

ORDINANCE NO. 2020-C-09

AN ORDINANCE AUTHORIZING AND APPROVING THE CITY OF VON ORMY, TEXAS, TO ADOPT REGULATIONS REGARDING THE HEIGHT AND GROWTH OF GRASS AND VEGETATION ON PRIVATE PREMISES; TO ADOPT REGULATIONS REGARDING OVERHANG AND PROTRUSIONS INTO PUBLIC RIGHTS-OF-WAY AND EASEMENTS; TO ADOPT REGULATIONS REGARDING ACCUMULATION OF GARBAGE, DEBRIS, LITTER, WASTE, RUBBISH, AND BRUSH ON PRIVATE PREMISES; TO ADOPT REGULATIONS REGARDING ABATEMENT OF DANGEROUS WEEDS; TO ADOPT REGULATIONS REGARDING PUBLIC NUISANCES RELATED TO SAME; PROVIDING ABATEMENT PROCEDURES BY PROPERTY OWNERS AND SAID CITY AND ASSESSING COSTS FOR SAME; PROVIDING LIEN PROCEDURES FOR REAL PROPERTY RELATED TO SAME; AUTHORIZING SAID CITY'S MAYOR, OR MAYOR'S DESIGNEE, TO EXECUTE ANY AND ALL RELATED DOCUMENTS NECESSARY FOR SUCH REGULATIONS AND PROCEDURES; AUTHORIZING SAID CITY'S MAYOR, OR MAYOR'S DESIGNEE, TO TAKE ANY AND ALL OTHER ACTIONS NECESSARY FOR SUCH REGULATIONS AND PROCEDURES; PROVIDING A SAVINGS/REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; PROVIDING AN EFFECTIVE DATE; AND AUTHORIZING ALL OTHER RELATED MATTERS.

WHEREAS, the City of Von Ormy, Texas ("City"), is a Type C municipality and political subdivision of the State of Texas; and

WHEREAS, the City has the authority to adopt certain regulations and procedures for the health and safety of the City, including, but not limited to, regulations for the excessive and dangerous height and growth of grass and vegetation on private premises and other related matters; and

WHEREAS, for the health, safety, and general welfare of the City and its community, the City now desires, through this Ordinance, to authorize and approve the City's adoption of regulations regarding the height and growth of grass and vegetation on private premises; regulations regarding overhang and protrusions into public rights-of-ways and easements; regulations regarding accumulation of garbage, debris, litter, waste, rubbish, and brush on private premises; regulations regarding abatement of dangerous weeds; regulations regarding public nuisances related to same; providing abatement procedures by property owners and said city and assessing costs for same; and providing lien procedures for real property related to same; and

WHEREAS, to help facilitate the City's implementation of the regulations and procedures set forth herein, the City now desires, through this Ordinance, to (1) authorize the City's Mayor, or Mayor's designee, to execute any and all related documents necessary for such regulations and procedures; (2) authorize the City's Mayor, or Mayor's designee, to take any and all other actions necessary for such regulations and procedures; and (3) authorize and approve all other related matters; and

WHEREAS, the City finds that authorizing and approving this Ordinance, and all other matters described herein, are in the best interest of the community and the City.

NOW, THEREFORE:

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF VON ORMY, TEXAS, THAT:

- A. The recitals set forth hereinabove are true and correct statements and are fully incorporated here as part of this Ordinance.
- B. The City hereby authorizes and approves this Ordinance regulating excessive and dangerous vegetation in the City and other related matters (as described herein), which regulations are hereby adopted and approved as follows:

SECTION 1. PRIVATE PREMISES - EXCESSIVE HEIGHT OR GROWTH OF VEGETATION.

- (a) It shall be unlawful for any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to permit, or not prevent, grass, weeds, bushes, shrubs, or any plant/vegetation, which is not cultivated, to grow to a greater height than twelve (12) inches or in significant unmanicured profusion upon said premises.
- (b) With respect to lots, tracts or parcels of land of two (2) or more acres under single ownership, the provisions of subsection (a) shall not be applicable to the area in excess of one hundred (100) feet from any open public street or way, or to the area in excess of one hundred (100) feet from any adjacent property on which habitable dwellings are located.

SECTION 2. OVERHANG OR PROTRUSION INTO PUBLIC RIGHTS-OF-WAY OR EASEMENTS.

- (a) It shall be unlawful for any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to permit, from such premises, the overhang of trees, bushes, shrubs, any plant/vegetation, and structures over a public street or public easement or public sidewalk up to a height of thirteen (13) feet.
- (b) It shall be unlawful for any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to permit, or not prevent, grass, weeds, brushes, shrubs, or any plant/vegetation, which is not cultivated, to grow in, along, upon or across the public sidewalk or public street adjacent to same in the area between such property line and the curb line to a height greater than twelve (12) inches on an average.

SECTION 3. ACCUMULATION OF GARBAGE, DEBRIS, LITTER, WASTE, RUBBISH AND BRUSH.

- (a) It shall be unlawful for any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to permit, or not prevent, any garbage, debris, litter, rubbish, waste, rubbish, brush, and any and all other objectionable, unsightly, or unsanitary matter of whatever nature to accumulate or be present upon any such lot, tract or parcel of land.

SECTION 4. PUBLIC NUISANCE.

- (a) Any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, shall keep such premises free from a condition constituting a public nuisance as defined by the Health and Safety Code Section 343.011(c)(1), (2), or (3), which states: a public nuisance is: (i) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle; (ii) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within three-hundred (300) feet of a public street for ten (10) days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street; or (iii) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests.

SECTION 5. ABATEMENT—DUTY OF PROPERTY OWNER OR OCCUPANT.

- (a) It shall be the duty of any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to cut, or cause to be cut, and/or remove, or cause to be removed, if necessary, to comply with this Ordinance, all such grass, weeds, bushes, shrubs, plants/vegetation, rubbish, brush, debris, litter, waste, and any and all other objectionable, unsightly, or unsanitary matter of whatever nature as often as may be necessary to comply with the provisions of this Ordinance. This Section 5 also applies to the duty of a property owner to remedy any violation of Section 4 above.

SECTION 6. ABATEMENT —PERFORMANCE BY CITY; COLLECTION OF COST.

- (a) Should any owner of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, who fails and/or refuses to comply with the provisions of Section 5 above within seven (7) days after written notice is personally delivered to said owner to do so, or delivered by letter addressed to said 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: (i) by publication at least once; (ii) by posting the notice on or near the front door of each building on the property to which the violation relates; or (iii) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, the City may do such cutting and/or removing all such grass, weeds, bushes, shrubs, plants/vegetation, rubbish, brush, debris, litter, waste, and any and all other objectionable, unsightly, or unsanitary matter of whatever nature, or cause the same to be done, and may pay therefor and charge the owner the expense incurred, including an administrative fee of one-hundred dollars (\$100.00).

- (b) In a notice provided under this Section 6, the City may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, 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 permitted by this Ordinance.

SECTION 7. ADDITIONAL AUTHORITY TO ABATE DANGEROUS WEEDS.

- (a) Notwithstanding any provision of this Ordinance to the contrary, the City may abate, without any notice, weeds that: (i) have grown higher than 48 inches; and (ii) are an immediate danger to the health, life, or safety of any person.
- (b) Not later than the 10th day after the date the City abates weeds under this Section, the City shall give notice to the property owner in the manner required by Section 6 above. The notice shall contain: (i) an identification, which is not required to be a legal description, of the property; (ii) a description of the violations of the ordinance that occurred on the property; (iii) a statement that the City abated the weeds; and (iv) an explanation of the property owner's right to request an administrative hearing about the City's abatement of the weeds.
- (c) The City shall conduct an administrative hearing 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 property owner files with the City a written request for a hearing. An administrative hearing conducted under this Section shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the weeds.
- (d) The City may assess expenses and create liens under this Section as it assesses expenses and creates liens under Section 8 below. A lien created under this section is subject to the same conditions as a lien created under Section 8 below.
- (e) The remedies and penalties provided by this Section are in addition to the provisions provided in Section 9 below.

SECTION 8. ASSESSMENT OF EXPENSES; LIEN ON PROPERTY.

- (a) If such work is done at the expense of the City, pursuant to this Ordinance, then all such costs shall be assessed on the real estate or lots upon which such expenses were incurred. The City shall first provide notice to the property owner in the manner provided by Section 6, providing the property owner notice of the amount due to the City pursuant to this Ordinance, the date such work was done, the date such expenses were incurred, and a 30-day deadline to pay such expenses to the City. If the property owner does not pay the City the expenses incurred pursuant to this Ordinance by the 30-day deadline stated in such notice, the City shall file a statement, with the County Clerk of Bexar County, Texas, of such expenses incurred, giving the amount of such expenses, the date on which said work was done, the name of the owner, if known, and the legal description of the property; and the City shall have a privileged lien on such lots or real estate

upon which such work was done to secure the expenditures so made, in accordance with the provisions of Section 342.007 of the Health and Safety Code of Texas, which lien shall be second only to tax liens and liens for street improvements and said amount shall bear ten (10) percent interest from the date the City files the lien statement with the County Clerk of Bexar County, Texas. The lien attaches upon the filing of the lien statement with the County Clerk of Bexar County, Texas.

- (b) The City may bring a suit for foreclosure in the name of the City to recover the expenditures and interest due.
- (c) The City may foreclose a lien on property under this Ordinance in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.
- (d) 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.
- (e) The remedies and penalties provided by this Section are in addition to the provisions provided in Section 9 below.

SECTION 9. FINE FOR VIOLATION AND OTHER PENALTIES.

- (a) **Criminal Prosecution.** Any person violating any of the provisions of this Ordinance may, upon conviction, be fined in any sum of money not less than one dollar (\$1.00) nor more than five-hundred dollars (\$500.00). Each day any such violation of this Ordinance shall continue shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.
- (b) **Civil Remedies.** Nothing in this section or ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of that ordinance and to seek remedies as allowed by law, including, but not limited to, the following: (i) injunctive relief to prevent specific conduct that violates this Ordinance or to require specific conduct that is necessary for compliance with this Ordinance; (ii) a civil penalty up to \$5,000 a day when it is shown that the defendant was actually notified of the provisions of this Ordinance and after receiving notice committed acts in violation of this Ordinance or failed to take action necessary for compliance with this Ordinance; and (iii) other available relief.

SECTION 10. DEFINITIONS.

Unless this ordinance expressly provides otherwise, the following terms, as used in this Ordinance, shall have the following definitions.

- (a) *Garbage or refuse* means any and all small dead animals; every accumulation of waste (animal, vegetable and/or other matter) that results from the preparation, processing, consumption, dealing in, handling, packing, 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; and all putrescible or easily decomposable waste animal or vegetable matter which is likely to attract flies or rodents); except (in all cases) any matter included in the definition of excluded waste.
- (b) *Waste*, as that term is used in this Ordinance, shall mean and include the following:
 - i. *Hazardous waste* means a form of excluded waste and is defined as any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or listed or characteristic hazardous waste as defined by federal, state, provincial or local law or any otherwise regulated waste. Hazardous waste shall include, but not be

limited to, any amount of waste listed or characterized as hazardous by the United States Environmental Protection Agency or any state agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, and including future amendments thereto, and any other applicable federal, state or local laws or regulations.

- ii. *Industrial solid waste* means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.
- iii. *Medical waste* means animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care-related facilities as those terms are defined in 25 TAC Section 1.132 (Tex. Dept. of Health, Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Section 252.001(6), Agriculture Code. The term does not include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants.
- iv. *Regulated Waste* means garbage, hazardous waste, illegally dumped rubbish or trash, industrial solid waste, medical waste, rubbish, solid waste and special waste as defined herein.
- v. *Solid waste* means useless, unwanted or discarded materials with insufficient liquid content to be free flowing, that result from domestic, industrial, commercial, agricultural, governmental and community operations which require proper storage, collection, transportation and disposal to prevent environmental pollution inimical to public health, safety and welfare. Solid waste does not include sewage, earth or material used to fill land in accordance with construction codes, mining residues, slag, dissolved or suspended solids in industrial waste water effluents which are not acceptable for disposal in sanitary sewage treatment system or any material included in the definition of excluded waste.
- vi. *Special waste* means nonhazardous solid waste that is subject to additional governmental regulations or special handling requirements in collection, transportation, processing or disposal as a result of the characteristics of, or processes that generate such waste. Special waste includes, but is not limited to, asbestos, or any waste defined as special by Texas Administrative Code 30 and as further defined in Sections 330.3(148), 330.171, 330.173 or any adjunct regulations. Waste may be classified as special because of its quantity, concentration, or chemical, physical or biological contents. Septic tank: pumpings and grease and grit trap waste are excluded.
- vii. *Yard waste* means grass, leaves, flowers, stalks, stems, tree trimmings, branches, and tree trunks.

(c) *Owner* means the record title holder of real property.

(d) *Rubbish* means all waste wood, wood chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded mattresses, used and discarded clothing, used and discarded shoes and boots, combustible waste pulp and other products such as are used for packaging, or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, and any and all other waste materials not included in the definition of excluded waste.

(e) *Street* means any public thoroughfare for the passage of vehicle and pedestrian traffic.

(f) *Other terms not otherwise defined herein, but which are defined in City Ordinance No. 2017-C-8, shall have the meaning set forth in such ordinance.*

- C. The City hereby (1) authorizes the City's Mayor, or Mayor's designee, to execute any and all related documents necessary for such regulations and procedures; (2) authorizes the City's Mayor, or Mayor's designee, to take any and all other actions necessary for such regulations and procedures; and (3) authorizes all other related matters.
- D. All provisions of the ordinances, regulations, or laws of the City in conflict with the provisions of this Ordinance be, and the same are, hereby repealed, and all other provisions of the ordinances of the City not in conflict with the provisions of this Ordinance shall remain in full force and effect.
- E. If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and independent provision, and such holdings shall not affect the validity of the remaining portions thereof.
- F. The City Clerk of the City is hereby directed to publish notice of this Ordinance at least one (1) time in the official newspaper of the City, or as, otherwise, required by the laws of the State of Texas.
- G. This Ordinance shall be effective immediately upon adoption and the passage of ten (10) days after the date of publication of this Ordinance as provided herein.

PASSED, APPROVED, AND ADOPTED THIS _____ DAY OF _____ 2020.

CITY OF VON ORMY, TEXAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

[SEAL]