

## ORDINANCE NO. 2019-06

AN ORDINANCE OF THE CITY OF BEACH CITY, CHAMBERS COUNTY, TEXAS (i) AMENDING ORDINANCE 2014-7 CREATING A PUBLIC NUISANCE ABATEMENT ORDINANCE; PROVIDING FOR A LIEN ON PROPERTY FOR THE COST OF REMOVAL OF A PUBLIC NUISANCE; PROVIDING A REPEALING CLAUSE; CONTAINING A SAVINGS CLAUSE; PRESCRIBING A MAXIMUM PENALTY OF TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00); AND PROVIDING FOR THE PUBLICATION AND THE EFFECTIVE DATE THEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH CITY, TEXAS:

**Section 1:** That the City of Beach City, Texas hereby establishes an ordinance providing for the control and abatement of nuisances within the city boundaries and within 5000 feet of its boundaries;

### PUBLIC NUISANCE ABATEMENT DIVISION

#### I. IN GENERAL

##### **Section 1-1. 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:

*"Abate"* means to eliminate by removal, repair, rehabilitation, or demolition.

*Approved solid waste site* includes a solid waste site permitted by the state natural resources conservation commission or the state department of health or a solid waste site licensed by a county.

*Brush* includes all trees and shrubbery over four feet in height that are not cultivated or cared for by persons owning or controlling the premises.

*"Building"* means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

*"Garbage"* means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

*"Neighborhood"* means: (A) a platted subdivision; or (B) property contiguous to and within 300 feet of a platted subdivision.

*"Platted subdivision"* means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

*"Premises"* means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

*"Public Nuisance"* means: (a) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle; (b) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street; (c) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pest; (d) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment; (e) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard; (f) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with: 4 (1) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or (2) a cover over the entire swimming pool that cannot be removed by a child. (g) maintaining a flea market in a manner that constitutes a fire hazard.

*"Public street"* means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

*"Receptacle"* means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

*"Refuse"* means garbage, rubbish, paper, and other decayable and non-decayable waste, including vegetable matter and animal and fish carcasses.

*Rubbish* includes all refuse, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, mounds of dirt, discarded clothing, concrete blocks, bricks, textiles of all sorts and in general all litter and all other things usually included within the meaning of the other terms used in this article that are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the premises within the general locality where such are situated and the term also includes any species of ragweed or other vegetable growth that might or may tend to be unhealthy to individuals residing within the general locality where such is situated.

*Weeds* includes all rank and uncultivated vegetable growth or matter that has grown more than twelve inches in height or that, regardless of height, is liable to become an unwholesome or decaying mass or a breeding place for flies, mosquitoes or other vermin.

*"Flea market"* means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal, or charitable organization.

## **Section 1-2. Administration and enforcement.**

The City Inspector or any person(s) authorized by City Council are authorized to enforce this article and to make all necessary inspections, to issue citations, to give notice, to file applicable charges and to otherwise cooperate in the enforcement of this article.

## **Section 1-3. Penalty for violation.**

Any person who shall violate this article shall, upon conviction, be punishable by a fine not exceeding \$2,000.00. Each day an offense shall continue shall constitute a separate offense.

## **Section 1-4. Maintaining conditions for transmission of human diseases.**

An owner, occupant or the person in charge of premises commits an offense if he intentionally or knowingly allows or permits an object, place or condition to remain or exist that constitutes a possible and probable medium of transmission of disease to or between human beings.

## **Section 1-5. Presumption of offense.**

In any prosecution authorized by this article, it shall be presumed that the object, place or condition constitutes a possible and probable medium of transmission of disease to or between human beings if:

- (1) It is a breeding place for or infested with flies, mosquitoes or other vermin;
- (2) Foul, decaying or putrescent substance or matter is present in an obviously offensive or objectionable manner;
- (3) Manure is present in an obviously offensive or objectionable manner;
- (4) Wastewater is present in an obviously offensive or objectionable manner; or
- (5) Weed growth as defined in section 1-1, is present.

## **Section 1-6. Presumption of knowledge.**

In any prosecution authorized by this article, the actor's intent or knowledge shall be

presumed if actual notice is shown or seven (7) days have elapsed after notice was mailed by regular U.S. mail to the owner or occupant of the premises.

## **DIVISION 2. PUBLIC HEALTH NUISANCES**

### **Section 2-1. Conditions creating nuisance.**

Whenever any condition described in this division or other weeds, brush, rubbish and all other objectionable and unsanitary matter of whatever nature shall exist, covering or partly covering the surface of any lot or parcel of real estate, or where there are holes in the ground that could fill with and hold stagnant water or if from any other cause such real estate shall be in a condition to cause disease or to produce, harbor or spread disease or to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, such conditions on the real estate are declared public nuisances, and prompt abatement is declared to be public necessity. Any such nuisance shall be removed from such premises or otherwise disposed of.

### **Section 2-2. Maintenance of premises.**

It shall be unlawful for any person owning, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits to permit or allow:

- Any stagnant or unwholesome water, sinks, filth, carrion, weeds, rubbish, brush, refuse, smoke, impure or unwholesome matter of any kind or objectionable, unsightly or unsanitary matter of whatever nature; or
- Any condition which is declared to be a public nuisance in section 2-1; to accumulate or remain thereon or to be carried by wind currents to nearby property.

It shall be unlawful for any business or other commercial venture within the city limits or within 5,000 feet therefrom, to permit any condition to exist that would be detrimental to the health and safety of the citizens of the city, including but not limited to smoke, windborne contaminants or runoff.

### **Section 2-3. Maintenance of private sewer lines.**

The property owner shall be responsible for maintenance of the septic system or sewer line that connects a structure on his property.

If a property owner's septic system or sewer line becomes damaged, defective or deteriorated to the extent that it admits earth or surface or subsurface water or permits the escape of effluents, the owner shall be notified by the city of the line's condition and that repairs must be made within 30 days after receipt of such notice. Notices shall be sent certified mail. However, if a property owner's septic system or sewer line becomes damaged, defective or deteriorated to the extent that it constitutes a public nuisance, as defined in section 1-1 and prompt abatement is a public necessity, this section, along with the notice procedures contained in this division, shall not apply.

Septic systems or sewer line repairs must follow the city's wastewater treatment requirements as found in Ordinance No. 2004-1 or any amendments thereto, and all applicable state regulations or law and are subject to approval by the city inspections division.

Maintenance repairs to all portions of a property owner's septic system or sewer line shall be the responsibility of the property owner and shall be made in compliance with Ordinance No. 2004-1 or any amendments thereto, and all applicable state regulations or laws.

If the property owner does not repair the septic system or sewer line within the period specified in this section, the city may terminate or disconnect the septic system or sewer service from structure(s) which it services.

If the septic system or sewer service has been disconnected as a result of failure to repair the septic system or sewer line as requested by the city and thereafter the city determines that the owner's septic system or sewer line has been repaired satisfactorily, the owner's line may be reconnected.

A person commits an offense if he intentionally or knowingly fails or refuses to repair his septic system or sewer line within the period of time prescribed herein.

#### **Section 2-4. Notice.**

Whenever conditions described in this division (Division II) are found to exist, any person authorized to enforce this article pursuant to section 1-2 shall give actual notice to the owner, occupant or person in charge of the offending premises, shall send notice by first class mail to the last known address of the owner, occupant or person in charge of the offending premises as recorded in the appraisal district records of the appraisal district in which the property is located; or shall give notice if personal service cannot be obtained:

- By publication at least once;
- 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 if the property contains no buildings.

A notice which the United States Postal Service returns as "refused" or "unclaimed" shall not affect the validity of the notice and the notice shall be considered delivered. Such notice shall be sufficient if it generally describes the offending premises, gives notice of the objectionable conditions and advises of the time allowed to cure the conditions and the consequences of failure to cure.

The city in the notice of a violation may inform the owner by 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 the notice, the city without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a

notice under this subsection occurs within the one-year period and the city has not been informed in writing by the owner of an ownership change, the city without notice may take any action permitted by section 2-5 and assess its expenses as provided by section 2-6.

#### **Section 2-5. Abatement.**

Under this division, the condition shall be deemed cured when within thirty (30) days after the mailing of the notice described in section 2-4:

- The offending premises is cleaned up, which clean up may include the filling and draining of areas that are unwholesome, contain stagnant water, or in a condition that may produce disease; and
- If required in the notice described in section 2-4, a receipt showing proof of proper disposal of waste at a state-approved waste disposal facility has been delivered to the person who sent the notice of the offending condition. The receipt must contain the date, time, amount disposed of, cost of disposal and the name of the approved solid waste site where the objectionable materials were taken.

An owner, occupant or person in charge of premises commits an offense if he intentionally or knowingly fails to cure the offending condition in the manner described in subsection (a) of this section.

In any prosecution authorized by this article, the actor's intent or knowledge shall be presumed if actual notice is shown or seven (7) days have elapsed after notice was mailed by regular U.S. mail to the owner, occupant or person in charge of the premises.

#### **Section 2-6. Removal by city.**

On failure to comply with the notice within thirty (30) days, as set out in section 2-4, the city may enter onto such premises to remove and eliminate such offending conditions, in addition to filing any applicable charges. The owner of such premises will be charged the actual costs of such removal and elimination, plus an administrative charge of \$300.00.

#### **Section 2-7. Lien on property until charges paid.**

Until all such charges as described in section 2-6 are paid, the property shall be subject to a lien in favor of the city. The lien shall be superior to all other levies except tax liens and liens for street improvement and shall accrue interest at the rate of ten percent per annum.

**Section 2:** All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

**Section 3:** If any provision, section, exception, subsection, paragraph, sentence, clause or

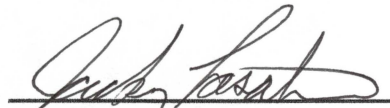
phrase of this ordinance or the application of same to any person or the set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

**Section 4:** Any person who fails to comply with any provision of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00). Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.

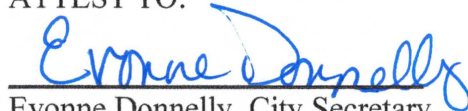
**Section 5:** This ordinance shall take effect from and after ten (10) days from its passage by the City Council. The City Secretary is hereby directed to give notice hereof by causing the caption of this ordinance to be published in a local newspaper of the City of Beach City once within ten (10) days after passage of this ordinance.

INTRODUCED, READ, and PASSED by the affirmative vote of the City Council of the City of Beach City, Chambers County Texas, this the 17<sup>th</sup> day of December, 2019.

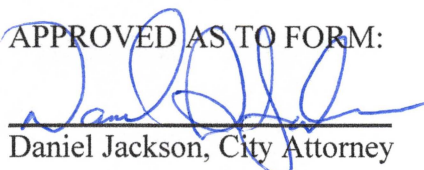
APPROVED:

  
Jackey Lasater, Mayor

ATTEST TO:

  
Evonne Donnelly, City Secretary

APPROVED AS TO FORM:

  
Daniel Jackson, City Attorney

