

ORDINANCE NO. 051910 A & B

AN ORDINANCE DECLARING PUBLIC NUISANCES UNLAWFUL; PROVIDING CITY AUTHORITY TO ABATE NUISANCES AFTER NOTICE; PERMITTING CITY RECOUPMENT OF NUISANCE ABATEMENT COSTS; DECLARING JUNKED MOTOR VEHICLES TO BE A PUBLIC NUISANCE; PROVIDING NOTICE AND HEARING REQUIREMENTS PRIOR TO MOTOR VEHICLE ABATEMENT; PERMITTING CITY ABATEMENT OF JUNKED MOTOR VEHICLES; PROVIDING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; AND ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF.

WHEREAS, it has come to the attention of the City Council of the City of Penelope that nuisances, including junked motor vehicles, can be dangerous and constitute a hazard to health, life and property; and

WHEREAS, the City Council of the City of Penelope finds it to be in the best interests of the public safety, health and general welfare to regulate nuisances and junked motor vehicles within the City, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PENELOPE, TEXAS:

SECTION 1. This Ordinance is hereby referenced as the "Penelope Nuisance and Junked Motor Vehicle Ordinance."

SECTION 2. Definitions

For the purpose of this Ordinance, certain terms, words and phrases shall have the meaning hereinafter ascribed thereto:

- A. City: The City of Penelope, Hill County, Texas;
- B. City Secretary: The current City Secretary for the City, or their designee;
- C. Junked motor vehicle: A vehicle that is self-propelled and:
 - (1) Does not have lawfully attached to it:
 - (a) An unexpired license plate; and
 - (b) A valid motor vehicle inspection certificate; and
 - (2) Is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) Is inoperable and has remained inoperable for more than:
 - (a) Seventy-two consecutive hours, if the vehicle is on public property; or

(b) Thirty consecutive days, if the vehicle is on private property.

D. Nuisance:

- (1) Any public nuisance known at common law or in equity jurisprudence.
- (2) Any nuisance which may be detrimental to the public whether in a building, on the premises of a building, or upon an unoccupied lot. This includes but is not limited to: any abandoned wells, shafts, basements, or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber, trash, fences, debris or vegetation which may prove a hazard for the public.
- (3) Whatever is dangerous to human life or is detrimental to health, as determined by the appropriate City personnel.
- (4) Overcrowding of a dwelling owned, leased or rented and to include rooms with occupants.
- (5) Uncleanliness of property as determined by the appropriate City personnel.
- (6) Whatever renders air, food or drink unwholesome or detrimental to the health of the public as determined by the appropriate City personnel.

D. Person: Any natural individual, firm, trust, partnership, association, corporation, or other legal entity.

E. Premises: A lot, plot or parcel of land including the buildings or structures thereon.

SECTION 3. Nuisances Unlawful

Any nuisance condition as defined by this Ordinance is unlawful. The City shall have the authority to abate any nuisances on private or public property within the City in conjunction with the procedures set forth in this Ordinance.

SECTION 4. Procedure for Abatement

A. **Notice of Violation.** In the event that any person permits any nuisance condition to exist on real property or premises they own, claim, occupy or supervise or maintain control of, the City may notify such person of their failure to comply with this Ordinance. The City shall direct any such person to correct, remedy, or remove such nuisance condition(s) within seven calendar days after such notice is received. Notice shall be sent to the owner by hand delivery or to the owner's address as recorded in the Hill County Appraisal District records. If personal service cannot be obtained, notice may be given by publication at least once in a newspaper of general circulation within the City, by posting the notice on or near the front door of each building on the property to which the violation relates, or by posting notice on a placard attached to a stake driven into the ground to which the violation relates, if the property contains no buildings. Notice can

also be given by certified mail through the United States Postal Service, and if 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.

- B. **Abatement by City Personnel.** Any person notified of a violation of this Ordinance must comply with the requirements of the City as specified in such notice within seven calendar days after notification in accordance with this Ordinance. At the end of those seven days, the City may enter upon the property and perform such work or make such improvements as are necessary to abate the nuisance, or cause the same to be done. The City may charge all expenses incurred in abating the nuisance to the owner of the property.
- C. **Collection of Abatement Expenses.** The City Secretary, or designee, shall file a statement of expenses incurred under this Ordinance in the Official Records for Hill County, Texas, giving the amount of such expenses, and the date on which said work was done or improvements made. This statement of expenses shall establish a privileged lien for the City on such lots or real estate upon which said work was done or improvements made to secure the expenditures so made, which lien shall be second only to tax liens and liens for street improvements; and the amount shall bear ten percent (10%) interest from the date the statement is filed until the lien is released by the City for payment in full. The City may institute suit to recover and foreclose on such lien. The statement of expenses as filed, or a certified copy thereof, shall be prima facie proof of the amount expended by the City for such work or improvements.

SECTION 5. Junked Motor Vehicles

- A. **Junked Motor Vehicles Declared a Nuisance.** A junked motor vehicle, as defined by this Ordinance, including a part of a junked motor vehicle, that is located on or is visible from a public place or public right-of-way, is detrimental to the safety and welfare of the public, invites vandalism, creates a fire hazard, is an attractive nuisance creating a hazard to the health and safety of minors, and produces urban blight adverse to the maintenance and development of the City. Any junked motor vehicle located on or visible from a public place or public right-of-way is a public nuisance and is unlawful.
- B. **Notification.** Whenever a junked motor vehicle is located on or visible from a public place or public right-of-way, the City shall follow the following procedure:
- (1) The City shall provide not less than ten calendar days' notice of the nature of the nuisance to:
 - (a) the last known registered owner of the junked motor vehicle(s);
 - (b) each lienholder of record of the junked motor vehicles(s);
 - (c) the owner or occupant of the property on which the nuisance is located, or if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

Such notice shall be sent by certified mail with a five-day return requested.

- (2) The notice must state that:
 - (a) the nuisance must be abated and removed not later than the tenth calendar day after the date on which the notice was mailed; and
 - (b) any request for a hearing must be made before that ten-day period expires.
- (3) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.
- (4) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh calendar day after the date of the return.

C. Hearing on Junked Motor Vehicle Nuisances.

- (1) If a hearing is requested by a person for whom notice is required under this Ordinance, a hearing before the Penelope City Council shall be held not earlier than the eleventh calendar day after the date of the service of the notice.
- (2) At the hearing, the junked motor vehicle is presumed to be inoperable, unless demonstrated otherwise by the owner.
- (3) If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:
 - (a) description;
 - (b) vehicle identification number (VIN); and
 - (c) license plate number.
- (4) Upon finding that a person is in violation of this Ordinance, the person shall be deemed guilty of a misdemeanor punishable by a fine not to exceed \$200.00. The City Council shall further order the person to abate and remove the nuisance within ten days.

D. Abatement of Junked Motor Vehicles. Following conviction at a hearing as described by this Ordinance, or if no hearing is requested within the ten-day time period, a junked motor vehicle, including a part of a junked motor vehicle, may be removed by the City to a scrapyard, a motor vehicle demolisher, or a suitable site operated by a municipality or county.

E. Collection of Abatement Expenses. The City Secretary, or their designee, shall file a statement of expenses incurred under this Ordinance in the Official Records for Hill County, Texas, giving the amount of such expenses, and the date giving the amount of

such expenses, and the date on which said work was done or improvements made. This statement of expenses shall establish a privileged lien for the City on such lots or real estate upon which said work was done or improvements made to secure the expenditures so made, which lien shall be second only to tax liens and liens for street improvements; and the amount shall bear ten (10%) percent interest from the date the statement is filed until the lien is released by the City for payment in full. It is further provided that for any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the City. The statement of expenses as filed, or a certificated copy thereof, shall be prima facie proof of the amount expended by the City for such work or improvements.

SECTION 6. Severability

If any section or part of any section or paragraph of this Ordinance is declared invalid or unconstitutional for any reason, it shall not be held to invalidate or impair the validity, force, or effect of any other section or sections or part of a section or paragraph of the Ordinance.

SECTION 7. Effective Date

This Ordinance shall be effective immediately upon its passage, approval and publication.

READ, CONSIDERED, PASSED AND APPROVED BY THE CITY COUNCIL OF PENELOPE, TEXAS AT A REGULAR MEETING ON THE 19th DAY OF May, 2010 AT WHICH A QUORUM WAS PRESENT, AND FOR WHICH DUE NOTICE WAS GIVEN.

Approved this the 19th day of May, 2010.

Bun Neal
Mayor

ATTEST:

Sharon Howard
City Secretary