

ORDINANCE NO. 22-H

AN ORDINANCE OF THE CITY OF ALVIN, TEXAS, AMENDING CHAPTER 12, HEALTH AND SANITATION, OF THE CODE OF ORDINANCES OF THE CITY OF ALVIN, TEXAS, FOR THE PURPOSE OF AMENDING DEFINITIONS, ACCUMULATION, MOWING REQUIREMENTS, NOTICE OF VIOLATION, AND DEFENSE TO PROSECUTION; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND SETTING FORTH OTHER PROVISIONS RELATED THERETO.

WHEREAS, the City Council of the City of Alvin desires to promote the health, safety, and general welfare of its citizens, and

WHEREAS, the overgrowth of grass, shrubs, weeds, and brush is unsanitary and lowers the quality of life for citizens in the City; and

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

Section 1. That Chapter 12, Health and Sanitation, Article I, of the Code of Ordinances, City of Alvin, Texas, is hereby amended with the language as follows:

CHAPTER 12, HEALTH AND SANITATION

ARTICLE I. IN GENERAL

“Sec. 12-1. Definitions

As used in this chapter, the following words and phrases shall have the meanings set forth below:

Any and all other objectionable, unsightly or unsanitary matter or conditions of whatever nature means and includes all cultivated and uncultivated vegetable growth, objects, matter, and conditions not included within the meaning of the other terms defined in this section, which are liable to produce or tend to produce an unhealthy, unwholesome, unsightly or unsanitary condition to the premises within the general locality where the same are situated, and shall also include any species of ragweed or other vegetable growth which might or may tend to be unhealthy to individuals residing within the general locality of where the same are situated.

Brush means and includes all trees or shrubbery under seven (7) feet in height which are not cultivated or cared for by persons owning or controlling the premises.

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.

Grass or weeds means and includes all cultivated and all rank and uncultivated vegetable growth or matter which has grown to more than nine (9) inches in height or which, regardless of height, is liable to become an unwholesome or decaying mass creating an unsanitary condition or a harborage or breeding place for mosquitoes, rodents, or vermin, or other disease-carrying pests.

Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris or waste; or iron, steel, appliances and other old or scrap ferrous or nonferrous material.

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, sidewalk, driveway, fence, porch, steps, or other structure appurtenant to the property.

Refuse means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

Rubbish means nondecayable waste from a public or private establishment or residence.

Trash means nonputrescible solid waste (excluding ashes) consisting of both combustible and noncombustible waste materials; combustible trash (rubbish), includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves and similar materials; noncombustible trash (rubbish), includes glass, crockery, tin cans, aluminum cans, metal furniture and like materials which will not burn at ordinary incinerator temperatures (one thousand six hundred (1,600) degrees to one thousand eight hundred (1,800) degrees Fahrenheit).

Sec. 12-2. - Accumulation of stagnant water.

It shall be unlawful for any owner or occupant of any lot, tract of property or premises within the city to permit or allow the accumulation of stagnant water on the lot, tract of property or premises. It shall likewise be unlawful for any person to permit or allow holes or places on such lots, tracts of property or premises where water may accumulate and become stagnant.

Sec. 12-3. - Accumulation of junk, trash, weeds, etc.

It shall be unlawful for any owner or occupant of any lot, tract of property or premises in the city to allow brush, junk, trash, weeds, refuse or any other objectionable, unsightly or unsanitary matter of whatever nature to grow or accumulate on or be carried by wind or rainwater from such lot or tract of property. Brush may be placed on the lot, tract of property or premises for collection purposes in accordance with the provisions of chapter 11 of this Code.

Sec 12-4. - Mowing requirements—Public nuisance declared.

- (a) It shall be unlawful for the owner or occupant of any lot or premises in the city to allow or permit the growth of grass or weeds which exceed a height of nine (9) inches on such lot or premises, or any contiguous, unpaved portion of a right-of-way in the city that is open for

public travel. The owner or occupant of any lot or premises within the city shall maintain, mow, and/or weed eat the lot or premises, including, but not limited to those areas contained within subsection (a) of this section, in its entirety, year-round in order to remain in compliance with this section, unless the lot or premises meets the exceptions contained in subsection (c) of this section.

- (b) Such lot or parcel of land, in addition to the grounds within its respective boundaries, shall be held to include, but shall not be limited to:
 - (1) All lots or parcels of land lying and being adjacent to and extending beyond the property line and any fence, wall or barrier of any such lot or parcel of land to the curb line of adjacent streets where a curb line has been established, or to the edge of pavement where no curb line has been established on adjacent streets;
 - (2) To the center of adjacent unimproved rights-of-way and alleys; and
 - (3) Within any abutting drainage ditch to the curb line of adjacent streets where a curb line has been established, or to the edge of the pavement where no curb line has been established on adjacent streets, unless the drainage ditch meets the exceptions contained in subsection (b) of this section.
- (c) If the contiguous, unpaved portion of a right-of-way contains a ditch, the City Manager or his/her designee is authorized to order the ditch to be mowed by city personnel or contractor upon making the following findings:
 - (1) That maintaining the ditch is not the responsibility of a homeowners' association, special purpose district, or similar entity; or
 - (2) Characteristics of the ditch render mowing by said owner or occupant unusually hazardous, including depth, steepness of the sides, continual presence of standing water, lack of safe and easy access by the owner/occupant, and location along a roadway with high traffic volume.
- (d) If the City Manager or his designee finds that the ditch will remain the owner or occupant's responsibility, the owner or occupant shall maintain, mow, and/or weed eat the lot or premises according to the requirements contained within this section.
- (e) The owner of any agriculturally exempt lot or premises defined as exempt under the Brazoria County Appraisal District's requirements, that contains no structures used or designed for human occupancy for residential or commercial purposes adjacent to developed areas shall be exempt from the nine (9) inch rule contained in this section; however, the perimeter of the agriculturally exempt lot or premises shall be mowed/maintained in compliance with the nine (9) inch rule contained within this section within fifty (50) feet from any adjacent property under different ownership and from any street right-of-way. The owner of any agriculturally exempt lot or premises must provide documentation of the agricultural exemption. If the owner is unable to provide documentation of the agricultural exemption, the owner shall maintain, mow, and/or weed eat the lot or premises according to the requirements contained within this section.

- (f) The owner of undeveloped land or of a vacant lot that has not been cleared shall clear all brush and undergrowth within fifty (50) feet from any adjacent property under different ownership and from any street right-of-way. Prior to removing any trees, the owner shall refer to Chapter 15-Article IX entitled, "Tree Preservation."

Sec. 12-5. - Notice of violation.

The city code enforcement officer or other designated city employee shall notify the owner and/or occupant of a lot, tract of property or premises in the city of a violation of any provision of this chapter. The person so notified shall be given ten (10) days after receipt of the notice to correct or remedy the violation. The notice shall be in writing and shall be served on the person by personal service or by mailing the notice by certified mail to the person at the person's last known address. In the event personal service cannot be obtained or the person's address is unknown, notification may be effected by any one of the following methods:

- (1) By publication at least once;
- (2) By posting the notice on or near the front door of each building on the property to which the violation relates; or
- (3) 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.

Sec. 12-6. - Removal or correction by city.

If the owner or occupant of the lot, tract of property or premises does not correct or remedy a violation of this chapter within ten (10) days of the date of receipt of the notice specified in section 12-5, the city may pursue any course of action necessary to remove or correct the condition, including performing work or improvements or causing work or improvements to be performed on the lot, tract of property or premises and charging the expenses to the owner or occupant of the lot, tract of property or premises. The city may assess the costs of the work or improvements against the real estate upon which the work or improvement is performed. The city shall be entitled to collect a charge in the amount set forth in chapter 28 of this Code for administrative expenses in carrying out the terms of this chapter in addition to the actual fees paid by the city for mowing and cleaning. The assessment of expenses against the owner and/or occupant shall not relieve the owner or occupant from any prosecution for a violation of this chapter.

Sec. 12-7. - Lien against property; suit for foreclosure.

If work or improvements are performed by the city under the provisions of section 12-6, the city shall be entitled to a lien against the real estate upon which the work or improvement is performed. To obtain such a lien, the mayor, city health officer or other city official designated by the mayor shall file a statement of expenses with the county clerk. The statement shall include the amount of expenses and the date upon which the work or improvements were performed. The lien shall constitute security for the expenditures made by the city. Interest shall accrue at the rate of ten (10) percent on the amount due from the date of payment by the city. The lien shall be inferior only to tax liens and liens for street improvements. The city may bring a suit for foreclosure in the name of the city to recover the expenditures and the interest due. In such a suit the statement of expenses or a certified copy of the statement shall constitute prima facie proof of

expenses incurred by the city in performing the work or improvement(s) or causing such to be performed.

Sec. 12-8. - Second violation within one year.

In the notice of violation issued pursuant to section 12-5 the code enforcement officer or other designated city employee may inform the owner or occupant by certified mail, return receipt requested, that if the owner or occupant 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 expenses against the real estate. If a violation covered by a notice under this section occurs within the 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 section 12-6 and assess the expenses as provided by section 12-7.

Sec. 12-9. - Penalty.

Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor which shall be punishable by a fine not to exceed two thousand dollars (\$2,000.00). Prosecution in municipal court shall be in addition to other remedies provided in this chapter.

Sec. 12-10. - Defense to prosecution.

It shall be a defense to prosecution under section 12-4 (e) of this chapter that the owner or occupant of the lot, tract of property or premises is growing hay for the specific purpose of cultivation and such hay is part of a predominately homogenous plant population provided that the hay is located no closer than fifty (50) feet to the edge of the paved surface of a public roadway.

Secs. 12-11—12-14. - Reserved.

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Section 2. That except as amended herein all other provisions of Chapter 12 of the Code of Ordinances, City of Alvin, Texas, shall remain in full force and effect. To the extent of any conflict or inconsistency between the provisions of this Ordinance and any other ordinance, the provisions of this Ordinance shall control.

Section 3. Penalties. Any person, firm, entity or corporation violating any provision of this Ordinance, as it exists or may be emended, shall be guilty of a misdemeanor, and on conviction, shall be fined in an amount not to exceeding \$2,000. Each continuing day's violation shall constitute a separate offence. The City of Alvin retains all legal rights and remedies available to it pursuant to local, state and federal law.

Section 4. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, invalid, or the application to any person or circumstance for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and

remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

Section 5. Incorporation into Code of Ordinances. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances, City of Alvin, Texas, as an addition, amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

Section 6. Effective Date. This Ordinance shall take effect immediately from and after its passage in accordance with the provisions of Chapter 52 of the Texas Local Government Code and the City of Alvin Charter.

Section 7. Open Meetings Act. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and the public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*. Notice was also provided as required by Chapter 52 of the *Texas Local Government Code* and the *City of Alvin Charter*.

Section 8. Publication. The City Secretary of the City of Alvin is hereby directed to publish this Ordinance, or its caption and penalty clause, in one issue of the official City newspaper as required by the City of Alvin Charter.

PASSED and APPROVED on the 3rd day of March 2022.

THE CITY OF ALVIN, TEXAS

ATTEST

By: _____
Paul A. Horn, Mayor

By: _____
Dixie Roberts, City Secretary