

CITY OF PECAN HILL, TEXAS

ORDINANCE NO. 07-06

AN ORDINANCE OF THE CITY OF PECAN HILL, TEXAS, REPEALING ORDINANCE NO. 6.200 RELATIVE TO WEEDS, GRASS AND VEGETATION, AND ESTABLISHING A NEW ORDINANCE AS PART OF ITS NEIGHBORHOOD INTEGRITY ORDINANCES ENTITLED "CLEANLINESS OF PREMISES;" DEFINING TERMS; PROHIBITING ACCUMULATIONS AND DECLARING DUMPING, STAGNANT WATER, TRASH AND OTHER UNSIGHTLY OR UNSANITARY MATTER A NUISANCE; REGULATING HIGH WEEDS AND GRASS, TRASH AND DEBRIS AND OTHER UNSIGHTLY AND UNSANITARY MATTER; AUTHORIZING INSPECTIONS; IMPOSING A DUTY UPON AN OWNER OR OCCUPANT OF REAL PROPERTY; PROVIDING FOR NOTICE OF VIOLATION AND TO ABATE; PROVIDING FOR CORRECTIVE ACTION BY CITY; ESTABLISHING LIENS; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY FOR FAILURE TO COMPLY; ESTABLISHING A REQUIREMENT FOR NO MENTAL STATE; PROVIDING A SEVERABILITY CLAUSE; REPEALING CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pecan Hill is a Type A-General Law Municipality; and

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

WHEREAS, proper sanitation and measures reasonably appropriate to effectuate such regulation are generally within the police powers of the City; and

WHEREAS, the City Council of the City of Pecan Hill, Texas has determined that it is in the best interest of the public health, safety and general welfare of the public to update the regulation of 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 PECAN HILL, TEXAS, THAT:

SECTION 1. All of the above premises are hereby found to be true and correct and are hereby approved and incorporated for all purposes into the body of this Ordinance as if copied in their entirety.

SECTION 2. Ordinance No. 6.200 relative to Weeds, Grass, and Vegetation is hereby repealed in its entirety.

SECTION 3. The City Council hereby establishes a new Ordinance entitled "Cleanliness of Premises," as part of its Neighborhood Integrity ordinances, to read, in its entirety, as follows:

“NEIGHBORHOOD INTEGRITY

ARTICLE I. CLEANLINESS OF PREMISES

Sec. 1 DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning, 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. Scrub vegetation or dense undergrowth.

CARRION. The dead and putrefying flesh of any animal, fowl or fish.

CITY. The City of Pecan Hill, Texas, or its agents.

DUMP. To dispose, discharge, place, deposit, throw, leave, sweep, scatter, unload, or toss.

FILTH. Any matter in a putrescent state.

GARBAGE. Any kitchen refuse, food stuffs or related material, including all decayable waste.

IMPURE OR UNWHOLESOME MATTER. Any putrescible or nonputrescible condition, object or matter that may, could or tends to cause injury, death or disease to human beings.

JUNK. 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. That of which any physical object is composed.

NUISANCE. 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 or uncovered (including unsecured covered) 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, and any objectionable, unsightly, or unsanitary matter of whatever nature.

OBJECTIONABLE, UNSIGHTLY OR UNSANITARY MATTER. Any matter, condition or object that is objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

OWNER. 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. Any individual, firm, partnership, association, business, corporation or other entity.

PROPERTY. 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. The decomposition of organic matter with the formation of foul-smelling, incompletely oxidized products.

REFUSE. 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. Junk, trash, debris, rubble, stone, useless fragments of building materials, and other miscellaneous, useless waste or rejected matter.

TRASH and DEBRIS. 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 materials, 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 period of time, tree and brush trimmings, dead standing or fallen trees, and other miscellaneous wastes or rejected matter.

VEGETATIVE GROWTH. Any grass, weeds, shrubs, trees, brush, bushes or vines.

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

Sec. 2 PROHIBITED ACCUMULATIONS, DUMPING, STAGNANT WATER, TRASH, AND OTHER UNSIGHTLY OR UNSANITARY MATTER DECLARED A NUISANCE.

(A) It shall be 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, refuse, trash, debris, junk, garbage, impure or unwholesome matter of any kind, or other 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 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 that 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.

Sec. 3. WEEDS, BRUSH AND UNSIGHTLY MATTER.

(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 height greater than ten inches (10") upon such real property within 200 feet of any property line that 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 that has been granted an agricultural property tax exemption on the most recent tax roll as certified by the County appraisal district in the county in which the property is located), except regularly cultivated row crops, that exceeds ten inches (10") 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 such crops be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein.

(B) With respect to lots, tracts or parcels of land of five (5) or more acres, the provisions of this Section shall not apply to any area situated more than 200 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and situated more than 200 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. 4. INSPECTIONS.

(A) For purposes of ascertaining whether violations of this Ordinance exist, the Mayor, or his/her designee, is authorized to inspect the exterior of a structure and premises that contain no structure.

(B) If entry onto the property is refused, the Mayor, or his/her designee, 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 Mayor, or his/her designee, shall be authorized to enter the property to the extent allowed by law.

Sec. 5. DUTY OF OWNER OR 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, occupied or unoccupied, as described in Sections 2 and 3, 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 2 and 3 and to use every precaution to prevent the same from occurring or growing on such property. Failure to so comply shall be a violation of this Ordinance.

Sec. 6. NOTICE OF VIOLATION AND TO ABATE; FAILURE TO COMPLY; CORRECTION BY CITY.

(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 seven (7) days after the date of notification as provided herein, the City shall have the authority as provided by law to enter upon such property and do or cause to be done the work necessary to obtain compliance with this Ordinance. All reasonable costs, charges and expenses (hereinafter "charges") incurred in doing or in having such work done shall be a charge to, and be a personal liability of, such person.

(B) It shall be the duty of the Mayor, or his/her designee, to give a minimum of seven (7) days official notice, in writing, to such person violating the terms of this Ordinance, subject to the provisions herein stated. The notice shall be in writing and may be served on such person violating the terms of this Ordinance:

- (1) by delivering it to him or her in person;
- (2) by forwarding or sending a letter or written notice addressed to such person at the person's address as recorded in the Ellis County appraisal district 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 at least once within seven (7) 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 herein and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice shall be 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, or by personally delivering the notice, 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 herein, and assess its reasonable expenses incurred as provided by Section 8, below.

Sec. 7. ADDITIONAL AUTHORITY TO ABATE NUISANCE.

(A) The City may abate, without notice, weeds that:

- (1) have grown higher than 24 inches; and
- (2) are an immediate danger to the health, life or safety of any person.

(B) 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 6, herein. The notice shall contain:

- (1) an identification, which is not required to be a legal description, of the property;
- (2) a description of the violation(s) 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 City Council 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 reasonable expenses and create liens under this Section as it assesses expenses and creates liens under Section 8. A lien created under this Section is subject to the same conditions as a lien created under Section 8. The authority granted the City by this Section is in addition to the authority granted by Section 8.

Sec. 8. EXPENSES INCURRED BY CITY; LIEN.

(A) 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 seven (7)-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 Chief of Police or Code Enforcement Officer, or his/her designee, first shall 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.

(B) If such owner fails or refuses to make complete payment of said charges within thirty (30) days of his or her receipt of said notice, the mayor, municipal health authority or other municipal official designated by the mayor, shall file a written statement of such charges with the Ellis County Clerk for filing in the County Land and Deed Records. Said statement shall be deemed sufficient if it contains the following minimum information; however, it also may contain such other additional information deemed appropriate by the Mayor, or his/her designee or 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 Ordinance; and
- (4) A notarized affidavit executed by the Mayor, or his/her designee, 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.

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 (10%) 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.

Sec. 9. ENFORCEMENT.

The provisions of this Ordinance shall be enforced by the Mayor, or his/her designee, and it shall be unlawful for any person to interfere with or hinder the Mayor, or his/her designee, in the exercise of their duties under this Ordinance. Notwithstanding any provisions contained herein to the contrary, the Mayor, or his/her designee, are hereby granted the authority to issue immediate citations to persons violating any provision of this Ordinance in their presence.

Sec. 10. 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 within seven (7) days after notice is given and received as set forth in Section 6, shall also be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$500.00, such offense being a violation of the health and safety ordinances 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 Ordinance that 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 provides for the enforcement of municipal ordinances.

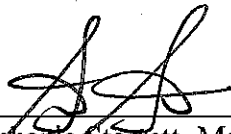
(D) Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this Chapter.”

SECTION 4. If any section, subsection, article, paragraph, sentence, clause, phrase or word in this Ordinance is for any reason held to be 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 5. All ordinances, orders and resolutions heretofore passed and adopted by the City Council of the City of Pecan Hill, Texas are hereby repealed to the extent said ordinances, orders or resolutions or parts thereof are in conflict herewith.


SECTION 6. The fact that the present ordinances and regulations of the City of Pecan Hill, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Pecan Hill, 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.

DULY PASSED, APPROVED AND ADOPTED by the City Council of the City of Pecan Hill, Texas, on this 19th day of June, 2007.



Stephanie Starfett, Mayor
City of Pecan Hill, Texas

ATTEST:



Shelley Martinez, City Secretary
City of Pecan Hill, Texas