



## City of Orchard

### ORDINANCE NO. 98-2012

AN ORDINANCE OF THE CITY OF ORCHARD, TEXAS, DELETING AND THEREFORE REPLACING ORDINANCE NO. 031-87, AND DECLARING AIR POLLUTION, CERTAIN UNSANITARY CONDITIONS, THE EXISTENCE OF UNKEPT GRASS, WEEDS, OR BRUSH, AS WELL AS THE PRESENCE OF RUBBISH OR OTHER UNSIGHTLY CONDITIONS, ALL TO CONSTITUTE A PUBLIC NUISANCE; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED \$2,000.00 FOR ANY VIOLATION OF ANY PROVISION OF THIS ORDINANCE; AND PROVIDING FOR SEVERABILITY.

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ORCHARD, TEXAS:**

**Section 1.** Ordinance No. 031-87 is hereby deleted and the provisions of this Ordinance shall replace the regulations established in such deleted Ordinance.

**Section 2.** The City of Orchard, Texas (the "City"), hereby adopts the following regulations governing the declaration and abatement of nuisances within the corporate limits of the City:

#### **"ARTICLE I. - AIR POLLUTION**

##### **Sec. 1-1. - Smoking in city buildings.**

(a) Prohibition. It shall be unlawful for any person to be in possession of a burning tobacco product, or to smoke tobacco, in a building owned or leased by the city within the corporate boundaries of such city.

(b) Defenses to prosecution.

(1) It is a defense to prosecution under this Section that the building in which the offense takes place does not have prominently displayed therein a reasonably sized notice that smoking is prohibited by city ordinance in



such building and that an offense is punishable as provided in this Ordinance.

(2) It is a defense to prosecution under this Section that the building in which the offense takes place is not equipped with facilities for extinguishment of smoking materials in a readily accessible location.

(c) Exception. It is an exception to this Section that the person in possession of the burning tobacco product or smoking the tobacco product does so exclusively within an area designated for smoking tobacco.

## **ARTICLE II. - GRASS, WEEDS, BRUSH, RUBBISH, AND OTHER UNSANITARY MATTER**

### **DIVISION 1. – GENERALLY**

#### **Sec. 2-1. - Definitions.**

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Any and all other objectionable, unsightly or unsanitary matter or conditions of whatever nature* means and includes all cultivated and uncultivated vegetable growth, objects, matter, and conditions not included within the meaning of the other terms defined in this section, which are liable to produce or tend to produce an unhealthy, unwholesome, unsightly or unsanitary condition to the premises within the general locality where the same are situated, and shall also include any species of ragweed or other vegetable growth which might or may tend to be unhealthy to individuals residing within the general locality of where the same are situated.

*Brush* means and includes all trees or shrubbery that are not cultivated or cared for by persons owning or controlling the premises.

*Grass or weeds* means and includes all cultivated and all rank and uncultivated vegetation or other vegetable growth or matter. Provided, however, this definition shall be deemed to not include cultivated and uncultivated vegetation on property for which an agricultural exemption has been issued for ad valorem tax purposes by the appraisal district of the county in which such property is located if such cultivated or uncultivated vegetation does not violate Subsection 3-2(b).

*Rubbish* means and includes all refuse, rejected tin cans, old vessels of all sorts, useless articles, discarded clothing and textiles of all sorts, and in general all non-decayable waste and all other things usually included within the meaning of such term.



**Sec. 2-2. - Public nuisance declared.**

(a) Any such lot or parcel shall containing one or more of the following conditions shall constitute and is hereby declared to constitute a public nuisance.

- (1) When grass or weeds have grown to more than twelve (12) inches in height, or such grass or weeds, regardless of height, is liable to become an unwholesome or decaying mass creating an unsanitary condition or a harborage or breeding place for mosquitoes, rodents, or vermin, or other disease-carrying pests;
- (2) When uncultivated brush is creating an unsanitary condition or a harborage or breeding place for mosquitoes, rodents, or vermin, or other disease-carrying pests;
- (3) When rubbish or any other objectionable or unsightly and unsanitary matter of whatever nature shall exist, covering or partly covering the surface of any lot or parcel of land situated within the City; or
- (4) When any such lot or parcel of land, as aforesaid, shall have the surface thereof containing low areas or holes, or be in any such condition that such lot or parcel of land holds, is liable to hold, or is currently holding stagnant water therein, or, if from any other cause, such lot or parcel of land shall be in such condition as to be liable to cause disease or produce, harbor or spread disease germs of any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or obnoxious.

The prompt abatement of any such nuisance described in this Section above is hereby declared to be a public necessity. Such lot or parcel of land, in addition to the grounds within its respective boundaries, shall be held to include, but shall not be limited to:

- (1) All lots or parcels of land lying and being adjacent to and extending beyond the property line of any such lot or parcel of land, into the right-of-way and all the way to the curblines of adjacent streets where a curblines has been established or to the edge of pavement where no curblines has been established on adjacent streets;
- (2) To the center of adjacent unimproved rights-of-way and alleys: and
- (3) The area between a fence, wall or barrier and within any abutting drainage channel easement to the top of such channel closest to the property.



(b) With respect to uncultivated agricultural properties or tracts of land that contain no structures used or designed for human occupancy for residential or commercial purposes, a nuisance is not declared until grass and weeds grow to a height greater than twenty-four (24) inches within fifty (50) feet from any adjacent property under different ownership or from any street right-of-way. However, on cultivated properties where the distance between the growing crop and abutting property under different ownership or from a street right-of-way is less than fifty (50) feet, a nuisance is not declared until grass and weeds grow to a height greater than twelve (12) inches.

(c) It is unlawful for any person to permit or allow any weeds, filth or rubbish of any kind to remain on any sidewalk in front of or at the side of any premises owned by such person, or in the street, to the middle of, in front of or at the side of any premises owned or controlled by such person, or upon any alley or drainage easement that may be adjacent to any lots owned or controlled by such person.

## **DIVISION 2. - ABATEMENT**

### **Sec. 2-3. - Required; notice to property owner and requirement to abate.**

(a) Whenever the existence of any nuisance, as described in this Article, on any lot or parcel of land situated within the City shall come to the knowledge of the Mayor or his/her designee, and the City intends to utilize the subsequent provisions of this Article to correct or remove the condition and assess the cost against the property, a notice identifying such property shall be issued to the person owning such property to correct, remedy or remove the condition within seven (7) calendar days after such notice and it shall be unlawful for any person to fail to comply with such notice.

The notice shall be given personally to the owner in writing, 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, if personal service cannot be obtained, then by publication at least one time in a newspaper of general circulation within the City, or by posting the notice on or near the front door of each building on the property to which the violation relates, or by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

The notice shall direct the abatement of such nuisance by a method or methods appropriate for such nuisance and within seven (7) calendar days from the service of such notice. The notice shall further state that, in default of the performance of the conditions required by this Section, the City may issue a citation or a series of citations to effect the nuisance abatement in accordance with Section 3-11 of this Article, or, at the City's discretion, at once cause the work to be done and pay therefor and charge the cost and expense incurred in doing or having such work done, or improvements made, to the owner of such property, and fix a lien thereon as provided in this Article.



(b) If the City mails a notice to a property owner in accordance with this section, 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.

(c) In a notice provided under this Article, the City will include in said notice that if the property 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 the notice, the City without further notice may correct the violation at the property owner's expense and assess the expense against the property. If a violation covered by a notice under this Section occurs within the one-year period, and the City has not been informed in writing by the property owner of an ownership changes, then the City without notice may take any action permitted in this Section and assess its expenses as hereinafter provided.

#### **Sec. 2-4. - Abatement by City.**

In the event of the failure, refusal or neglect of the owner or occupant of any premises or property to cause a nuisance to be removed or abated in the manner and within the time provided in Section 3-3, the City may cause the grass, weeds, brush, rubbish or other unsanitary matter or condition constituting a nuisance to be promptly and similarly abated, in a reasonable and prudent manner, at the expense of the City. The Mayor or his/her designee shall carefully compile the cost of such work done and improvements made in abating such nuisance and shall charge such costs against the owner of the premises.

#### **Sec. 2-5. - Costs of abatement; filing of lien.**

The City Commission hereby finds and declares that the general overhead of administrative expenses incurred from inspecting, locating the owner, issuing notice, issuing citations, reinspecting, ordering work done, and submission of billing, together with all necessary incidents of same, require a reasonable charge established by City Resolution for each lot, tract or parcel of land, and such charge is hereby established and declared to be an expense of such work and improvement. In addition, if the City files a lien against such lot, tract or parcel of land to secure payment for such abatement as provided in this Article, an additional charge of not less than \$50.00 shall be added to reimburse the City for its expense in causing the preparation and filing of such lien, such expense hereby being found and determined by the City Commission as representing the actual cost to the City in having such service performed.

#### **Sec. 2-6. - Statement of expenses; institution of lien.**

After receiving from the Mayor or his/her designee a compilation of the cost of the work done pursuant to this Article and after charging the expenses against the



owner of the premises, the Mayor shall certify a statement of such expenses and the City Secretary shall file such statement with the County Clerk of the County in which such property is located. Upon the filing of such statement with the County Clerk, the City shall have a privileged lien upon the land described therein and upon which the improvements have been made, second only to tax liens and liens for street improvements, to secure the expenditure so made, and ten percent (10%) interest on the amount from the date of such payment. For any such expenditures and interest, as aforesaid, suit may be instituted by the City Attorney and recovery and foreclosure had in the name of the City; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. Upon payment of the full charge assessed against any property, pursuant to the procedure set forth in this section, the Mayor shall be authorized to execute, for and in behalf of the City, a written release of the lien mentioned in this Section, such written release to be on a form prepared and approved in each case by the City Attorney.

**Sec. 2-7. - City may contract for abatement.**

The City shall have the right to award any quantity of work authorized under Section 3-4 to a general contractor whose bid shall be accepted by City Commission as the lowest and best secured bid for the doing of the work mentioned in this Article.

**Sec. 2-8. - Summary abatement.**

In addition to the remedies prescribed by this Article, and cumulative thereof, if it shall be brought to the attention of the City Commission and the City Commission determines that any such nuisance is likely to have an immediate adverse effect upon the public health, comfort or safety, the City Commission may, by appropriate resolution or motion, order such nuisance summarily abated by the City in a reasonably prudent manner.

**Sec. 2-9. - Preparation and mailing of notices and bills.**

All notices to cut grass, weeds or brush or to abate any nuisance under this Article, or otherwise provided for in this Ordinance, and all statements evidencing costs to the City of cutting weeds or abatement of any other nuisances, upon the failure, refusal or neglect of the owner to cut grass, weeds or brush or to abate the nuisance after having been notified to do so, as well as all other clerical work incident to enforcement of the provisions of this Article, shall be prepared and mailed by the Mayor or his/her designee.

**Sec. 2-10. - Collection and disposition of funds.**

All payments of money by and collections of money, if any, from property owners for the purpose of paying the City for its expense in abating nuisances as



provided for in this Article, or otherwise provided for in this Ordinance, shall be handled by the City Secretary. Any such payment or collection so made shall be received by and receipted for, in duplicate, by the City Secretary or one of the Secretary's duly authorized assistants. Such receipts and the necessary records in connection therewith shall be prepared and handled and maintained as a permanent record, and such sums of money shall be handled, in the form and manner prescribed by the City Commission.

**Sec. 2-11. - Penalty for failure to abate nuisance.**

Any owner, lessee or occupant, whether a natural person or a corporation, or any agent, servant, representative or employee of any such owner, lessee or occupant, including any person having ownership, occupancy or control of any premises or lot or parcel of land or any part thereof, or any interest therein, or improvements thereon, situated within the limits of the City, on which there exists any nuisance, as described in this Article, or otherwise described in this Ordinance, who shall intentionally, knowingly, recklessly or with criminal negligence allow or permit any such nuisance to be created, or to remain and continue if created and established, or who shall fail, refuse or neglect to remove or abate such nuisance by one of the methods provided in this Article or otherwise regulating such premises so as to prevent such a nuisance within ten (10) calendar days from the date of service of notice thereof as provided for in this Article, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000.00. Each day of violation shall constitute a separate offense.”

**Section 3.** Any person, corporation or entity who or which intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed \$2,000.00. Each day in which any violation shall occur, or each occurrence of any violation, shall constitute a separate offense.

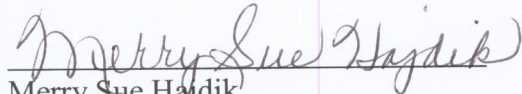
**Section 4.** In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Commission of the City of Orchard, Texas, declares

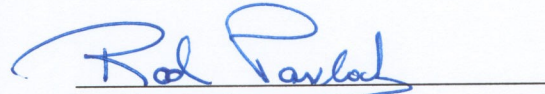


that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED, APPROVED, AND ADOPTED this 11th of April, 2012.

ATTEST:

  
Merry Sue Hajdik  
City Secretary

  
Rod Pavlock  
Mayor