

ORDINANCE NO. 2008 – 1

AN ORDINANCE AMENDING CHAPTER 6, ARTICLE 6.02 OF THE CODE OF ORDINANCES OF THE CITY OF MOULTON, TEXAS, ENTITLED "WEEDS AND LOT SANITATION"; ESTABLISHING FINES FOR THE VIOLATION OF SAID ARTICLE; ESTABLISHING ENFORCEMENT AUTHORITY, REPEALING ANY INCONSISTENT PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of MOULTON, Texas is a municipality incorporated and operating under the Laws of the State of Texas; and

WHEREAS, the City of MOULTON has determined that it is in the best interest of the health, safety and welfare of its citizens to repeal the existing City ordinance and promulgate and enforce a new ordinance concerning the abatement of nuisances within the city.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MOULTON, TEXAS:

PART 1: That portions of Chapter 6, Article 6.02, of the Code of Ordinances of the City of Moulton, Texas are hereby replaced with new provisions as follows:

CHAPTER 6. HEALTH AND SANITATION

ARTICLE 6.02 ELIMINATION OF WEEDS, RUBBISH, JUNK, REFUSE, UNLAWFUL ACCUMULATIONS, AND OTHER NUISANCES

Sec. 6.201. Definitions.

:

Abate. Shall mean to eliminate by removal, repair, rehabilitation, or demolition.

Brush. Shall mean an uncultivated growth or dense undergrowth that may create a fire or other hazard, unsanitary condition, or harborage for rodents, vermin or pests.

Building. Shall mean any structure, moveable Premises, or fence built for support, shelter, or the enclosure of a person, animal, chattel, machine, or piece of equipment.

Carrion. Shall mean the dead and putrefying flesh of any animal, fowl or fish.

Filth. Shall mean any matter in a putrescent state.

Garbage. Shall mean decayable waste from a public or private source, including establishments, residences, or restaurants.

Junk. Shall mean an accumulation for a period of five (5) days or longer of rubbish, including, but not limited to old machinery or parts of same, old iron or other metal, glass, cordage, building materials, newspapers, abandoned vehicles, bicycles, refrigerators, stoves, washing machines, dryers, furniture, tires, cans, scrap metal, or any other object that is not completely enclosed in a building or is not visible from any public street or right-of-way.

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

Nuisance. Shall mean:

1. keeping, storing or accumulating refuse on Premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
2. keeping, storing or accumulating rubbish, including construction refuse, newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on Premises in a neighborhood or within 300 feet of a public right-of-way for 7 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public right-of-way;
3. maintaining a Premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
4. allowing weeds to grow on a Premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
5. 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 or encourages/invites loitering;
6. maintaining, on abandoned and/or unoccupied property, a swimming pool that is not protected with:
 - a. a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or
 - b. a cover over the entire swimming pool that cannot be removed by a child

7. maintaining an area in a manner that constitutes a fire hazard;
8. discarding refuse, trash or other items and/or creating a hazardous visual obstruction on;
 - a. city-owned land; or
 - b. land or easements owned or held by a special district that has the city council as its governing body; or
9. discarding refuse on the smaller of:
 - a. an area that spans 20 feet on each side of a utility line, or other public right-of-way; or
 - b. the actual span of the utility easement or other public right of way; or
10. filing or blocking a drainage easement, failing to maintain a drainage easement, maintaining a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation, or violating an agreement with the city to improve or maintain an easement;
11. filling, blocking, altering or otherwise obstructing property that is located in either a flood plain and/or a flood way, or in areas that effect drainage into such regulated areas;
12. conducting any activity that creates or results in noxious odors that are present beyond the property line of the originating tract.

Objectionable, unsightly or unsanitary matter. Shall mean any matter, condition, or object which could attract rodents, reptiles or insects, and which is or could be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities.

Owner. Shall mean a person having title to real property and/or the person or entity identified as the Owner, as recorded in the appraisal records of the Lavaca County Appraisal District, or, for purposes of this statute, the individual occupying and/or leasing the property at issue.

Person. Shall mean any individual, firm, partnership, association, business, corporation, or other entity.

Premises. Shall mean privately owned or controlled Premises, including vacant lots, buildings designed or used for residential, commercial, business, industrial or religious purposes. The term includes a yard, ground, walk, private alleyway, driveway, fence, porch, steps or other structural appurtenant to the Premises.

Refuse. Shall mean a heterogeneous accumulation of work out, used up, broken, rejected

or worthless materials, and includes garbage, rubbish, paper, or litter, and other decayable or nondecayable waste.

Rubbish. Shall mean trash, debris, rubble, stone, fragments of building materials, or other miscellaneous useless waste or rejected matter.

Rubble — Shall mean any non-decayable waste greater than 50 lbs. in weight and/or greater than three (3) cubic feet in size.

Weeds — means all rank and/or uncultivated vegetable growth or matter that:

1. has grown to 12" or more in height; or
2. may create an unsightly or unsanitary condition or become a harborage for rodents, vermin or other disease carrying pests, regardless of the height of weeds.

Specifically excluded from the definition of weeds are:

1. shrubs, bushes, and trees;
2. cultivated flowers and cultivated wild flowers; and
3. cultivated crops.

Any word not defined herein shall be construed in the ordinary context used and by ordinary interpretation, not as a term of art.

PART 2.

Sec. 6.202 Unlawful Accumulations:

No person owning, claiming, leasing, occupying or having supervision or control of any real property, occupied or unoccupied, within the city limits of the City of Moulton, Texas, shall permit or allow any stagnant or unwholesome water, filth, carrion, weeds, rubbish, rubble, brushy, lumber, building materials, refuse, junk, machinery or garbage, or impure or unwholesome matter of any kind, or objectionable, unsightly matter of whatever nature to accumulate or remain on such real property, or Premises, or within any easement area on such real property or Premises or upon any adjacent right of way for streets and alleys between the property line of such real property or Premises and where the paved surface of the street or alley begins. Such condition or conditions are hereby declared to be public nuisances, pursuant to Section 217.002 of the Texas Local Government Code.

PART 3.

Sec. 6.203 Notice of Violations

a. In the event that any person fails to comply with this Article within seven (7) days of notice of a violation, the City (or its representative) may:

- i. Enter upon the Premises upon which the violation exists without further notice, and remedy the nuisance or make the improvements required; and
- ii. Pay for the work done to remedy the nuisance or make the improvements and charge the expenses to the Owner of the Premises.

b. The notice must be given:

- i. Personally to the Owner in writing; or
- ii. By letter addressed to the Owner at the Owner's address as recorded in the appraisal district records of the appraisal district in which the Premises is located; or
- iii. If personal service cannot be obtained or the Premises Owner's address is unknown:
 1. by publication at least once; or
 2. by posting the notice on or near the front door of each building on the Premises to which the violation relates; or
 3. by posting the notice on a placard attached to a stake driven into the ground on the Premises to which the violation relates, if the Premises contains no buildings.

c. If the City mails a notice to a Premises Owner in accordance with Subsection (b), 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 delivered and received by the Owner.

d. In a notice provided under this section, the City may inform the Owner by regular mail and a posting on the Premises or 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 may without further notice, correct the violation at the Owner's expense and assess the expense against the Premises. 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, than the City may, without notice, take any action permitted by this Article and assess its expenses as provided for in Section 6.203, *et seq.*, below

PART. 4.

6.203.1 Assessment of Expenses; Lien

- a. The City shall assess expenses incurred under this Article against the real estate on which the work to remedy the nuisance is done or improvements made.
- b. To obtain a lien against a Premises and/or property, the Mayor, City Administrator, City Attorney, or Peace Officer must file a statement of expenses with the County Clerk of Lavaca County. The lien statement must state the name of the Owner of the Premises or property, if known, and the legal description of the Premises or property. The lien attaches upon the filing of the lien statement with the County Clerk.
- c. The lien obtained by the City is security for the expenditures made and the interest accruing at the rate of 10 percent (10%) on the amount due from the date of payment by the City.
- d. The lien is inferior only to:
 1. Tax liens; and
 2. Liens for street improvements.
- e. The City may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.
- f. 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.
- g. The remedy provided by this section is in addition to any other remedy allowed by law.
- h. The City may foreclose a lien on a Premises and/or property under this subchapter in a proceeding relating to the property and/or Premises brought under Subchapter E, Ch. 33, of the Texas, Tax Code.
- i. All charges shall bear interest at the maximum legal rate per annum from the date the city incurs the expense.
- j. The owner or any other person responsible as provided herein, shall be jointly and severally liable for the charges.

PART 5.

Sec. 6.204 Enforcement.

The provisions of this article shall be enforced by representatives of the city. Notwithstanding any provisions of this article to the contrary, the Chief of Police or his or her designee has authority to issue immediate citations to persons violating any provision of this article in the presence of said official. The Chief of Police, or his or her designee, upon the showing of proper identification, are authorized to enter upon any private property and/or Premises to inspect for violations of this article and to insure compliance with same. It shall be unlawful for any person to interfere with the Chief of Police or his or her designee, in the exercise of their duties under this article.

PART 6.

Sec. 6.205 Violation Declared to be a Nuisance; Punishable by Fine

All violations of this Article shall be declared to be nuisances per se. A person commits an offense of this Article, and upon conviction thereof shall be guilty of a misdemeanor and shall be subject to a fine, as provided for in Section 1.01.009 of this Code. Said fine shall be in addition to any cost or expense that is incurred by the City to remedy the nuisance should the responsible party fail to do so after notice and a demand for compliance by the City. Each and every day that a violation declared to be a nuisance continues shall constitute a separate offense of this Article.

PART 7.

Sec. 6.206 Additional Authority to Abate Dangerous Weeds Without Notice.

a. The City may abate, without notice, weeds that:

- i. have grown higher than 48 inches; and/or
- ii. are an immediate danger to the health, life, or safety of any person.

b. Not later than the tenth (10th) day after the City abates weeds under this section, the City shall give notice to the Premises Owner in the manner required by Section 6.203.

c. The Notice shall contain:

- i. An identification of the Premises, which is not required to be a legal property description;
- ii. A description of the violations of the ordinance that occurred on the Premises;
- iii. A statement that the municipality abated the weeds; and
- iv. An explanation of the Premises owner's right to request an administrative hearing about the municipality's abatement of the weeds.

d. The City shall conduct an administrative hearing before the City Administrator, or his or her designee, 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 Premises owner files with the City a written request for a hearing with the City Secretary.

e. An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date of a request for a hearing is filed. The owner may testify or present any witness or written information relating to the City's abatement of the weeds.

f. A municipality may assess expenses and create liens under this section as it assesses expenses and creates liens under Sec. 6.203.1. A lien created under this section is subject to the same conditions as a lien under Section 6.203.1.

g. The authority of the City under this section is in addition to the authority granted by Sections 6.203 and 6.205.

PART. 8

Section 6.207. Power of City Concerning Carrion, Carcasses or Other Unwholesome Matter.

a. No person shall be allowed to bring, deposit, or have in City limits a carcass or other offensive or unwholesome substance or matter.

b. A person shall be required to remove or destroy any offensive or unwholesome substance or matter, filth, carrion, garbage, putrid or unsound beef, pork, fowl, or fish, or hides or skins of any kind that the person is responsible for placing in the City.

c. If the person does not comply with subsections (a) and (b), above, the City shall be authorized to immediately, without prior notice to the Owner:

i. Remove or destroy the offending material; and

ii. Pay for the work done or improvements made and charge the expenses of the Premises;

iii. Require the owner of a dead animal filth, carrion or carcass to remove to a place designated by the City; or

d. If the City removes or destroys the offending material, the Owner shall be wholly and completely responsible for any and all costs associated therewith, and shall reimburse the City, in full, for any and all costs incurred. Should the Owner fail to pay the assessed expenses to the City for a period of seven (7) days after notification by the City of same, the City shall create a lien, as set forth in Sec. 6.203.1.

PART 9. The City Administrator and City Secretary are hereby authorized and directed to make the necessary changes to all records of the City of Moulton to reflect this

amendment.

PART 10. All ordinances and resolutions, or parts of ordinances and resolutions, in conflict with this Ordinance are hereby repealed, and are no longer of any force and effect. If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

PASSED, ADOPTED AND APPROVED THIS 13TH DAY OF NOVEMBER 2008

Cynthia A. McIntosh, Mayor
City of Moulton, Texas

