

**CITY OF SANDY OAKS, TEXAS**

**ORDINANCE NO. 2019-148**

**AN ORDINANCE OF THE CITY OF SANDY OAKS, TEXAS AMENDING ORDINANCE NO. 2016-55, ESTABLISHING REGULATIONS FOR PROHIBITING LITTER AND TO PROVIDE FOR ABATEMENT; DECLARING LITTERING A PUBLIC NUISANCE; DECLARING JUNKED VEHICLES A PUBLIC NUISANCE AND PROVIDING FOR ABATEMENT; PROVIDING A PENALTY CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Sandy Oaks ("City Council") seeks to prohibit littering and improper solid waste disposal to preserve the scenic environment of the City of Sandy Oaks, Texas ("City");

**WHEREAS**, the City Council finds that littering and improper solid waste disposal, including junked vehicles, pose health and sanitation risks to the citizens of the City;

**WHEREAS**, the City Council finds that littering and improper solid waste disposal, including junked vehicles constitute public nuisances;

**WHEREAS**, pursuant to Texas Local Government Code Section 51.001, the City has general authority to adopt an ordinance or police regulation that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City;

**WHEREAS**, pursuant to Chapter 217 of the Local Government Code, the City Council has the express authority to declare and abate public nuisances;

**WHEREAS**, Chapter 683 of the Texas Transportation Code and Chapters 341-342 of the Texas Health and Safety Code authorize a municipality to adopt procedures for the abatement of nuisances and the abatement and removal of a junked vehicle from private or public property; and

**WHEREAS**, the City Council finds that it is necessary and proper for the good government, peace and order of the City to adopt an ordinance prohibiting littering and improper solid waste disposal, including junked vehicles, and providing procedures for the disposal of solid waste including junked vehicles;

**WHEREAS**, the City Council adopted Ordinance No. 2016-55 to regulate littering and providing for abatement procedures and desires to amend Ordinance No. 2016-55 to declare junked vehicles a public nuisance and provide for abatement procedures;

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

**Section 1. Findings.** The findings set out herein are found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes.

## Section 2. Definitions.

- (a) "Abate" means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.
- (b) "Antique vehicle" means a passenger car or truck that is at least 25 years old.
- (c) "Garbage" means rubbish, trash, kitchen and household waste, ashes, bottles, cans, rags, paper, food, food containers, lawn trimmings, tree trimmings, hedge trimmings, leaves, grass, weeds and refuse, and all decayable wastes, including solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking or consumption of food, including waste matters from markets, storage facilities and the handling and sale of produce and other food products.
- (d) "Junk" means all worn out, worthless and discarded material, in general, including, but not limited to, wood products, scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys, and bones, rags, glass, paper, cordage, cloth, rubber, rope, tinfoil, bottles, old cotton, machinery, tools, construction materials, appliances, furniture, fixtures, utensils, boxes or crates, pipe or pipe fittings, automobile or airplane tires, dismantled motor vehicles, boats, boat trailers, or travel trailers or parts thereof, or other manufactured goods or odds and ends that are worn out, worthless, deteriorated, burned, obsolete, discarded material or other wastes, especially those that are unusable in their existing condition.
- (e) "Junked vehicle" means a vehicle as defined by section 683.071 of the Texas Transportation Code that may be self-propelled and meets any of the conditions described below for 30 consecutive days if on private property, or for 72 hours if on public property, and does not have lawfully attached to it:
  - (1) an unexpired license plate; or
  - (2) a valid motor vehicle inspection certificate; or
  - (3) is wrecked, dismantled or partially dismantled, or discarded; or
  - (4) is otherwise inoperable.
- (f) "Litter" means any quantity of uncontainerized paper, metal, plastic, glass, or miscellaneous solid waste which may be classified as trash, debris, rubbish, refuse, garbage, or junk not placed in a solid waste container, except that which is contained and clearly set out for collection by the City's solid waste provider.
- (g) "Motor vehicle collector" means a person who owns one or more antique or special interest vehicles and acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.
- (h) "Person" means any individual, firm, organization, partnership, unincorporated association or corporation.
- (i) "Refuse" means the same as "garbage" herein.



- (j) "Rubbish" means all refuse, junk, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded clothing, used and discarded shoes and boots, combustible waste, pulp and other products used for packaging or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, textiles and objects of all sorts, and in general all litter.
- (k) "Special interest vehicle" means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.
- (l) "Trash" means the same as "garbage" herein.
- (m) "Waste" means rejected, unutilized or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, commercial, or industrial activities.

### **Section 3. Accumulation of litter, trash, refuse, garbage, rubbish, waste, or junk.**

- (a) *Accumulation of garbage, trash, weeds, brush, rubbish or littering prohibited.* It shall be unlawful for any person to throw, discard, place, or deposit litter, trash, refuse, garbage, rubbish, waste or junk in any manner or amount on any public or private property within the corporate limits of the City, except in lawfully provided containers. *Declaration of Nuisance.* Litter, trash, refuse, garbage, rubbish, waste or junk accumulated or disposed of in violation of this Ordinance or state law or dumped on public or private property is declared a nuisance by the City Council.
- (b) *Abatement.*
  - (1) The City may require the owner or occupant of any lot or lots to keep the same free from any garbage, junk, litter, refuse, rubbish, trash and/or waste or any other objectionable, unsightly, or unsanitary matter of whatever nature. If a violation is found, the City shall notify said owner or occupant of such violation and give ten (10) days to correct or remedy the violation. The notice shall be in writing and shall be served on the owner or occupant by personal service or by mailing the notice by certified mail to the owner or occupant's last known address. In the event personal service cannot be obtained or the owner or occupant's address is unknown, notification may be effected by any of the following methods:
    - a. By publication in the City's official newspaper;
    - b. By posting the notice on or near the front door of each building on the property to which the violation relates; or
    - c. by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

- (2) If the owner or occupant fails to abate the violation in the given time, the City may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made to the owner of such property. In addition, the City Council may cause any of the improvements above-mentioned to be done at the expense of the City on account of the owner, and cause the expenses thereof to be assessed on the real estate, or lot or lots upon which the expense is incurred.
- (3) In the notice of violation issued under this ordinance, the City's designated representative may inform the owner or occupant, that if the owner or occupant commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the City, without further notice, may correct the violation at the owner's expense and assess the expenses against the real estate.
- (4) If an owner is mailed a notice in accordance with subsection (a) and the United States Postal Service returns the notice as "refused" or "unclaimed" the validity of the notice is not affected, and the notice is considered as delivered.
- (5) In any event, any such work done or improvements made at the expense or direction of the City shall be assessed on the real estate or lot or lots upon which such expense was incurred.

#### **Section 4. Abatement and Removal of Junked Vehicles.**

- (a) *Junked Vehicles Declared a Public Nuisance:* In accordance with Section 683.072 of the Texas Transportation Code, junked vehicles, including a part of a junked vehicle not enclosed in garage or other structure is a public nuisance.
- (b) *Offense/Penalty:* A person commits an offense if the person maintains a junked vehicle as defined by Section 2(c) herein. An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.00. Upon a finding of guilty, the Court shall order the abatement and removal of the junked vehicle at the cost and expense of the person committing the offense.
- (c) *Inapplicability:* This section will not apply to any vehicle or vehicle part 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 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 stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are maintained in an orderly manner, not a health hazard, are and are screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.



(d) *Abatement Procedures:*

- (1) *Notice:* Notice requiring abatement and removal of a junked vehicle, or junked vehicle part from private property shall be furnished by the City Marshal or a designee not less than ten (10) days before the date the junked vehicle, or part of the junked vehicle, must be abated or removed. The notice must be sent by certified mail with a five-day return requested, delivery by United States Postal Service with signature confirmation, or presented by personal delivery to (1) the last known registered owner of the junked vehicle or junked vehicle part; (2) each lien holder of record of the junked vehicle or junked vehicle part; and (3) the owner or occupant of the property on which the junked vehicle or junked vehicle part is located. Notice requiring abatement and removal of a junked vehicle, or junked vehicle part, if a junked vehicle or junked vehicle part is located on a public right-of-way or a private right-of-way accessible to the public shall be placed/affixed on the junked vehicle or junked vehicle part and written notice shall be provided at the door/gate of the property closest to the junked vehicle or junked vehicle part. The notice must state that the junked vehicle or junked vehicle part must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed and any request for a hearing must be made before that 10-day period expires. If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the junked vehicle or junked vehicle part or, if the owner is located, personally delivered. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.
- (2) *Public Hearing:* If a person receiving notice provided in this section requests a public hearing, the City Council shall conduct the public hearing. If a public hearing is requested by a person for whom notice has been sent under this section, the public hearing shall be held not earlier than the eleventh day after the date of the service of notice. At the public hearing, the junked vehicle or junked vehicle part is presumed to be inoperable, unless demonstrated otherwise by the owner. If the information is available, a resolution requiring removal of the junked vehicle or junked vehicle part shall include the vehicle's description, vehicle identification number, and license plate number.
- (3) *Junked Vehicle Disposal:* A junked vehicle, including any part of a junked vehicle, may be removed by a towing service under contract with the City to provide towing and impound services to their storage facility. The junked vehicle or junked vehicle part shall not be reconstructed or made operable after removal. The City Marshal or his/her designees shall furnish notice of the removal of a junked vehicle or junked vehicle part to the Texas Department of Transportation within five (5) days after the date of removal. The relocation of a junked vehicle or junked vehicle part to another location in the City after



a proceeding for the abatement and removal of the junked vehicle or junked vehicle part has commenced has no effect on a proceeding if the junked vehicle or junked vehicle part also constitutes a public nuisance.

**Section 5. Right to Abate Dangerous Conditions.** Whenever an immediate danger to the health, life or safety of any person exists as a result of garbage, junk, litter, refuse, rubbish, trash or waste, the City may abate the nuisance without notice to the owner. In the event the City abates the nuisance under this section, the City shall forward notice to the owner within seven (7) days in the manner set forth in Section 3 of this Ordinance. Any such work done or improvements made at the expense or direction of the City under this section shall be assessed on the real estate or lot or lots upon which such expense was incurred.

**Section 6. Costs.** In addition to any other remedy provided in this Ordinance and cumulative thereto, the City or person designated by the City, after giving to the owner of the property notice in writing, as provided herein, may cause any of the work or improvements mentioned in this Ordinance to be done at the expense of the City, and cause all of the actual cost to the City to be assessed on the real estate or lot on which such expenses occurred.

**Section 7. Cost of Abatement Constitutes Lien.**

- (a) Cumulative of the City's remedy by fine, as set forth herein, the City may do such work or cause the same to be done to remedy such condition to remove such matter from such owner's premises at the City's expense and assess the same against the real estate or lot or lots upon which such expense is incurred.
- (b) Upon filing with the County Clerk of Bexar County, Texas, of a statement by the City Secretary or designee of such expenses, the City shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent per annum interest on the amount from the date of such payment so made by the City.
- (c) The City may, additionally, institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the County Clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy such condition or remove any such matter.

**Section 8. Offense; Penalty.** An offense under this Ordinance is a Class C misdemeanor. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of Five Hundred Dollars (\$500.00), unless specifically stated herein. Upon a finding that the violation constitutes a danger to public health and sanitation, other than the dumping of refuse, such fine shall be no less than Five Hundred Dollars (\$500) and shall not exceed Two Thousand Dollars (\$2,000.00), unless otherwise specifically stated herein. Upon a finding that a violation constitutes a dumping of refuse, such fine shall be no less than Five Hundred Dollars (\$500) and shall not exceed Four Thousand Dollars (\$4,000.00), unless otherwise specifically stated herein. Each occurrence shall be deemed to be a separate violation. Each day that a violation is permitted to exist shall constitute a separate offense.

**Section 9. Remedies.** All remedies cited herein are in addition to and not in lieu of all remedies permitted to the City by state law.

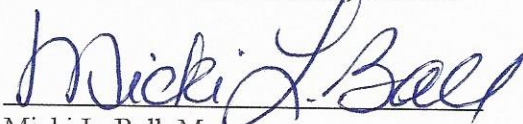
**Section 10. Severability.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**Section 11. Publication.** The City Clerk is hereby authorized and directed to publish the caption of this Ordinance together with the penalty provision contained herein in the manner and for the length of time prescribed by law.


**Section 12. Effective Date.** This Ordinance shall take effect immediately upon its publication as required by section 52.011 of the Local Government Code.

**PASSED AND APPROVED** on this 26<sup>th</sup> day of September 2019.

**CITY OF SANDY OAKS, TEXAS**

  
Micki L. Ball, Mayor

**ATTEST:**

  
Katherine Yelton, City Secretary