

ORDINANCE NO. 037-2020

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS AMENDING CHAPTER 44 OF THE BIG SPRING CITY CODE ENTITLED "SOLID WASTE" BY ADDING A NEW ARTICLE III "ILLEGAL DUMPING AND LITTER CONTROL," IN ORDER TO ADOPT REGULATIONS FOR ILLEGAL DUMPING AND LITTER CONTROL WITHIN THE CITY LIMITS OF BIG SPRING AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR A PENALTY; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, illegal dumping and litter-related crimes have a negative impact on communities across America and cause in excess \$11.5 billion per year in clean-up costs; and

WHEREAS, illegal dumping and litter-related crimes also negatively affect the morale of a community and discourage growth and outside investment; and

WHEREAS, the City Council finds it necessary to adopt regulations for the control of illegal dumping and litter to armor our enforcement officials and citizens with the tools needed to reduce the negative impact that illegal dumping and litter-related crimes have on the Big Spring community;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG SPRING, TEXAS, THAT:

SECTION 1. This ordinance shall be known as the Big Spring Illegal Dumping and Litter Control Ordinance.

SECTION 2. This ordinance shall apply to and be enforced in the incorporated boundaries of the City of Big Spring and its extraterritorial jurisdiction.

SECTION 3. The Big Spring City Code, Chapter 44 entitled "Solid Waste" is hereby amended to add a new Article III entitled "Illegal Dumping and Litter Control" and shall read in its entirety as follows:

ARTICLE III. ILLEGAL DUMPING AND LITTER CONTROL

Sec. 44.100. Intent.

It is the express intent of the City Council and of this Ordinance to promote a clean, healthy, safe and attractive environment in which to live. Further, it is the intent of the City Council to cause authorized personnel to properly notify the property owner(s), or if not the property owner, the person(s) responsible for violating this ordinance. Such notification shall be in writing with a

clear explanation of the violation. Such written notification shall also explain options for resolution of the violation and allow adequate time for remediation. Code Enforcement shall be made available to work with the individual(s) and use all applicable regulations that may aid in the cleanup of litter and/or the disposal of illegal dumpsites. Upon request, the Director of Public Works may also grant reasonable extensions for the time required for cleanup.

Sec. 44.101. Definitions.

The following words, phrases, or terms used in this Ordinance, unless the context indicates otherwise, shall have the following meanings:

Bulky waste includes stoves, water heaters, washing machines, furniture, household construction debris, and other waste materials other than dead animals, hazardous waste, and stable matter with weights or volume greater than those allowed for placement in bags.

Commercial entity shall mean any and all generators of commercial waste, including commercial establishments, contractors, non-profit entities such as churches, public facilities, multi-family dwellings and other businesses.

Commercial waste shall mean any and all accumulations of non-hazardous refuse, debris, and waste products generated by the operation of industries, stores, building contractors, offices, churches, public facilities, multi-family dwellings and other business establishments that are collected in industry-standard front load or roll-off containers. Included in commercial waste is commercial construction debris.

Container means the receptacles used by residents and businesses for the storage of solid waste and recyclables.

Dead animal includes animals or portions thereof equal to or greater than 15 pounds in weight that have expired from any cause, except those slaughtered or killed for human use or consumption.

Garbage means every accumulation of waste (animal, vegetable and/or other matter) that results from the handling, packing, preparation, processing, consumption, dealing in, canning, storage, transportation, decay, or decomposition of meats, fish, fowl, birds, fruits, grains, or other animal or vegetable matter (including but not by way of limitation, used tin cans and other food containers; including all putrescible waste matter which is likely to attract flies or rodents) except (in all cases) any matter included in the definition of Bulky Waste, Dead Animals, Hazardous Waste, or Rubbish.

Hazardous waste means waste in any amount, which is defined, characterized or designated as hazardous by the United States Environmental Protection Agency or appropriated State agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law. For purposes of this ordinance, the term Hazardous Waste shall also include motor oil, gasoline, paint, and appliances containing Freon.

Illegal/Unlawful/Unauthorized dumping means any collection of solid waste which is either dumped or caused to be dumped or placed on any property either public or private, whether or not regularly used, which tends to create a hazard to the public health, safety and welfare, or declared a public nuisance, per se, shall be considered as forming an illegal dump, but not the careless, scattered littering of smaller individual items. An illegal dump shall also mean any solid waste disposal site that does not meet the regulatory provisions of the Texas Health and Safety Code.

Litter means all garbage and rubbish, loosely strewn, uncollected, unpackaged, and uncontained which includes but is not limited to paper, bottles, cans, glass, crockery, plastic, rubber, waste building materials, disposable packages, cigarette butts and other tobacco products, gum and containers.

Miscellaneous non-vegetative yard waste includes outdoor furniture, wire, plastics, bicycles, toys, grills, or any other outdoor item that is not classified as rubbish or yard waste. (See yard waste.)

Person means any person, owner, lessee, firm, business, partnership, sole proprietorship, association, corporation, company or organization of any kind.

Private property means any dwelling, house, building or other structure designed or used for private, commercial, or residential purposes, including any yard, grounds, acreage, vacant lots, walk, driveway, porch, steps, parking areas, vestibule, or mailbox belonging to such dwelling, house, building or other structure.

Public road means any road or roadway that is maintained by a City, County, State or Federal government using public funds.

Public property means any and all streets, public rights of way, easements, medians, sidewalks, boulevards, highways, streets, alleys, or other public parks, squares, spaces, grounds, buildings, and infrastructure.

Resident includes a person residing on the property, whether that person owns or leases the residence.

Rubbish means nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves and similar material. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like material, which will not burn at ordinary incinerator temperatures (not less than 1600 degrees F.).

Solid waste includes all items contained in the definition of garbage, bulky waste, dead animals, stable matter, miscellaneous yard waste, rubbish, household construction debris, commercial construction debris, or commercial waste. (See Commercial Waste)

Solid Waste Enforcement Officer (SWEO) means the Building Official or his designees, or the Fire Marshal, or his designees, who will enforce state laws related to solid waste, and to enforce the provisions of this ordinance.

Solid Waste Hearing Officer (SWHO) means the City Manager, who will hear appeals from those who receive the Written Notice of Corrective Action.

Yard waste means the leaves, grass cuttings, weeds, garden waste, tree limbs, and other vegetative wastes generated at residential, commercial, institutional, governmental, or industrial properties.

Sec. 44-102. Containerization of Litter and Solid Wastes in Receptacles for Collection.

- (a) It is unlawful for any person to deposit any materials in receptacles placed for public use as a depository for litter, recyclables, or solid wastes other than that specifically designated for that container.
- (b) All persons that place their solid waste in containers for collection are responsible for unsightly garbage in and about the property owned, operated or controlled by said persons. Spillage and overflow of wastes around containers shall be promptly cleaned and properly disposed of within a 24-hour period.
- (c) It shall be the responsibility of each person to keep his or her own property clean and free of garbage and any resulting litter. Any non-contained and uncontrolled accumulation of garbage on any public or private property is a violation of this ordinance.
- (d) Persons owning or occupying property shall keep right-of-way areas in front of their premises (and behind, if alleys are present) free of solid waste of all types.
- (e) It shall be the responsibility of the resident or the owner or manager of a commercial or multifamily residential establishment to utilize a storage system that will include containers of adequate size and strength and in sufficient numbers up to the limit permissible to contain all solid waste that the residence or other establishment generates in the period of time between collections. The owner or, if leased, the lessee of the storage containers shall be jointly and severally responsible for compliance with this requirement.
- (f) Any solid waste resulting from construction, repair, or alteration of any building shall be contained and removed in a timely manner by the generator and/or its contractor. All trees, tree limbs, and brush cut by a contractor or any person performing such task, or any other yard wastes collected from the property shall either be managed on-site in accordance with state law or should be removed and properly disposed. These materials shall be placed in containers such that they will not be scattered by the elements.
- (g) Residents and commercial entities shall set out solid waste and recyclable materials only in approved containers, as described in Article I of this Chapter.

- (h) Waste spilled due to improper bagging or because the bag was not protected from animals shall be cleaned up by the resident or commercial entity within 24 hours.
- (i) Residents and commercial entities shall set out solid waste and recyclables such that they cannot become scattered by the elements. All garbage and other small, loose items for disposal shall be bagged before being placed in the approved container. Recyclables shall be placed in a lidded cart or set out such that heavier items are on top to avoid materials becoming scattered by the elements.
- (j) Placing solid waste in someone else's container, public or private, constitutes theft of service, and is a violation of this Ordinance.

Sec. 44-103. Littering Prohibited.

- (a) It is unlawful for any person to throw, discard, or deposit litter, as defined herein, in any manner or amount in or upon any private or public property, highway, street, right-of-way, body of water, or park in the corporate limits of the City of Big Spring or its extraterritorial jurisdiction, except in public receptacles, in authorized private receptacles, or in accordance with regulations and requirements set forth by the City of Big Spring.
- (b) It is unlawful for any person to sweep into or deposit in any gutter, street or other public place within the corporate limits of the City of Big Spring or its extraterritorial jurisdiction the accumulation of litter or yard waste from any building or lot or from any public or private sidewalk or driveway. Persons owning or occupying property shall keep the sidewalks, entrance walks, parking lots and parking areas in front of or upon their premises free of litter.
- (c) It is unlawful for any person, while a driver or passenger in a vehicle, to throw or deposit litter upon any street or other public place within the corporate limits of the City of Big Spring or its extraterritorial jurisdiction or upon private property.
- (d) It is unlawful for any person to throw or deposit litter in any public place within the corporate limits of the City of Big Spring or its extraterritorial jurisdiction except to make deposits in public receptacles specifically provided for solid waste, recycling, and cigarette butts. Where public receptacles are not provided, all such litter shall be carried away from the public place by the person responsible for its presence and properly disposed of elsewhere as provided herein.
- (e) It is unlawful for any person to throw or deposit litter in any fountain, pond, lake, stream, bay or any other body of water in a public place or elsewhere within the corporate limits of the City of Big Spring or its extraterritorial jurisdiction.
- (f) It is unlawful for any person to throw or deposit any commercial or noncommercial handbill in or upon any vehicle; provided, however, that it shall not be unlawful in any

public place for a person to hand out or distribute without charge to the receiver thereof a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

- (g) It is unlawful for any person to throw or deposit any commercial or noncommercial handbill or telephone books in or upon any private premises which are temporarily or continuously uninhabited or vacant.
- (h) It is the duty of the owner, lessee, tenant, occupant, or person in charge, to keep and cause to be kept the sidewalk and gutter areas (twenty-four inches from curb into street) free from obstruction or nuisances of every kind, and to keep sidewalks, gutter areas, archways, backyards, courts and alleys free from litter and other offensive materials.

Sec. 44-104. Penalties for Littering.

Any person found to be in violation of any littering provisions of this ordinance shall be subject to a fine of up to \$500. No mental state shall be required to prove the guilt of the offender.

Sec. 44-105. Illegal Dumping Prohibited.

It shall be unlawful for any person to cause, create, or allow an illegal dump on any private or public property. Illegal dumps shall be eliminated by removal and proper, legal management of the dumped material. Solid waste from the illegal dump site will be disposed in an approved and permitted landfill and/or recycling facility.

Sec. 44-106. Penalties for Illegal Dumping.

- (a) Any person found to be in violation of any illegal dumping provisions of this ordinance with criminal negligence shall be subject to a fine of up to \$1,000.
- (b) Any person found to be in violation of any illegal dumping provisions of this ordinance with criminal recklessness, knowledge, or intent shall be subject to a fine of up to \$4,000.

Sec. 44-107. Illegal Dump Cleanup.

- (a) The property owner shall be responsible to clean up the illegal dump by order of abatement upon the finding of the SWHO.
- (b) Upon a written request by the property owner certifying that they are financially or otherwise incapable of cleaning up the site, and upon approval by the City Manager, the City of Big Spring may clean up the illegal dumpsite. However, before such work may begin, a consent form for removal from private property must be fully executed.

Sec. 44-108. Enforcement.

- (a) The following persons are hereby empowered to and shall enforce the provisions of this ordinance. Law enforcement officers of the City of Big Spring, the City of Big Spring Fire Marshal, the City of Big Spring Building Official, and City of Big Spring Code Enforcement Officers.
- (b) Any citizen within the city limits or extraterritorial jurisdiction of Big Spring may file a sworn complaint with the municipal prosecutor of the City of Big Spring against any party in violation of this ordinance.
- (c) A law enforcement officer, fire marshal, or a code enforcement officer of the City of Big Spring may initiate an investigation where the officer has sufficient probable cause to believe this ordinance is being violated.
- (d) If the law enforcement officer, fire marshal, or code enforcement officer discovers an article of garbage bearing the name or address of any person, corporation, company, firm, business or institutions on any public or private property, it shall be presumed that said article of garbage being so discovered is the property of such person whose name appears thereon, and said person placed or caused to be placed such article of garbage; provided, however, that such presumption shall be rebutted by competent evidence. This presumption is based on the intent that all generators of such items are responsible for such items until such time they have been properly disposed of. Upon receiving a complaint alleging unlawful litter or an illegal dump, the Solid Waste Enforcement Officer (SWEO) discusses the issue with the resident, property owner, or the person believed responsible to try and resolve the issue. For leased property, the SWEO will attempt to contact the tenant first and the owner only after attempts to work with the tenant does not result in compliance to this ordinance.
- (e) If, after investigating an alleged illegal dump site or litter problem, the SWEO believes further action should be taken and, if the issue cannot be resolved, the SWEO shall issue a Written Notice of Corrective Action. The Written Notice of Corrective Action may be issued to suspected violators of this ordinance in lieu of citation or arrest.
 - (1) Notices shall be mailed by Certified Mail, return receipt requested, to the suspected violator's last known place of residence and shall be deemed personal service upon the person for the purpose of this ordinance.
 - (2) Notices shall include the date issued, a description of the alleged offense committed, an explanation of the corrective measures to be taken, and the date and time by which such corrections shall be made.
 - (3) The issuing authority of notifications shall retain all such notices issued and make them available for public inspection during normal office hours.

- (f) If the person notified of a suspected violation does not contest the Written Notice of Corrective Action, and completes the corrective measures within the time specified, the SWEO will issue a Certificate of Compliance certifying that the suspected violation no longer exists.

Sec. 44-109. Appeal Procedure.

- (a) If the person notified of an alleged violation wishes to contest the Written Notice of Corrective Action, they must submit in writing, within 10 days of receipt by registered mail of the Written Notice of Corrective Action, a request for a hearing to the City of Big Spring Solid Waste Hearing Officer.
 - (1) The Solid Waste Hearing Officer shall schedule a meeting date within 15 days from receipt of a request for a hearing.
 - (2) The Solid Waste Hearing Officer after considering all evidence shall make a ruling that dismisses the alleged violation or affirms the issuance of the Written Notice of Corrective Action. Note: The cost of the hearing shall be a charge to City of Big Spring upon dismissal of the alleged violation, or a charge to the person(s) that requested the hearing upon a ruling that requires remediation. The Solid Waste Hearing Officer may grant an extension of time for remediation upon considering justifying circumstances.

Sec. 44-110. Failure to Comply.

Any person who has been served a written notice of corrective action in accordance with the provisions of this ordinance, and how shall neglect, refuse or fail to fully comply with the corrective notices so ordered, and/or within the time frame so ordered therein, shall be in violation of this ordinance. The Code Enforcement Department, or other authorized agent, shall file an affidavit with the appropriate court of jurisdiction for prosecution.

Sec. 44-111. Individual Complaints.

Individuals may initiate an investigation by filing a written complaint (See Appendix B) with the Solid Waste Enforcement Officer alleging that the conditions of a parcel of land constitutes a menace to the health, safety, and welfare of the adjacent community.

- (a) Upon receipt of the complaint, the Solid Waste Enforcement officer will investigate the matter and confer with the members of the Director of Public Works. If the Solid Waste Enforcement Officer determines that there is substantial evidence to believe that the condition of such property does pose a menace to the health, safety, and welfare of the local community, he will recommend that the Director of Public Works convene a hearing in accordance with this Article.

Sec. 44-112. Examples.

Examples of littering and illegal dumping conditions on private property that may be considered illegal and declared a menace to the public health and safety of the community:

- (a) Properties that contain items that hold water and make a good mosquito-breeding habitat.
Example: open barrels, tires, etc.
- (b) Buckets, drums, containers, or other items that hold oil or other liquids that may spill, drip, or leak and, if rained upon, may spill over and contaminate the soil.
- (c) Material that is fly producing, rat harboring, and/or is odorous.
- (d) Loose material of significant volume that may be blown onto [jurisdiction] road right-of-way or neighboring property.
- (e) Objects that create a condition that may be expected to attract children and constitute a danger to their safety.
- (f) Hazardous, toxic, or radioactive waste as defined by the Texas Commission on Environmental Quality (TCEQ) or the federal Environmental Protection Agency, including appliances that contain Freon, e.g., refrigerators and air conditioners.
- (g) Discarded dead animals weighing 15 pounds or more that may be infectious or odorous.
- (h) Burning of garbage in violation of law.
- (i) Illegal discharge to state waters. It shall be unlawful for any person to throw, discard or deposit garbage, rubbish, yard waste or other solid wastes into any river, creek, stream, water drainage way, or in any other manner that would result in the wash out of wastes into state waters.

Sec. 44-113. Failure to Comply.

- (a) If a Written Notice of Corrective Action is issued and the condition described is not resolved within 30 days, the property owner will be ordered to appear before the City Council for a show cause hearing under the Structural Standards Ordinance
- (b) If the City Council finds that the condition on the property constitutes a menace to the health and safety of the community, the Board can order the property owner to clean up his property.
- (c) Upon the failure or refusal of any person so notified to properly dispose of garbage, rubbish and/or yard waste from their property within 30 days after issuance of proper corrective notice, the City Manager may effect the removal of said garbage, rubbish,

and/or yard waste and charge the owner of such property for the actual cost of removal and such assessment may be a lien against the property.

SECTION 4. This Ordinance shall be cumulative and in addition to any other laws in force.

SECTION 5. The standards and procedures set forth in this ordinance are non-exclusive and therefore citizens and the City of Big Spring may simultaneously proceed under one or more Article(s) as to any single condition as deemed appropriate.

SECTION 6. Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared unconstitutional or invalid for any purpose, the remainder of this ordinance shall not be affected thereby.

SECTION 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict.

SECTION 8. The City Secretary is hereby ordered and directed to cause the descriptive caption as well as the penalties for violation of this ordinance to be published as required by law.

SECTION 9. This ordinance shall take effect immediately after its publication in accordance with the provisions of the Charter of the City of Big Spring, and it is accordingly so ordained.

PASSED AND APPROVED on first reading at a regular meeting of the City Council on the **13th** day of **October, 2020** with all members of the Council voting “aye” for the passage of same.

PASSED AND APPROVED on second and final reading at a ^{Special}~~regular~~ meeting of the City Council on the **29th** day of **October, 2020** with all members of the Council voting “aye” for the passage of same.


Shannon D. Thomason, Mayor

ATTEST:


Donald Moore, City Secretary