

## ORDINANCE NO. 12-3039

AN ORDINANCE AMENDING CHAPTER 54. "ENVIRONMENT", ARTICLE III-NUISANCES, SECTION 54-68 (16) "DECLARATION OF NUISANCE", SECTION 54-70 (3) "DISPOSAL, TRASH AND DEBRIS", SECTION 54-73 (3) "NOTICE TO ABATE VIOLATION; FAILURE TO COMPLY; CORRECTION BY CITY", OF THE CITY OF BEDFORD CODE OF ORDINANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the City Council of Bedford, Texas deems it necessary, in order to provide for the health, safety, and general welfare of the residents of the City of Bedford, to establish the provisions of this ordinance regarding the regulation of Nuisances as authorized by the State of Texas; and,

WHEREAS, the City Council of Bedford, Texas has established regulations for Nuisances, in *Chapter 54, Environment, Article III-Nuisances, of the Code of Ordinances*, as amended; and,

WHEREAS, the City Council of Bedford, Texas has determined that revisions are necessary to this Nuisance ordinance and has noticed, according to the requirements of public meetings by State Law, the proposed amendments; and,

WHEREAS, the City Council of Bedford, Texas has, after thoughtful deliberation, voted to approve these Nuisance ordinance amendments.

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

SECTION 1. *Chapter 54, Environment, Article III-Nuisances, of the Code of Ordinances*, being the Nuisance ordinance of the City of Bedford be amended to read in its entirety as follows:

Sec. 54-67. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.]

*Code enforcement official* means the chief of police, building official, fire marshal, code enforcement official, health inspector or their designated representatives, charged with any enforcement and administration of this article.

*Exterior property area* means the open space or non-inhabited or occupied areas on the premises.

*Foul* means offensive to the senses, revolting, having an offensive odor, smelly, rotten or putrid, all waste, and body waste, including animal and vegetable waste resulting from handling, preparation, cooking, storage or consumption of food.

*Garbage* means all waste including animal and vegetable waste, dead animals, food, any matter that is no longer wanted or needed, anything that is worthless of nominal value, inferior, or vile.

***Graffiti*** means the unauthorized application of paint, ink, chalk, dye or other similar substance, or other inscribed or engraved material on public or private structures located on publicly or privately owned real property within the city that is not authorized by law.

***High grass and weeds*** means any vegetation that because of its height is objectionable, unsightly or unsanitary which contributes to urban blight and endangers the public safety by creating a fire hazard, excluding: shrubs; bushes, trees, cultivated flowers, gardens, and cultivated crops.

***Nuisance*** means any condition, object, material, matter or light or noise as defined by city ordinance that is offensive, dangerous or detrimental to human life, safety or health; or that renders property, the ground, the water, the air or food a hazard or likely to cause injury to human life or health; or that threatens to become detrimental to the public health and be of an impure or unwholesome matter of any kind, or contributes to urban blight and any objectionable, unsightly, or unsanitary matter.

***Trash/Debris*** means all solid wastes, including garbage, trash, litter, junk, tin cans, bottles, papers, grass and weed cuttings, tree limbs, brush, wood or building materials, discarded fences, discarded vehicle parts, tires, wreckage, abandoned or inoperable household appliances, moveable furniture and/or appliances not designed for or modified to withstand the elements and outdoor use, equipment, tools, machines, broken or discarded furniture and other forms of household effects that have been abandoned and allowed to accumulate on private or public property or which contributes to urban blight.

***Waste*** means regarded or discarded as worthless or useless, unwanted or unusable material.

#### **Sec. 54-68. - Declaration of nuisance.**

The following are declared to be a nuisance and shall be abated, and any persons guilty of performing or causing any such nuisance, or permitting or suffering such on any property or to remain upon said property or in any structure, building occupied by or controlled by such persons or on any public street immediately adjacent to such premises shall be deemed guilty.

- (1) Any property, buildings, structures or places containing accumulations of garbage, weeds, water, junk, trash and debris, stagnant liquids, flammable liquids, or other deposits or substances which are likely to become unwholesome, filthy, unsightly, offensive or unsanitary or likely to create or engender disease.
- (2) Discharging of any sewage waste directly or indirectly onto the ground or into any stream, creek, waterway or other body of water.
- (3) Permitting any property, tank, pond, alley, gutter, swimming pool, or open receptacle containing water, or a source of water to become stagnant, foul, nauseous, offensive or unpleasant, or provide harborage for mosquitoes, flies, or other insects.
- (4) Maintaining a swimming pool with impaired visibility of upper and/or lower drain(s) or in an unsafe, unsecured, unclean or unsanitary condition.
- (5) Any person who owns or occupies any property with a swimming pool to discharge water from the swimming pool onto the property of another, or to drain the pool in such a way as to drain onto the property of another without consent of adjoining property owner.
- (6) Permitting the accumulation, dumping or the burial of garbage, trash and debris, building materials, discarded furniture, tree limbs, household waste items, ashes, inoperable household appliances, vehicle tires, scrap metal, or automobile parts on any private property and/or depositing the same onto any private property, public right-of-way or public property or the dumping or burying of used motor oils

- or any other chemical substance which is not permitted by the state commission on environmental quality directly onto or into the ground.
- (7) Permitting a lawn irrigation system to spray or overflow water onto a public sidewalk or public street during periods of freezing weather when such water freezes and results in a potentially dangerous condition.
  - (8) Allowing, generating or fostering any unreasonably loud, disturbing, or unnecessary noise in violation of the city ordinances which causes distress, discomfort or injury to persons in the immediate vicinity thereof.
  - (9) Any property where rats or vermin breed or are harbored.
  - (10) Any object or article placed, planted or allowed to grow upon or over any public street or sidewalk, except such as are permitted by ordinance of this city, in such manner as to obstruct or hinder the free passage upon such public street or sidewalk.
  - (11) The act of sweeping or depositing any trash and debris onto any public street or other public place and allowing the same to remain in such place.
  - (12) To create or allow graffiti that is visible from a public place or public right-of-way.
  - (13) The act of scattering, distributing, or affixing any advertisements, circulars, handbills, printed or written announcements, or paper of like character, upon the public streets, within or on public buildings, signs, monuments, or grounds within the city, except as provided by the city's sign ordinance or other law.
  - (14) The act of permitting light or lights to directly illuminate or shine upon a dwelling on a property of another after 11:00 p.m. in such a manner as to cause distress, discomfort or injury to persons, except with the express consent of such other person. This article shall not apply to lights maintained or controlled by the city upon its own property or property under its control or upon any street or alley of the city.
  - (15) No vehicle shall be used for living, sleeping, home occupation, or household purposes when parked or stored on commercial or residential property.
  - (16) Any tree and/or shrubbery allowed to grow onto or over a public street, except such as are permitted by ordinance of this City, in such manner as to obstruct or hinder the free passage of vehicles including but not limited to Fire, Police, emergency and non-emergency vehicles must maintain a minimum clear space between the street and lowest portion of the tree limbs of at least fourteen (14) feet above the public street and gutter.

**Sec. 54-69. - High grass and weeds.**

It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any property, occupied or unoccupied, within the corporate limits of the city, to permit grass or weeds to grow to a height greater than ten inches, or to permit grass or weeds to grow and accumulate or remain thereon onto and within the curb, gutter and sidewalk. If there is no curb and gutter, then the property shall be maintained to the traveled portion of the street. This shall not include cultivated flowers and gardens.

**Sec. 54-70. - Disposal, trash and debris.**

- (1) Every occupant or owner of a property with trash and debris shall dispose of all trash and debris in a clean and sanitary manner by placing such in approved containers for the storage of such until removed from the premises for disposal.
- (2) All interior and exterior property and premises shall be free from any accumulation of trash and debris.
- (3) Other than the hours for garbage and recycling bin placement and collection allowed by City ordinance, residentially zoned property shall maintain approved containers to be located on the premises within those boundaries established by the building lines and easements of such property with said approved containers

to be located behind fences, walls, shrubbery or vegetation to be screened from public view.

**Sec. 54-71. - Inspections.**

- (1) The code enforcement official, or his/her designee, is authorized to inspect any property for compliance with, or violations of, this article.
- (2) In the event entry onto the property is refused, the code enforcement official, or his/her designee, shall have recourse provided by law, including but not limited to obtaining an administrative search warrant or an injunction to secure entry. If the owner, occupant, or person in control cannot be identified or located, the code enforcement official, or his/her designee, shall be authorized to enter the property to the extent allowed by law.

**Sec. 54-72. - Duty of owner or occupant to abate nuisance.**

It shall be the duty of any person owning, claiming, occupying or having supervision or control of a property, occupied or unoccupied, to comply with this article.

**Sec. 54-73. - Notice to abate violation; failure to comply; correction by city.**

- (1) If any person owning, claiming, occupying, or having supervision or control of any real property fails to comply with the provisions of this article, within the time prescribed by the code enforcement official, or the time prescribed by state law, the city shall notify such person of failure to comply as specified in the Texas Health and Safety Code 342.006. The city shall have the authority as provided by law to issue citation(s) for such violation and go upon such property and do or cause to be done the work necessary and pay for the work done or improvements made and charge an administrative fee and the expenses to the owner of the property. The notice must be given personally to the owner in writing; or 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 if personal service cannot be obtained, the city may serve notice by publication at least once in a local newspaper; or by posting the notice on or near the front door of each building on the property to which the violation relates; or 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. If the city mails a notice to a property owner in accordance with this subsection 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 as delivered.
- (2) In a notice provided under this section, the city may inform the owner by regular mail and a posting on the 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 without further notice may correct the violation at the owner's expense and assess the expense against the property. 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, then the city without notice may take any action and assess its expenses, all as more particularly specified in the Texas Health and Safety Code 342.006 which is hereby adopted by reference.
- (3) Any notice, placards, signs, tags or seals posted or affixed by the City shall not be mutilated, destroyed or tampered with, or removed without authorization from the City.

**Sec. 54-74. - Expenses incurred by city; lien.**

The city may assess expenses incurred under Section 54-73 against the real estate on which the work is done or improvements made. To obtain a lien against the property, the city shall file with the county clerk a statement, signed by the mayor or an official of the city designated by the mayor, of the amount so expended and costs which statement shall state the name of the owner, if known, and the legal description of the property. Such amount shall bear interest at the rate of ten percent from the date the city incurs the expense and shall become a privileged lien against the real property, second only to tax liens and liens for street improvements. The city may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due. The statement of expense filed with the clerk or a certified copy thereof shall be prima facie proof of the amount expended in such work improvements or correction of the property, all as more particularly specified in the Texas Health and Safety Code 342.007, which is hereby adopted by reference.

**Sec. 54-75. - Enforcement.**

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

**Sec. 54-76. - Penalty upon failure to comply.**

- (1) Any person violating or failing to comply with any provision or requirement of this article, who continues to violate or fail to comply with same within the time prescribed by the code enforcement official, or the time prescribed by state law shall also be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$2,000.00, such offense being a violation of the city ordinances. 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.
- (2) Notwithstanding the foregoing, any violation of any provision of this article 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.
- (3) In addition to any other remedies or penalties contained herein, the city may enforce the provisions of this article pursuant to the applicable provisions of chapter 54 of the Texas Local Government Code, which provides for the enforcement of municipal ordinances.

**SECTION 2.** That this Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance.

**SECTION 3.** If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed

such remaining portion of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 4.** This Ordinance shall take effect from and after its date of passage in accordance with law, and it is so ordained.

**PRESENTED AND PASSED** on this 23rd day of October 2012, by a vote of 6 ayes, 1 nays and 0 abstentions at a regular meeting of the City Council of the City of Bedford, Texas.

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**Jim Griffin, Mayor**

**ATTEST:**

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**Michael Wells, City Secretary**

**APPROVED AS TO FORM:**

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**Stan Lowry, City Attorney**