

ORDINANCE NO. 199

AN ORDINANCE REPEALING ORDINANCE NO. 77 OF THE CODE OF ORDINANCES OF THE CITY OF BEVIL OAKS; REGULATING JUNKED MOTOR VEHICLES AT LOCATIONS OTHER THAN AUTOMOTIVE WRECKING AND SALVAGE YARDS; DECLARING A PUBLIC NUISANCE; PROVIDING FOR NOTICE TO THE OWNER OR OCCUPANT; PROVIDING FOR A TRIAL IN THE JUSTICE COURT AND PROVIDING A PENALTY AND SEVERABILITY CLAUSE.

WHEREAS, the City Council of the City of Bevil Oaks finds that the visibility and accessibility of junked motor vehicles in the City of Bevil Oaks is a hazard to the safety of children who are naturally attracted by such conditions; and,

WHEREAS, the City Council of the City of Bevil Oaks further finds that the open and obvious use of land in the City of Bevil Oaks for the storage and display of junked motor vehicles has caused a relative decline in the market value of property, in the use and enjoyment of property, the enjoyment of life, and the general welfare of those inhabitants of the City of Bevil Oaks who live near locations where junked motor vehicles exist; therefore

**BE IT ORDAINED BY THE CITY COUNCIL
OF THE CITY OF BEVIL OAKS:**

Section 1. Ordinance NO. 77 of the Code of Ordinances of the City of Bevil Oaks is hereby repealed.

Section 2. **DEFINITIONS:** When not inconsistent with the context, words used in the present tense shall include the future; words used in the plural number include the singular number; and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. "Junked motor vehicle" means any motor vehicle, as defined in the Transportation Code Sub-chapter E, §683.071 et. seq. which does not have lawfully affixed thereto both an un-expired license plate or plates and a valid motor vehicle safety inspection certificate, in addition to but not limited to junked trailers, junked boats, junked tractors and containers, and the condition of which is one or more of the following:

- (1) Wrecked
- (2) Dismantled
- (3) Partially dismantled
- (4) inoperative
- (5) discarded

Section 3. **DECLARED A PUBLIC NUISANCE.** The presence of any junked motor vehicle on any private lot, tract or parcel of land, or portion thereof, occupied or unoccupied, improved or

unimproved, within the City, shall be deemed a public nuisance; and it shall be unlawful for any person to cause or maintain such a 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 any junked motor vehicle, to be parked, left or maintained on his own real property, provided that this section shall not apply with regard to:

- (1) Any junked motor vehicle in an enclosed building;
- (2) Any junked motor vehicle on the premises of a business enterprise operated in a lawful manner, when necessary to the operation of such business enterprise; or
- (3) Any junked motor vehicle in an appropriate storage place or depository maintained at a location officially designated and in a manner approved by the City.

Section 4. NOTICE TO OWNER OR OCCUPANT ON OCCUPIED PREMISES.

Whenever any such public nuisance exists on occupied premises within the City in violation of Section 3 hereof the Marshal or his duly authorized agent may order the owner of the premises, if in possession thereof, or the occupant of the premises whereon such public nuisance exists, to abate or remove the same. Such order shall:

- (1) Be in writing;
- (2) Specify the public nuisance, its location and contain a description of the vehicle, and the correct identification number and license number of the vehicle, if available at the site;
- (3) Specify the corrective measures required;
- (4) Provide for compliance within ten (10) days of receipt of the order; and
- (5) Provide that a request for a hearing must be made before expiration of said ten (10) day period.

Such order may be mailed, by certified or registered mail with a five (5) day return request, to the owner or the occupant of the premises whereupon such public nuisance exists. If the notice is returned undelivered by the United States Post Office, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return. If the owner or occupant of the premises fails or refuses to comply with the order of the Marshal or duly authorized agent within the ten (10) day period after service thereof, as provided herein, the Marshal or his duly authorized agent may take possession of said junked motor vehicle and remove it from the premises. The Marshal or his duly authorized agent may thereafter dispose of said junked motor vehicle in such manner as the City Council may provide. However, if the owner or occupant of said premises so desires, he may, within said ten (10) days period after service of notice to abate the nuisance, request the Clerk of the Justice Court, either in person or in writing, and without requirement of bond, that a date and a time be set when he may appear before the Municipal Court or Justice of the Peace for a trial to determine whether or not he is in violation of this section; and said trial shall be set as provided in subsection (A) hereof.

(A) **PRELIMINARIES TO TRIAL.** Upon receiving a request for trial, made pursuant to Section 3 or 4 hereof, the Clerk of the Municipal or Justice Court shall set a date and a time for such trial on the court docket. The Clerk of the Municipal or Justice Court shall notify the City Attorney of the date and time of such hearing. The City Attorney shall cause to be prepared, filed and served on the Defendant, a written complaint charging that the owner or occupant of the premises, as the case may be, has violated this Section. After service, such complaint shall be on file with the Clerk of the Municipal or Justice Court not less than ten (10) days prior to the date of the trial.

(B) **TRIAL IN THE MUNICIPAL OR JUSTICE COURT.** The Municipal Court Judge or the Justice of the Peace shall hear any case brought before the said court, as set out herein, and shall determine whether or not the Defendant is, in fact, in violation of this Ordinance. Upon a finding that said Defendant is in violation of this Ordinance, said Defendant shall be deemed guilty of a misdemeanor and subject to a fine in accordance with the penalty provision hereinafter set forth. The Municipal Court Judge or the Justice of the Peace shall further order such Defendant to remove and abate said nuisance within ten (10) days, the same being a reasonable time. If the Defendant shall fail and refuse, within said ten (10) days, to abate or remove the nuisance, the Municipal Court Judge or the Justice of the Peace may issue an order directing the Marshal or his duly authorized agent to have the same removed, and the Marshal or his duly authorized agent may take possession of said junked motor vehicle and remove it from the premises. The Marshal or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

Section 5. **REMOVAL WITH PERMISSION.** If, within ten (10) days after receipt of notice from the Marshal, or his duly authorized agent, to abate the nuisance, as herein provided, the owner or occupant of the premises may give is written permission to the Marshal or his duly authorized agent for removal of the junked motor vehicle from the premises and shall pay for said removal, the giving of such permission and payment for said removal shall be considered compliance with the provision of this section.

Section 6. **REMOVAL BY ORDER OF THE MUNICIPAL COURT JUDGE OR JUSTICE OF THE PEACE.** If there is a junked motor vehicle, as herein defined, on premises that are unoccupied, and neither the owner of the premises nor the owner of said vehicle can be found and notified to remove the same, the, upon a showing of such facts to the Municipal Court Judge or Justice of the Peace, the court may issue an order directing the Marshal to have the same removed, and the Marshal or his duly authorized agent may take possession of said junked motor vehicle and remove it from the premises. The Marshal or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

Section 7. NOTICE TO TEXAS HIGHWAY DEPARTMENT. Within five (5) days after the date of removal of any vehicle under this Ordinance, notice shall be given to the Texas Highway Department. Said notice must identify the vehicle or part thereof removed.

Section 8. NO RECONSTRUCTION AFTER REMOVAL. After a vehicle has been removed, it shall not be reconstructed or made operable.

Section 9. PENALTY. Any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding Two Hundred Dollars (\$200.00), and each offense and each day such violation continues shall constitute a separate offense.

Section 10. SEVERABILITY OF PARTS OF ORDINANCE. If any section, subsection, sentence, clause or phrase of this Ordinance, or the application of the same to a particular set of persons or circumstances, should for any reason be held to be invalid, such invalidity shall in no way affect the remaining portion of this Ordinance and to such end the various portions and provisions of this Ordinance are declared to be severable.

PASSED AND APPROVED this 19th day of September, 2006

Rebecca M. Ford

REBECCA M. FORD, MAYOR

CITY OF BEVIL OAKS, TEXAS

ATTEST:

Michelle M. Nelson

MICHELLE NELSON, CITY SECRETARY

CITY OF BEVIL OAKS, TEXAS