

**ORDINANCE NO. 2021-07-01**

**AN ORDINANCE OF THE CITY OF GORMAN, TEXAS REPEALING AND REPLACING ORDINANCE # 302, ORDINANCE 294, AND ORDINANCE 2010-06; ESTABLISHING UPDATED REGULATIONS GOVERNING THE CONDITION OF REAL PROPERTY WITHIN THE CITY; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Gorman (the “City”) is a home-rule municipality created pursuant to Article XI Section 5 of the Texas Constitution with powers of local self-government, including the power to adopt and enforce ordinances necessary to preserve good government, order, and security to the City and its inhabitants;

**WHEREAS**, Chapter 683, Subchapter E of the Texas Transportation Code provides procedures whereby cities may prohibit and abate junked vehicles;

**WHEREAS**, Chapter 342, Subchapter A of the Texas Health and Safety Code allows for cities to regulate and prohibit stagnant water, filth, weeds, accumulation of refuse, storage of rubbish, and unsanitary conditions which attract or harbor pests;

**WHEREAS**, the City Commission of the City of Gorman (the “City Commission”) has adopted various ordinances regulating the condition of real property within the City, including provisions related to junked vehicles, weeds, and accumulation of rubbish, but has determined that updates are needed to comply with state law and to strengthen the City’s enforcement efforts; and

**WHEREAS**, the City Commission finds that the regulations contained herein are necessary to ensure the health and safety of, and are in the best interest of, the citizens of Gorman, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GORMAN, TEXAS:**

**Section 1. Repeal.** The following ordinances are hereby repealed:  
Ordinance #302, adopted on July 21, 1988 and amended in 1999.  
Ordinance 2010-06, adopted on October 21, 2010.  
Ordinance 294, adopted on December 7, 2012.

Any other prior ordinance or prior ordinance provision is hereby repealed to the extent that such ordinance or provision of an ordinance conflicts or contradicts this Ordinance.

**Section 2. Junked Vehicles.** The following provisions are hereby adopted to govern junked vehicles within the City of Gorman.

**2.1. Definitions.**

*Enforcement Official* shall mean any regular full-time employee of the City designated by the City Commission to enforce violations of this Ordinance. [Note – this is required by State law].

*Junked Vehicle* shall mean a vehicle that:

- (1) is self-propelled; and
- (2) displays an expired license plate or does not display a license plate; and
- (3) is inoperable and has remained inoperable for more than 72 consecutive hours (if the vehicle is on public property) or 30 consecutive days (if the vehicle is on private property).

## **2.2 Junked Vehicles Declared to be Public Nuisances; Abatement.**

(a) A junked vehicle, including a part of a junked vehicle, that is visible from a public place or public right-of-way:

- (1) is detrimental to the safety and welfare of the public;
- (2) tends to reduce the value of private property;
- (3) invites vandalism;
- (4) creates a fire hazard;
- (5) is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) produces urban blight adverse to the maintenance and continuing development of the City; and
- (7) is a public nuisance.

(b) The City shall abate and remove a junked vehicle or parts of a junked vehicle as a public nuisance from private property or a public right-of-way in accordance with the definitions, provisions, and procedures contained in this Section 2.

## **2.3 Offense.**

(a) A person commits an offense if the person maintains a public nuisance described by Section 2.2, above.

(b) An offense under this Section 2.3 is a misdemeanor punishable by a fine not to exceed \$200.00, pursuant to Texas Transportation Code Sec. 683.073(b).

(c) The Gorman Municipal Court shall order abatement and removal of the nuisance after conviction under this Section 2.

## **2.4 Authority; Procedures.**

(a) The Enforcement Official is hereby authorized to enforce the provisions of, and to administer the procedures established in, this Ordinance. Enforcement officials are hereby authorized to enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

(b) The Gorman Municipal Court may issue necessary orders to enforce these procedures.

## **2.4 Notice.**

(a) Upon determining that a junked vehicle or part of a junked vehicle exists on private property or a public right-of-way in violation of this Section 2, the Enforcement Official shall send a notice to abate by certified mail, return receipt requested, to:

- (1) the last known registered owner of the nuisance;

- (2) each lienholder of record of the nuisance; and
  - (3) 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 owner or occupant of the property adjacent to the right-of-way.
- (b) The notice must state that:
- (1) the nuisance must be abated and removed by the person receiving the notice not later than the 10<sup>th</sup> day after the date on which the notice was mailed;
  - (2) Any request for a hearing must be made before the 10-day period expires; and
  - (3) If the vehicle or vehicle part is not removed within that 10-day period and a hearing is not requested, the City will proceed in removing the vehicle or vehicle part.
- (c) 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.
- (d) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11<sup>th</sup> day after the date of the return.

## **2.5 Hearing.**

- (a) The Gorman Municipal Court is hereby designated as the official to conduct hearings according to the procedures adopted in this Ordinance.
- (b) If a hearing is requested by a person to whom notice is required to be sent under Section 2.4, the hearing shall be held not earlier than the 11<sup>th</sup> day after the date of the service of the notice.
- (c) At the hearing, the vehicle in question is presumed, unless demonstrated otherwise by the owner, to be a junked vehicle.
- (d) At the hearing, the Court may determine that the vehicle or vehicle part at issue is a junked vehicle and order the vehicle to be removed, or the Court may determine that the vehicle or vehicle part is not a junked vehicle and dismiss the proceeding. The person requesting the hearing shall be notified in writing of the determination within five (5) business days after the hearing. If the Court orders the person to remove the vehicle, the person shall have ten (10) days to comply.
- (e) If the information is available at the location of the vehicle, an order requiring removal of the vehicle must include the vehicle's description, vehicle identification number, and license plate number.

**2.6 Abatement by City.** If the person to whom notice was served under Section 2.4 does not remove the nuisance or request a hearing within ten (10) days after the notice was mailed, or if the person does not remove the nuisance within ten (10) days after a ruling from the Gorman Municipal Court pursuant to Section 2.5, the City may take action to abate and remove the nuisance.

## **2.7 Junked vehicle disposal.**

- (a) A junked vehicle, including a part of a junked vehicle, may be removed to a scrap yard, a motor vehicle demolisher, or a suitable site operated by the City.

(b) The City may operate a disposal site if the City Commission determines that commercial disposition of junked vehicles is not available or is inadequate. The City may finally dispose of a junked vehicle or vehicle part, or transfer it to another disposal site if the disposal is scrap or salvage only.

**2.8 Relocation or reconstruction of vehicle.**

(a) Relocation of a junked vehicle or vehicle part to another location in the City by the owner or another person after a notice under Section 2.4 has been sent does not stop or delay enforcement of this Section 2 if the junked vehicle or vehicle part constitutes a nuisance at the new location.

(b) After a vehicle has been removed by the owner or another person subject to an order to abate issued under this Section 2, the owner or other person shall not reconstruct the vehicle or make it operable.

**2.9 Notice to Department of Transportation.** The Enforcement Official shall give notice of the removal of the vehicle or vehicle part to the Texas Department of Transportation identifying the vehicle or vehicle part within five (5) days after the date of removal.

**2.10 Inapplicability.** This Section 2 does 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 license 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:

- (1) Maintained in an orderly manner;
- (2) Not a health hazard; and
- (3) Screened from ordinary public view by appropriate means, including a fence or rapidly growing trees or shrubbery.

(c) In this Section 2.10, the following terms have the following meanings:

*Antique Vehicle* shall mean a passenger car or truck that is at least 25 years old.

*Motor Vehicle Collector* shall mean a person who:

- (1) owns one or more antique or special interest vehicles; and
- (2) acquires, collects, or disposes of an antique or special interest vehicle, or part of such vehicle, for personal use to restore and preserve an antique or special interest vehicle for historical interest.

*Special Interest Vehicle* shall mean a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historical interest, is being preserved by a hobbyist.

**Section 3. Conditions on Real Property.** The following provisions are hereby adopted to govern conditions on real property within the City of Gorman.

**3.1 Definitions.**

*Code Official* shall mean any person designated by the City Commission to enforce violations of this Section 3.

*Prohibited Condition* shall mean a condition of real property described by Section 3.2.

**3.2 Prohibited Conditions.** It shall be unlawful for an owner or occupant of any land, tract, or lot, or portion thereof to allow any of the following conditions to occur on said property:

- (a) Stagnant water;
- (b) Weeds, grass, and undergrowth over ten (10) inches tall;
- (c) The storing or accumulation of household trash and garbage unless the refuse is entirely contained in a closed receptacle;
- (d) The storing or accumulation of rubbish, including newspapers, refrigerators, stoves, furniture, tires, cans, used building materials and supplies, or discarded household fixtures or appliances unless completely enclosed in a building or is not visible from a public street; or
- (e) Maintaining the property in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests.

**3.3 Notice.**

(a) Should any owner of property violate Section 3.2, the Code Official may provide the owner with notice that the property contains a Prohibited Condition.

(b) The notice shall inform the owner of the nature of the Prohibited Condition and give the owner seven (7) days from the date the notice is mailed to correct the violation. The notice shall also contain the statement, described in Section 3.5(a), warning of additional violations within one (1) year of the notice.

- (c) The notice shall be given:
- (1) personally to the owner in writing;
  - (2) by letter addressed to the owner at the owner's address as recorded in the Eastland County Appraisal District; or
  - (3) if personal service cannot be obtained:
    - (A) by publication at least once;
    - (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.

(d) If a notice mailed under this Section 3.3 is returned by the United States Postal Service as “refused” or “unclaimed”, the validity of the notice is not affected, and the notice is considered as delivered.

**3.4 Abatement by City.** If the City sent a notice under Section 3.3 and the owner does not correct the Prohibited Condition(s) within the time period stated in the notice, the City may do the work or make the improvements required and pay for the work done or improvements made and charge the expenses to the owner.

**3.5 Additional Violations in One Year.**

(a) The notice sent under Section 3.3 shall also inform the owner that if the owner allows a Prohibited Condition of the same kind or nature to occur on the property on or before the first anniversary of the date of the notice, the City without further notice may correct the new Prohibited Condition at the owner’s expense and assess the expense as a lien against the property.

(b) If the City provided notice under Section 3.5(a) and another similar Prohibited Condition occurs on the property, then the City may abate the Prohibited Condition(s) pursuant to Section 3.4 and charge the costs to the owner pursuant to Section 3.7.

**3.6 Limited Authority to Abate without Prior Notice.**

(a) The City may abate, without notice, weeds that have grown higher than 48 inches and that are an immediate danger to the health, life, or safety of any person.

(b) Not later than the 10<sup>th</sup> day after the date the City abates weeds under Section 3.6(a), the City shall provide notice to the property owner in the manner required by Section 3.3(c). The notice shall contain:

- (1) an identification, which is not required to be a legal description, of the property;
- (2) a description of the dangerous situation that existed on the property;
- (3) a statement that the City abated the weeds; and
- (4) an explanation that the owner may request an administrative hearing about the City’s abatement of the weeds, if the owner files a written request for a hearing within 30 days of the City’s abatement of the weeds.

(c) If the owner requests a hearing, the City Commission shall conduct the hearing not later than the 20<sup>th</sup> day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City’s abatement of the weeds. The City Commission shall decide whether or not to require the owner to pay the City for the abatement.

**3.7 Assessment of Expenses; Lien.**

(a) If the City abates a condition on property pursuant to Section 3.4, Section 3.5(b), or Section 3.6, it shall send to the owner a statement of expenses. If the owner does not pay the City for the total amount due on the statement of expenses within ten (10) days, the City shall file a lien against the property.

(b) To perfect its lien, the Mayor shall file a statement of expenses with the Eastland County Clerk. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the Eastland County Clerk.

(c) The lien is security for expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the City.

(d) The lien is inferior only to tax liens and liens for street improvements. The City Commission may foreclose the lien in a proceeding relating to the property brought under Subchapter E, Chapter 33, Texas Tax Code.

### **3.8 Penalty.**

(a) It is a criminal offense for any person, corporation, partnership, company, or other entity to violate the provisions of this Section 3 by permitting or maintaining a prohibited condition on any property within the City of Gorman. Upon conviction, such violation shall be punished by a fine of up to \$2,000.00. Each day the violation continues shall constitute a separate offense.

(b) Criminal prosecution under this Section 3.8 may be brought against the owner and/or occupant of property with the prohibited condition(s) and may be brought in addition to, or in lieu of, abatement proceedings.

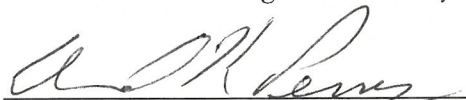
(c) The notice described by Section 3.3 is not required to be given to an owner or occupant before criminal charges are filed.

**Section 4. Severability.** Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, or ineffectiveness or such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

**Section 5. Effective Date.** This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication of the Ordinance for at least ten (10) days in a daily newspaper or two (2) issues of a weekly paper published within the City.

**PASSED** upon first reading this the 17<sup>th</sup> day of June 2021.

**PASSED, APPROVED, AND ADOPTED** upon second and final reading this the 1<sup>st</sup> day of July 2021.

  
David K. Perry, Mayor

ATTEST:

  
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Tacy Warren, City Secretary

