

## CHAPTER 8

# OFFENSES AND NUISANCES

### ARTICLE 8.100 SCAVENGING OF WASTE IN SANITARY LANDFILL

#### Sec. 8.101 Definitions

The following definitions shall apply in the interpretation and enforcement of this article:

Solid Waste. All putrescible and nonputrescible discarded or unwanted solid materials, including municipal solid waste and industrial solid waste; as used in these regulations, the term "solid waste" does not include and these regulations do not apply to:

- (1) Soil, dirt, rock, sand and other natural and man made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or
- (2) Waste materials which result from activities associated with the exploration, development or production of oil or gas and are subject to control by the Texas Railroad Commission.

Municipal Solid Waste. Solid waste resulting from or incidental to municipal, community, trade, business and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles and all other solid waste other than industrial solid waste.

Site. A plot of ground suitable or set apart for the processing or disposal of municipal solid waste.

Garbage. Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking and consumption of food, including waste materials from markets, storage facilities, handling and sale of produce and other food products.

Rubbish. Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture and

like materials which will not burn at ordinary incinerator temperatures.

Person. Individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(1965 Code of Ordinances, Chapter 8, Article II, Section 8-31)

**Sec. 8.102 Prohibition Against Interference With Landfill System Operation**

It shall hereafter be unlawful for any person (as herein defined) to in any manner interfere with, deter or prohibit, stop or impede any operation necessary for the operation of the sanitary landfill system of the city. (1965 Code of Ordinances, Chapter 8, Article II, Section 8-32)

**Sec. 8.103 Unlawful to Scavenge in Sanitary Landfill System**

It shall hereafter be unlawful for any person to scavenge or salvage, collect or remove any metal or any other solid waste from the sanitary landfill site operated by the city. (1965 Code of Ordinances, Chapter 8, Article II, Section 8-33)

**Sec. 8.104 Unlawful to Dispose in Landfill Without Permit**

It shall be unlawful for any person to dispose of or deposit any item of garbage, refuse, trash or any other item described in Chapter 6, Article 6.300, Section 6.301 or Section 8.101 in the sanitary landfill site without a permit as defined and issued in a form specified by the city manager. (1965 Code of Ordinances, Chapter 8, Article II, Section 8-33.1)

**Sec. 8.105 Penalty**

Whenever in this article an act is prohibited or declared to be unlawful or an offense, or whenever in this article the doing of any act is required, or the failure to do any act is declared to be unlawful, the penalty for the violation of the provisions of this article shall be punished in accordance with the general penalty provision set forth in Section 1.109 of this code; provided, however, that no penalty shall be greater or less than penalty provided for the same or a similar offense under the laws of the State of Texas. Each day any violation of this article shall continue shall constitute a separate offense. Each violation is designated as a separate offense, whether it shall occur on one day or in successive days. Any violation in the provisions of this article may be summarily abated by the police department of the city. (1965 Code of Ordinances, Chapter 8, Article II, Section 8-34)

**ARTICLE 8.200 JUNKED VEHICLES<sup>\*(1)</sup>**

**Sec. 8.201 Short Title**

This article may be cited as the "Junked Vehicle Ordinance." (1965 Code of Ordinances, Chapter 8, Article III, Section 8-41)

**Sec. 8.202 Definitions**

The following definitions shall apply to this article:

Abandoned Motor Vehicle. A motor vehicle that is inoperable and more than five (5) years old and left unattended on public property for more than forty-eight (48) hours, or a motor vehicle that has remained illegally on public property for a period of more than forty-eight (48) hours, or a motor vehicle that 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 a motor vehicle left unattended on the right-of-way of a designated county, state, or federal highway within this state for more than forty-eight (48) hours.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-42)

Antique Auto. Repealed. (see Section 8.220) (Ordinance 1878 adopted 11/7/02)

City. The City of Brownfield, Texas.

Collector. 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.

Demolisher. A person whose business is to convert a motor vehicle into processed scrap or scrap metal or to otherwise wreck or dismantle a motor vehicle.

Garagekeeper. An owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair or maintenance of a motor vehicle.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-42)

Junked Vehicle. Means any vehicle that is self-propelled and:

- (1) does not have lawfully attached to it:

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- (A) an unexpired license plate; or
  - (B) a valid motor vehicle inspection certificate; and
- (2) is:
- (A) wrecked, dismantled or partially dismantled or discarded; or
  - (B) inoperable and has remained inoperable for more than:
    - (i) 72 consecutive hours, if the vehicle is on public property; or
    - (ii) 30 consecutive days, if the vehicle is on private property.

(Ordinance 1878 adopted 11/7/02)

*Motor Vehicle.* A motor vehicle subject to registration under the Certificate of Title Act (Article 6687-I, Vernon's Texas Civil Statutes), except that for purposes of Section 5.02, 5.03, and 5.04 of this Act. "Motor vehicle" includes a motorboat, outboard motor, or vessel subject to registration under Chapter 31, Texas Parks and Wildlife Code.

*Police Department.* The department of public safety or the police department of the City of Brownfield acting under the general police power authority as vested in such department by its respective governing body.

*Special Interest Vehicle.* A motor vehicle of any age that has not been altered or modified from original manufacturers' specifications and, because of its historic interest, is being preserved by hobbyists.

*Storage Facility.* A garage, parking lot or any type of facility or establishment for the servicing, repairing, storing or parking of motor vehicles.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-42)

**Sec. 8.203 Authority to Take Possession of Abandoned Motor Vehicles**

- (a) The police department may take into custody an abandoned motor vehicle found on public or private property.
- (b) The police department may employ its own personnel, equipment and facilities or hire persons, equipment, and facilities to remove, preserve and store an abandoned motor vehicle it

takes into custody.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-43)

**Sec. 8.204 Notification of Owner and Lien Holders**

(a) The police department that takes into custody an abandoned motor vehicle shall notify, not later than the tenth day after taking the motor vehicle into custody, by certified mail, the last known registered owner of the motor vehicle and all lien holders of record pursuant to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), or Chapter 81, Parks and Wildlife Code, that the vehicle has been taken into custody. The notice shall describe the year, make, model and vehicle identification number of the abandoned motor vehicle, set forth the location of the facility where the motor vehicle is being held, inform the owner and any lien holders of their right to reclaim the motor vehicle not later than the twentieth day after the date of the notice, on payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, or garagekeepers' charges if notice is under Section 8.207 of this article. The notice shall also state that the failure of the owner or lien holders to exercise their right to reclaim the vehicle within the time provided constitutes a waiver by the owner and lien holders of all right, title and interest in the vehicle and their consent to the sale of the abandoned motor vehicle at a public auction.

(b) If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner or if it is impossible to determine with reasonable certainty the identity and addresses of all lien holders, notice by one publication in one newspaper of general circulation in the area where the motor vehicle was abandoned is sufficient notice under this article. The notice by publication may contain multiple listings of abandoned vehicles, shall be published within the time requirements prescribed for notice by certified mail and shall have the same contents required for a notice by certified mail.

(c) The consequences and effect of failure to reclaim an abandoned motor vehicle are as set forth in a valid notice given under this section.

(d) The police department or an agent of the police department that takes custody of an abandoned motor vehicle is entitled to reasonable storage fees for:

- (1) A period of not more than ten (10) days beginning on the day the department takes custody and continuing through the day the department mails notice as provided by this section; and
- (2) A period beginning on the day after the day the department mails notice and continuing through the day any accrued charges are paid and the vehicle is removed.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-44)

**Sec. 8.205 Police Department Use of Certain Abandoned Motor Vehicles**

(a) If an abandoned motor vehicle has not been reclaimed as provided by Section 8.204 of this article, the police department that originally took custody of the abandoned motor vehicle may use that vehicle for police department purposes as provided by this section.

(b) The police department may use the abandoned motor vehicle for police department purposes as long as the department considers it cost-effective. If the police department discontinues use of the abandoned motor vehicle, the department shall auction the vehicle as provided by Section 8.206 of this article.

(c) This section does not apply to an abandoned motor vehicle with a garagekeeper's lien.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-45)

**Sec. 8.206 Auction of Abandoned Motor Vehicles**

If an abandoned motor vehicle has not been reclaimed as provided by Section 8.204 of this article, the police department may use the abandoned motor vehicle for police department purposes as provided by Section 8.205 of this article or sell the vehicle at a public auction. Proper notice of the public auction shall be given and in the case of a garagekeeper's lien, the garagekeeper shall be notified of the time and place of the auction. The purchaser of the motor vehicle takes title to the motor vehicle free and clear of all liens and claims of ownership, shall receive a sales receipt from the police department and is entitled to register the purchased vehicle and receive a certificate of title. From the proceeds of the sale of an abandoned motor vehicle the police department shall reimburse itself for the expenses of the auction, the costs of towing, preserving, and storing the vehicle that resulted from placing the abandoned motor vehicle in custody and all notice and publication costs incurred under Section 8.204 of this article. Any remainder from the proceeds of a sale shall be held for the owner of the vehicle or entitled lien holder for ninety (90) days and then shall be deposited in a special fund that shall remain available for the payment of auction, towing, preserving, storage, and all notice and publication costs that result from placing another abandoned vehicle in custody if the proceeds from a sale of another abandoned motor vehicle are insufficient to meet these expenses and costs. The City of Brownfield may transfer the amount in the special fund that exceeds one thousand dollars (\$1,000.00) from the special fund to the city's general revenue account to be used by the police department. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-46)

**Sec. 8.207 Garagekeepers and Abandoned Motor Vehicles**

(a) A motor vehicle left for more than ten (10) days in a storage facility operated for commercial purposes after notice is given by registered or certified mail, return receipt requested, to the owner and to any lien holder of record under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) to pick up the vehicle, or for more than ten (10) days after a period when under a contract the vehicle was to remain on the premises of the storage facility, or a motor vehicle left for more than ten (10) days in a storage facility by someone other than the registered owner or by a person authorized to have possession of the motor vehicle under a contract of use, service, storage, or repair is considered an abandoned vehicle and shall be reported by the garagekeeper to the police department. If the notice to the owner or a lien holder is returned by the post office unclaimed, notice by one publication in one newspaper of general circulation in the area in which the vehicle was left in storage is sufficient notice.

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees in addition to storage fees earned pursuant to contract, for a maximum of five (5) days only until notification is mailed to the last known registered owner and all lien holders of record as provided by subsection (a) above. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within forty-eight (48) hours after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

(c) The police department, upon receipt of a report from a garagekeeper of the possession of a vehicle considered abandoned under the provisions of this section, shall follow the notification procedures provided by Section 8.203 of this article, except that custody of the vehicle shall remain with the garagekeeper until after compliance with the notification requirements. A fee as set forth in the fee schedule in the appendix of this code shall accompany the report of the garagekeeper to the police department. The fee shall be retained by the police department receiving the report and used to defray the cost of notification or other cost incurred in the disposition of an abandoned motor vehicle.

(d) An abandoned vehicle left in a storage facility and not reclaimed after notice is sent in the manner provided by Section 8.204 of this article shall be taken into custody by the police department and used for police department purposes as provided by Section 8.205 of this article or sold in the manner provided by Section 8.206 of this article. The proceeds of a sale under this section shall first be applied to the garagekeeper's charges for servicing, storage, and repair, but as compensation for the expense incurred by the police department in placing the vehicle in custody and the expense of auction, the police department shall retain two (2) percent of the gross proceeds of the sale of each vehicle auctioned, unless the gross proceeds are less than ten dollars (\$10.00). If the gross proceeds are less than ten dollars (\$10.00), the department shall

retain the ten dollars (\$10.00) to defray expenses of custody and auction. Surplus proceeds remaining from an auction shall be distributed in accordance with Section 8.206 of this article.

(e) Except for the termination or limitation of claim for storage for failure to report an abandoned motor vehicle, nothing in this section may be construed to impair any lien of a garagekeeper under the laws of this state.

(f) A person charging fees under subsection (b) above commits an offense if the person charges a storage fee for a period of time not authorized by that subsection. An offense under this section shall be punished in accordance with the general penalty provision found in Section 1.109 of this code and each and every day this article is violated shall constitute a separate offense.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-47)

### **Sec. 8.208 Disposal to Demolishers**

(a) A person, firm, corporation or unit of government on whose property or in whose possession is found any abandoned motor vehicle and a person who is the owner of a motor vehicle whose title certificate is faulty, lost or destroyed may apply to the Texas Department of Transportation for authority to sell, give away or dispose of the vehicle to a demolisher. Nothing in this section may be construed as being in conflict with the provisions of Section 8.211 and Section 8.214 of this article. The application, except one submitted by a unit of government, shall be accompanied by a fee as set by the Texas Department of Transportation.

(b) The application must set out the name and address of the applicant, the year, make, model and vehicle identification number of the motor vehicle, if ascertainable, together with any other identifying features, and must contain a concise statement of the facts surrounding the abandonment, a statement that the title of the motor vehicle is lost or destroyed, or a statement of the reasons for the defect of title in the owner. The applicant shall execute an affidavit stating that the facts alleged in the application are true and that no material fact has been withheld.

(c) If the Texas Department of Transportation finds that the application is executed in proper form and shows that the motor vehicle has been abandoned on the property of the applicant or that the motor vehicle is not abandoned but that the applicant appears to be the rightful owner, the department shall follow the notification procedures as provided in the statutes of the State of Texas.

(d) If an abandoned motor vehicle is not reclaimed in accordance with the statutes of the State of Texas, the Texas Department of Transportation, on notification of that fact by the applicant, shall issue the applicant a certificate of authority to sell the motor vehicle to a demolisher for



demolition, wrecking or dismantling. A demolisher shall accept the certificate in lieu of the certificate of title to the motor vehicle.

(e) A person in possession of an abandoned vehicle that was authorized to be towed in by a police department and that is more than eight (8) years old and has no engine or is otherwise totally inoperable may, on affidavit of that fact and approval of the police department, apply to the Texas Department of Transportation for a certificate of authority to dispose of the vehicle to a demolisher for demolition, wrecking or dismantling only.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-48)

### **Sec. 8.209 Duties of Demolishers**

(a) A demolisher who purchases or otherwise acquires a motor vehicle to wreck, dismantle or demolish it shall obtain a valid certificate of title, sales receipt or transfer document under Section 8.206 and Section 8.211 of this article, respectively, or a certificate of authority from the person delivering the vehicle for demolition, but the demolisher is not required to obtain a certificate of title for the motor vehicle in the demolisher's name. On demand of the Texas Department of Transportation, the demolisher shall surrender for cancellation the certificate of title or authority. The Texas Department of Transportation shall issue such forms and rules governing the surrender of auction sales receipts and certificates of title as are appropriate. The Certificate of Title Act (article 6687-1, Vernon's Texas Civil Statutes) governs the cancellation of title of the motor vehicle.

(b) A demolisher commits an offense if the demolisher fails to keep an accurate and complete record of a motor vehicle purchased or received in the course of business in the manner provided by this section. These records must contain the name and address of the person from whom each motor vehicle was purchased or received and the date of the purchase or receipt. The records shall be open for inspection by the Texas Department of Transportation or any police department at any time during normal business hours. A record required by this section must be kept by the demolisher for at least one year after the transaction to which it applies. A demolisher who commits an offense under this subsection shall be punished in accordance with the general penalty provision set forth in Section 1.109 of this code and each and every day this subsection is violated shall constitute a separate offense.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-49)

### **Sec. 8.210 Junked Vehicles as Public Nuisance**

(a) A junked vehicle that is located in a place where it is visible from a public place or public right-of-way, is detrimental to the safety and welfare of the general public, tends to reduce the

value of private property, invites vandalism, creates fire hazards, constitutes an attractive nuisance creating a hazard to the health and safety of minors and is detrimental to the economic welfare of the state by producing urban blight adverse to the maintenance and continuing development of the municipalities in the state, and is a public nuisance.

(b) Junked vehicles which are located on any property zoned for residential purposes under the zoning ordinances of the city are detrimental to the safety and welfare of the general public, tending to reduce the value of private property, to invite vandalism, to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the state by producing urban blight which is adverse to the maintenance and continuing development of the municipalities in the State of Texas, and such vehicles are, therefore, declared to be a public nuisance.

(c) It shall be unlawful for any individual, company or corporation to leave or permit to remain upon public or private property (except as herein provided) within the city any junked vehicle or parts or portion thereof for any period of time in excess of ten (10) days.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-50)

#### **Sec. 8.211 Disposal of Junked Vehicles**

A junked vehicle or vehicle part may be disposed of by removal to a scrap yard, demolisher, or any suitable site operated by the city, town, or county for processing as scrap or salvage. The process of disposal must comply with the provisions of Section 8.214 of this article. The city may operate a disposal site if its governing body determines that commercial channels of disposition are not available or are inadequate, and it may make final disposition of the vehicles or vehicle parts, or the city may transfer the vehicles or vehicle parts to another disposal site if the disposal is only as scrap or salvage. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-51)

#### **Sec. 8.212 Authority to Enforce**

A person authorized by the city, town, or county to administer the procedures authorized by this article may enter private property for the purposes specified in the procedures to examine a vehicle or vehicle part, obtain information as to the identity of the vehicle and remove or cause the removal of a vehicle or vehicle part that constitutes a nuisance. An appropriate court in a city, town, or county that enacts procedures under this article may issue orders necessary to enforce the procedures. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-52)

#### **Sec. 8.213 Effect of Article on Other Statutes**

This article does not affect any law authorizing the immediate removal as an obstruction to traffic of a vehicle left on public property. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-53)

**Sec. 8.214     Procedures for Abating Nuisance**

(a) Notice; Hearing. Those provisions of this article relating to the abatement of junked vehicles shall be enforced by the city manager or a person designated by the city manager to enforce this article notwithstanding any provisions in this article to the contrary. Whenever it is brought to the attention of the city manager that a nuisance as defined herein exists in the city, notice shall be given to the person or persons maintaining such nuisance. The notice must be delivered by personal delivery or by certified mail with a five-day return 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:
  - (A) the property on which the nuisance is located; or
  - (B) if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

The notice must state that:

- (1) the nuisance must be abated and removed not later than the 10<sup>th</sup> day after the date on which the notice was personally delivered or mailed; and
- (2) the date that a hearing will be held before the municipal judge.

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, personally delivered.

If notice is returned undelivered by the postal service, 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. In every case, a public hearing shall be held prior to the removal of the nuisance.

(b) Order by Municipal Judge.

- (1) After the hearing is held by the municipal court, if the municipal judge finds that the

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junked vehicle is a nuisance, he shall order the owner or occupant of the premises upon which the vehicle is located to remove such vehicle within such time as may be determined by the court.

(Ordinance 1878 adopted 11/7/02)

(2) It shall be unlawful and a violation of this article for any such person to whom such order is given to fail or refuse to comply therewith and to remove such junked vehicle within the time provided by the order.

(c) Duty of Owner or Occupant of the Premises. In the event the owner or occupant of the premises does not request a hearing as hereinabove provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

(d) Vehicles Not to be Made Operable. After a vehicle has been removed in accordance with or under the terms and provisions of this article, it shall not be reconstructed or made operative.

(e) Notice to Texas Department of Transportation. Notice shall be given to the Texas Department of Transportation within five (5) days after the date of removal identifying the vehicle or part thereof.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-54)

**Sec. 8.215 Administration of This Article**

The administration of this article shall be by regularly salaried, full-time employees of the city, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-55)

**Sec. 8.216 Removal of Vehicles**

(a) If following entry of an order by the municipal court, the owner of the vehicle or the occupant of the premises where the vehicle is located has not complied with the requirements of the order, the city manager or his designee may remove or cause to be removed the vehicle which was the subject of the order.

(b) Vehicles Not to be Made Operable. After a vehicle has been removed by the city in accordance with or under the terms of this article, it shall not be reconstructed or made operative.

(c) Notice to Texas Department of Transportation. Notice shall be given to the Texas

Department of Transportation within five (5) days after the date of removal identifying the vehicle or part thereof.

(Ordinance 1878 adopted 11/7/02)

**Sec. 8.217 Sale or Disposal of Vehicles**

When any junked vehicle has remained in the storage area provided in Section 8.211 hereof for not less than ten (10) days, it shall be the duty of the chief of police to dispose of same by removal to a scrap yard or by sale to a demolisher for the highest bid or offer received therefor or to remove same to any suitable site operated by the city for processing as scrap or salvage. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-57)

**Sec. 8.218 Disposition of Sale Proceeds; Disposition of Unsold Vehicles**

(a) Out of the proceeds of same the chief of police shall pay for the cost of removal and storage and the balance, if any, shall be paid to the person entitled thereto (either owner or lien holder).

(b) If there is not a bid or offer for the junked vehicle, the chief of police may dispose of same by causing it to be demolished or removed to a place provided by the city council or by permitting it to be removed by a demolisher who is willing to do so for the benefit of the junk or parts he can salvage.

(1965 Code of Ordinances, Chapter 8, Article III, Section 8-58)

**Sec. 8.219 Enforcement; Chief of Police May Delegate Authority**

(a) Wherever the chief of police is charged with the enforcement of this article, he may delegate such authority to any regularly salaried employee of the police department of the city. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-59)

(b) The relocation of a junked vehicle that is a public nuisance to another location within the corporate city limits after a proceeding for the abatement or removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location. (Ordinance adopting Code)

**Sec. 8.220 Applicability**

(a) The procedures set forth in this article do not apply to a vehicle or vehicle part that:

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- (1) is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
  - (2) 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:
    - (A) maintained in an orderly manner;
    - (B) not a health hazard; and
    - (C) screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
- (b) In this section:
- (1) Antique Vehicle. Means a passenger car or truck that is at least 25 years old.
  - (2) Motor Vehicle Collector. Means a person who:
    - (A) owns one or more antique or special interest vehicles; and
    - (B) 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.
  - (3) 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.

(Ordinance 1878 adopted 11/17/02)

**Sec. 8.221 Penalty for Violation**

Any person who shall violate the terms and provisions of this article shall upon conviction thereof be punished in accordance with the general penalty provision set forth in Section 1.109 of this code and each and every day this article is violated shall constitute a separate offense. (1965 Code of Ordinances, Chapter 8, Article III, Section 8-61)

## **ARTICLE 8.300 FILLING OF LAKE AREAS**

### **Sec. 8.301 Definition**

For the purposes of this article the term "lake area" is that part of any natural storm water lake area in the city, the perimeter of which has been established by the city engineer and is substantially the estimated high-water level indicated on plats of any lake area which has been approved by the planning commission and filed with the city secretary and the city engineer. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-11)

### **Sec. 8.302 Dumping Dirt, Debris, Etc., in Lake Areas Prohibited; Generally**

The dumping or other placing of any dirt, debris or other solid materials in any lake area shall constitute a nuisance, and any person who shall dump, place or permit to be placed any such material therein shall be guilty of a misdemeanor; provided however, that this section shall not apply to the construction of or to any person engaged in the construction of any public work, the extension of any public utilities or the paving of any roadway in any public park in any lake area, when the project is planned and the work or contract is approved by or is done under the supervision of the city engineer and the project or work is not designed or calculated to decrease the water holding capacity of the lake area involved. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-12)

### **Sec. 8.303 Transportation of Dirt, Debris, Etc., for Purpose of Dumping**

It shall be unlawful for any person to transport or to direct the transportation of any dirt, debris or other materials over any of the streets or alleys in the city for the purpose of dumping or otherwise placing any such materials in any lake area; provided however, that this section shall not apply to persons making the removal of such debris, dirt, or objects or other solid materials which has been unlawfully dumped into any said lake area as is hereinafter provided nor shall it apply to the construction of or to any person engaged in the construction of any public work, the extension of public works or utilities or the paving of roadways in any public park in any lake area, when the project is planned and the work or contract is approved by or is done under the supervision of the city engineer and the project or work is not designed or calculated to decrease the water holding capacity of the lake area involved. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-13)

### **Sec. 8.304 Use of Transported Dirt, Debris, Etc.**

It shall be unlawful for any person to spread or use for filling purposes or cover over, or otherwise use or permit to be used upon any land within a lake area any dirt, debris or other solid materials which have been transported or moved in any manner to a lake area from outside the

lake area, and whoever violates any part of this provision shall be guilty of maintaining a nuisance. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-14)

**Sec. 8.305 Permitting Dumping, Transportation of Dirt, Debris, Etc.; Deemed Nuisance**

It shall be unlawful and constitute a nuisance for any person or persons jointly or severally owning, or having possession or control or any other interest in, any land located in any lake area in the city to permit, allow or suffer any dirt, debris, or other solid materials or objects hauled, carried or otherwise transported from outside any such lake area onto the land within a lake area, to remain upon the land of any such person within the lake area, and any such person who violates any part of this provision shall be guilty of maintaining a nuisance. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-15)

**Sec. 8.306 Abatement of Nuisance-Duty**

It shall be the duty of every person having ownership, control, possession or the right to possession of any lake area in which dirt, debris or objects or other solid material has been dumped or otherwise placed in such manner as to constitute a nuisance, proceed at once to remove or abate same as soon as its presence comes to his knowledge. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-16)

**Sec. 8.307 Same-Notice**

(a) Whenever the nuisance defined above shall exist within the city, the city engineer shall cause notice in writing to be given to the owner, proprietor or occupant, if any, of the premises whereon such nuisance exists. Such notice shall be made by letter addressed to such owner, proprietor or occupant at his post office address with return receipt requested, or by publication as many as two (2) times within ten (10) consecutive days if personal service may not be had as aforesaid or if the owner's address be not known. Such notice shall contain an order to such owner, proprietor or occupant of such premises to remove or cause the removal of such nuisance within ten (10) days.

(b) It shall be the duty of any owner, proprietor or occupant to comply with the provisions of the notice authorized by this article. Any owner, proprietor or occupant, who, within ten (10) days after written notice thereof, shall neglect, fail, or refuse to abate the nuisance defined herein, shall be guilty of a misdemeanor.

(1965 Code of Ordinances, Chapter 10, Article I, Section 10-17)

**Sec. 8.308 Same-by City; Expense of Same; Declared Lien Against Property**



If such nuisance is not abated within the time set by the notice of the preceding section, the city engineer shall cause such nuisance to be abated or removed and shall defray the expenses thereof out of any money in the city treasury available for such purpose. All expenses so incurred shall be charged against the owner and shall be a lien on the land and premises whereupon such nuisance exists to the extent and in the manner authorized by Article 4436, Revised Civil Statutes of Texas. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-18)

**Sec. 8.309 Same-Recovery of Expense**

Upon the abatement or removal of such nuisance by the city, a statement of the expenses incurred by the city in such action shall be signed and acknowledged by the mayor and filed with the county clerk. A copy of such statement shall be filed with the city attorney who shall be authorized to timely file suit to foreclose the lien for such expenses as provided by Article 4436, Revised Civil Statutes of Texas. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-19)

**Sec. 8.310 Legal Action Authorized for Enforcement of Article Provisions**

The city attorney, upon written request of the city manager, is authorized to prosecute any and all suits when deemed necessary or expedient against any person to restrain and prevent the dumping or other placing of dirt, debris or other objects or other solid materials in any lake area, and to cause or compel the removal of such dirt, debris, objects or other materials which may have been dumped or placed in violation of the provisions of this article. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-20)

**Sec. 8.311 Issuance of Building Permits in Lake Areas-Restricted<sup>\*(2)</sup>**

Except as provided in the following, the building inspector is hereby prohibited from issuing building permits for construction within any lake area.

The city engineer is authorized to issue permits to owners to make uniform fills in lake areas below the estimated high-water line provided that such fills are made by dirt excavated from below the estimated high-water line, and the fills produce a ground surface above the estimated high-water line, for all land in such areas intended to be improved for human habitation if the plans therefore have been approved by the planning and zoning commission and the water-holding capacity of the lake area is not thereby decreased. The perimeter on such plats of any such lake area shall be modified by the city engineer to conform to such fills, and building permits may be issued when the ground surface has in fact been raised to an elevation above the estimated high-water level. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-21)

**Sec. 8.312 Same-When Permitted**

When the planning and zoning commission approves any plat or replat of any tract of land in a lake area affected by an estimated high-water line, and such plat is supported by plans and specifications for making uniform fills below the estimated high-water level by using dirt excavated from below the estimated high-water level and the fills will produce a ground surface above the estimated high-water level for all land intended to be improved for human habitation, and the water-holding capacity of the lake area will not be thereby decreased, the perimeter of such lake area shall be modified by the city engineer to conform thereto, and the building permits may be issued when the ground surface has in fact been raised to an elevation above the estimated high-water level. (1965 Code of Ordinances, Chapter 10, Article I, Section 10-22)

## **ARTICLE 8.400 OFFENSES AND MISCELLANEOUS PROVISIONS**

### **Sec. 8.401 Noise Generally-Prohibited Generally<sup>†(3)</sup>**

It shall be unlawful for any person except any city officer or employee in the discharge of his duties to knowingly or wantonly use or operate or cause to be used or operated any mechanical or electrical device, machine, apparatus or instrument to intensify or to amplify or to reproduce the human voice, or any other sound, on any public street within the city. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-26)

### **Sec. 8.402 Same-Advertising Purposes; Prohibited**

It shall be unlawful for any person to knowingly or wantonly use or operate or cause to be used or operated any mechanical or electrical device, machine, apparatus or instrument to intensify or to amplify or to reproduce the human voice, or to produce, reproduce, intensify or amplify any other sound, in any building or on any premises in the city whereby the sound therefrom is cast directly upon the public streets or places or where such device is maintained and operated for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed or operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public place, or of persons in neighboring premises. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-27)

### **Sec. 8.403 Noise Created by Sound Amplifying Equipment-Definitions**

Person. The word "person" as used herein shall include the singular and the plural and shall also mean and include any person, firm, corporation, association or organization.

Sound Truck. The words "sound truck" as used herein shall mean any motor vehicle, or horse-drawn vehicle, having mounted thereon, or attached thereto, any sound amplifying equipment.

Sound Amplifying Equipment. The words "sound amplifying equipment" as used herein shall mean any machine, or device for the amplification of the human voice, music or any other sound. "Sound amplifying equipment," as used herein shall not be construed as including standard automobile radios when used, or heard only by occupants of the vehicle in which installed or warning devices on authorized emergency vehicles, or horns or other warning devices, on other vehicles used for traffic safety or emergency purposes.

Commercial Sound Advertising. The term "commercial sound advertising" as used herein shall mean the use of sound amplifying equipment, except church chimes, for the purpose of drawing the attention of the general public. The use of sound amplifying equipment at a place of business, or residence for the purpose of providing voice communication, or music, or sound shall not be considered sound advertising if the sound is not audible off the premises under the control of the owner or tenant of such place of business or residence.

(1965 Code of Ordinances, Chapter 12, Article I, Section 12-27.1)

#### **Sec. 8.404 Same-Non-Commercial Use of Sound Amplifying Equipment**

(a) Registration Required. No person shall use, or cause to be used sound amplifying equipment designed to be heard off premises for non-commercial purposes in the City of Brownfield before filing a registration statement with the city secretary in writing. This registration statement shall be filed in duplicate and shall state the following:

- (1) Name and home address of the applicant.
- (2) Address of place of business of applicant.
- (3) License number and motor number of the sound truck to be used by applicant.
- (4) Name and address of person who owns the sound truck.
- (5) Name and address of person having direct charge of sound truck or amplifying equipment.
- (6) Names and addresses of all persons who will use or operate the sound truck or amplifying equipment.
- (7) The purpose for which the sound amplifying equipment will be used.
- (8) A general statement as to the section or sections of the city in which the sound truck

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or amplifying equipment will be used.

- (9) The proposed hours of operation of the sound amplifying equipment.
- (10) The number of days of proposed operation of the sound amplifying equipment.
- (11) A general description of the sound amplifying equipment which is to be used.
- (12) The maximum sound producing power of the sound amplifying equipment to be used. State the following:
  - (A) The wattage to be used.
  - (B) The volume in decibels of the sound which will be produced.
  - (C) The approximate maximum distance for which sound will be thrown from the sound amplifying equipment.

(b) Registration Statement Amendment. All persons using or causing to be used sound amplifying equipment for noncommercial purposes shall amend any registration statement filed pursuant to subsection (a) within forty-eight (48) hours after any change in the information therein furnished.

(c) Registration and Identification. The city secretary shall return to each applicant under subsection (a) above one copy of said registration statement duly certified by the city secretary as a correct copy of said application. Said certified copy of the application shall be in the possession of any person operating the sound amplifying equipment at all times while the sound amplifying equipment is in operation and said copy shall be promptly displayed and shown to any policeman of the City of Brownfield upon request.

(d) Regulation of Use. Non-commercial use of sound amplifying equipment in the City of Brownfield shall be subject to the following regulations:

- (1) The only sounds permitted are music or human speech.
- (2) Operations are permitted between the hours of 10:00 a.m. and 10:00 p.m. each day, except on Sundays when no operations shall be authorized, except for church chimes.
- (3) Sound amplifying equipment shall not be operated on a sound truck unless the sound truck upon which such equipment is mounted is operated at a speed of at least ten (10) miles per hour except when said truck is stopped or impeded by traffic. Where

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stopped by traffic the said sound amplifying equipment shall not be operated for longer than one minute at each such stop.

- (4) Sound shall not be issued within one hundred (100) yards of hospitals, schools, churches, convalescent homes or funeral parlors, except for church chimes.
- (5) No sound amplifying device shall be operated under provisions of this section in a residential area after 8:30 p.m. except at organized athletic events conducted in parks or fields designed for such athletic events.
- (6) The human speech and music amplified shall not be profane, lewd, indecent or slanderous.
- (7) The volume of sound at all times shall be controlled so that it will not be audible for a distance in excess of one hundred (100) feet from the sound amplifying equipment, except church chimes, and so that such volume is not unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the area of audibility.
- (8) No sound amplifying equipment except church chimes shall be operated within excess of fifteen (15) watts of power in the last state of amplification. Church chimes may be operated in excess of fifteen (15) watts of power; however, the volume shall not be unreasonably loud, raucous, jarring disturbing or a nuisance to persons within the area of audibility.

(1965 Code of Ordinances, Chapter 12, Article I, Section 12-27.2)

**Sec. 8.405 Same-Commercial Use of Sound Amplifying Equipment is Prohibited**

(a) The use within the city limits of the city of sound amplifying equipment for the purpose of advertising is prohibited. No person shall operate or cause to be operated, maintain, or cause to be maintained any sound amplifying equipment for advertising purposes of any nature.

(b) No person shall within the city limits use or maintain sound amplifying equipment for commercial purposes except that the sound shall not be audible to persons outside the area of the property under the control of such person, whether such property shall be owned, rented or under the control of such person.

(1965 Code of Ordinances, Chapter 12, Article I, Section 12-27.3)

**Sec. 8.406 Same-Penalties**

Any person who violates any provision of Sections 8.404 and 8.405 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in accordance with the general penalty provision set forth in Section 1.109 of this code. Each day's violation of any such section shall be a separate offense under the terms hereof. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-27.4)

**Sec. 8.407     Noises Prohibited**

(a) Some sounds may be such that they are not measurable or may not exceed the limits set forth in this section but they may be excessive, unnatural, prolonged, unusual and are a detriment to the public health, comfort, convenience, safety, welfare and prosperity of the residents of the city.

(b) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in the violation of this article, but such enumerations shall not be deemed to be exclusive, namely:

- (1) The sounding of any horn or signaling device on any automobile or other vehicle except as a danger warning; the creation by means of any signaling device of any unreasonably loud or harsh sound; the sounding of any signaling device for any unnecessary or unreasonable period of time; and the unreasonable use of any signaling device.
- (2) The playing, use or operation, or permitting the playing, use or operation, of any radio, musical instrument, phonograph or other machine or device for the producing or reproducing of sound if such sound is for the purpose of entertainment or is used for that purpose and can be heard from the distances stated in this section or violates the parameters set forth in subsection (B) hereof.
  - (A) A violation will occur if the noise source is located within a motor vehicle in or upon a public street, highway, building, sidewalk, park, thoroughfare or other public area, or is located in and upon a public property, and the sound can be heard more than thirty (30) feet from its sources, or if the noise is in a building or other structure and the sound can be heard more than fifty (50) feet away from the building or structure
  - (B) It shall be prima facie evidence of a violation of this section if the sound can be heard outside the limit described in subsection (A) above.
  - (C) This subsection shall not apply to events for which special permit has been issued pursuant to any section of the code of ordinances of the city.

- (3) The using, operating or permitting to be played, used or operated any radio, television, tape or record player, amplifier, musical instrument or other machine or device used for the production, reproduction or emission of sound; any prolonged sounds made by people and the keeping of any animal which by causing frequent or long continuous noise in such manner as to disturb the public peace, quiet and comfort of the neighboring inhabitants or at any time with greater intensity than is necessary for convenient hearing for the person or persons who are in the room, vehicle or chamber in which such sound emitter is operated and who voluntarily listens thereto. Quieter standards are expected during nighttime hours.

(1965 Code of Ordinances, Chapter 12, Article I, Section 12-27.5)

**Sec. 8.408 Downtown Entertainment District**

(a) There is hereby created a downtown entertainment district that is bounded on the north by the north line of Main Street, on the east by the east line of 5<sup>th</sup> Street, on the South by the south line of Broadway and on the west by the west line of 6<sup>th</sup> Street.

(b) Any business, civic club, or qualified non-profit organization, whose main place of activity is within the corporate limits of the City of Brownfield, may by special permit issued by the chief of police or his designee, hold an outdoor gathering with music or other entertainment, either live or recorded, within the downtown entertainment district between the hours of 8:00 a.m. and 10:30 p.m. Monday through Saturday, with a maximum time for the activity to be four and one-half (4 1/2) hours within any one twenty four (24) hour period.

(c) Airborne sound emanating from the downtown entertainment district shall not be discernable within 100 feet of the area outside of said district.

(d) The chief of police or his designee is also empowered to block off the downtown entertainment district upon the special request of a permit holder for a period not to exceed four and one-half (4 1/2) hours and between the hours of 6:00 p.m. and 10:30 p.m. Monday through Friday or between the hours of 12:00 p.m. (Noon) and 10:30 p.m. on Saturday. However, it is the direction of the council that Main Street may never be blocked for any purposes under this section. The granting of this special request by the chief of police or his designee shall be within the total discretion of said person and they are directed in granting these special requests to consider the number of requests previously made by any permit holder and that the granting of any such special request shall be in the best interest of traffic flow and the safety and well being of the citizens of Brownfield.

(e) The permit required by this section shall be valid for a period of six (6) months from the  
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date of its issuance, provided however, that upon receipt of a complaint by a police officer of the City of Brownfield, such police officer is empowered to immediately revoke the permit and cause the activity that is in progress to cease and desist. Within 10 days of such revocation, there shall be a hearing to determine whether or not the permit should be reissued for the remainder of the original period of the permit and upon what conditions, if any. Said hearing shall be before a five person panel consisting of any three of the following persons and appointed by the city manager:

- (1) City manager;
- (2) Assistant city manager;
- (3) Administrative assistant to the city manager;
- (4) City attorney;
- (5) Chief of police;
- (6) Assistant chief of police;

and one council member or mayor and one citizen of Brownfield as appointed by the mayor.

(f) The application for the permit shall be on a form prescribed by the chief of police and approved by the city attorney and shall be made by a duly authorized representative of the organization seeking such permit. The application for the permit shall be accompanied by a fee set by the city council of the City of Brownfield that reflects the administrative costs of processing and issuing the permit and any additional costs incurred as a result of any special requests to block off any streets.

(Ordinance 1806 adopted 3/20/97)

**Sec. 8.409 Slingshots; Possession or Use of Prohibited**

It shall be unlawful for any person to possess, discharge, shoot, propel or use on the streets and public property in the city a weapon or instrument used for propelling missiles commonly known as a sling or slingshot, or to discharge, shoot or propel the missiles therefrom over the streets and public property of the city. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-35)

**Sec. 8.410 Spitting on Public Places**

If any person shall spit upon the streets or sidewalks, or upon the floor or walls of the post office,



courthouse, depot or any church or public or school building within the city, he shall be deemed guilty of a misdemeanor. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-36)

**Sec. 8.411 Water Towers, Poles, Similar Structures; Climbing**

It shall be unlawful for any person not employed to do so, to climb or ascend any water tower, windmill tower, telephone, telegraph, electric light or any other publicly or privately owned pole in the city. (1965 Code of Ordinances, Chapter 12, Article I, Section 12-43)

**Secs. 8.412–8.416 Reserved for Future Use**

**Editor's note**—Sections 8.412 through 8.416 were repealed by Ordinance 1919 adopted 12/2/04.

**ARTICLE 8.500 CURFEW FOR MINORS**

**Sec. 8.501 Definitions**

For the purpose of this article, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

Establishment. Is any privately owned place of business carried on for a profit or any place of amusement or entertainment to which the public is invited.

Operator. Is any individual, firm, association, partnership or corporation operating, managing, or conducting any establishment; and whenever used in any clause prescribing a penalty, the term as applied to associations or partnerships shall include the members or partners thereof and as applied to corporations shall include the officers thereof.

Parent. Is any natural parent of a juvenile, a legal guardian, or any adult person, eighteen (18) years or older, in whose care the juvenile has been placed by the natural parent or legal guardian.

Public Place. Is any public street, highway, road, alley, park, playground, public building, parkway or vacant lot.

Remain. Is to stay behind, to tarry and stay unnecessarily upon a public place, including congregating in groups totaling four (4) or more juveniles in which any minor included would not be using the public place for an ordinary or serious purpose such as passage or going home. To implement this definition with more precision and precaution, numerous exceptions will be

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provided hereinafter to indicate that this is not a mere prohibitory or presence type curfew ordinance. More exceptions become available to juveniles with increasing years and advancing maturity as appropriate in the interest of reasonable regulation.

Juvenile. Is any person under the age of seventeen (17) years of age, or in equivalent phrasing, any person of the age sixteen (16) years old or younger.

Time of Night. Is the prevailing local standard time at the date in question, whether central standard time or central daylight savings time, as observed by the public. The time maintained by the Brownfield Police Department shall be the prima facie evidence of the time of day for continued implementation of this article.

Years of Age. Means the time from one birthday, such as sixteenth, to the next, but not including the day of the next birthday. Thus upon a person's seventeenth birthday, he or she will cease to be a juvenile regulated by this article.

**Sec. 8.502 Curfew Established**

It shall be unlawful for any person sixteen (16) or less years of age to be or remain in or upon any public place or in or upon any establishment within the City of Brownfield between the hours of 12:00 a.m. and 5:30 a.m. of the following day, official city time, except that on Fridays and Saturdays and nights next preceding school holidays (not including summer vacation) the hours shall be from 1:00 a.m. to 5:30 a.m.

**Sec. 8.503 Exceptions**

In the following exceptional cases a juvenile in or upon any public place or in and upon an establishment shall not be deemed in violation of this article; this section is intended as a clear guide for juvenile, their parents and law enforcement officials:

- (1) When the juvenile is accompanied by his parent, legal guardian or authorized adult supervisor.
- (2) When exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the rights of assembly. It shall be deemed a bona fide exercise of such rights if the assembly, whether parade or demonstration, has been permitted by the City of Brownfield or other bona fide religious, social or school activities involving the right to assemble.
- (3) When engaged in performing an errand or other legitimate business at the direction of a parent, guardian or supervisory adult including travel to and from such location by a

direct route.

- (4) When the juvenile is on the sidewalks at the place where such juvenile resides, or on the sidewalk of either next door neighbor, when said neighbors do not object to such presence.
- (5) When the juvenile is engaged in employment activities, such as but not restricted to, newspaper delivery.
- (6) All of the above cited exceptions to the curfew ordinance include travel to and from such activity by a direct route, and this article is in no way to be construed as limitation upon normal travel by a juvenile engaged in interstate movement.
- (7) Each of the foregoing exceptions are severable and in addition other possible exceptions may be added hereto in the future as warranted by experience as illuminated by the views of students, school personnel, citizens, neighborhood spokesmen, parents, officers and persons in authority concerned positively with minors as well as juvenile delinquency.

#### **Sec. 8.504 Parental Responsibility**

It shall be unlawful for a parent knowingly to permit or by insufficient control to allow a juvenile in his or her care to be or remain in any public place or to be or remain in any establishment other than for excepted activities during the curfew hours established by this article. The term "knowingly" includes knowledge which a parent should reasonably be expected to have concerning the whereabouts of a juvenile in such parent's custody. It shall be prima facie evidence of violation of this section if a responsible parent has no knowledge of a juvenile's whereabouts during the hours of curfew established by this article. The purpose of this section is to require neglectful or careless parents to meet the community standard of parental responsibility.

#### **Sec. 8.505 Establishment Owner's Responsibility**

It shall be unlawful for the owner or operator of a business establishment to allow a juvenile to remain upon such business premises during the hours of curfew established in this article beyond the time necessary to conduct an excepted activity. It shall be no defense to this section that juvenile made a purchase, if the juvenile did not immediately make such purchase upon arrival and depart immediately thereafter. It shall be a defense to prosecution under this section that the owner or operator of such business establishment has promptly notified the Brownfield Police Department that juveniles present on the premises after hours have refused to depart.

**Sec. 8.506 Enforcement Procedures**

(a) A law enforcement officer, upon finding or having his or her attention called to any juvenile in or on a public place or in or on the premises of a business establishment in a prima facie violation of this article, may take the juvenile into custody. Such juvenile may be transported to the Brownfield Police Department. Upon arrival at the police department, a parent, legal guardian or other responsible adult shall be immediately notified to pick up such juvenile. An officer taking a juvenile into custody shall also have discretion to release such juvenile to a parent, legal guardian or other responsible adult under circumstance deemed appropriate by the officer. An officer may also issue a warning notice to the juvenile in accordance with Section 52.01 of the Texas Family Code and order such juvenile to go directly and promptly to his or her home. Delinquent conduct or conduct indicating a need for supervision under Sections 51.03 and 52.01 of the Texas Family Code shall be handled in accordance with applicable provisions of the Family Code.

(b) Upon picking up a juvenile in custody, said parent, legal guardian or other responsible adult may be questioned about the circumstance of the juvenile's activities. This is intended to permit ascertainment, under constitutional safeguards, or relevant facts, and to centralize responsibility for accurate, effective, fair, impartial and uniform environment and recording, thus making available experienced supervisory personnel, the best of facilities, and, if required, referral to social agencies equipped to handle family problems that may be disclosed by investigation. In the absence of convincing identification, an officer on the street may use his or her best judgment in determining age. Procedures shall be constantly refined in the light of experience, and changes herein may be made on the basis of such experience.

(c) In any event, an officer shall within twenty-four (24) hours file a written report on the juvenile incident or shall participate to the extent possible in the preparation and filing of such a report by his supervisor.

(d) When a parent, legal guardian or other responsible adult has come to take charge of a juvenile and the appropriate information has been received, the juvenile shall be released to the custody of the parent, legal guardian or other responsible adult. If a parent, legal guardian or other responsible adult cannot be located or fails to take charge of the juvenile, then the juvenile shall be released to appropriated authorities. However, the police department shall have the discretion to refuse to release a juvenile to an adult other than the parent or legal guardian of the juvenile.

(e) A juvenile may not be held at the police department for more than six (6) hours; during such time the following procedures shall be observed:

- (1) The office must be an unlocked, multipurpose area that is not designated, set aside, or

used as a secure detention area or part of a secure detention area;

- (2) The juvenile may not be secured physically to a cuffing rail, chair, desk or stationary object;
- (3) The juvenile may not be held longer than necessary to accomplish the purposes of identification, investigation, processing, release to parent, guardians or custodians, and arrangement of transportation to school or court; and
- (4) The office may not be designated or intended for residential purposes.

**Sec. 8.507 Penalties**

Prevailing community standards as reflected by this article require the availability of criminal penalties in order for this article to be a viable instrument for the maintenance of such standards. Consequently, violation of this article by a juvenile, parent or business establishment owner or operator shall be deemed to be a misdemeanor punishable by a fine in accordance with the general penalty provision set forth in Section 1.109 of this code. Each day any violation continues constitutes a separate offense.

(Ordinance 1830 adopted 5/20/99)

**ARTICLE 8.600 LASER POINTERS**

(a) It shall be unlawful for any person to knowingly focus, point or shine a laser pointer directly or indirectly upon or about a person or animal when the person operating the device knows or should have known that such action will harass, alarm, or annoy said person or animal.

(b) A "laser pointer" means any device that emits light amplified by the stimulated emission of radiation that is visible to the human eye.

(c) Any person, firm or individual who shall violate any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction shall be fined in a sum in accordance with the general penalty provision set forth in Section 1.109 of this code. Each and every instance of the violation of this article shall constitute a separate offense.

(Ordinance 1829 adopted 5/6/99)

**ARTICLE 8.700 ILLEGAL SMOKING PRODUCTS**

**Sec. 8.701 Definitions**

(a) For the purposes of this article, certain terms and words are hereby defined. Words used in the present tense include the future, the singular number includes the plural, and the plural the singular; reference to the male gender includes the female, and references to any person or animal without specifying gender include both male and female; the word “shall” is mandatory and directory wherever it is used in this article.

(b) The following terms and words are defined:

*Restricted smoking material.*

- (1) Any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or comparable chemical:
  - (A) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
  - (B) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
  - (C) (6aS, 10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol (also known as HU-211 or Dexanabinol);
  - (D) 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
  - (E) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or
  - (F) 1-pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081).
- (2) Products containing some of the above substances are currently being marketed under the following commercial names:

“K-2,” “K-2 SUMMIT,” “K-2 SEX,” “GENIE,” “DASCENTS,” “ZOHAI,” “SAGE,” “SPICE,” “KO KNOCK-OUT 2,” “SPICE GOLD,” “SPICE DIAMOND,” “YUCATAN FIRE,” “SOLAR FLARE,” “PEP SPICE,” “FIRE N’ ICE,” AND

“SALVIA DIVINORUM.”

- (3) It is anticipated by the council that new products will be marketed under different names but will be subject to this definition if they contain any of the chemical components set forth above.

*Restricted smoking material paraphernalia.* Any paraphernalia, equipment, or utensil that is used or intended to be used in ingesting or inhaling any illegal smoking materials and may include:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;
- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

**Sec. 8.702      Restricted Smoking Materials–Purpose**

The purpose of this section is to prohibit the sale or delivery of restricted smoking materials as defined herein to any individual within the city limits and to prohibit the possession of restricted smoking materials by any individual within the city limits. Any form of delivery to include a simple gift constitutes a violation of this article.

**Sec. 8.703      Sale, Delivery, Offer, or Gift**

It shall be unlawful for any person to sell, offer to sell, deliver to, or to give any restricted smoking material to any person.

**Sec. 8.704 Use or Possession of Restricted Smoking Material**

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the city.

**Sec. 8.705 Use or Possession of Restricted Smoking Paraphernalia**

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it to ingest, inhale, or otherwise consume restricted smoking material. If an individual is found in possession of this type of paraphernalia, it will be a violation of this article if appropriate forensic testing is done on the paraphernalia and traces of restricted smoking material are present on the device.

**Sec. 8.706 Defenses to Prosecution**

(a) It shall be a defense to prosecution for a violation of this section if the use of the restricted smoking material is in the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the state.

(b) It shall be a defense to prosecution under the terms of this section if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the state.

(Ordinance 2017 adopted 11/18/10)



**Endnotes**

**1 (Popup - Popup)**

\* **State Law reference**-Regulation of abandoned and junked motor vehicles; V.T.C.A., Transportation Code, ch. 683.

**2 (Popup - Popup)**

\* **Cross reference**-Chapter 3, Building Regulations.

**3 (Popup - Popup)**

† **State Law reference**-Authority of municipality to restrain or prohibit the ringing of bells, blowing of horns, hawking of goods, or any other noise, V.T.C.A., Local Government Code, Sec. 217.003.