

ORDINANCE NO. 2387

AN ORDINANCE OF THE CITY OF BRYAN, TEXAS, AMENDING CHAPTER 50 “HEALTH AND SANITATION”, ARTICLE IV “NUISANCES”, DIVISION 1 “GENERALLY”, SECTION 50-88 THROUGH SECTION 50-93 OF THE BRYAN CITY CODE; REMOVING DILAPIDATED STRUCTURES FROM THIS CHAPTER; CHANGING EXCEPTIONS TO WEEDS AND GRASS REQUIREMENTS TO AFFIRMATIVE DEFENSES TO PROSECUTION; PROVIDING ADMINISTRATIVE HEARINGS BEFORE THE CITY MANAGER OR CITY MANAGER’S DESIGNEE; MAKING ABATEMENT RESTITUTION AND CRIMINAL PENALTIES PROVIDED IN THE ORDINANCE CUMULATIVE OF ALL OTHER REMEDIES AVAILABLE AT LAW; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; FINDING AND DETERMINING THAT THE MEETING AT WHICH THE ORDINANCE IS PASSED WAS OPEN TO THE PUBLIC AS REQUIRED BY LAW; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bryan, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has previously adopted procedures for abatement of general nuisance violations and tall grass and weed abatement in accordance with state law; and

WHEREAS, the City Council of the City of Bryan, Texas, desires to amend and clarify these provisions; and

WHEREAS, the City Council of the City of Bryan, Texas, has determined that the adoption of the amendment herein is in the best interest of the public health, safety and general welfare and therefore deems it advisable to enact this ordinance.

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

1.

That Chapter 50 “Health and Sanitation, Article IV “Nuisances”, Division 1 “Generally Sec. 50-88. “Specific enumeration”, subsection (3), is hereby amended to read as follows:

Sec. 50-88. - Specific enumeration.

(3) Discarded building materials and dilapidated fences. Any discarded building materials, or dilapidated fences

2.

That Chapter 50 “Health and Sanitation, Article IV “Nuisances”, Division 1 “Generally”, Section 50-89 is hereby amended to read as follows:

Sec. 50-89. –Affirmative Defenses – Weeds and grass.

The following shall be affirmative defenses to prosecution for a violation of Sec.50-88(1) “Weeds and grass”:

- (1) The property is lawfully and actively used for crop production;
- (2) The property is lawfully and actively used for grazing and measures a total area of one acre or larger;
- (3) The property consists of heavily wooded areas filled with uncultivated underbrush;
- (4) It is between March 1 and June 15 of each year and the property is used for cultivation of concentrated wildflowers and the weeds and grass do not exceed 18 inches in height; or
- (5) The property is State highway right-of-way.

3.

That Chapter 50 “Health and Sanitation, Article IV “Nuisances”, Division 1 “Generally”, Sec.50-90. is hereby amended to read as follows:

Sec. 50-90. All Nuisances – Abatement Generally

(a) *Duty to Abate.* It shall be the duty of every owner, lessee, occupant, or person in control of any lot, parcel of land, or premise within the city limits where any nuisance as defined in this division may exist, to remove, abate, or destroy the same without delay.

(b) *Abatement by City.* Prior to any abatement action by the City, the City shall notify the owner of property in the City of the nuisance violation as provided in Section 50-91 below. If the owner of property in the City is notified as provided in Section 50-91 below, and does not comply with the City's requirements to abate the nuisance set forth in the notice within ten calendar days after the date of notification, the City may:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(c) *Nuisances where no known person responsible.* Whenever any public nuisance is found in any place in this city for the removal, abatement, or destruction of which no person can be

held liable under the provisions hereof, it shall be the duty of the city manager or the city manager's designee to cause the removal, abatement or destruction of said nuisance.

4,

That Chapter 50 "Health and Sanitation, Article IV "Nuisances", Division 1 "Generally", Sec.50-91. is hereby amended to read as follows:

Sec. 50-91. notice to property owners.

(a) The notice must be given:

- (1) Personally to the owner in writing;
- (2) 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 property is located; or
- (3) If personal service cannot be obtained:
 - a. By publication at least once;
 - b. By posting the notice on or near the front door of each building on the property to which the violation 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.
- (4) If the notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered delivered.

(b) The notice shall inform the owner:

- (1) Of each specific violation causing the nuisance occurring on the property;
- (2) That failure of the owner to abate, or cause abatement of, the violation within seven (7) calendar days of receipt of said notice as provided in subsection (b) above:
 - a. Shall subject the owner to further criminal penalties as set forth in the City Code; and
 - b. May result in the city abating the nuisance, assessing the costs against the owner and filing a lien on the property; and
- (3) 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, and the city has not been previously informed, in writing, by the owner of

an ownership change, the city, without further notice, may correct the violation at the owner's expense and assess the expenses against the property; and

- (4) An explanation of the property owner's right to request an administrative hearing before the city manager or the city manager's designee about the city's abatement of the nuisance.

5.

That Chapter 50 "Health and Sanitation, Article IV "Nuisances", Division 1 "Generally", Sec.50-92 is hereby amended to read as follows:

Sec. 50-92. - Administrative Hearing.

- (a) The city manager or the city manager's designee shall conduct an administrative hearing on the abatement of nuisance under this provision if, not later than the fifth calendar day after the date of the notice of the nuisance, the property owner files with the city's code enforcement department a written request for a hearing. The fact that a hearing has been requested shall not affect the city's right to abate weeds and grass nuisances prior to such hearing.
- (b) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for hearing is filed. The owner may testify or present any witnesses or written information relating to the city's abatement of the nuisance.

6.

That Chapter 50 "Health and Sanitation, Article IV "Nuisances", Division 1 "Generally", Sec.50-93(f) is hereby amended to read as follows:

Sec. 50-93. - Assessment of expenses; lien.

- (f) The remedy provided by this section is in addition to the remedy provided by section 50-95. All remedies provided in this ordinance are in addition to, and not in lieu of all remedies permitted to the City by law.

7.

That all ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

8.

The Code of the City of Bryan, Texas, as amended, shall remain in full force and effect, save and except as amended by this Ordinance.

9.

Should any section, paragraph, sentence, clause, phrase or word of this Ordinance be declared unconstitutional or invalid for any purpose by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and to this end the provisions of this Ordinance are declared to be severable.

10.

It is hereby found and determined that the meeting at which this Ordinance was passed was open to the public, as required by Section 551.001 et seq., Texas Government Code, and that advance public notice of time, place and purpose of said meeting was given.

11.

It is the intention of the City Council that this Ordinance shall become a part of the Code of the City of Bryan, Texas, and it may be renumbered and codified therein accordingly.

12.

This Ordinance shall take effect immediately upon its first and only reading and passage.

PASSED, ADOPTED, AND APPROVED the 14th day of November, 2019, at a regular meeting of the City Council of the City of Bryan, Texas, by a vote of __yeses and ____noes.

ATTEST:

CITY OF BRYAN:

Mary Lynne Stratta, City Secretary

Andrew Nelson, Mayor

APPROVED AS TO FORM:

Janis K. Hampton, City Attorney