

Chapter 70 OFFENSES AND MISCELLANEOUS PROVISIONS¹

ARTICLE III. CLEANLINESS OF PREMISES²

Sec. 70-54. 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:

Brush means scrub vegetation or dense undergrowth.

Carion means the dead and putrefying flesh of any animal, fowl or fish.

Dump means to dispose, discharge, place, deposit, throw, leave, sweep, scatter, unload, toss.

Filth means any matter in a putrescent state.

Garbage means any kitchen refuse, food stuffs or related material, including all decayable waste.

Impure or unwholesome matter means any putrescible or nonputrescible condition, object or matter which tends, may or could cause injury, death or disease to human beings.

Junk means 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 means that of which any physical object is composed.

Nuisance means 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, carion, 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 means any matter, condition or object which is objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

¹State law reference(s)—Local government preempted from enacting law concerning conduct addressed by state penal code, V.T.C.A., Penal Code § 1.08.

²State law reference(s)—Regulation of nuisances by home-rule municipality, V.T.C.A., Local Government Code § 217.042; municipal power concerning weeds and unsanitary matter, V.T.C.A., Health and Safety Code § 342.004; assessment of expenses and lien for abatement by municipality, V.T.C.A., Health and Safety Code § 342.007.

Owner means 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 means any individual, firm, partnership, association, business, corporation or other entity.

Property means 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 means the decomposition of organic matter with the formation of foul-smelling, incompletely oxidized products.

Refuse means 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 means junk, trash, debris, rubble, stone, useless fragments of building materials, and other miscellaneous, useless waste or rejected matter.

Trash and debris means 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 means any grass, weeds, shrubs, trees, brush, bushes or vines.

Weeds means any vegetation that because of its height is objectionable, unsightly or unsanitary, excluding: shrubs, bushes and trees, cultivated flowers, and cultivated crops.

(Code 1982, § 20-61; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-55. Prohibited accumulations 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, sinks, refuse, filth, carrion, weeds, rubbish, brush and refuse, trash, debris, junk, garbage, impure or unwholesome matter of any kind, or objectionable or unsightly matter of whatever nature to accumulate or 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 unlawful and declared a nuisance for any person to dump, or permit to be dumped, upon or along any drain, gutter, alley, sidewalk, street, park, right-of-way or vacant lot into or adjacent to water, or any other public or private property within the corporate limits of the city, 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.
- (c) 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.

(Code 1982, § 20-62; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-56. Weeds, brush, and other objectionable or unsightly matter, etc.

- (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 12 inches upon such real property within 150 feet of any property line which abuts street rights-of-way, alleys, utility easements, subdivided additions, developed property or any buildings or other structures. It shall be the duty of such person to keep the area from the line of his property to the curblin next adjacent to it, if there is a curblin, and, if not, then to the centerline of the adjacent unpaved street, or to the edge of the pavement, cleared of the matter referred to above. All vegetation (including hay unless the hay is cultivated on property which has been granted an agricultural property tax exemption on the most recent tax roll as certified by the county appraisal district), except regularly cultivated row crops, and which exceed 12 inches in height, shall be presumed to be objectionable and unsightly matter; provided further that regularly cultivated row crops shall not be allowed to grow within the right-of-way of any public street or easement nor shall they be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein.

(b) All trees or vegetation on or over a public right-of-way shall be maintained by the adjacent property owner and limbed to meet the following clear heights:

(1) Sidewalks and intersection visibility: minimum 7 feet

(2) Signs: minimum 1 foot above and around the sign

(3) Roadway, driveways, and drive aisles: minimum 14 feet

~~(b)~~(c) With respect to lots, tracts or parcels of land of five or more acres, the provisions of this section shall not apply to any area greater than 150 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and greater than 150 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.

(Code 1982, § 20-63; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-57. Inspections.

For the purpose of ascertaining whether violations of this Code exist, the chief building official, or his designee, is authorized to inspect:

- (1) The exterior of a structure and premises which contain no structure; and
- (2) If entry onto the property is refused, the chief building official shall have every recourse provided by law, including, but not limited to, an administrative search warrant or an injunction to secure entry. If the owner, occupant, or person in control cannot be identified or located, the chief building official may enter the property to the extent allowed by law.

(Code 1982, § 20-64; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-58. Duty of owner, occupant to cut and remove weeds, brush, and unsightly matter.

It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, as described in sections 70-55 and 70-56, to remove, drain and/or fill all prohibited matter or conditions and to cut and remove all weeds, brush, vegetative growth, and other objectionable or unsightly matter as often

as may be necessary to comply with sections 70-55 and 70-56 and to use every precaution to prevent the same from occurring or growing on such property.

(Code 1982, § 20-65; Ord. No. 99-12-99, § 2, 12-7-1999; Ord. No. 2019-11-074, § 1(Exh. A), 11-5-2019)

Sec. 70-59. Notice of violation and to abate; failure to comply; correction by city.

- (a) If such person violating the terms of this article fails or refuses to comply with the demand for compliance contained in the aforementioned notice, within seven days after the date of notification as provided herein, the city may go upon such property and do or cause to be done the work necessary to obtain compliance with this article. All costs, charges and expenses (hereinafter "charges") incurred in doing or in having such work done shall be a charge to, and a personal liability of, such person.
- (b) It shall be the duty of the chief building official or inspector or his duly appointed representative to give a minimum of seven days' official notice in writing to such person violating the terms of this article, subject to the provisions herein stated. The notice shall be in writing and may be served on such person violating the terms of this section by:
 - (1) Delivering it to him in person;
 - (2) By letter or written notice addressed to such person at the person's address as recorded in the appraisal district in which the property is located and delivered by United States certified mail, return receipt requested, with a second optional copy by United States regular mail; or
 - (3) If personal service cannot be obtained:
 - a. By publication once within seven consecutive days in the city's official newspaper;
 - b. By posting the notice on or near the front door of each building on the property to which the violations 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 the property owner in accordance with subsection (b) of 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.
- (d) The city, in the notice provided herein, may inform the owner by certified mail, return receipt requested or regular mail and a posting on the property 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, 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 has not been informed in writing by the owner of an ownership change, then the city, without notice, may take any action permitted by subsection (a) of this section, and assess its expenses as provided by section 70-61.

(Code 1982, § 20-66; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-60. Additional authority to abate nuisance.

- (a) 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.

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- (b) Not later than the tenth 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 70-58. 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.
 - (c) The city shall conduct an administrative hearing before the building and standards commission 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.
 - (d) The city may assess expenses and create liens under this section as it assesses expenses and creates liens under section 70-61. A lien created under this section is subject to the same conditions as a lien created under section 70-61. The authority granted the city by this section is in addition to the authority granted by section 70-61.

(Code 1982, § 20-67; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-61. Expenses incurred by city; lien.

- (a) If a notice describing the violation and the city's rights to impose a lien on the property without further notice as provided for herein is delivered to the owner of such real property, and he fails or refuses to comply with such demand for compliance within the seven-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.
- (b) To perfect the lien against the real property, the mayor, municipal health authority or other municipal official designated by the mayor, such as the chief building official, shall file a written statement of such charges with the county clerk of the county 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 mayor, the chief building official or their respective designee, or his duly appointed representative:
 - (1) The name of the owner of the real property, if known;
 - (2) A legal description of the real property;
 - (3) A 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 article; and
 - (4) A notarized affidavit executed by the chief building official, or his duly appointed representative, stating that all prerequisites required by this article 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. The lien attaches upon the filing of the lien statement with the county clerk.
- (c) All such charges shall bear interest at the rate of ten percent per annum from the date of payment by the city. The lien obtained is security for the expenditures made and is inferior only to tax liens and liens for street improvements. 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.

(d) This remedy is in addition to any penal provision provided herein.

(Code 1982, § 20-68; Ord. No. 99-12-99, § 2, 12-7-1999; Ord. No. 2004-08-078, § 2, 8-2-2004)

Sec. 70-62. Enforcement.

The provisions of this article shall be enforced by the chief building official and his duly appointed representative, and it shall be unlawful for any person to interfere with or hinder the chief building official and his duly appointed representative in the exercise of their duties under this article. Notwithstanding any provisions contained herein to the contrary, the chief building official and his duly appointed representative are hereby granted the authority to issue immediate citations to persons violating any provision of this article in their presence.

(Code 1982, § 20-69; Ord. No. 99-12-99, § 2, 12-7-1999)

Sec. 70-63. Penalty upon failure to comply.

- (a) Any person violating or failing to comply with any provision or requirement of this article, who continues to violate or fail to comply with same after seven days after notice is given and received as set forth in section 70-59, 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. This section shall be in addition to and cumulative of the provisions for abatement of the nuisance by the city and charging the cost of same against the owner of the property.
- (b) Notwithstanding the foregoing, any violation of any provision of this article 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 article pursuant to the applicable provisions of V.T.C.A., Local Government Code ch. 54, 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 article.

(Code 1982, § 20-70; Ord. No. 99-12-99, § 2, 12-7-1999)

Secs. 70-64—70-84. Reserved.

