

ORDINANCE 98

CONTROL OF WEEDS, BRUSH, RUBBISH, JUNK, UNSIGHTLY MATTER

AN ORDINANCE REGULATING THE CONTROL OF WEEDS, BRUSH, RUBBISH, JUNK, AND UNSIGHTLY MATTER IN THE CITY OF BAYSIDE; PROVIDING FOR DEFINITIONS, VIOLATIONS, EXEMPTIONS, NOTIFICATION PROCESS, DUTY TO ABATE, AND COLLECTION OF FEES THEREFORE; PROVIDING PENALTIES FOR THE VIOLATION WHEREOF; REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HERewith; SPECIFICALLY NEGATING A REQUIREMENT OF A CULPABLE MENTAL STATE AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF BAYSIDE:

ARTICLE I PURPOSE

The purpose of this code is the practical safeguarding of persons and property and declaring a public nuisance uncontrolled weeds, brush, rubbish, junk, and unsightly matter within the Town of Bayside, Texas, which could be injurious to the general public health, safety and general welfare by; providing breeding grounds and shelter for rats, mice, snakes, mosquitoes and other vermin, insects and pests; or attaining such heights and dryness so as to constitute a serious fire threat or hazard; or bearing seeds, that when mature, could cause the spread of weeds or, when breathed could cause irritation to the throat, lungs and eyes of the public; or hiding rubbish, such as broken glass or metal, which could inflict injury on any person going upon the property; or being unsightly; or any growth of weeds, other than ornamental plant growth, which exceeds 12" in height. This code repeals ORDINANCE 6 and AMENDMENT 6A, ORDINANCE 64 and AMENDMENT A, AMENDMENT B, AMENDMENT C, ORDINANCE 64 REVISED OCTOBER 2007, AND ORDINANCE 64 REVISED AUGUST 2011 of the Town of Bayside and all other ordinances and parts of the ordinances in conflict therewith.

ARTICLE II DEFINITIONS

SEC. 1. As used in this ordinance, the following terms shall have the respective meanings ascribed to them:

- **BRUSH:** All trees or shrubbery under seven (7) feet in height and less than three (3) inches in diameter which are not maintained, cared for, or cultivated.
- **CROPS:** Cultivated plants or agricultural produce, such as grain, corn, cotton, vegetables, or fruit, considered as a group: High grass and weeds is not considered a crop as defined by this ordinance.
- **JUNK:** All worn-out, worthless, and discarded material, other metals, glass, paper and cordage.
- **LOT:** Land within the property lines and all areas of public right-of-way adjacent to and extending beyond the property line of said lot:
 - (1) To the curb line of adjacent streets, where a curb line has been established; or
 - (2) For a distance of fourteen (14) feet, where no curb line has been established; and
 - (3) To the center of adjacent alleys.
- **OBJECTIONABLE, UNSIGHTLY OR UNSANITARY MATTER:** Animal, vegetable or mineral matter or any composition or residue thereof.
- **OWNER:** Any person owning any interest in a lot, or any person leasing, occupying, or having supervision or control of a lot.
- **RUBBISH:** Garbage, trash and other discarded articles and materials.

- TRASH: All refuse other than garbage, rubbish and brush; including any household trash and yard trash (grass clippings, leaves, etc.).
- WEEDS: All rank and uncultivated vegetable growth or matter that:
 - (1) Has grown to more than twelve (12) inches in height; or
 - (2) May create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

SEC. 2. As used in this ordinance, supervision and control shall be determined as follows:

- (A) The present occupant of the premises shall give rise to prima facie presumption of supervision and control.
- (B) If the property is unoccupied, then supervision and control shall be presumed to be in the owner as determined by the current tax roll; or
- (C) If the property is unoccupied and is listed with a real estate agency, such agency shall, in absence of any other designated agent, be presumed to be the agent of the owner and shall therefore be presumed to have supervision and control.

ARTICLE III VIOLATIONS

SEC. 1. Weeds, brush, rubbish, junk, unsightly matter, --Declared nuisance and prohibited.

- (A) The existence of brush; junk; objectionable, unsightly or unsanitary matter; rubbish; trash; or weeds upon a lot in violation of this division is hereby declared to constitute a public nuisance subject to the abatement procedures prescribed in this ordinance or otherwise provided in this chapter.
- (B) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to permit weeds or grass to grow to a height greater than twelve (12) inches upon said premises. Provided, however, the provisions of this subsection shall not apply to any owner, occupant or person in charge of any premises who has received and maintains a valid permit to grow and harvest hay within the city limits.
- (C) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to permit weeds, grass or any plant to grow in, upon or across any sidewalk or street adjacent to the lot or property. Cultivated vegetation may be adjacent to the sidewalk when not in violation of other sections of the city code.
- (D) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to permit any junk, brush, trash, rubbish or any other objectionable, unsightly, or unsanitary matter of whatever nature to accumulate to be present upon any such lot or parcel of land.
- (E) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to permit the open storage of any icebox, refrigerator, stove, or similar items upon any such lot or parcel of land.

ARTICLE IV EXEMPTIONS

SEC. 1. Exempted from the weed provisions of this section are the following:

- (A) Heavily wooded areas filled with uncultivated underbrush.
- (B) Actively utilized crop production.
- (C) The cultivation of concentrated wildflowers from March 1 until June 15 of each year in areas where grasses and weeds do not exceed eighteen (18) inches in height.
- (D) Property that the owner of the premises has received and maintains a valid permit to grow and harvest hay within the city limits. The requirements for receiving and maintaining a valid permit to grow and harvest hay within the city limits are:
 - (1) This section will be satisfied if all hay, remaining weeds, grass and uncultivated plants do not exceed twenty-four (24) inches in height. It shall be the duty of the property owner to remove or cause to be cut all weeds, grass or uncultivated plants as often as may be necessary to comply with this section. Failure to cut and bale said vegetation shall be grounds for the permit to be revoked.
 - (2) Notwithstanding any provision contained herein to the contrary, the use of lots for harvesting hay shall not excuse the requirement that a width of at least one hundred (100) feet from any structure and at least twenty five (25) feet from any adjacent property under different ownership on which habitable structures are located shall be kept mowed at or below the required twelve (12) inch height at all times.
 - (3) The open storing of hay within the city limits is prohibited, and the harvested hay shall be removed from the city limits or stored within a building within thirty (30) days after the hay is harvested.
 - (4) No real estate used to grow and harvest hay within the city limits shall be considered as being used for agricultural purposes unless a valid permit is in existence.
 - (5) The property must be five (5) acres or larger and zoned Farm Residential. The city secretary or city official will determine the size and feasibility of the parcel for permitting. All property that has existing hay fields that are in production at the adoption of this ordinance shall be grandfathered and exempt from the acreage and zoning restriction. Permits for property that has been grandfathered on size and zoning restrictions will not transfer with the change of ownership. New property owners must have the required five (5) acre minimum and be zoned Farm Residential to receive a Hay Permit.
 - (6) Permits shall be issued upon the payment of a fee per contiguous lot and each permit shall be valid for one year. The fee set by the city council shall be paid as required at the time of filing application. Said fees may be adjusted annually. Permits may be renewed annually upon the payment of the annual fee. Only property owners may apply for the permit.
 - (7) Applications for permits shall be made upon forms provided by the city secretary and shall contain or have attached thereto information including, but not necessarily limited to, the following:

(a) Name, address and telephone number of the applicant, the owner of the premises, and any person or entity holding any lien against the premises.

(b) The legal property description (farm tract, lot and block number) of the premises.

(8) Notification. The City employee shall give the notice of violation by posting the violation notice on a placard attached to a stake driven into the ground on the property when the hay exceeds twenty-four (24) inches in height or when the hay has not been removed from the property within thirty (30) days. Such notice shall require the abatement of such violation within ten (10) days of such notice.

(9) Abatement of Violations. Failure to cut and bale said vegetation or failure to remove harvested hay shall be grounds for the permit to be revoked. If the owner of the property does not comply with this section and fails to remedy the violation the city may mow the property or pay for the mowing to be done or remove the harvested hay or pay for the removing of the harvested hay to be done and charge the expenses to the owner of the property.

(10) The provision of this subsection shall not be applicable to the lots and parcels of land in Residential zones. Residential zones must be maintained in accordance with Article III in its entirety.

(E) The following areas and types of vegetation are exempted from this provision if managed in a manner so as not to become infested with weeds or to create a stagnant, foul-smelling condition:

(1) Native wetland vegetation found in wetlands, as defined by the State of Texas Wetlands Conservation Act, or in floodplains, drainage ponds, or ditches which store and convey storm water;

(11) Native vegetation found in natural areas which are part of public open space, parks, and nature centers;

ARTICLE V NOTIFICATION

SEC. 1. Notice Of Property Owner To Abate And Work Or Improvements By The City.

(A) The City secretary shall notify the owner of a lot in writing of the existence of a violation of ARTICLE II upon such lot. Such notice shall require the abatement of such violation or request to schedule a hearing within ten (10) days of such notice.

(B) The City secretary shall give the notice of violation:

(1) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(2) If personal service cannot be obtained:

(a) By publication at least once in the local newspaper.

(b) By posting the notice on or near the front door of each building on the property to which the violation relates; or

(c) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(C) If the city mails a notice to a property owner in accordance with SECTION 1(B)(1), 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.

ARTICLE VI DUTY TO ABATE.

SEC. 1. It shall be the duty of any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to cut, or cause to be cut, and remove such brush, weeds, rubbish, trash, junk, ice boxes, refrigerators, stoves, and any and all other objectionable, unsightly or unsanitary matter of whatever nature as often as may be necessary to comply with the provisions of ARTICLE II hereof.

SEC. 2. Abatement By City, Assessment Of Expenses; Lien.

(A) If the owner of the property that does not comply with ARTICLE II SECTION 1 and fails to remedy the violation or schedule a hearing within ten (10) days of notice of a violation, the city may:

(1) Do the work or make the improvements required; and

(2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(B) After the work has been completed and paid for by the city, a statement of expenses incurred by the city to abate such conditions and administrative fees as set by the council shall be mailed to the owner of the property. Said fees may be adjusted annually. In some cases, the cost may be higher, especially if much of the work must be done by hand. The owner of the property shall pay for work and administrative fees within thirty (30) days of the date of mailing thereof.

(C) In the event that the amount shown on said statement for the work and administrative fees has not been paid within thirty (30) days of mailing, the city secretary or assigned representative is hereby designated by the mayor as the municipal official to execute and file a statement of expenses with the clerk of the county. The statement shall constitute a lien on the property. This lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall attach upon the filing of the lien statement with the county clerk. The lien shall accrue interest at a rate of ten (10) percent on the amount due from the date of payment by the city and shall be inferior only to tax liens. For any such expenditures, administrative costs, filing fees and interest, the city or its assignee may institute suit and recover and foreclose on the property, and the aforesaid statement or copy thereof shall be prima facie proof of the amount expended in any such work performed by the city.

(D) In the event the owner of any such property requests in writing that the city do such work as is necessary in order to abate or prevent a violation of this ordinance, then such request will negate the requirement for the above-described notification of violation by the city and the city will have the same remedies as above-stated.

SEC. 3. Additional Authority To Abate Dangerous Weeds.

- (A) The city may abate, without notice, weeds that:
 - (1) Have grown higher than 36 inches; and
 - (2) Are an immediate danger to the health, life, or safety of any person.
- (B) Not later than the tenth day after the date the city abates the weeds under this section, the city shall give notice to the property owner in the manner required by ARTICLE IV.
- (C) The notice shall contain:
 - (1) An identification, which is not required to be a legal description, of the property;
 - (2) A description of the violations of the ordinance that occurred on the property including photographs of the violations;
 - (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.
- (D) The City Council shall conduct an administrative hearing on the abatement of 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 city mayor shall preside over the administrative hearing. At the hearing, the owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.
- (E) The city may assess expenses and create liens under this section as it assesses expenses and creates liens under SECTION 2. A lien created under this section is subject to the same conditions as a lien created under SECTION 2.

ARTICLE VII COLLECTIONS AND DISPOSITION OF MONEY

SEC. 1. Assessment Of Expenses; Lien.

- (A) To obtain a lien against the property, the mayor or city official designated by the mayor shall file a statement of expenses with the county clerk. The lien statement must state the name of the owner, if known, and the legal description
- (B) The lien obtained by the city is security for the expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the city of the property. The lien attaches upon the filing of the lien statement with the county clerk.
- (C) The lien is inferior only to Tax liens.
- (D) The city council may authorize the city attorney to bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

(E) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(F) The city council may authorize the city attorney to foreclose a lien on property.

(G) In any civil, criminal or administrative appeal, hearing or action commenced by the City under this Ordinance, the City shall be entitled to recover from the defendant of such action reasonable attorney's fees, costs of suit, any other costs of enforcement, including, but not limited to, inspection costs and cleanup or abatement costs.

SEC. 2. Collections And Disposition Of Money. All collections of money from lot owners in payment of charges for statement of violations of this division shall be received by and receipted for by the city secretary or a duly authorized assistant.

ARTICLE VIII PENALTY

The culpable mental state required by Chapter 6.02, Texas Penal Code is specifically negated and dispensed with and a violation is a strict liability offense.

Any person violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not to exceed two thousand dollars (\$2,000.00). Each day such violation exists shall constitute a separate offense.

ARTICLE IX ATTORNEY AUTHORIZATION

Notwithstanding any penal provision herein, the city attorney is authorized to file suit on behalf of the city for such injunctive relief as may be necessary to abate such nuisance whenever any nuisance as herein defined is found in any place within the city.

ARTICLE X VALIDITY

SEC. 1. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The validity of any section, clause, sentence, or provision of this ordinance shall not effect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

ARTICLE XI EFFECTIVE DATE

This ordinance shall be effective upon adoption and, in addition, if any penalty, fine or forfeiture is imposed by this ordinance, then this ordinance shall be effective only after publication of this ordinance in its entirety or in summary form once in the official newspaper of the Town of Bayside.

Date Published in Official Newspaper February 23, 2017

Passed, ordained, approved and adopted this the 14th day of February, 2017.

Attest:

Connie Garner

City secretary

By: Sandra Sada

Mayor Town of Bayside, Texas