

Chapter 40- NUISANCES

Article I. Purpose and Scope

This Chapter is set forth pursuant to the authority granted to home rule municipalities in Texas Local Government Code §217.041, et. seq., as amended, and Texas Health and Safety Code Chapter 342, as amended.

The purpose of this Chapter is to promote the public health, safety and welfare of the citizens of the City of Temple by requiring a minimum level of maintenance of private property to protect the livability, appearance and economic stability of the City, to protect the public from health and safety hazards and the impairment of property values that result from the neglect and deterioration of property, to eliminate conditions that lead to blighted neighborhoods, and to safeguard the health of the citizens by preventing the spread of disease.

The City, through this Chapter, sets forth the requirements necessary to prohibit and abate nuisance conditions that interfere with the comfortable enjoyment of private property, or cause hazardous or injurious conditions that may be detrimental to the health, safety, or welfare of the general public, or depreciate the community in which the property is situated.

This Chapter sets forth the conditions which may be considered an illegal nuisance and provides for enforcement and administrative remedies when such conditions exist.

Article II. Definitions

Abate- includes eliminating by removal, repairing, rehabilitation, demolition, cleaning, filling, draining, disinfecting, vacating, or by other means complying with applicable ordinances or laws;

Bamboo- includes any tropical or semitropical grass of the genera Bambusa, Dendrocalamus or of any other related genera;

Brush- includes all trees, shrubbery, bushes, groundcover, ivy, vines, and similar vegetation under seven (7) feet in height which are not cultivated or cared for by a person owning or controlling the premises;

Days- shall mean calendar days unless otherwise specified;

Objectionable, unsightly, or unsanitary matter- includes all uncultivated vegetable growth, objects, items, and matters which are liable to produce or tend to produce an unhealthy, unwholesome, or unsanitary condition on the premises where the same is situated, or which tends to cause discomfort to the senses of persons of ordinary sensibilities in the vicinity, or which tends to lead to the blight of neighborhoods, or depreciate the community in which the property is situated;

Property- includes all real property, lots, or parcels of real estate within the city limits, whether developed or undeveloped, containing structures or vacant;

Premises- includes all privately owned property including vacant land or a building or structure designed or used for residential, commercial, business, industrial or religious purposes, as well as the yard, ground, driveway, walkway, sidewalks, fence, porch, steps or other structure appurtenant to the property;

Rubbish- includes all refuse, junk, trash, debris, discarded tin and plastic containers, glass, paper, metal, wood or other building materials, old vessels, bottles, cans, useless articles, discarded clothing and textiles of all sorts, discarded furniture, tires, or other material discarded or sold by a previous owner at a nominal price, and in general all litter and other things usually included within the generally accepted meaning of the term;

Trailer-means a vehicle, other than a pole trailer, with or without motive power, designed to be drawn by a motor vehicle and to transport persons or property;

Uncultivated- means unmanaged, unimproved or not refined or assisted by human intervention;

Vehicle- means a device that can be used to transport or draw persons or property. The term includes, but is not limited to, a boat, recreational vehicle, all-terrain vehicle, camper, trailer or aircraft. The term does not include a device exclusively used on stationary rails or tracks, or manufactured housing as that term is defined by Chapter 1201, Occupations Code;

Weeds- includes all uncultivated vegetable growth or matter, including grass;

Wildflower- means a flower of any uncultivated variety or a flower growing freely without human intervention.

Article III. Administration

Sec. 3.1 Designation. The code enforcement manager is designated and charged with enforcing this Chapter. The code enforcement manager, or his designee, shall conduct administrative hearings as provided by this Chapter.

Sec. 3.2 Code Enforcement Officers Authorized. Code enforcement officers are authorized under the direction of the code enforcement manager to administer procedures under this Chapter, except that any authorized person may abate a nuisance.

Sec. 3.3. Right of Entry and Inspection. The code enforcement manager, a code enforcement officer, or an authorized designee of the code enforcement manager, may enter any private property or premises for purposes of enforcing this Chapter.

Sec. 3.4. Warrants. The municipal court judge has the authority as granted by State law to issue warrants as necessary for the investigation and enforcement of this Chapter.

Article IV. Nuisances

Sec. 4.1. Public Nuisance. It shall be unlawful to maintain, use, place, deposit, leave or permit to be on or remain on any public or private property an item, condition, or action that is dangerous to human health or welfare, renders the ground, water, air or food a hazard to human health, tends to diminish the economic value or property values of the community, or is injurious to the senses of an individual of ordinary sensibilities in the immediate vicinity thereof.

Sec. 4.2. Conditions Constituting a Nuisance. The following specific acts, conditions, items, and things are declared a nuisance and are unlawful; provided, however, that this list shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) The deposit or accumulation of any filth, any decaying, rotten or putrid substance, or other impure, unwholesome or offensive matter, including animal carcasses or flesh of dead animals, foul liquids, gases, dusts, fumes, mist, and sprays to the extent any one of them may become hazardous to the health or a source of discomfort to persons living or passing in the vicinity;
- (2) The accumulation of rubbish, trash, refuse, junk or other abandoned materials, metals, lumber, stagnant water, or any object or matter that may cause injury, death or disease to human beings;
- (3) Any condition that provides harborage for rats, mice, snakes and other vermin, including wild or undomesticated bees;
- (4) A polluted well, cistern, spring or stream, or the pollution of any body of water used for drinking purposes;
- (5) The maintenance of any privy, vault, or cesspool, except as authorized by the Unified Development Code;
- (6) Keeping any building, structure, or room, in such a state of uncleanness or disrepair as to endanger the health of persons dwelling within;
- (7) Allowing cellars, temporary tents, or sheds to be used as sleeping rooms;
- (8) A building or portion of a building occupied as a dwelling which is not provided with a plentiful supply of pure water or adequate ventilation;
- (9) Permitting property to be in such a condition that it holds or is liable to hold stagnant water, or be in such a condition that may cause disease, or produce, harbor or spread disease, germs of any nature, or tend to render the surrounding area unhealthy, offensive or obnoxious;
- (10) Permitting the accumulation of water, stagnant or otherwise, in which mosquitos breed, or which may become a breeding place for mosquitos;
- (11) Permitting urine, feces, vomit, or other bodily fluids in or on any property, including a sidewalk adjacent to any paved portion of a street abutting the property, that may be accessible to the public or in such a manner that the presence of any of the foregoing may be detected in the vicinity of the property;
- (12) Permitting the accumulation of animal waste;
- (13) Allowing, permitting, or maintaining a property or premises with high weeds, grass or other uncultivated vegetation or brush;

- (14) Allowing, permitting or maintaining a property or premises with uncultivated or overgrown bamboo;
- (15) Allowing, permitting, or maintaining the storage or accumulation of any appliances, building materials, equipment, indoor (non-weather resistant) furniture, or other goods outside of an enclosed structure or not fully screened in a manner compliant with the Unified Development Code, that can be seen from any portion of adjoining or adjacent property, including the street or alleyway;
- a) This provision does not apply to firewood that is neatly stacked a minimum of twelve (12) inches off of the ground, or
 - b) Building materials stored in a workman-like manner as part of, and in conjunction with, an active building permit and in compliance with all other City ordinances.
- (16) Parking, or allowing others to park vehicles in the yard, grass, or on any other unimproved parking surface or portion of a property, unless screened from public view in compliance with the Unified Development Code;
- (17) Allowing, permitting or maintaining a “junked vehicle” as defined in Texas Transportation Code Chapter 683, Subchapter E, as amended.

Sec. 4.3. Responsibility to Abate Nuisance. It shall be the responsibility of any property owner, tenant, and/or occupant to maintain property inside the city limits in compliance with this Code. Upon notification that a violation exists, it shall be the responsibility of the noticed individual to abate, remove or eliminate the nuisance within the time frame given. Failure to abate a nuisance as required constitutes an offense.

Article V. High Weeds and Grass

Sec. 5.1. High Weeds or Grass Unlawful. It shall be unlawful for any owner, occupant, or tenant to allow weeds, grass, or other rank or uncultivated vegetable growth to exceed nine (9) inches in height on any lot that is two (2) acres in size or less or that contains one or more structures.

Sec. 5.2. Larger Lots; Fire Break Required. For properties, larger than (2) acres in size with no existing structures, or that are zoned agricultural or have a current agricultural exemption filed with Bell County, grass, weeds, and other vegetation shall not exceed nine (9) inches in height within fifty (50) feet of any property line or structure, or more than forty-eight (48) inches in height on the remaining portion of the property.

Sec. 5.3. Bamboo.

- (a) It shall be unlawful for any owner, occupant, or tenant to allow bamboo to be planted, maintained or otherwise permitted to exist in a manner that encroaches or grows upon any adjoining neighboring property, including sidewalks, streets, public property and rights-of-way held by the City.

- (b) Owners, occupants, and/or tenants shall take such measures necessary to prevent bamboo from invading, encroaching, or growing onto adjoining or neighboring property. Such measures may include, but are not limited to, the installation of sheathing comprised of metal or other material impenetrable by bamboo at a sufficient depth around where the bamboo is planted or is growing to prevent the growth or encroachment upon adjoining or neighboring property.

Sec. 5.4. Exception; Wildflowers. During the period beginning March 1st and ending May 31st of each year, portions of property containing concentrated wildflowers in areas where grasses and weeds do not exceed eighteen (18) inches in height are exempt from the provisions of this Article.

Sec. 5.5. Notice to Abate. Notice of violation of this article shall be sent by first class mail with a certificate of mailing to the owner, occupant, or tenant of the property or premises where high grass or weeds are found to exist in violation of this section. The code enforcement officer shall provide ten (10) days' notice for the abatement of the violation.

Sec. 5.6. Abatement of Dangerous Weeds without Notice.

- (a) The City may abate, without notice, grass, weeds or other uncultivated vegetation that has grown higher than forty-eight (48) inches and are an immediate danger to the health, life, or safety of any person. The City shall provide notice to the owner, occupant, or tenant in the manner required under Section 7.1 of this Chapter.
- (b) The notice shall contain an identification of the property, a description of the violation, a statement that the City abated the weeds, and an explanation that the person has a right to request an administrative hearing by filing a written request with the code enforcement manager not later than the 30th day after the date of the abatement of the high grass, weeds or other uncultivated vegetation.

Sec. 5.7 Administrative Hearing Before Code Enforcement Manager.

- (a) The code enforcement manager shall conduct an administrative hearing on the abatement of weeds under Section 5.6 of this Chapter, if not later than the 30th day after the date of the abatement of grass, weeds, or uncultivated vegetation, the property owner, occupant, or tenant, files a written request for a hearing.
- (b) The hearing shall be conducted not later than the 20th day after the date a request for a hearing is filed.
- (c) The property owner, occupant, or tenant may testify or present witnesses or written information relating to the City's abatement of high grass, weeds, or uncultivated vegetation.
- (d) After hearing and considering all evidence presented at the hearing, the code enforcement manager will determine whether a dangerous nuisance existed warranting immediate abatement and whether the abatement by the City was justified. The determination of the code enforcement manager shall be final.
- (e) The City may assess expenses and assess liens under this section as it assesses expenses and liens under Section 7.5 of this Chapter.

Article VI. Junked Vehicles

Sec. 6.1. Authorization. This article is set forth pursuant to the authority given to municipalities in Texas Transportation Code Chapter 683, Subchapter E, as amended, to adopt procedures for the abatement

and removal from private or public property or public right-of-way of a junked vehicle or part or a junked vehicle as a public nuisance.

Sec. 6.2. Designation of Official; Administration. The code enforcement manager is hereby designated and charged with enforcing the procedures for abatement and removal of a public nuisance under this article and shall be the designated “official” for the purposes contained herein. A code enforcement officer is authorized at the direction of the code enforcement manager to administer the procedures for abatement and removal of a junked vehicle, except that any authorized person may move or remove a junked vehicle to abate the nuisance.

Sec. 6.3. Right of Inspection. A person authorized to administer the procedures set forth herein, may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

Sec. 6.4. Definitions.

(a) In this article, “junked vehicle” means:

1. A vehicle, watercraft, or aircraft that:
 - a. Is self-propelled; and
 - b. Is wrecked, dismantled or partially dismantled, or discarded; or
 - c. Is Inoperable and has remained inoperable for more than:
 - i. 72 consecutive hours, if the vehicle is on public property; or
 - ii. 30 consecutive days, if the vehicle is on private property.
2. A motor vehicle that displays an expired license plate or does not display a license plate; or
3. An aircraft that does not have lawfully printed on the aircraft an unexpired federal aircraft identification number registered under the Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or
4. A watercraft that:
 - a. Does not have lawfully on board an unexpired certificate of number; and
 - b. Is not a watercraft described by Section 31.055 of the Texas Parks and Wildlife Code.

Sec. 6.5. Junked Vehicle Declared a Public Nuisance. A junked vehicle, including part of a junked vehicle that is visible at any time of the year from a public place or public right-of-way:

- (a) Is detrimental to the safety and welfare of the public;
- (b) Tends to reduce the value of private property;
- (c) Invites vandalism;
- (d) Creates a fire hazard;
- (e) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (f) Produces urban blight adverse to the maintenance and continuing development of the City of Temple; and
- (g) Is a public nuisance.

Sec. 6.6. Responsibility to Abate. The owner, occupant, or tenant of a property on which a junked vehicle is located, or if the junked vehicle is located on a public right-of-way, the property adjacent to the right-of-way, shall be responsible for abating and removing a junked vehicle.

Sec. 6.7. Notice to Abate and Remove Nuisance. Whenever a public nuisance exists on premises within the city in violation of Section 6.6 of this article, the official shall provide ten (10) days written notice to abate and remove the public nuisance to:

- (a) The last known registered owner of the nuisance;
- (b) Each lienholder of record of the nuisance; and
- (c) The owner or occupant of:
 - 1. The property on which the nuisance is located; or
 - 2. If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

Sec. 6.8. Requirements of Notice. The notice to abate and remove the public nuisance shall be personally delivered, sent certified mail with five-day return requested, or delivered by the United States Postal Service with signature confirmation service and shall state:

- (a) The nature of the nuisance;
- (b) The nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was mailed or personally delivered; and
- (c) That any request for a public hearing must be made before the ten (10) day period expires.
- (d) If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance, or if the owner is located, personally delivered.
- (e) If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Sec. 6.9. Hearing before the Official; Notice of Hearing.

- (a) A public hearing before the official is required before removal of the public nuisance, if such hearing is requested by a person for whom notice is required under Section 6.7 within the ten (10) day period following the notice to abate and remove the nuisance.
- (b) Unless a later date is requested by the person for whom notice is required under Section 6.7 of this article, the official shall set a date, time, and the location for a hearing on the notice to remove and abate the nuisance. The hearing shall be held not earlier than the eleventh (11th) day after the date of the return of the notice.
- (c) If the person for whom notice is required under Section 6.7 of this article requests the official to reschedule the hearing date, the official at his discretion shall reschedule the hearing date; however, the person is not entitled to additional service of notice for the rescheduled hearing.
- (d) At the hearing, the junked motor vehicle, watercraft, or aircraft is presumed to be inoperable, unless otherwise demonstrated by the owner.
- (e) The determination of the official at the hearing shall be final and binding, and the official may issue an order to remove or abate the nuisance immediately.

Sec. 6.10. Order for Removal.

- (a) The official may issue an order to remove and abate the nuisance that shall be final and binding on the persons for whom notice is required under Section 6.7 who did not request a hearing or appear at the hearing before the official.
- (b) If the information is available at the location of the nuisance, the order requiring the removal of the nuisance must include the description of the vehicle, the vehicle identification number, and license plate number.

Sec. 6.11. Voluntary Abatement. If, within ten (10) days of the notice to abate the nuisance, a person for whom notice is required under Section 6.7, provides written consent to the official to remove the nuisance, he/she shall be considered to be in compliance with this article, and further enforcement action shall be suspended.

Sec. 6.12. Offense; Criminal Penalty.

- (a) Violation of this article shall constitute a Class C misdemeanor, which shall be prosecuted in the municipal court, and punishable by a fine not to exceed \$200.00. Each day a violation exists constitutes a separate offense.
- (b) The owner, occupant, or tenant of the property on which the nuisance is located, or if the nuisance is located in the public right-of-way, the property adjacent to the right-of-way, shall be subject to criminal prosecution for maintenance of a nuisance at the discretion of the official, if the nuisance remains unabated after the tenth (10th) day on which notice to abate the nuisance was mailed or delivered, or if the nuisance remains unabated after the issuance of an order for removal as set forth in this article.
- (c) The procedures for abatement and removal of a public nuisance by the official under this article are independent and cumulative of any criminal penalties imposed.

Sec. 6.13. Disposal of Junked Vehicles.

- (a) A junked vehicle may be disposed of by removal to a scrapyard, demolisher, or a suitable site operated by a municipality or county.
- (b) A junked vehicle taken into custody and removed pursuant to the provisions of this article shall not be reconstructed or made operable.

Sec. 6.14. Notice of Removal to Texas Department of Transportation. The official shall give notice of removal of the junked vehicle, identifying the vehicle or vehicle part, to the Texas Department of Transportation not later than the fifth (5th) day after the date of the removal.

Sec. 6.15 Inapplicability of Article.

- (a) Procedures adopted under this article may not apply to a vehicle or vehicle part that is:
 1. completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
 2. stored or parked in a lawful manner on private property, in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the storage area, if any, are:

- a. maintained in an orderly manner;
- b. not a health hazard; and
- c. screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(b) In this section:

1. *Antique vehicle* means a passenger car or truck that is at least 35 years old.
2. *Motor vehicle collector* means a person who:
 - a. owns one or more antique or special interest vehicles; and
 - b. acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historical interest.
3. *Special interest vehicle* means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

Article VII. Enforcement and Penalties

Sec. 7.1. Notice of Violation.

- (1) When a violation of this Chapter is found to exist, the code enforcement official shall provide written notice to the owner, occupant, or tenant of the property or premises to abate the public health notice within ten (10) days.
- (2) The notice to abate shall be sent by first class mail, with a certificate of mailing, and shall contain:
 - a. An identification of the property, premises, or location where the public health nuisance is located;
 - b. A description of the violation;
 - c. A statement that a violation of this Code is a Class C misdemeanor, and may be punishable by a fine of up to \$2000.00 per day per violation, unless otherwise set forth in this Chapter, for which the owner or occupant will be criminally prosecuted and that if the violation is not abated within ten (10) days, a citation will be issued and the owner, occupant, or tenant will be required to appear in municipal court;
 - d. A statement that if the owner, occupant, or tenant of the property commits another violation of the type or nature originally noticed in this section within one (1) year, the City without further notice may correct the violation at the owner's expense and file a lien against the property.

Sec. 7.2. Citation.

- (a) A code enforcement officer is authorized to issue a citation to any person who violates a provision of this Chapter.
- (b) The citation shall contain:

- a. An identification of the property, premises or location where the violation exists;
 - b. A description of the offense;
 - c. A statement that violation of this Chapter is a Class C misdemeanor, punishable by a fine of up to \$2000.00 per day per violation, unless otherwise set forth in this Chapter, and that a criminal complaint will be filed for which the person will be required to appear in municipal court.
- (c) The citation shall be delivered:
- a. Personally by hand delivery;
 - b. By letter addressed to the last known address of the person; or
 - c. If personal service cannot be achieved and the address of the person is unknown:
 - i. By publication at least twice within ten (10) consecutive days;
 - ii. By posting the notice and citation on or near the front door of each building on the property to which the violation relates;
 - iii. 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;or
 - d. As provided by Chapter 17A. Corporations and Associations, Texas Code of Criminal Procedure.

Sec. 7.3. Abatement by City.

- (a) If the owner, occupant, or tenant does not comply with the notice of violation, and the nuisance is not abated within ten (10) days, the City may do the work required to abate the nuisance and bill the same for all expenses and fees incurred.
- (b) If the invoice remains unpaid for a period of thirty (30) days, the City may assess a lien against the property, which may accumulate 10% interest per year.

Sec. 7.4. Abatement of Recurring Nuisance without Further Notice.

- (a) If the owner, occupant, or tenant commits or permits another violation of the same kind or nature on or before the first anniversary date of the notice of violation as provided in Section 7.1, the City may without further notice, remedy the violation at the owner, occupant, or tenant's expense and assess a lien against the property.
- (b) If a violation occurs within the one-year period as provided in subsection (a) above, and the City has not been informed of an ownership change, then the City may take any action permitted by Section 7.3 of this Chapter.

Sec. 7.5. Assessment of Expenses and Liens.

- (a) The City may assess expenses incurred in the abatement, removal, elimination, remedy or repair of any violation under this Chapter against the real property on which the work was done or improvements made.
- (b) The code enforcement manager shall prepare and file a statement of expenses with the county clerk of Bell County, Texas to obtain a lien against the property.
- (c) The lien is security for the expenditures made by the City and interest may accrue at the rate of ten (10) percent annually on the amount due from the date of the expenditure by the City.
- (d) The lien is inferior only to tax liens and liens for street improvements.

- (e) The City may bring suit for foreclosure in the name of the City to recover the expenditures and interest due.
- (f) The City may foreclose on a lien in a proceeding relating to the property brought under Subchapter E, Chapter 33 of the Tax Code.
- (g) The statement of expenses, or a certified copy of the statement, is prima facie proof of the expenses incurred by the City in doing the work or making the improvements.

Sec. 7.6. Criminal Penalty.

- (a) Procedures for the abatement or removal of a nuisance under this section are independent and cumulative of criminal penalties provided herein.
- (b) A person that commits, permits or allows a violation of Article IV or Article VI of this Chapter is subject to criminal prosecution.
- (c) The owner, occupant, or tenant, of the property on which the nuisance is located commits an offense if the person fails to abate a nuisance as required, and is subject to criminal prosecution.
- (d) An offense under this Chapter is a Class C misdemeanor, which shall be prosecuted in the municipal court. For offenses which are determined to affect fire safety, zoning or public health and sanitation, a fine of up to \$2000.00 per offense may be assessed, unless otherwise set forth in this Chapter. For all other violations of this Chapter, a fine of up to \$500 per offense may be assessed, unless otherwise set forth in this Chapter. Each day a violation occurs is a separate offense.

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