

CITY OF HAWK COVE, TEXAS

ORDINANCE NO. 99-3

AN ORDINANCE OF THE CITY OF HAWK COVE, TEXAS, ESTABLISHING HEALTH AND SANITATION REGULATIONS; REGULATING HIGH WEEDS AND GRASS, TRASH AND DEBRIS AND OTHER UNSIGHTLY AND UNSANITARY MATTER; DEFINING TERMS; PROHIBITING THE BRINGING, DEPOSITING, HAVING OR DUMPING OF CARCASSES OR OTHER OFFENSIVE OR UNWHOLESOME SUBSTANCES OR MATTER; REQUIRING A PERSON TO REMOVE OR DESTROY ANY OFFENSIVE OR UNWHOLESOME SUBSTANCE OR MATTER; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Health and Safety Code, Chapter 342, provides for municipal regulation of sanitation; and

WHEREAS, the City Council has determined that it is in the best interest of the public health, safety and general welfare of the public to regulate unsanitary and unhealthful conditions caused by high weeds and grass, and the accumulation of trash, debris and other unsightly and unsanitary matter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HAWK COVE, TEXAS, THAT:

SECTION 1

That all of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION 2

The City Council hereby adopts the following ordinance:

"HEALTH AND SANITATION

Sec. 1.01. Definitions.

For the purpose of this ordinance, 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 heterogeneous 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 waste 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.

Sec. 1.02. *Weeds and Brush Over Twelve Inches High.*

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 twelve inches (12"). All vegetation, not regularly cultivated, and which exceeds twelve inches (12") in height, shall be presumed to be objectionable and unsightly matter.

B. With respect to lots, tracts or parcels of land of five (5) or more acres and under single ownership, the provisions of this section shall not apply to any area greater than 100 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and greater than 100 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.

Sec. 1.03. *Duty to Cut and Remove Weeds, Brush, and Unsightly Matter.*

A. It shall be the duty of any person owning, claiming, occupying or having supervision or control of any such real property, as described herein, to cut and remove all such weeds, brush, vegetative growth, and other objectionable or unsightly matter as often as may be necessary to comply with the next preceding subsection; provided, that said removing and cutting at a frequency of at least one (1) time every thirty (30) days shall be deemed in compliance with this section.

B. It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the City, to keep the area adjacent to his or her property line, including the front or side parkway and rear, between the property line or sidewalk and the curb and the rear or side parkway between the property line and the alley pavement or traveled way, or if there is no curb, then within ten feet (10') outside such property line, free and clear of the matter referred to in Section 1.03 (a) above. Provided, however, that where the alleyway is not open to traffic, that the parkway in such cases shall be deemed to be between the property line and the center line of the alley.

C. It shall be the duty of any person owning, claiming, occupying or having supervision or control of any such real property, as described herein, to maintain all right-of-way adjacent or next to their real property in compliance with the subsection. All vegetative growth not regularly cultivated and which exceeds twelve inches (12") in height shall be presumed to be objectionable and unsightly and shall be kept mowed. Furthermore, regularly cultivated crops allowed to grow within the right-of-way of any public street or easement shall also be kept mowed in compliance with this subsection.

D. 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.

Not later than the 10th 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 Section 1.05. 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.

The City shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30th 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 20th 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 may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 1.06. A lien created under this section is subject to the same conditions as a lien created under Section 1.06. The authority granted the City by this section is in addition to the authority granted by Section 1.06.

Sec. 1.04. *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, 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 to 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 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.

C. It shall be unlawful and declared a nuisance for any person to dump, or permit to be dumped, knowingly or intentionally, upon any sidewalk, alley, street, into or adjacent to water, or any other public or private property, 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.

Sec. 1.05. *Notice to Abate.*

A. In the event that any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the City of Hawk Cove, fails to comply with the provisions of this ordinance, it shall be the duty of the City Marshal or his/her duly appointed representative to give a minimum of ten (10) days official notice in writing to such person violating the terms of this ordinance, subject to provisions in subsection (c), below.

B. The notice shall be in writing and may be served on such person violating the terms of this section by delivering it to him or her in person, or by letter or written notice addressed to such person and delivered by United States Certified Mail, return receipt requested, or by United States Regular Mail if the certified notice or letter is returned unclaimed; or if such person can not be found and the certified letter or notice is returned for reasons other than unclaimed by the United States Postal Service, then by publication two (2) times within ten (10) consecutive days in the City's official newspaper (when personal service cannot be had and the address of such person is unknown).

C. The City of Hawk Cove, in the notice of a violation, may inform the owner, as provided in subsection (b) above, 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 of Hawk Cove, without further notice, may correct the violation at the owner's expense and assess the expense against the property. If the violation, covered by a notice under this subsection, occurs within said one-year period, and the City of Hawk Cove has not been informed in writing by the owner of an ownership change, then the City of Hawk Cove, without notice, may take any action permitted by Section 1.06, below and assess its expenses as provided by Section 1.06 herein.

Sec. 1.06. *Removal by the City Upon Failure of Owner to Comply.*

A. If such person violating the terms of this ordinance fails or refuses to comply with the demand for compliance contained in the aforementioned notice, within ten (10) days after the date of notification in writing by personal service or by certified letter or notice, or date of second publication of notice in the City's official newspaper, the City may go upon such property and do or cause to be done the work necessary to obtain compliance with this ordinance. All costs, charges and expenses (called "charges") incurred in doing or in having such work done shall be a charge to, and a personal liability of, such person.

B. 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 ten (10) 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 Marshal, 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 terms of this ordinance.

C. If such owner fails or refuses to make complete payment of said charges within twenty (20) days of his or her receipt of said notice, the City Marshal, or his/her duly appointed representative, shall file a written statement of such charges with the County Clerk of the county in which such real property is located 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 City Marshall, or his/her duly appointed representative:

- (1) The name of the owner of the real property;
- (2) A legal description of the real property;
- (3) An itemized 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 Marshal, 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.

D. All such charges shall bear interest at the rate of ten percent (10%) per annum from the date the owner of the real property receives the aforementioned notice of demand for payment of such charges. 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.

Sec. 1.07. *Illegal Dumping.*

A. It shall be unlawful for any person to bring, deposit, have or dump, a carcass or other offensive or unwholesome substance or matter within the corporate city limits.

B. A person who is responsible for placing such a carcass, offensive or unwholesome matter, filth, putrid or unsound beef, pork or fish, or hides or skins of any kind, is required to remove such offensive or unwholesome matter.

Sec. 1.08. *Enforcement.*

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

Sec. 1.09. *Penalty Upon Failure to Comply.*

A. Any person violating or failing to comply with any provision or requirement of this ordinance, who continues to violate or fail to comply with same after ten (10) days after notice is given and received as set forth in § 1.05, shall also be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$2,000.00, such offenses being violations of the health and safety ordinance of the City. 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.

B. Notwithstanding the foregoing, any violation of any provision of this ordinance 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 ordinance 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 ordinance."

SECTION 3

If any section, article, paragraph, sentence, clause, phrase or word in this ordinance or application thereto any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance; and the City Council hereby declares it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4

The fact the present ordinances and regulations of the City of Hawk Cove, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Hawk Cove, Texas, creates an emergency for the immediate preservation of public business, property, health, safety and general welfare of the public that requires that this ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

PASSED, APPROVED AND ADOPTED THIS 31st DAY OF AUGUST, 1999.



Ava Havens, Mayor

ATTEST:



City Secretary

APPROVED AS TO FORM:

Robert F. Brown, City Attorney