

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS DECLARING JUNKED VEHICLES AS A PUBLIC NUISANCE IN THE TOWN OF PROSPER, TEXAS; ESTABLISHING REGULATIONS AND PROCEDURES FOR THE CONTROL AND REMOVAL OF JUNKED VEHICLES; PROVIDING FOR A PENALTY AND MAKING IT AN OFFENCE FOR A VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of Prosper (the "Town Council") has investigated into and determined that it will be advantageous and beneficial to the Town of Prosper ("Prosper") and its inhabitants to declare junked vehicles as a public nuisance in Prosper; and

WHEREAS, the Town Council has investigated and determined it will be in the best interest of the public health, safety and welfare to establish procedures for the removal of junked vehicles.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Definitions. For the purposes of this Ordinance, the following definitions apply:

Antique vehicle as used herein means a passenger car or truck manufactured at least twenty-five (25) years ago.

Demolisher as used herein means a person with a business that converts a motor vehicle into processed scrap metal, or otherwise wrecks or dismantles motor vehicles.

Junked vehicle as used herein means a motor vehicle as defined in V.T.C.A., Transportation Code, Chapter 683, that is self-propelled vehicle, or part thereof, that:

- A. Does not have attached lawfully to it:
 - 1. an unexpired license plate; or
 - 2. a valid motor vehicle inspection certificate; and
- B. is:
 - 1. wrecked, dismantled or partially dismantled, or discarded; or
 - 2. inoperable and has remained inoperable for more than:
 - a. seventy-two (72) consecutive hours, if the vehicle is on public property; or
 - b. thirty (30) consecutive days, if the vehicle is on private property.

Special interest vehicle means a motor vehicle of any age without alteration or modification from original manufacturer's specifications that, because of its historic interest, is preserved by hobbyists.

Vehicle Collector means an antique or special vehicle owner who, for personal use, collects, purchases, acquires, trades, or disposes of antique or special interest vehicles, or their parts, in order to restore, preserve, and maintain an antique or special vehicle for historic interest.

SECTION 3: Junked Vehicle Declared a Public Nuisance. A junked vehicle, including part of a junked vehicle, that is visible at any time of the year from a public place or public right-of-way:

- A. is detrimental to the safety and welfare of the public;
- B. tends to reduce the value of private property;
- C. invites vandalism;
- D. creates a fire hazard;
- E. is an attractive nuisance creating a hazard to the health and safety of minors;
- F. produces urban blight adverse to the maintenance and continuing development of municipalities; and
- G. is a public nuisance.

SECTION 4: Offense.

- A. A person commits an offense if the person allows or maintains a junked vehicle in any place, whether on private or public property, in view of the public or on a public right-of-way.
- B. An offense under this Section 4 is a misdemeanor punishable by a fine not to exceed two hundred dollars (\$200.00). A separate offense occurs each and every day the violation described in subsection (a) continues.
- C. The court shall order abatement and removal of the public nuisance on conviction of this offense.

SECTION 5: Authority to Abate Nuisance; Procedures. To abate and remove a junked vehicle from any place visible to the public, whether on private or public property, the following procedure is required:

- A. **Notice.**
 - 1. Any employee of a department authorized by the Town Administrator to enforce this Ordinance shall:
 - a. Send written notice via certified mail, with a five (5) day return receipt requested, (i) to the last known registered owner of the junked vehicle; (ii) to any known lienholder of record of the junked vehicle; and (iii) to the

owner or occupant of the property on which the junked vehicle is located, or, if the junked vehicle is on the public right-of-way, the owner or occupant of the property adjacent to the public right-of-way; or

- b. Post written notice on the junked vehicle if the address of the last known registered owner of the junked vehicle is unknown; or
 - c. Hand-deliver notice to the last known registered owner of the junked vehicle if his or her physical location is known.
2. The notice must state the nature of the nuisance, and that:
 - a. The junked vehicle must be abated and removed no later than the tenth (10th) day after the date on which the notice was mailed; and
 - b. Any request for a hearing must be made in writing and received by the department before that ten (10) day period expires.
 3. If any notice is returned undelivered, action to abate the nuisance shall continue to a date not earlier than the eleventh (11th) day after the date of the return.
 4. In the case where a person receiving notice neither requests a hearing nor abates the nuisance within the ten (10) day period provided in subsection 5.A.2.a., the Town Administrator, or his/her designee shall, in compliance with subsection 5.A.1., give notice of a public hearing, providing the date, time, and place of the hearing.

B. Hearing.

1. The Town Administrator, or his/her designee, shall conduct all hearings under this Section. This hearing officer does not have to adhere to strict rules of evidence, and can adopt informal procedures for the hearing.
2. If a person receiving notice of a junked vehicle requests a hearing, the public hearing shall occur not earlier than the eleventh (11th) day after the date of the service of notice. If a person has not responded to the initial notice, a public hearing may occur five (5) business days after the date on the notification of public hearing required by Section 5.A.4.
3. At the hearing, the junked vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

C. Abatement and removal of nuisance.

1. Request for abatement and removal of junked vehicle.
 - a. After receiving written notice from the Town regarding the public nuisance

created by a junked vehicle:

- i. The owner of the junked vehicle may request and authorize the Town to remove the junked vehicle; or
 - ii. The owner or occupant of the private property upon which the junked vehicle is located may request and authorize the Town to remove junked vehicle if the Town cannot locate the vehicle's owner.
- b. Before the Town removes a junked vehicle, the person requesting removal under this Section must execute an authorization and indemnification agreement, thereby allowing the Town to enter the private property and holding the Town harmless from any claim of injury or damage sustained as a result of the removal and disposal of the junked vehicle in accordance with Section 7.
2. Abatement and removal of junked vehicle after hearing.
- a. Should a hearing officer find that a junked vehicle, or part thereof, is located in an area visible from a public place or in a public right-of-way, the hearing officer shall order abatement and removal of the junked vehicle.
 - b. If the information is available at the location of the nuisance, an order requiring removal of the nuisance must include the vehicle's description, vehicle identification number, and license plate number.
 - c. The municipal court may issue orders necessary to enforce the procedures and removal of the public nuisance.

SECTION 6: Administration of Procedures; Authority to Enforce.

- A. Regularly salaried, full-time Town employees shall administer the procedures outlined in Section 5 for abatement and removal of a junked vehicle, except that any authorized person may remove the nuisance.
- B. Any employee of a department authorized by the Town Administrator to enforce this Ordinance may enter private property to examine the public nuisance, to obtain information to identify the nuisance, and to remove or direct removal of the nuisance.
- C. Any person authorized by the Town Administrator, or his/her designee, may enter private property to remove the junked vehicle, or part thereof.

SECTION 7: Junked vehicle disposal.

- A. A junked vehicle removed under Section 5 may not be reconstructed or made operable.
- B. A junked vehicle may be removed to a scrap yard, a motor vehicle demolisher, or any other suitable site for processing scrap or salvage.
- C. After a proceeding for abatement and removal of a public nuisance commences, removal of the junked vehicle to another location within the Town limits where said vehicle continues to constitute a public nuisance has no effect on the proceedings already underway.

SECTION 8: Notice to Texas Department of Transportation. No later than the fifth (5th) day after the date of removal of a junked vehicle, the Town Administrator, or his/her designee, shall send notice to the Texas Department of Transportation identifying the vehicle, or part thereof, removed so that the Texas Department of Transportation may cancel the certificate of title issued for the vehicle.

SECTION 9: Exception. The provisions of this Ordinance do 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 or vehicle part stored by a vehicle collector on the collector's property, where the antique or special interest vehicle or vehicle part and the outside storage area 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, shrubbery or rapidly growing trees.

SECTION 10: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 11: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

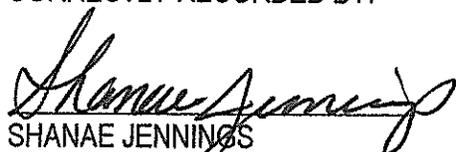
SECTION 12: Effective Date. This Ordinance shall become effective from and after its adoption

and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER,
TEXAS on this 21st day of December 2004


CHARLES NISANGER, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:


SHANAE JENNINGS
Town Secretary

DATE OF PUBLICATION: 12/29/04 & 12/27/04, Dallas Morning News (Collin
County Edition)