

ORDINANCE NO. 173-08

AN ORDINANCE OF THE CITY OF HACKBERRY, TEXAS, REPEALING ORDINANCE 9-2-00; REGULATING NUISANCES, DEBRIS, WASTE, WEEDS, RUBBISH, BRUSH AND OTHER OBJECTIONABLE, UNSIGHTLY OR UNSANITARY MATTER; PROVIDING FOR REMOVAL BY THE CITY; PROVIDING FOR CHARGING OF EXPENSES TO THE OWNER OF THE PROPERTY; PROVIDING FOR NOTICE; PROVIDING FOR ASSESSMENT OF EXPENSES AS A LIEN ON REAL ESTATE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; PROVIDING FOR SEVERABILITY, SAVINGS, AND EFFECTIVE DATE.

WHEREAS, the City Council of the City of Hackberry, Texas, has determined the desirability and necessity of providing standards to protect the health, safety and welfare of the citizens of Hackberry by establishing standards regulating nuisances, debris, waste, weeds, rubbish, brush and other objectionable, unsightly or unsanitary matter; and

WHEREAS, the existence of nuisances, debris, waste, weeds, rubbish, brush and other objectionable, unsightly or unsanitary matter will create health hazards and blighted areas requiring large scale clearance, a curtailment of investment and tax revenue, and an impairment of economic values; and

WHEREAS, there is a need for the authority to protect and preserve the public health, safety, order, property values, and welfare of the citizens of Hackberry, Texas, as well as to maintain a healthful, clean and beautiful environment; and

WHEREAS, this Ordinance is intended to supplement and to coordinate existing litter control and removal efforts, and not terminate existing efforts nor, except as specifically stated, to repeal or effect any other ordinance governing or prohibiting litter or the control and disposition of waste.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF HACKBERRY, TEXAS:

Section 1: Definitions.

The following words, terms, and phrases, when used in the Ordinance, shall have the meaning assigned to them in this section, except where the context clearly indicates a different meaning. To the extent that any definition herein conflicts with a definition of the same term in Chapter 342 of the Texas Health and Safety Code, Chapter 342 will control.

Abate – means to repair, replace, remove, destroy or otherwise remedy the condition in question by such means and in such a manner and to such an extent as the City in its judgment shall determine is necessary in the interest of the general health, safety and welfare of the community.

Attractive Nuisance – means any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes any abandoned wells, shafts, basements or excavations; abandoned refrigerators and motor vehicles; any structurally unsound fences or structures; or any lumber trash, fences, debris or vegetation which may prove hazardous or dangerous to inquisitive minors.

Dismantled – means that form which essential equipment, parts or contents have been removed or stripped and the outward appearance verifies the removal.

Inoperative – means incapable of functioning or producing activity for mechanical or other reasons.

Lienholder – means any person who has a recorded security interest in real property, including mortgagee, beneficiary under a deed of trust, or holder of other recorded liens or claims of security interest in real property.

Nuisance – means a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to person of ordinary sensibilities. (Schneider Nat. Carriers, Inc. v. Bates, 147 S.W. 3d 264 (Tex. 2004);)

Structure – means anything constructed, built or planted upon, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, which structure requires location on the ground or is attached to something having a location on the ground, including fences, gates, garages, carports, swimming and wading pools, patio, outdoor areas, paved areas, walks, tennis courts and similar recreation areas.

Wrecked – means that which has outward manifestation or appearance of damage to parts and contents, including but not limited to vehicles, boats, equipment, trailers, tractors, and recreational vehicles/equipment.

Common Continuing Nuisance – means a wrong that arises from the unreasonable, unhealthy, unwarranted or unlawful use by a person of his property, either real or personal, or from his improper, indecent or unlawful personal contact, working an obstruction of or injury to the rights of the public, and producing material annoyance, inconvenience, discomfort or hurt to the public continuously or at frequent intervals.

Dump – means to throw, discard, place, deposit, discharge, burn or dispose of a substance.

Hazardous Waste – means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 1998, codified in Title 40 of the Code of Federal Regulations, and any designated hazardous waste.

Litter – means all discarded substances and materials, including without limitation all rubbish, waste material(s), tin cans, refuse, garbage, trash, debris, dead animals, building or construction materials, demolition debris, mechanical equipment or parts, scrap tires, or any other material or substance of any kind and description resulting from domestic, industrial, commercial or mining operations.

Occupant – means a person who resides, or holds possession or control of or occupies property.

Owner – as used herein shall mean, in addition to the legal owner of such property, any person, firm, association or corporation in charge of, having control of or having the right of control of any property. The term “Owner” shall also include any mortgage company or other mortgage who, by foreclosure or other operation of law has acquired any legal or equitable right in and to certain property.

Parkway – as that term is used herein shall mean that property adjacent to the property of any owner extending from the owner’s property line to the curb line of any street, roadway or alley where curb exist, or, extending to the edge of the driving portion of any street, roadway or alley where there are not curbs, including adjacent drainage ditches and easements derived from the owner’s servient estate.

Person- means any natural person, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of persons or entities of any kind.

Private Property – means any dwelling, house, building, or other structure, whether inhabited to be used permanently or temporarily, or continuously uninhabited or vacant, which is one hundred (100) percent privately owned, and shall include any yard, grounds, walk, parking area, driveway, porch, steps, vestibule or mailbox belonging or pertinent to such dwelling, house, building, or other structure.

Public Place – means any area that is used or held out for use by the public, whether owned or operated by public or private interests, including but not limited to streets, parking lots, parking garages, sidewalks, rights-of-way, parks, campgrounds, highways, alleys or other public ways.

Vehicle – includes every device capable of being moved upon a public highway and in, upon, or by which any person or property may be transported or drawn upon a public highway, including devices moved by human power or used exclusively upon stationary rails or tracts.

Grass and Weeds Over Twelve (12”) Inches High – as used herein shall have its common place meaning and shall not include agricultural crops from which the person growing such crop derives a substantial portion of his income and does not include tended and cultivated hedges or other similar utilitarian forms of vegetation.

Rubbish – as the term is used herein shall mean any illegally deposited solid waste. The following, among others, are hereby declared to be Rubbish: old lumber, junk, old vehicles or machinery or parts thereof, garbage, trash, scrap material, ruins, or demolished or partly demolished structures or buildings, piles or stones, bricks, or broken rock, trees, tree limbs and branches.

Section 2. Unlawful Conditions on Property.

The owner or occupant of any property, whether the same is occupied or unoccupied, shall keep such property and adjacent parkway free of any of the following conditions:

- A. Stagnant water;
- B. Hazardous Waste;
- C. Grass and weeds over twelve inches in height;
- D. Rubbish, Litter, brush, and other objectionable, unsightly, or unsanitary matter; or
- E. Any other condition found by City, County or State Health Officers or other authorized person to be unsanitary or unwholesome or a condition that may produce disease.

Section 3. Property Maintenance – Public Nuisances.

It is hereby declared to be a public nuisance for any owner or other person in control of the property or premises to keep or maintain the property, premises or rights-of-way in such a manner that any of the following conditions are found to exist:

- (a) Abandoned, dismantled, wrecked, inoperable, unlicensed, and discarded objects, furniture, equipment or appliances such as, but not limited to vehicles, boats, water heaters, refrigerators, clothes dryers, washing machines, cooking stoves, heating stoves, air conditioners, microwave ovens, televisions, dishwashers, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers standing or stored on the property or on sidewalks or streets which can be viewed from a readily accessible from such places, or which are stored on private property in violation of any other law or ordinance;

Exceptions:

- 1. Inoperable vehicles, boats, or equipment in the restoration process which are completely covered with a tarp-like covering, and are not visible from right-of-ways, a street or alley.
- 2. Appliances scheduled for sanitation pickup that have the doors removed, and are set out for removal on the scheduled removal date.

- (b) Utility, construction, landscaping, cattle or other such trailers parked within the front yard and visible from a public street;
- (c) Sand, gravel, dirt or other landscaping materials shall not be within the front yard in excess of sixty (60) days.
- (d) Discarded garbage, Rubbish, refuse, or recyclable items which have not been recycled within thirty (30) days of being deposited on the property which are determined by an Enforcement Officer to constitute a fire hazard or to be detrimental to human life, health or safety;
- (e) Oil, grease, paint, other petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which is determined by and Enforcement Officer to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety;
- (f) Litter (*excluding: (1) materials for a construction project on the property with a valid permit, and (2) lumber for household repairs stacked neatly, off the ground, not higher than four feet, nor longer than twenty feet stored in the backyard*), salvage materials, including but not limited to auto parts, scrap metals, tires, other materials stored on premises in excess of seventy-two (72) hours;
- (g) Receptacles for discarded materials and recyclables which are left in the front yard following the day of the regularly scheduled refuse pick-up for the property;
- (h) Swimming pool, pond, spa, other body of water, or excavation which is abandoned, unattended, unsanitary, empty, which is not securely fenced, or which is determined by the Enforcement Officer to be detrimental to life, health or safety;
- (i) Any premises which detrimentally impacts the surrounding neighborhood because of dilapidation, deterioration or decay or is unsafe for the purpose for which it is being used or is not secured or is improperly secured; and
- (j) Any condition on a property which meets the requirements of subparagraph (1) , (2) or (3), below:
 - (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property;
 - (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal; or
 - (3) Litter or other refuse which may constitute a threat or detriment to public safety, health, welfare or property values.

Section 4. Responsibility for Property Maintenance

The owner, occupant, lessee or tenant of any property within the City shall be responsible for the maintenance of property and premises in a manner consistent with the provisions of this Ordinance and other City ordinances.

Under no circumstances shall any private property owner be permitted to store, accumulate, or otherwise maintain any Litter, debris or other refuse on the premises in such quantities as to constitute a nuisance or be harmful to the health or safety of the public; nor shall the burial of any litter, debris, or other refuse be allowed on private property, except where a special use permit has been issued for use as an inert landfill or sanitary landfill by the Environmental Protection Agency (EPA) or the Texas Commission on Environmental Quality (TCEQ).

Section 5. Dumping; Use of Private Refuse Container Without Permission from Owner.

No person shall dump or otherwise dispose of Litter, any waste containing hazardous substances, or other refuse or unsightly matter on any public or private property unless said property is specifically approved by the EPA or the TCEQ for dumping.

It is a violation of this Ordinance to dump any domestic, industrial, commercial or mining waste or litter, or refuse into any private dumpster, container or private collection system without permission from the owner.

Section 6. Throwing Litter from Vehicle.

It shall be unlawful to throw, drop or otherwise deposit or dispose of Litter or any other refuse from any moving vehicle.

Section 7. Allowing Escape of Load Material.

No vehicle shall be driven or moved on any street, highway or other public road within the City unless such vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping there from; provided, however, that sand or any substance for increasing traction, or water or other substance may be sprinkled on a roadway and the cleaning or maintaining of such roadway may be undertaken by the governmental agency having that responsibility. Any person operating a vehicle from which any glass, litter or other object has fallen or escaped which constitutes an obstruction or could damage a vehicle or otherwise endanger travel on such street, highway or other public road shall immediately cause the street, highway or public road to be cleaned of all glass objects and shall pay any costs for such removal. No provision of this Section shall apply to any motor vehicle which is used exclusively for agricultural purposes and which is not operated on or over any public highway for any other purpose than the purpose of operating it across the highway or along the highway from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin or the purpose of taking the vehicle to a repair shop.

Section 8. Construction and Demolition Sites.

- (a) All construction and demolition contractors must obtain a permit from the City prior to commencing construction or demolition.
- (b) All construction and demolition contractors, building permit holders, and/or property owners shall adhere to all provisions of this Section.
- (c) On-site refuse receptacles to effectively and securely handle the accumulation of all debris, paper, building material waste, scrap building materials and other trash and Litter produced by those working on the site will be installed and maintained. All construction and demolition sites shall be kept in a litter-free condition. Under no circumstances shall the accumulation of Litter become a threat to the public safety or to the public health, welfare, property, or portion thereof.
- (d) All dirt, mud, silt or any other earth deposited upon any public or private property, including streets and roads, as a result of construction and/or demolition shall be immediately removed by the permit holder as to prevent any detectable amount of accumulation which may tend to cause a threat to the public safety, property values, both real and personal, or good order of the City or environment. Any construction supplies or materials, landscaping supplies or materials, or any other material deposited on a public road or right-of-way shall be removed on a daily basis, or immediately if the presence of such materials constitutes a threat to the public health or safety. In additions to all the remedies and relief provided in this Ordinance for violations of this Section, the Code Enforcement Officer/City Marshal, or those agents as either may designate, employ, or assign, may immediately cause to cease all work being performed at the site by the issuance of a stop work order. No further work will resume at the site until the violation is corrected and inspected by the authority which issued the stop work order and all re-inspection fees that are assessed are paid in full.
- (e) Under no circumstances shall any Litter, Rubbish, waste or debris, including, but not limited to brush, limbs, stumps, roots and other by-products of the construction or demolition process be buried on any property not expressly and properly permitted for such activity.
- (f) No burning of Rubbish, Litter, brush, trash, waste or debris may be conducted on any property.
- (g) Demolition and construction sites must contain protective and security fencing to protect the citizens and environment, including but not limited to, the prevention of erosion from stormwater runoff, scattering of Litter and debris, and entry of small children.

Section 9. Posting of Notices on Utility Poles or Other Public Structures.

No person shall post or affix any notice, poster or other paper or device calculated to attract the attention of the public to any public utility pole or other public lamppost or structure unless expressly authorized by the City.

Section 10. Scavenging.

No person other than the owner thereof, or an agent or employee of the City, shall interfere with any container placed for the purpose of storing refuse pending collection, or remove or take any of the contents thereof, or remove any such container from the location where the container has been placed by the owner thereof.

Section 11. Authority of Enforcement Officer.

Enforcement of this Ordinance may be accomplished by the City Marshal, Enforcement Officer, or other authorized City personnel in any manner authorized by the Ordinance or by any other law, including but not limited to issuance of criminal citations, civil actions and abatement.

Section 12. Abatement of Public Nuisances.

- (a) Non-exclusive Authority to Abate - The City may choose to abate any public nuisance or violation of the Ordinance through the procedure set out in Section 342.006 of the Texas health and Safety Code or through any of the abatement methods set forth in the Ordinance or in other local, state or federal law when the responsible party has been properly notified and has refused to remedy the nuisance, and nothing contained in this Ordinance shall be construed as limiting, prejudicing or adversely affecting the City's ability to concurrently or consecutively use any of those proceedings as the City may deem are applicable. Proceeding under this Section will not preclude the City from proceeding under other Sections of this Ordinance. Whenever an Enforcement Officer determines that any condition exists in violation of the provisions of this Ordinance, he/she may take enforcement action pursuant to this Section.
- (b) Right of Entry – The Enforcement Officer may enter any property or premises at all times to perform any duty imposed upon him/her by this Ordinance whenever the Enforcement Officer has cause to believe a violation of provisions of this Ordinance is occurring, provided that:
 - (1) The Enforcement Officer shall present proper credentials, state the reason for entry and request entry from the owner or occupant.
 - (i) If entry is denied, he/she may seek a court ordered inspection warrant if cause exists pursuant to City, State or Federal law.

- (ii) If entry is denied, the Enforcement Officer shall have recourse to every remedy provided by law to secure entry.
- (2) The Enforcement Officer shall make a reasonable effort to locate the owner of unoccupied property or premises, inform the owner of the reasons for entry and request entry.
- (3) The Enforcement Officer shall not enter any property or premises in the absence of permission to enter, unless an inspection warrant has been issued by a court of competent jurisdiction.

Section 13. No Duty to Enforce.

Nothing in this Ordinance shall be construed as requiring the City to enforce the prohibitions in this Ordinance against all or any properties which may violate the Ordinance. In the City's prosecutorial discretion, and as the City's resources permit, this Ordinance may be enforced only as to a limited number of problem properties per year. Nothing in this Section or the absence of any similar provisions from any other City law shall be construed to impose a duty upon the City to enforce such other provision of law.

Section 14. Criminal or Civil Penalty for Violation.

Pursuant to the City's prosecutorial discretion, the City may enforce violations of the provisions of the Ordinance as criminal, civil or abatement actions.

- (a) Infraction/misdemeanor – Any person who violates any of the provisions of this Ordinance shall be guilty of an infraction and/or misdemeanor. Each and every day, or any part thereof, during which any such violation is committed, continued, or allowed shall be a separate offense.
- (b) Prosecution – Every violation of this Ordinance shall be a misdemeanor; provided, however, that where the City Attorney has determined that such action would be in the best interest of justice, the City Attorney may specify in the accusatory pleading or citation, that the violation shall be prosecuted as an infraction.
- (c) Penalty for Infraction – Each and every violation of this Ordinance which is deemed an infraction is punishable by:
 - (1) A fine not exceeding two-hundred dollars (\$200.00) for the first violation; or
 - (2) A fine not exceeding five-hundred dollars (\$500.00) for each additional violation, after the first, of the same or similar provision of this Ordinance within a one year period of the first violation.

- (d) Civil Penalties – Any person who intentionally, accidentally, or negligently violates any provision of this Ordinance may be civilly liable to the City in the sum of not less than two-hundred dollars (\$200.00) but not to exceed two-thousand dollars (\$2,000.00) per day for each day in which such violation occurs or continues. The City may petition the municipal or superior court to impose, assess and recover such sums. The civil penalty provided in this Section excludes inspection costs and cleanup or abatement costs; is cumulative and not exclusive; and, shall be in addition to all other remedies available to the City under state law and local ordinances.
- (e) Nothing in this Section shall preclude the City from enforcing the terms of this Ordinance by way of immediate issuance of a citation for any violation therein.
- (f) Nothing in this Section shall preclude the City from seeking appropriate injunctive relief to halt continuing violations of this Ordinance or to halt a nuisance.

Section 15. Costs of Enforcement.

In any civil, criminal or administrative appeal, hearing or action commenced by the City under this Ordinance, the City shall, to the extent allowed by law, 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.

Section 16. Non-emergency Abatement by the City.

Following determination by the City Administrator, City Marshall, Code Enforcement Officer or City Council that a nuisance shall be abated by the City, the notices required by law shall be given and a hearing shall be conducted as provided therein. Following the abatement, the costs of abatement include those authorized by this Ordinance shall be confirmed by the City Council and thereafter placed as a lien on the subject property pursuant to the procedure set out in Section 342.007 of the Texas Health and Safety Code. The City may abate by all other legal means available to it by law.

Section 17. Conclusive Notice.

Mailing of notice of any hearing or order under this Ordinance to the owners of the real property concerned as the owner's names and addresses are shown on the last equalized roll upon which City taxes are collected shall be conclusively deemed to be the proper persons and addresses for mailing the resolution, and the failure of any or all of the addressees to receive the notice of a hearing or order pursuant to this Ordinance shall be conclusively deemed to be adequate notice to any and all occupants, users or possessors of the property or its contents, and the failure of any such occupant, user, or possessor to see, read, understand or otherwise receive the notice shall not invalidate any of the proceedings.

Section 18. Severability.

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clause and phrase be declared unconstitutional or invalid.

Section 19. Savings.

This Ordinance shall be cumulative of all other ordinances of the city and shall not repeal any of the provisions of those ordinances except in those instances where the provisions of, and only to the extent, those ordinances are in direct conflict with the provisions of this Ordinance. If any provision of this Ordinance conflicts with Chapter 342 of the Texas Health and Safety Code, then Chapter 342 shall control.

Section 20. Effective Date.

This ordinance shall become effective from and after its adoption and publication as required by law.

ADOPTED by the City Council of the City of Hackberry, Texas, on this the 12th day of August, 2008.

APPROVED:

Jeromy Cannon, Mayor

Attest:

City Secretary