

Junked Vehicles

Piece of Art or Piece of Junk

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Sec. 683.071. DEFINITION. In this subchapter, "junked vehicle" means a vehicle that is self-propelled and:

(1) does not have lawfully attached to it:

(A) an unexpired license plate; and

(B) a valid motor vehicle inspection certificate;

and,

(2) is:

(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.



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Sec. 683.072. JUNKED VEHICLE DECLARED TO BE PUBLIC NUISANCE.

A junked vehicle, including a part of a junked vehicle, that is visible at any time of the year 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 municipalities; and
- (7) is a public nuisance.

Sec. 683.073. OFFENSE.

(a) A person commits an offense if the person maintains a public nuisance described by Section 683.072.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.

(c) The court shall order abatement and removal of the nuisance on conviction.



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Sec. 683.075. NOTICE.

(a) The procedures for the abatement and removal of a public nuisance under this subchapter must provide not less than 10 days notice of the nature of the nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service 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.

(b) The notice must state that:

- (1) the nuisance must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed; and
- (2) any request for a hearing must be made before that 10-day period expires.

(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, personally delivered.

(d) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.





02/17/2009 13:23



01/23/2007 11:18



02/25/2007 11:17



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Article I, Section 17 of the Texas Constitution provides:

No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

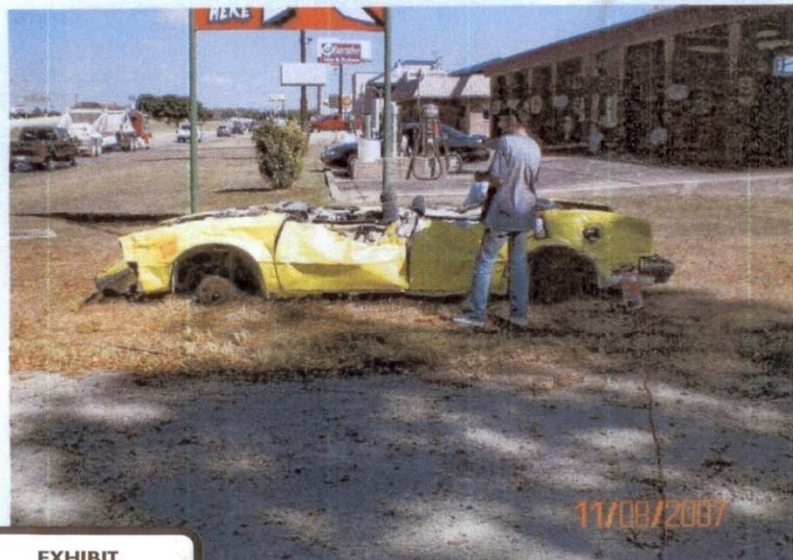


EXHIBIT
RESPONDENT
2



Sec. 683.076. HEARING.

(a) The governing body of the municipality or county or a board, commission, or official designated by the governing body shall conduct hearings under the procedures adopted under this subchapter.

(b) If a hearing is requested by a person for whom notice is required under Section 683.075(a)(3), the hearing shall be held not earlier than the 11th day after the date of the service of notice.

(c) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(d) If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include the vehicle's:

- (1) description;
- (2) vehicle identification number; and
- (3) license plate number.

After hearing the evidence presented at the hearing, the Court finds that:

1. The vehicle does not have a license plate;
2. The vehicle does not have a motor vehicle inspection certificate; and,
3. The vehicle is partially dismantled and inoperable.

As a result of the above findings of fact the Court finds that the vehicle is a junked vehicle as defined by Section 34.191 of the City of San Marcos Code of Ordinances.

The Court further declares that the vehicle is a public nuisance, as such is defined by Section 34.194 of the City of San Marcos Code of Ordinance.

It is therefore

ORDERED that within FIVE (5) BUSINESS DAYS from the signing of this order the vehicle be removed from the premises, or otherwise brought into compliance with the City Code.

In the instant case, the City of San Marcos cited Kleinman for violating the City's junked vehicle ordinance and Kleinman sought a hearing in the Municipal Court regarding the alleged violation. On January 10, 2008, the Municipal Court determined the vehicle at issue constituted a junked vehicle and a public nuisance and ordered its removal. The Municipal Court was a court of competent jurisdiction in this matter.

Kleinman's right to appeal the judgment of the Municipal Court is governed by Texas Government Code § 30.00014, which allows an appeal from the judgment of a municipal court to the county courts at law. *Id* at (a). The appellant "may give the notice of appeal orally in open court on the overruling of the motion." *Id* at (d)...

The Municipal Court's judgment is a final judgment on the merits of Kleinman's claim that his planter is not a vehicle subject to the City's "junked vehicle" ordinance...Accordingly the Municipal Court's judgment that Kleinman's planter is, in fact, a "junked vehicle" under Section 34.191 of the City of San Marcos Code and a "public nuisance" under Section 34.194 of the San Marcos Code is entitled to res judicata effect.

Sec. 30.00014. APPEAL.

(a) A defendant has the right of appeal from a judgment or conviction in a municipal court of record. The state has the right to appeal as provided by Article 44.01, Code of Criminal Procedure. The county criminal courts or county criminal courts of appeal in the county in which the municipality is located or the municipal courts of appeal have jurisdiction of appeals from a municipal court of record. If there is no county criminal court, county criminal court of appeal, or municipal court of appeal, the county courts at law have jurisdiction of an appeal.

Sec. 22.220. CIVIL JURISDICTION.

(a) Each court of appeals has appellate jurisdiction of all civil cases within its district of which the district courts or county courts have jurisdiction when the amount in controversy or the judgment rendered exceeds \$100, exclusive of interest and costs.





11/17/2008 17:00

PIECE OF ART OR PIECE OF JUNK - 1ST AMENDMENT RIGHTS

The Court consistently has held (in line with *Price v. City of Junction, Texas* 711 F.2d 582 (5th Cir.1983)) that the junked vehicle ordinances are “a content-neutral ban on nuisance vehicles visible from public places.” The question, then, is whether or not the ban on junked vehicles leaves artists with an “adequate alternative channel to communicate their message” if that message is uniquely linked to the medium of the car.

The Court found that the car had both expressive and functional elements, that is it is not a “pure statement” of beliefs about car culture, but is also both a planter and a distinctive symbol of the Planet K business, especially since Planet K has installed other similar “car planters” at other locations.

The Court found that the plaintiffs had a choice to either remove the junked vehicle or screen it so that it could not be seen from a public right-of-way, therefore the law is sufficiently tailored and there is no stated “as applied” violation of the plaintiffs’ rights under the First Amendment.

VISUAL ARTISTS RIGHTS ACT – 17 U.S.C. 106A

§ 106A. Rights of certain authors to attribution and integrity
Rights of attribution and integrity. Subject to section 107 [[17 USCS § 107](#)] and independent of the exclusive rights provided in section 106 [[17 USCS § 106](#)], the author of a work of visual art--

(3) subject to the limitations set forth in section 113(d) [[17 USCS § 113\(d\)](#)], shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

Court's Analysis of rights under VARA

There are exceptions to VARA: “The modification of a work of visual art which is the result of...the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification ...unless the modification is caused by gross negligence. 17 U.S.C. § 106A(a)(3)(a).

Courts considering this exception have uniformly found “an artist has no right to the placement or public presentation of his sculpture under the exemption in § 106A(c)(2).” *Phillips v. Pembroke Real Estate, Inc.* 283 F.Supp.2d 89,100 (D.Mass.2003). Since the Plaintiff’s could either screen, or move, their “art” there is no violation of VARA.

