

CITY OF HUNTINGTON

ORDINANCE NO. 021709 WT

WEEDS AND TRASH ORDINANCE

AN ORDINANCE OF THE CITY OF HUNTINGTON, TEXAS WHICH ADDRESSES THE ACCUMULATION OF WEEDS AND/OR TRASH WITHIN THE CORPORATE LIMITS OF HUNTINGTON, TEXAS; TO PROVIDE FOR REPEAL OF CONFLICTING ORDINANCES; TO PROVIDE A SEVERABILITY CLAUSE; AND TO PROVIDE AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE CITY COUNCIL OF HUNTINGTON, TEXAS THAT:

THE TEXT SET OUT BELOW SHALL BE THE WEEDS AND TRASH ORDINANCE ENACTED BY THE CITY OF HUNTINGTON, TEXAS.

SECTION I.

Definitions.

For the purpose of this article, the terms used herein shall be interpreted to read as follows, and any words not herein defined shall be construed in the context used and by ordinary interpretation and not as a word of art:

Brush shall mean scrub vegetation or dense undergrowth.

Carrion shall mean the dead and putrefying flesh of any animal, fowl or fish.

Dump shall mean to dispose, discharge, place, deposit, throw, leave, sweep, scatter, unload, toss.

Filth shall mean any matter in a putrescent state.

Garbage shall mean any kitchen refuse, food stuffs or related material, including all decayable waste.

Impure or unwholesome matter shall mean any putrescible or nonputrescible condition, object or matter which tends, may or could cause injury, death or disease to human beings.

Junk shall mean all worn out, worthless or discarded material, including but not limited to any of the following materials, or parts of said materials or any combination thereof: new or used iron, steel or nonferrous metallic scrap, brass or waste materials; used and/or inoperative household appliances, household electrical or plumbing fixtures, floor coverings and/or window coverings not currently in use; used lumber, brick, cement block, wire, tubing and pipe, tubs, drums, barrels, and/or roofing material not currently in use; air conditioning and heating equipment not currently in use; used vehicle components and parts not currently in use; used furniture other than that designed for outdoor use or that which would normally be considered as antique furniture; used and/or inoperative residential lawn care equipment and machinery not currently in use; used pallets, windows or doors not currently in use; new or used sheet metal, structural steel and/or chain not currently in use; used and/or inoperable vending machines, radios and/or televisions not currently in use; and any other type of used and/or inoperable machinery or equipment not currently in use.

Matter shall mean that of which any physical object is composed.

Nuisance shall mean any condition, object, material or matter that is dangerous or detrimental to human life or health; or that renders the ground, the water, the air or food a hazard or likely to cause injury to human life or health; or that is offensive to the senses; or that threatens to become detrimental to the public health; and shall include but not be limited to: any abandoned wells, shafts or basements, abandoned refrigerators, stagnant or unwholesome water, sinks, privies, filth, carrion, rubbish, junk, trash, debris or refuse, impure or unwholesome matter of any kind, any objectionable, unsightly, or unsanitary matter of whatever nature.

Objectionable, unsightly or unsanitary matter shall mean any matter, condition or object which is objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

Owner shall mean any person or entity shown as the property owner on the latest property tax assessment rolls or any person having or claiming to have any legal or equitable interest in the property, including any agent who is responsible for managing, leasing or operating the property.

Person shall mean any individual, firm, partnership, association, business, corporation or other entity.

Property shall mean all privately owned, occupied or unoccupied property, including vacant land, and/or a building designed or used for residential, commercial, business, industrial or religious purposes. The term shall also include a yard, ground, wall, driveway, fence, porch, steps or other structure appurtenant to the property.

Putrescible shall mean the decomposition of organic matter with the formation of foul

smelling, incompletely oxidized products.

Refuse shall mean heterogenous accumulation of worn out, used, broken, rejected or worthless materials, including but not limited to garbage, rubbish, paper or litter, and other decayable or nondecayable matter.

Rubbish shall mean junk, trash, debris, rubble, stone, useless fragments of building materials, and other miscellaneous, useless waster or rejected matter.

Trash and debris shall mean all manner of refuse including but not limited to: mounds of dirt, piles of leaves, grass and weed clippings, paper trash, useless fragments of building material, rubble, furniture other than furniture designed for outside use, useless household items and appliances, items of salvage, such as scrap metal and wood, old barrels, old tires, objects that hold water for an extended time, tree and brush trimmings, and other miscellaneous wastes or rejected matter.

Vegetative growth shall mean any grass, weeds, shrubs, trees, brush, bushes or vines.

Weeds shall mean any vegetation that because of its height is objectionable , unsightly or unsanitary, excluding: shrubs, bushes and trees, cultivated flowers, and cultivated crops.

SECTION II.

Prohibited accumulations dumping, stagnant water, trash and other unsightly or unsanitary matter declared a nuisance.

- (A) It is unlawful and declared a nuisance for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city, to permit or allow any stagnant or unwholesome water, sinks, refuse, filth, carrion, weeds, rubbish, brush and refuse, trash, debris, junk, garbage, impure or unwholesome matter of any kind, or objectionable or unsightly matter of whatever nature to accumulate or remain upon any such real property or within any public easement on or across such real property or upon any adjacent public street or alley right-of-way between the property line of such real property and where the paved surface of the street or alley begins.
- (B) It shall be unlawful and declared a nuisance for any person to dump, or permit to be dumped, upon or along any drain, gutter, alley, sidewalk, street, park, right-of-way or vacant lot into or adjacent to water, or any other public or private property within the corporate limits of the city, any unwholesome water, refuse, rubbish, trash, debris, filth, carrion, weeds, brush, junk, garbage, impure or unwholesome matter of any kind or other objectionable or unsightly matter of whatever kind.

- (C) It shall be the duty of all such persons to keep the sidewalks in front of their property free and clear of all such matter, and to fill up, drain or regrade any lots, ground or yards which shall have stagnant water thereon, and to cleanse and disinfect any house, building, establishment, lot, yard or ground from refuse, rubbish, trash, filth, carrion, or objectionable, unsightly or unsanitary matter of any kind, or other impure or unwholesome matter of any kind.

SECTION III.

- (A) It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city, to permit weeds, brush, or any objectionable or unsightly matter to grow to a greater height than 12 inches upon such real property within 150 feet of any property line which abuts street rights-of-way, alleys, utility easements, subdivided additions, developed property or any buildings or other structures. It shall be the duty of such person to keep the area from the line of his property to the curblin next adjacent to it, if there is a curblin, and, if not, then to the centerline of the adjacent unpaved street, or to the edge of the pavement, cleared of the matter referred to above. All vegetation (including hay unless the hay is cultivated on property which has been granted an agricultural property tax exemption on the most recent tax roll as certified by the Angelina County appraisal district), except regularly cultivated row crops, and which exceed 12 inches in height, shall be presumed to be objectionable and unsightly matter; provided further that regularly cultivated row crops shall not be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein.
- (B) With respect to lots, tracts or parcels of land of five or more acres, the provisions of this section shall not apply to any area greater than 150 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and greater than 150 feet from any adjacent property under different ownership and on which any building is located or on which any improvement exists, as measured from the property line.

SECTION IV.

For the purpose of ascertaining whether violations of this code exist, the city manager, or his/her designee, is authorized to inspect:

- (1) The exterior of a structure and premises which contain no structure; and
- (2) If entry onto the property is refused, the city manager and/or his/her designee shall have every recourse provided by law, including but not limited to an administrative search warrant or an injunction to secure entry. If the owner,

occupant, or person in control cannot be identified or located, the city manager or his/her designee may enter the property to the extent allowed by law.

Duty of owner, occupant to cut and remove weeds, brush, and unsightly matter.

It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, to remove, drain and/or fill all prohibited matter or conditions and to cut and remove all weeds, brush, vegetative growth, and other objectionable or unsightly matter as often as may be necessary to comply with the provisions of this ordinance and to use every precaution to prevent the same from occurring or growing on such property.

SECTION V.

Notice of violation and to abate; failure to comply; correction by city.

- (A) If such person violating the terms of this article fails or refuses to comply with the demand for compliance contained in the aforementioned notice, within seven days after the date of notification as provided herein, the city may go upon such property and do or cause to be done the work necessary to obtain compliance with this article. All costs, charges and expenses (hereinafter "charges") incurred in doing so or in having such work done shall be a charge to, and a personal liability of, such person.
- (B) It shall be the duty of the city manager or his/her duly appointed representative to give a minimum of seven days official notice in writing to such person violating the terms of this article, subject to the provisions herein stated. The notice shall be in writing and may be served on such person violating the terms of this section by:
- (1) Delivering it to him or her in person;
 - (2) By letter or written notice addressed to such person at the person's address as recorded in the appraisal district in which the property is located and delivered by United States Certified Mail, return receipt requested, with a second optional copy by United States Regular Mail; or
 - (3) If personal service cannot be obtained:
 - (a) By publication once within seven consecutive days in the city's official newspaper;
 - (b) By posting the notice on or near the front door of each building on the property to which the violations relates; or
 - (c) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
 - (d) If the city mails a notice to the property owner in accordance with

subsection (b) and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered as delivered.

- (e) The city, in the notice provided herein, may inform the owner by certified mail, return receipt requested or regular mail and a posting on the property that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of such notice, the city, without further notice, may correct the violation at the owner's expense and assess the expense against the property by filing a lien against the property in the Deed records of Angelina County, Texas in accordance with the procedure set out hereinbelow. If the violation, covered by a notice under this subsection, occurs within said one-year period, and the city has not been informed in writing by the owner of an ownership change, then the city, without notice, may take any action permitted by subsection (a) herein, and assess its expenses as hereinafter provided.

SECTION VI.

Additional authority to abate nuisance.

- (A) The city may abate, without notice, weeds that:
1. Have grown higher than 48 inches; and
 2. Are an immediate danger to the health, life, or safety of any person.
- (B) Not later than the tenth (10) day after the date the city abates weeds under this section, the city shall give notice to the property owner in the manner required by this Ordinance. The notice shall contain:
1. An identification, which is not required to be a legal description, of the property;
 2. A description of the violations of the ordinance that occurred on the property;
 3. A statement that the city abated the weeds; and
 4. An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.
- (C) The city shall conduct an administrative hearing on the abatement of the weeds under this section if, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files with the city a written request for a hearing. An administrative hearing conducted under this section shall be conducted not later than the twentieth day after the date a request for a hearing is filed. The

owner may testify or present any witnesses or written information relating to the city's abatement of the weeds. The city judge shall preside at this hearing and the city attorney or his designee shall request the interests of the city.

- (D) The city may assess expenses and create liens under this section as it assesses expenses and creates liens as hereinafter set out. A lien created under this section is subject to the same conditions as a lien created as set out below. The authority granted the city by this section is in addition to the authority granted by other sections set out herein.

SECTION VII.

Expenses incurred by city; lien.

- (A) If a notice as provided for herein is delivered to the owner of such real property, and he or she fails or refuses to comply with such demand for compliance within the seven-day time period established herein, the aforementioned charges shall be, in addition to a charge to and personal liability of said owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the city manager, or his/her duly appointed representative, shall first give such owner written notice of demand for payment of such charges. Such written notice may be given by any one of the methods provided for herein for the giving of the initial notice demanding compliance with the term of this article.
- (B) If such owner fails or refuses to make complete payment of said charges within 30 days of his or her receipt of said notice, the mayor, the city manager or other municipal official designated by the city manager, shall file a written statement of such charges with the county clerk of the county for filing in the county land and deed records. Said statement shall be deemed sufficient if it contains the following minimum information; however, it may also contain such other information deemed appropriate by the mayor, the city manager or their representative designee, or his/her duly appointed representative:
- (1) The name of the owner of the real property, if known;
 - (2) A legal description of the real property;
 - (3) A statement of the charges incurred by the city in doing or in having such work done as necessary to bring the real property into compliance with this ordinance; and
 - (4) A notarized affidavit executed by the city manager, or his/her duly appointed representative, stating that all prerequisites required by this ordinance for the imposition of the charges and the affixing of the lien have been met and that all statements and/or representations made therein are true and correct. The lien attaches upon the filing of the lien statement

with the county clerk.

- (C) All such charges shall bear interest at the rate of ten percent per annum from the date of payment by the city. The lien obtained is security for the expenditures made and is inferior only to tax liens and liens for street improvements. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The written statement of such charges provided for herein, or a certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner of the real property or any other person claiming, occupying or having supervision or control of the real property shall be jointly and severally liable for such charges.
- (D) This remedy is in addition to any penal provision provided herein.

SECTION VIII.

Enforcement.

The provisions of this article shall be enforced by the city manager and/or his/her duly appointed representative(s), and it shall be unlawful for any person to interfere with or hinder the city manager and/or his/her designee and his/her duly appointed representative(s) in the exercise of their duties under this article. Notwithstanding any provisions contained herein to the contrary, the city manager and his/her duly appointed representative(s) are hereby granted the authority to issue immediate citations to persons violating any provision of this article in their presence.

SECTION IX.

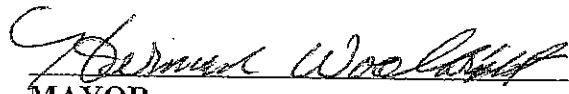
Penalty upon failure to comply.

- (A) Any person violating or failing to comply with any provision or requirement of this article, who continues to violate or fail to comply with same after seven days after notice is given and received as set forth herein, shall also be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceed \$200.00. A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs or continues to occur. This section shall be in addition to and cumulative of the provisions for abatement of the nuisance by the city and charging the cost of same against the owner of the property.
- (B) Notwithstanding the foregoing, any violation of any provision of this article which constitutes an immediate danger or threat to the health, safety and welfare of the

public may be enjoined in a suit brought by the city for such purpose.

- (C) In addition to any other remedies or penalties contained herein, the city may enforce the provisions of this article pursuant to the applicable provisions of Chapter 54 of the Texas Local Government Code, which chapter provides for the enforcement of municipal ordinances.
- (D) Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

ADOPTED, PASSED, APPROVED AND EFFECTIVE AS OF this the 17 day of February, 2009.


MAYOR

ATTEST:


CITY SECRETARY