

ORDINANCE NO. 99-02-09-A

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF DILLEY, TEXAS, BY PROVIDING FOR THE FILLING UP AND DRAINAGE OF LOTS THAT SHALL HAVE UNWHOLESOME PLACE OR PLACES WHERE STAGNANT WATER MAY ACCUMULATE THEREON: THE CLEANING OF ANY BUILDING OR PREMISES OF FILTH, CARRION OR OTHER IMPURE AND UNWHOLESOME MATTER: REQUIRING OWNERS OR OCCUPANTS OF LOTS IN THE CITY OF DILLEY TO KEEP SAID LOTS FREE FROM WEEDS, RUBBISH, BRUSH, TRASH, JUNKED VEHICLES, AND OTHER UNSIGHTLY OR UNSANITARY MATTER: PROVIDING FOR NOTICE TO BE GIVEN TO OWNERS OR OCCUPANTS OR PREMISES IN CASE OF FAILURE TO MAKE LOTS AND/OR PREMISES SANITARY AND SIGHTLY: PROVIDING FOR THE CITY OF DILLEY TO CAUSE THE CORRECTION AND ABATEMENT WORK TO BE DONE ON ITS OWN AND CHARGE THE OWNER FOR THE EXPENSE INVOLVED: AND UPON FAILURE OF THE OWNER TO PAY THE CITY FOR SUCH EXPENSE, PROVIDING FOR THE FIXING OF A LIEN AGAINST SUCH LOTS FOR SUCH IMPROVEMENTS; AND DECLARING AN EMERGENCY.

WHEREAS, it is deemed by the City Council of the City of Dilley, Texas, that it is dangerous to the public health for lots in the developed areas within the City of Dilley to have places thereon where stagnant water may accumulate and for filth, carrion or other unpure and unwholesome matter to accumulate on lots within said City; and that it is dangerous to public health and constitutes a fire hazard to have weeds, brush, rubbish, trash, junked vehicles and other unsightly and unsanitary matter on lots within the City of Dilley; and,

WHEREAS, it is expressly provided by the provisions of Article 4436 and Art. 4477-1, Rev. Civ. Stat. Ann., that cities have the power to correct the evils herein stated;

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

SECTION 1: DEFINITIONS.

For the purposes of these Ordinances the following terms shall have the meaning shown;

- a. "Brush" shall include all trees or shrubbery under seven (7) feet in height not cultivated and cared for by the person owning or controlling the premises.
- b. "Developed area" shall mean any city block which is divided into more than four (4) lots or parcels under separate ownership or occupancy, upon which building exist on more than twenty-five percent (25%) of such lots or parcels; and in addition, shall include any new city block not meeting the above definition of "developed area" if at least fifty percent (50%) of its perimeter is adjacent to or across a road, street or alley from a new city block which is divided into more than four (4) lots or parcels under separate ownership or occupancy, upon which buildings exist on more that twenty-five percent (25%) of such lots or parcels.
- c. As used in this article, "junked vehicle" shall mean any motor vehicle as defined in Section 1 of Article 6701-11, Vernon's Texas Civil Statues, as amended, which:
 1. Is inoperative, and which is wrecked; dismantled; partially dismantled; or discarded; and does not have lawfully affixed to it any of the following:
 - (a) An unexpired license plate; or
 - (b) A valid motor vehicle safety inspection certificate; or
 2. Is inoperative, and remains inoperable for a continuous period of more than forty-five (45) days.
- d. The word "garbage", as used in this Ordinance, shall include all kitchen waste consisting of animal or vegetable matter.
- e. "Lot" shall have its ordinary meaning but shall also include, in addition to the land within its boundaries, all land adjacent to and extending beyond the property line to the curbline of adjacent streets, and, where no curb

exists, to the existing street surface. The word lot shall also include all land lying between the property line of any lot and the center of adjacent alleys.

- f. "Owner" as used herein shall also include any tenant, lessee, or other occupant of property under an existing agreement or understanding with the owner thereof.
- g. "Parcel" shall mean any tract of land which has not been subdivided into lots, but shall also include, in addition to the land within its boundaries, all land adjacent to and extending beyond the property line to the curblines of adjacent streets, and where no curb exists, to the surface of an adjacent public street or road. The word parcel shall also include all land lying between the property line and the center of any adjacent alley.
- h. The word "rubbish", as used in this Ordinance, shall include all trash, refuse, tin cans, old vessels of all sorts, discarded automobile or truck bodies which are incapable of being used for transportation, useless articles, discarded clothing and textiles of all sorts and, in general, all litter and other things usually included within the meaning of the term.
- i. The word "weeds", as used in this Ordinance, shall include all rank and uncultivated vegetable growth or matter which has grown to more than twelve (12) inches in height, or which regardless of height, is unsightly.

Section 2. ACTS PROHIBITED.

It shall be unlawful for any tenant or occupant of any buildings or premises, in person or by his servant, agent or employee, to cast, throw, drop, place, sweep, or deposit, or allow to accumulate, or to allow the same to be done in any manner whatsoever, any garbage, rubbish, weeds, brush, trash, stagnant water, junked vehicles, or other substance or thing whatsoever of an offense nature or deleterious to health, in or upon any street, sidewalk, park other public place, or vacant lot or in any yard space or privately owned premises.

It shall be unlawful to do or perform any act prohibited hereby and it shall be unlawful to fail to do or perform any act required hereby. Upon conviction any violation

hereof shall be punished as provided in Section 15. Each day of violation hereof shall constitute a separate offense.

SECTION 3. Unlawful noncompliance; keeping of junked vehicles prohibited.

- a. It shall be unlawful for any person, firm or corporation who shall own or occupy any lot or lots in the City of Dilley, Texas, to allow weed, rubbish, brush, trash or any other unsightly, objectionable or insanitary matter to accumulate or grow on said lot or lots.
- b. It shall be unlawful for the owner or occupant of any real property within the city to keep or permit the keeping of any junked vehicle or parts thereof on such property in violation of this article.

SECTION 4. DECLARATION OF PUBLIC NUISANCE.

- a. Whenever and wherever weeds, brush, trash, stagnant water, rubbish or junked vehicles shall exist, covering or partially covering the surface of any lot within the corporate limits of the city, such condition is hereby declared to be a public nuisance, the prompt abatement of which is a public necessity. All property within a developed area within the city shall be completely free and clear of weeds, brush or rubbish, trash, stagnant water, or junked vehicles.
- b. In other areas of the city, the portion of any lot or parcel of land within fifty (50) feet of any open public street or road which is within seventy-five (75) feet of any building shall be kept completely free and clear of any weeds, brush or rubbish, trash, stagnant water, or junked vehicles.
- c. Whenever and wherever weeds, brush, rubbish, trash, stagnant water, or junked vehicles shall exist, covering or partially covering this portion of any lot or parcel in a new city block which is not a developed area, such condition is hereby declared to be a public nuisance, the prompt abatement of which is a public necessity.
- d. It is the duty and responsibility of the owners of property within the city to keep and maintain their properties in compliance with the above standards.

SECTION 5. ISSUANCE, SERVICE OF ABATEMENT NOTICE.

- a. **Generally.** Whenever the City Administrator receives information of the existence of any property not meeting the standards set out in Section 4, he/she or any building inspector or sanitary officer assigned such responsibility, shall serve the owner of the property with a written notice informing the owner of such condition and directing that action be taken to bring the property into compliance within fifteen (15) days.
- b. **Contents of notice.** The notice required to be sent by Section shall:
 1. Be in writing; and
 2. State the nature of the public nuisance and that it must be removed and abated within fifteen (15) days after receipt of notice; and
 3. State that a request for a hearing to determine whether or not a public nuisance exists or whether the motor vehicle is a junked motor vehicle as defined herein must be made to the City Administrator on an agent appointed to receive such request before expiration of fifteen (15) days after receipt of such notice; and
 4. State that in the event no request for a hearing is received, criminal charges of maintaining and permitting a public nuisance to exist on the keeping of junked vehicle(s), such public nuisance on vehicle(s) constructing a public nuisance may be filed in the municipal court.
- c. **Service of notice on individuals.** Such notice may be served by personal delivery to the owner if he can be located within the city limits, but if he cannot be so located or served by certified letter addressed to such owner at his post office address, but if such address cannot be served by publication as many as two (2) times within ten (10) consecutive days in a newspaper of general circulation published in the city. In a case of community property, service upon either the husband or the wife shall deemed sufficient notice hereunder.
- d. **Service of notice on corporation.** If the owner is a corporation, service may be made by delivery of same to any office or place of business of such corporation or any officer of the corporation if such office, place of business or officer can be located within the city limits, but if such office, place of business, or officer cannot be so located after reasonable effort, service may be made by certified letter addressed to its corporate

headquarter's post office address, but if such address cannot be ascertained after reasonable effort, the notice may be served by publication as many as two (2) times within ten (10) consecutive days in a newspaper of general circulation published in the city.

- e. Substituted service of notice. Whether delivered personally, by mail or by publication, the notice provided for above shall be addressed to the owner, but if the owner is not known, service may be had by publication addressed "to the owner of (legal description of the property involved)". The notice shall give the legal description of the property, state the condition which constitutes a violation hereof, and shall state that upon failure of the owner to rectify the situation within fifteen (15) days from date the notice is delivered (or within fifteen (15) days from the date of the second publication, if notice is to be served by publication) a criminal complaint may be filed in the municipal court of the city for violation of this article, stating the penalties for violation. In addition, the notice shall advise that the city may cause the correction and abatement work to be done on its own and charge the owner for the expense involved, and upon failure of the owner to pay the city for such expense, fix a lien on the property for the expense involved as provided for below.

SECTION 6. UNLAWFUL NONCOMPLIANCE; FILING COMPLAINT; FINES.

It shall be unlawful for the owner or tenant of any land within the city to fail to have any weeds, brush or rubbish mowed, cut removed, or otherwise bring property into compliance with the standards set forth in Section 4 above, within fifteen (15) days after notice is received, or published, directing that such standards be met; the City Administrator assigned such duties shall, whenever a violation is found, whenever possible to do so, file a complaint the municipal court; and the prosecutor of the municipal court assigned such duties shall prosecute the case, and upon conviction for violation hereof the owner shall be fined in accordance with Section 15. Each day's violation hereof shall constitute a separate offense.

SECTION 7. ABATEMENT BY CITY; PAYMENT OF COSTS BY OWNER; IMPOSURE OF LIEN FOR NONPAYMENT; REMOVAL OF TREES FOR ACCESS.

- a. In addition to the remedy provided for above, the city may also cause the work necessary to bring any property into compliance herewith to be done, if the owner has failed to either do such work or cause work to be done within fifteen (15) days from the date notice has been received, or published, and to charge to the owner for the costs incurred by the city. A statement of the costs incurred by the city to abate such condition shall be mailed to the owner of such premises, if the owner and mailing address is known, and, if not known, may be published in a newspaper of general circulation in the city. The statement shall demand payment within thirty (30) days from the date of receipt or publication.
- b. If such statement has not been paid within such period, the Mayor and the City Council, by ordinance duly adopted, may cause a statement to be filed with the county clerk of the county of the expenses incurred to abate and correct such condition on the premises, to be filed in the deed records, and such statement shall be and the city shall have a privileged lien upon the lot, parcel, or tract of land upon which such expenses were incurred, second only to tax liens and liens for street improvements, together with ten (10) percent interest per annum on the delinquent amount from the date such payment was due. For any such expenditures and interest, as aforesaid, suit may be instituted 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.
- c. Although large trees are not covered hereby, and are not felt to be a nuisance or a hazard, it may be necessary at times to remove trees or parts thereof in order for the city crews or city contractors to effect entry of mowing or clearing equipment to property or portions of property not meeting standards established in this article. In such case, the removal of such trees, or parts thereof as is found necessary shall be done and is hereby authorized, and the cost of this work shall be included in the cost charged to the owner.

SECTION 8. OWNER'S RIGHT TO HEARING

- a. The owner or occupant of any premises on which a public nuisance exists or on which a junked vehicle is located in violation of this ordinance, may within fifteen (15) days after receipt of notice to remove or abate same, request of the City Administrator on his/her agent, either in person or in writing, and without the requirement of bond, that a date and time be set when he/she may appear before the City Administrator for a hearing to determine whether or not a condition then existing on the affected land owner's property is a public nuisance, or to determine whether or not the motor vehicle(s) is a junked motor vehicle(s).

- b. The hearing shall be administrative in nature. A record shall be made which shall include:
 1. The names of those appearing before the council.
 2. A description of the lot or premises or vehicle(s).
 3. The identification number and most recent license number, if available.
 4. The decision as to whether or not a public nuisance exist on the premises or whether or not on the vehicle(s).
- c. Upon determination by the City Administrator that the condition is a public nuisance or that the motor vehicle(s), is (are) junked motor vehicle(s), and therefore in violation of this article, the owner or occupant of this premises upon which the public nuisance or motor vehicle(s) is located shall be ordered to abate the condition or remove the vehicle within ten (10) days or where hardship is found to exist, within thirty (30) days, the same being reasonable times.
- d. During the pendency of any of the above actions, any affected land owner, tenant or occupant shall have the right to receive a public hearing to protest to the City Council of the following:
 1. The determination that the property is in violation of standards set out in this article;
 2. The cost to rectify the situation;
 3. The adequacy of the notice;
 4. Whether a lien should be placed on the property.
- e. This protest to the City Council must be made by filing a written notice within ten (10) days following the administrative hearing before the City Administrator.
- f. If the person so ordered fails to remove the junked vehicle on about the condition declared to be a public nuisance within the period specified, the council shall turn over the record of the case to the chief prosecutor of the municipal court, and he/she shall file criminal charges under the penal provision of this article in the municipal court.

SECTION 9. EXCEPTIONS.

Nothing in this article shall apply to:

- a. A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from a public street, other public property, or public right-of-way.
- b. A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed junkyard; or
- c. Unlicensed, operable or inoperable antique and special interest vehicles stored by a collector in his property, provided that the vehicles and the outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery or other appropriate means;
- d. A vehicle or part thereof which is stored or parked on private property in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, in connection with the business of a licensed wrecker service.

SECTION 10. STATE TO BE NOTIFIED OF EACH REMOVAL.

Notice shall be given to the state department of highways and public safety that a junked vehicle has been removed within five (5) days after the removal of such junked vehicle as provided in this article, identifying the vehicle or part thereof removed.

SECTION 11. INTERFERENCE WITH REMOVAL PROHIBITED.

It shall be unlawful for any person to knowingly or intentionally interfere with or attempt to prevent the examination or identity of vehicles pursuant to this article, or to knowingly or intentionally interfere with or attempt to prevent the removal of a junked vehicle under the terms of this article.

SECTION 12. WRONGFUL CONDUCT TO BE PENALIZED.

- a. It shall be unlawful to do or perform any act prohibited hereby, and it shall be unlawful to fail to do or perform any act required hereby. Upon conviction any violation hereof shall be punished in accordance with Section 15.
- b. In addition to the fine, the court shall, in any case wherein the owner or occupant is found guilty of keeping a junked vehicle, enter a written order authorizing the City Administrator to remove the junked vehicle.
- c. It shall be an affirmative defense to any prosecution under this provision that the notice required by Section 5 of this article was not given to the defendant prior to the commencement of the criminal prosecution.

SECTION 13. AWARD OF BID BY CITY.

The city may award any quantity of work under Section 7 to any person whose bid shall be accepted by the city council as being the best for doing such work during a stipulated time, not exceeding one (1).

SECTION 14. REMEDIES NO EXCLUSIVE.

The enumeration of remedies for the suppression of nuisance as provided in this chapter are not to be deemed as exclusive, but as cumulative. In particular, prosecution for the offense described in Section 6 shall not affect the right of the city to abate the nuisance in the manner provided by this chapter, nor shall abatement by the city be a bar to prosecution for the offense described in Section 6.

SECTION 15. PENALTIES

Any person, firm or individual who shall violate any of the provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding Two Hundred (\$200.00) Dollars, and each and every day's violation shall constitute a separate and distinct offense, in case the owner or occupant

of any lot, lots or premises under the provisions of this Ordinance shall be a corporation, and shall violate any provisions of this Ordinance, the president, vice president, secretary, treasurer or such corporation, or any manager, agent or employee of such corporation shall be also severally liable for the penalties herein provided.


SECTION 16.

If any part of this Ordinance is, or should be held invalid for any reason, then that fact shall not invalidate the entire Ordinance, but the balance thereof shall remain in full force and effect.

SECTION 17.

All other Ordinance or parts of Ordinances in conflict with this Ordinance are hereby repealed.

PASSED AND APPROVED THIS 9th day of February, 1999.



City Secretary



Mayor