is enclosed in a garage or other building;
- (2) To the parking or storage of a vehicle inoperable for a period of 30 consecutive days or less; or
- (3) To any person conducting a business enterprise in compliance with existing zoning regulations or who places such vehicles behind screening of sufficient size, strength and density to screen such vehicles from the view of the public and to prohibit ready access to stored vehicles by children. However, nothing in this subsection shall be construed to authorize the maintenance of a public nuisance.

**SECTION IV. PUBLIC OFFICER.** The Mayor or his/her designee shall designate a public officer to be charged with the administration and enforcement of this ordinance.

- A. This officer may order removal of junked vehicles, subject to the procedures in this section.
- B. In order to abate a nuisance junked vehicle, the officer shall give notice to the owner or occupant of the premises on which the nuisance exists, and if the nuisance is on public premises, notice to the owner or occupant of the premises adjacent to the public property or public right-of-way, as follows:
  - a. The notice shall state the nature of the public nuisance.
  - b. The notice shall state that the nuisance must be removed and abated within ten (10) days.



- c. The notice shall state that a request for hearing, if desired, must be made before the expiration of the ten (10) day period.
- d. The notice must be mailed, by certified mail with a five-day return request, to the owner or occupant of the premises.
- e. If a public hearing is requested within ten (10) days after service of such notice, a hearing shall be held before the municipal court judge of the city. If the vehicle or vehicle part is determined to be a public nuisance, based upon the evidence presented at such hearing, the court shall order in writing the removal of the vehicle or vehicle part. Such order shall include a description of the vehicle, and, if available, the correct identification number and license number of the vehicle.
- f. If no public hearing is requested as provided, the officer shall cause said public nuisance to be abated and removed.
- g. If, after the public hearing, there is an order to remove the junked vehicle, the office of the municipal court judge or the Mayor may accomplish the removal, or a person authorized by either of them.
- h. Upon removal of such junked vehicle, such vehicle shall not be reconstructed or made operable.

**SECTION V. COMPLAINTS; INQUIRY AND INSPECTION.** The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints in writing signed by two or more persons stating that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, police department head or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions that appear to constitute a nuisance. Upon making any inquiry and inspection, the public officer shall make a written report of findings.

**SECTION VI. RIGHT OF ENTRY.** The officer or his authorized representative may enter upon private property for the purposes specified in this part to examine vehicles or parts thereof, obtain information as to the identity of vehicles and to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this part. It shall be a violation of this ordinance to deny the public officer the right of access and entry upon private property at any reasonable time for the purpose of making inquiry and inspection to determine if a nuisance exists.

**SECTION VII. NOTIFICATION OF VIOLATION.** Any person found by the public officer to be in violation shall be served a notice of such violation.

(a) The notice shall be served by restricted mail, postage prepaid, return receipt requested if the owner or his or her agent in charge of the property is a resident of Poth, Wilson County, Texas, the notice shall be personally served by the public officer or a law enforcement officer.

(b) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be

made by the public officer and filed with the city clerk, and the serving of the resolution shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

**SECTION VIII. NOTIFICATION CONTENTS.** The notice shall state the condition(s) which is (are) in violation of Section 3. The notice shall also inform the person that:

- (a) He, she or they shall have 10 days from the date of serving the notice to abate the condition(s) in violation of Section 3; or
- (b) He, she or they have 10 days from the date of serving the notice to request a hearing before the Municipal Court Judge or Poth City Council of the matter as provided by Section 12;
- (c) Failure to abate the condition(s) or to request a hearing within the time allowed may result in prosecution as provided by Section 9 and/or abatement of the condition(s) by the city as provided by Section 10.

**SECTION IX. FAILURE TO COMPLY; PENALTY.** Should the person fail to comply with the notice to abate the nuisance or request a hearing, the public officer may file a complaint in the municipal court of the city against such person and upon conviction of any violation of provisions of Section 3, be fined in an amount not to exceed \$100 per day or be imprisoned not to exceed 30 days or be both fined and imprisoned. Each day during or on which a violation occurs or continues after notice has been served shall constitute an additional or separate offense.

**SECTION X. ABATEMENT.** In addition to, or as an alternative to prosecution as provided in Section 9, the public officer may seek to remedy violations of this ordinance in the following manner. If a person to whom a notice has been sent pursuant to Section 7 has neither alleviated the conditions causing the alleged violation or requested a hearing before the municipal judge within the time period specified, the public officer may present a resolution to the court for adoption authorizing the public officer or other agents of the city to abate the conditions causing the violation at the end of 10 days after passage of the resolution. The resolution shall further provide that the costs incurred by the city shall be charged against the lot or parcel of ground on which the nuisance was located. A copy of the resolution shall be served upon the person in violation in one of the following ways:

- (a) Personal service upon the person in violation;
- (b) Service by restricted mail, postage prepaid, return receipt requested; or
- (c) In the event the whereabouts of such person are unknown and the same cannot be ascertained in the exercise of reasonable diligence, an affidavit to that effect shall be made by the public officer and filed with the city clerk, and the serving of the resolution



shall be made by publishing the same once each week for two consecutive weeks in the official city newspaper and by posting a copy of the resolution on the premises where such condition exists.

**SECTION XI. DISPOSITION OF VEHICLE.** Disposition of any motor vehicle removed and abated from private property pursuant to this ordinance shall be as provided by a private service at the discretion of the CITY OF POTH. If any junked vehicle is sold to a demolisher, the owner of the said vehicle must sign an abandoned vehicle removal waiver authorizing the City of Poth to dispose of said vehicle. The proceeds shall be used to reimburse the CITY OF POTH for the expense of removing the junked vehicle from the premises upon which it was located. Any remainder from the proceeds of a sale shall be held for the owner of the junked vehicle or entitled lien holder for ninety (90) days, and, if at the end of the ninety (90) day period such funds are unclaimed said funds shall be deposited but remain available for the payment of removal costs which result from removal of other junked vehicles, or whenever the proceeds from a sale of such other junked vehicle are insufficient to meet these expenses and costs.

(a) **NOTICE TO TEXAS DEPARTMENT OF HIGHWAYS AND TRANSPORTATION.** The CITY OF POTH or designated officer shall give notice to the Texas Department of Highways and Public Transportation within five (5) days of the date of removal, identifying the vehicle or part thereof removed under the terms of this part.

**SECTION XII. HEARING.** If a hearing is requested within the 10-day period as provided in Section 8, such request shall be made in writing to the governing body. Failure to make a timely request for a hearing shall constitute a waiver of the person's right to contest the findings of the public officer before the municipal judge. The hearing shall be held by the municipal court judge as soon as possible after the filing of the request therefore, and the person shall be advised by the court of the time and place of the hearing at least five days in advance thereof. At any such hearing, counsel may represent the person and the city may introduce such witnesses and the municipal court deems evidence as necessary and proper. The hearing need not be conducted according to the formal rules of evidence. Upon conclusion of the hearing, the municipal court shall record its determination of the matter by means of adopting a resolution and serving the resolution upon the person in the matter.

**SECTION XIII. COSTS ASSESSED.** If the city abates the nuisance, the cost of abatement shall be charged against the lot or parcel of ground on which the nuisance was located. The city clerk shall, at the time of certifying other taxes to the county clerk, certify the costs as provided in this section. The county clerk shall extend the same on the tax roll and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid.

**SECTION XIV. FAILURE TO ABATE OR ALLOW ABATEMENT OF NUISANCE.** A person commits an offense if the person owns or occupies private premises, public premises or the premises adjacent to the public right-of-way in the city

on which there exists a public nuisance as herein set out, and who fails, refuses or neglects to remove or abate such nuisance or refuses notice as herein set out, or refuses to abide by any order requiring the removal of said vehicle or part thereof.

**SECTION XVI. HOLD HARMLESS.** With respect to any negligent or intentional act of the City of Poth, their respective agents, servants, employees, contractors, et al, this ordinance holds harmless the City of Poth and its agents from any loss, claim, cause of action, liability or expense for any loss or injury to any person or property occurring as a result of enforcing this ordinance.

**SECTION XVII. REPEAL:** This Ordinance hereby repeals Ordinance No. 102185-1 and any code provisions in conflict with the provisions thereof.

**SECTION XVIII. INCLUSION IN THE CODE** It is the intention of the City of Poth, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code Ordinances of the City of Poth, Texas. To this end, the section of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", "amendment" or other appropriate designation.

**SECTION XIX. EFFECTIVE DATE.** This Ordinance shall become effective upon adoption by the Poth City Council and approved by the Mayor et al.

**ADOPTED BY THE CITY COUNCIL OF POTH, TEXAS, in Regular Session this**  
22 day of JAN. 2001 A.D.

**CITY OF POTH,**

**WILSON COUNTY, TEXAS**

**APPROVED:**

  
**MAYOR**

**Attest:**

**BY:**

  
**CITY SECRETARY**



AMENDMENT

COPY

ORDINANCE NO: 012201 – ABANDONED, INOPERABLE AND  
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AMENDMENT NO: I

ARTICLE NO: n/a

SECTION NO: V


ORDINANCE NO. 012201 is hereby amended as follows:

**SECTION V. COMPLAINTS; INQUIRY AND INSPECTION.** The public officer shall make inquiry and inspection of premises upon receiving a complaint or complaints that a nuisance exists and describing the same and where located or is informed that a nuisance may exist by the board of health, police department head or the fire chief. The public officer may make such inquiry and inspection when he or she observes conditions that appear to constitute a nuisance. Upon making any inquiry and inspection, the public officer shall make a written report of findings.

**PASSED and APPROVED** this 19th day of May, 2003

  
Chrystal Eckel -- Mayor

ATTEST:

  
Gladys Billimek - City Secretary

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