

AN ORDINANCE DEFINING AND PROVIDING FOR THE ABATEMENT OF
JUNKED AND ABANDONED MOTOR VEHICLES AND PARTS; PROVIDING A
PENALTY AND FOR PUBLICATION.

WHEREAS, the existence of abandoned and junked vehicles within the City of Pelican Bay constitutes a public nuisance, detracts from property values and endangers the public welfare; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELICAN BAY, TEXAS:

Section: 1: **Definitions**

Whenever the following terms are used in this Ordinance, they shall have the meaning respectively ascribed to them as follows:

Abandoned motor vehicle means any motor vehicle which:

- (1) Is inoperable and more than five (5) years old and left unattended on public property for more than forty-eight (48) hours;
- (2) Has remained illegally on public property for a period of more than forty-eight (48) hours;
- (3) Has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours; or
- (4) Is left unattended on a right-of-way of any designated county, state or federal highway, or any street, alley, or public right-of-way within the City for more than forty-eight (48) hours.

Antique auto means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least thirty-five (35) years old.

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

2 Demolisher means any person whose business is to convert a motor vehicle into
4 processed scrap or scrap metal, or otherwise to wreck or dismantle motor
vehicles.

6 In ordinary public view means that the vehicle or part thereof or the tarp or
8 cover thereon is visible from any public right-of-way, or adjacent land, or the
10 first floor level of a building thereon which is owned or occupied by a person
other than the owner or occupant of the property on which the junked vehicle
or part thereof is located or parked.

12 Junked vehicle means any motor vehicle as defined in Section 1 of Article
6701d-11, Vernon's Texas Civil Statutes, as amended, which:

- 14 (1) Is inoperative;
- 16 (2) Which does not have lawfully affixed to it either an unexpired
18 license plate or a valid motor vehicle safety inspection certificate;
20 and is wrecked, dismantled, partially dismantled, or discarded, or
22 that remains inoperable for a continuous period of more than
forty-five (45) days. Evidence that a vehicle in public view has
not been driven under its own power for a period of forty-five
(45) days or more shall constitute prima facie evidence that said
vehicle was inoperative for the same period.

24 Motor vehicle means a motor vehicle subject to registration under the Certificate
26 of Title Act (V.T.C.S., Art. 6687-1), except that for purposes of Sections 5.02,
5.03, and 5.04 of this Act, "motor vehicle" includes a motorboat, outboard
28 motor, or vessel subject to registration under V.T.C.A., Parks and Wildlife code,
Chapter 31.

30 Person means any individual, firm, partnership, association, corporation,
32 company, or organization of any kind.

34 Special interest vehicle means a motor vehicle of any age that has not been
36 altered or modified from original manufacturer's specifications and, because of
its historic interest, is being preserved by hobbyists.

38 **Section 2: Presence of Junked Vehicles Deemed Public Nuisance; Exception**

40 The location or presence of any junked motor vehicle or vehicles on any private
42 or public property, occupied or unoccupied, improved or unimproved, within the
City shall be deemed a public nuisance. It shall be unlawful for any person to
44 cause or maintain such public nuisance by wrecking, dismantling, partially
dismantling, rendering inoperable, abandoning, or discarding any motor vehicle
on the real property of another or to suffer, permit, or allow the same to be

placed, located, maintained, or exist upon his own real property. This Section shall not apply to:

- (1) A vehicle or part thereof 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;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard;
- (3) A vehicle in an appropriate storage place or depository maintained in a location officially designated and in a manner approved by the City;
- (4) A motor vehicle in operable conditions specifically constructed for racing or operation on privately owned drag strips or race strips;
- (5) An unlicensed, inoperable antique or special interest vehicle stored on property, provided that the vehicle and outdoor storage area are maintained so 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; or
- (6) A motor vehicle stored as the property of a member of the armed forces of the United States while on active duty assignment.

Section 3: Abatement Order, Private Property

- (a) Whenever such public nuisance as described in Section 2 exists on private property within the City, the Chief of Police or other designated official enforcing this Ordinance shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same. Such order shall:
 - (1) be in writing;
 - (2) specify the public nuisance and its location;
 - (3) specify the corrective measure required;
 - (4) provide for compliance within ten (10) days from service thereof, and

2 (5) inform the owner or occupant of his right to a hearing before the
Municipal Court Judge if notice of a demand for hearing is given
4 in writing within ten (10) days of the issuance of the order.

6 (b) Such order shall be served upon the owner or occupant of the premises
wherein the nuisance is located, by sending said order by certified,
8 United States mail with a five-day return receipt requested to:

10 (1) the address of the premises;

12 (2) the address listed on the certificate of title of the offending
vehicle; and

14 (3) the address of any lienholder.

16 (c) If the owner or the occupant of the premises fails and refuses to comply
with the notice stating the order of the Chief of Police or his duly
18 authorized agent within ten (10) days after service thereof, the Chief of
Police or his duly authorized agent shall take possession of said junked
20 motor vehicle and remove it from the premises.

22 (d) If the notice is returned undelivered by the United States Postal Service,
official action to abate said nuisance shall be continued to a date not less
24 than ten (10) days from the date of such return.

26 (e) The Chief of Police or his duly authorized agent shall thereafter dispose
of said junked motor vehicle in such a manner as the City Council may
28 provide.

30 (f) The owner or occupant of said premises may, within said ten (10) day
period after service of notice to abate the nuisance, request of the Chief
32 of Police, either in person or writing and without the requirement of
bond, that a date and time be set when he may appear before the
34 Municipal Judge for a hearing to determine whether he is in violation of
this Ordinance.

36 (g) If a request is made under the provisions of subsection (f) above, no
38 action to remove said vehicle shall be taken pending the hearing.

40 **Section 4: Abatement Order, Public Property**

42 (a) Whenever such public nuisance as described in Section 2 exists on public
property within the City, the Chief of Police or other designated official
44 enforcing this Ordinance shall order the owner of the premises, or the

2 occupant of the premises if in possession thereof, to abate or remove the
3 same. Such order shall:

- 4 (1) be in writing;
- 6 (2) specify the public nuisance and its location;
- 8 (3) specify the corrective measure required;
- 10 (4) provide for compliance within ten (10) days from service thereof;
12 and
- 14 (5) inform the owner or occupant of his right to a hearing before the
16 City Council if notice of a demand for hearing is given in writing
18 within ten (10) days of the issuance of the order.

20 (b) Such order shall be served upon the owner of the vehicle and any
22 lienholder of record thereof by sending said order by certified United
24 States mail with a five day return receipt requested to the address listed
26 on the certificate of title of the offending vehicle, and the address of any
28 lienholder.

30 (c) If the owner of the offending vehicle fails and refuses to comply with the
32 notice stating the order of the Chief of Police or his duly authorized
34 agent within ten (10) days after service thereof, the Chief of Police or his
36 duly authorized agent shall take possession of said junked motor vehicle
38 and remove it from the premises.

40 (d) If the notice is returned undelivered by the United States Postal Service,
42 official action to abate said nuisance shall be continued to a date not less
44 than ten (10) days from the date of such return.

(e) The Chief of Police or his duly authorized agent shall thereafter dispose
of said junked motor vehicle in such a manner as the City Council may
provide.

(f) The owner of said vehicle may, within said ten (10) day period after
service of notice to abate the nuisance, request of the Chief of Police,
either in person or writing and without the requirement of bond, that a
date and time be set when he may appear before the Municipal Judge for
a hearing to determine whether he is in violation of this Ordinance.

(g) If a request is made under the provisions of subsection (f) above, no
action to remove said vehicle shall be taken pending the hearing.

- 2 (h) Nothing in this Ordinance shall affect laws that permit immediate
removal of a vehicle left on public property which constitutes an
4 obstruction to traffic.

6 **Section 5: Public Hearing**

- 8 (a) Upon receipt of a request for a hearing made pursuant to Section 3(f)
and Section 4(f), the Chief of Police or his duly authorized agent shall set
10 a date and time for such hearing before the Municipal Judge. The Chief
of Police or his duly authorized agent shall notify the owner of the
12 vehicle or the owner or occupant of the premises, as the case may be, in
writing as to the date and time of such hearing.
- 14 (b) The Municipal Judge shall hear any case brought before the court and as
set out herein determine whether the subject vehicle is a junked vehicle
16 under the provisions of this Ordinance. The Judge may summon any
witnesses or solicit any information he deems necessary in determining
18 the status of the vehicle.
- 20 (c) If the Judge determines that the subject vehicle is junked, under the
provisions of this Ordinance, the owner of said vehicle or the owner or
22 occupant of the premises, as the case may be, shall be ordered to remove
or cause to be removed said vehicle from either public or private
24 property within five (5) days from the date of the order of the Judge.
Any resolution or order requiring the removal of a vehicle or part thereof
26 shall include a description of the vehicle, the correct vehicle identification
number, and license number of the vehicle, if available.

28 **Section 6: Filing Complaint**

30 If the order of the Municipal Judge is not complied with, the Chief of Police shall
32 forthwith cause to be prepared, filed, and served on the defendant a written
complaint charging that the owner of the vehicle or the owner or occupant of the
34 premises, as the case may be, has violated the provisions of this Ordinance.

36 **Section 7: Trial**

- 38 (a) The Judge of the Municipal Court shall hear any case brought before said
court and shall determine whether the defendant is in violation of this
40 Ordinance. Upon finding that the defendant is in violation of this
Ordinance, said defendant shall be found guilty of a misdemeanor and
42 subject to a fine of up to \$500.00 per day. Each day that the nuisance
continues shall be considered a separate occurrence.
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2 (b) The Judge of said court shall further order such offense removed and
said nuisance abated within ten (10) days, same being a reasonable time.

4 (c) If the defendant shall fail and refuse to abate and remove said nuisance
6 within ten (10) days, the Judge of said court may issue an order directing
8 the Chief of Police or his duly authorized agent to have the same
removed and the Chief of Police or his duly authorized agent shall take
possession of said junked motor vehicle and remove it from the premises.

10 (d) The Chief of Police or his duly authorized agent shall thereafter dispose
12 of said junked motor vehicle in such a manner as the City Council may
provide.

14 **Section 8: Removal of Junked Vehicle With Permission**

16 The owner of the vehicle or the owner or occupant of the premises, as the case
18 may be, if after receipt of ten (10) days' notice from the Chief of Police or his
duly authorized agent to abate the nuisance as herein provided, may give his
20 written permission to the Chief of Police or his duly authorized agent for
removal of the junked motor vehicle and the giving of such permission shall be
22 considered in compliance with the terms and provisions of this Ordinance. Once
a vehicle has been removed, it shall not be reconstructed or made operable.

24 **Section 9: Removal From Unoccupied Premises**

26 If a junked vehicle as defined in Section 1 is located on premises that are
unoccupied and the owner of the premises is notified to remove same but cannot
28 be found, then upon a showing of such facts to the Judge of the Municipal
Court, the court may issue an order directing the Chief of Police or his duly
30 authorized agent to have the same removed, and the Chief of Police or his duly
authorized agent shall take possession of said junked motor vehicle and remove
32 it from the premises. The Chief of Police or his duly authorized agent shall
thereafter dispose of said junked motor vehicle in such a manner as the City
34 Council may provide.

36 **Section 10:** When a junked motor vehicle is removed from any premises by the Chief of
Police or his duly authorized agent, notice shall be given to the Texas
38 Department of Highways and Public Transportation within five (5) days after the
date of removal of the junked vehicle or part thereof and identifying the junked
40 vehicle or part thereof, and requesting that said department cancel the certificate
of title to such vehicle pursuant to V.A.C.S., Art. 6687-9, as amended.
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Section 11: **Declaration of Nuisance; Duty To Impound**

When an abandoned motor vehicle or any property other than a junked motor vehicle, as defined in Section 1, is placed, left standing, parked, erected, or lying in violation of any ordinance or code of the City or left unattended for more than forty-eight (48) continuous hours in or on any public street, alley, sidewalk, park, or other public place of the City is declared to be a nuisance. Any such property when so found shall be removed summarily by any officer of the City and kept until redeemed or sold as herein provided.

Section 12: **Lien On Impounded Property**

The City shall have a lien on such impounded personal property for all costs incurred in impounding, storing, and advertising such property and such lien shall be prior and superior to all other liens of every kind, save and except liens for ad valorem taxes. The City may retain possession thereof until all costs are paid and may sell the same as herein provided.

Section 13: **Redemption**

The owner or any person legally entitled to possession of such impounded personal property may redeem the same as follows:

- (1) Before sale: By paying to the Chief of Police the impounding fee and any other actual expenses incurred by the City in impounding and keeping the impounded property, as determined by the Chief of Police.
- (2) After sale: By paying to the buyer at the auction sale double the amount paid by him for such personal property and any reasonable expenses incurred by him for keeping same, provided that the property must be redeemed from the auction buyer within thirty (30) days after the date of auction sale, excluding the date of sale. If not redeemed within thirty (30) days after the date of auction sale, title to said property shall become absolute in the auction buyer.

Section 14: **Sale of Property**

(a) When any personal property, other than a motor vehicle, is not redeemed within sixty (60) days after being impounded, and when any motor vehicle, other than a junked motor vehicle, is not redeemed after compliance by the Chief of Police with the provisions of this Ordinance, the Chief of Police shall sell the same at public auction to satisfy the lien of the City.

(b) Procedures for sale of property other than motor vehicles:

2 (1) Before selling such personal property, other than motor vehicles,
4 the Chief of Police shall post two (2) notices thereof, one at the
6 United States Post Office, Pelican Bay, Texas, and one at the
8 entrance to the City Hall, and shall cause a copy thereof to be
10 published in a newspaper distributed in the City once a week for
12 two (2) consecutive weeks, the date of the first publication to be
14 at least fourteen (14) days prior to the day of the auction sale.

(2) The notice of sale shall describe the impounded property, state
that the same is unredeemed, state that the same shall be sold at
public auction, designate the place of sale, and state a time and
date of sale which shall not be less than fourteen (14) days from
the date of posting such notices as herein required.

(c) Procedures for sale of motor vehicles:

16 (1) When any motor vehicle has not been redeemed within thirty
18 (30) days from the date of its impounding, it shall be the duty of
20 the Chief of Police to submit to the Texas Department of
22 Highways & Public Transportation, and similar agency of the
24 proper state when the vehicle is registered in another state, that
said department supply to him all information contained in
records of the department on said vehicle.

(2) Immediately upon receipt of such information from said
department, the Chief of Police shall notify the owner and
lienholders as shown by the records of said department by
registered mail with return receipt requested that said vehicle has
been impounded and of the provisions of this division in regard
to redemption and sale of impounded property.

(3) In the event a motor vehicle has not been redeemed within fifteen
(15) days from receipt of the return receipt or notice of
nondelivery of said registered mail, the Chief of Police shall
prepare a notice of sale of such vehicle, in the manner described
in subsection (b)(2) above, and shall send a copy of said notice
to the owner and lienholders as shown by the records, and
advertise said notices in the manner required in subsection (b)(1)
above. Notice by registered mail to the address shown on the
records of said highway department shall constitute notice of the
pending sale to such owner and lienholders.

(4) When the Chief of Police is unable to ascertain the names of the
owner and lienholders, and the motor vehicle has not been
redeemed within forty-five (45) days from its impounding, no

notice of sale other than posting and advertising as herein prescribed shall be required.

- (d) When any impounded property, including motor vehicles, is not redeemed by the date and time designated in the notice of sale, the Chief of Police shall cause such property to be sold at public auction, and, shall execute a bill of sale of said property to the purchaser thereof. He shall not execute or deliver any but a conditional bill of sale unless and until the title of said buyer has become absolute by an expiration of thirty (30) days in time, exclusive of the date of sale, without being redeemed by the owner of the impounded property.
- (e) After deducting the impounding fee and all other actual expenses incurred by the City in impounding, storing, and selling of said property, as determined by the Chief of Police, not to exceed a reasonable amount for each impounded article, he shall pay the balance of the proceeds of such sale, if any, to the owner of the property.
- (f) If the owner fails to call for such proceeds, they shall be paid into the City general fund. Within six (6) months after such auction sale, the owner may apply in writing to the Chief of Police and upon satisfactory proof of ownership, shall be entitled to receive the amount of the proceeds delivered to the City general fund.
- (g) Impounded property which is offered for sale at public auction in accordance with the procedures herein prescribed and upon which no person bids shall thereafter be sold or otherwise disposed of as junk. Money received for junk property shall be disposed of in the same manner as proceeds from an auction under this Section.

Section 15: Records; Fees

The Chief of Police shall keep a record book which shall contain a description of all property impounded, the date and time of such impounding, the date notices of sale were posted and advertised and mailed to owners and lienholders, the return of receipts of registered notices, the date of the sale of auction, the amount realized for each article at such sale, the name and address of the owner and lienholders, if known, the name and address of the auction buyer, and any such other information as he may deem necessary.

Section 16: State Law Applicable

V.A.C.S., Article 4477-9a, Article 5, is adopted by reference and the provisions of said Article shall control and take precedence over any conflicting provisions of this Ordinance.

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Section 17: **Penalty**

If any person is found guilty and shall fail and refuse within ten (10) days to remove and abate any nuisance as ordered by the court, he shall be guilty of a misdemeanor and fined in an amount not exceeding five hundred dollars (\$500.00). Each day of continuing violation shall be considered a separate offense.

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Section 18: **Relationship To Other Regulations**

Nothing in this Ordinance is intended to relieve any person of any condition, restriction, or requirement imposed by any other law, ordinance, or code of the City. Where any other ordinance, law, or code is in conflict with the provisions of this Ordinance, this Ordinance shall govern.

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Section 19: **Partial Repeal**

All ordinances conflicting with this ordinance are hereby repealed to the extent of such conflict.

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Section 20: **Severability**

If any section, sentence, clause or phrase of this Ordinance is found invalid by a court of competent jurisdiction, it is the intent of the governing body of the City that the remaining sections sentences, clauses and phrases continue in full force and effect.


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Section 21: **Publication**

The City Secretary is directed to cause publication of the descriptive caption and Section 17 of this Ordinance as an alternative method of publication provided by law.

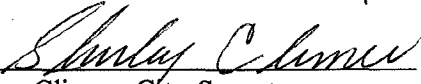
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IT IS SO ORDERED.

PASSED AND APPROVED on the 29 day of March, 1995 by a vote of 5 to 0.

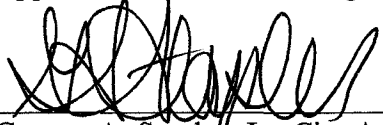
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CITY OF PELICAN BAY

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By: 
Billy Heaton, Mayor

ATTEST:

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Shirley Climer, City Secretary

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Approved as to form and legality:

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George A. Staples, Jr., City Attorney