

Health/Sanitation

No. 2021-006 A

AN ORDINANCE REPEALLING "SECTION 5 OPEN FIRES PROHIBITED: EXCEPTION" OF ORDINANCE NO. 2012-006, LEAVING IN PLACE REMAINING NUISANCE PROVISIONS REGARDING STAGNANT WATER, GARBAGE, TRASH, WEEDS, JUNK, WASTE AND OTHER REFUSE; LEAVING IN PLACE GRASS REGULATIONS, LEAVING IN PLACE REGULATIONS ADDRESSING SHRUBS, BRUSH, WEEDS, AND OTHER DEBRI; LEAVING IN PLACE THE DECLARATION OF PUBLIC NUISANCE; AND LEAVING IN PLACE ALL PENALTY AND NOTICE PROVISIONS OF SAID ORDINANCE NO. 2012-006

AN ORDINANCE OF THE CITY OF DEPORT, TEXAS

WHEREAS, Section 5 of Ordinance 2012-006 which prohibits open fires with minimal exceptions is found to be inconsistent with the needs and desires of the City; and

WHEREAS, The City Council of the City of Deport desires to leave in place the balance of Ordinance 2012-006 regarding Nuisances and Enforcement; and

WHEREAS, The City Council wishes to remove Section 5; and


NOW THEREFORE BE IT ORDERED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEPORT, TEXAS:


Section NO. 5 of Ordinance 2012-006 is hereby revoked and ordered deleted from Ordinance NO. 2012-006. This Ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained. The remaining provisions of Ordinance 2012-006 are left in place and are not affected by this revocation.

Signed on the 12th day of May 2021.


PATRICK WATSON, MAYOR

ATTEST:


DENISE GLOCK
CITY SECRETARY


DAVID HAMILTON, CITY ATTORNEY
DEPORT, TEXAS

ORDINANCE NO. 2021-006

AN ORDINANCE REPEALLING ORDINANCE NO. 2011-02 OF THE CITY OF DEPORT; AND ADOPTING THIS ORDINANCE PROVIDING FOR REGULATION OF AND CERTAIN RESTRICTIONS ON STAGNATE WATER, GARBAGE, TRASH, WEEDS, JUNK, WASTE AND OTHER REFUSE; REGULATING GRASS, LEAVES, SHRUBS, WEEDS, BRUSH, AND OTHER DEBRIS WITHIN THE TERRITORIAL LIMITS OF DEPORT; PROHIBITING OPEN FIRES UNDER CERTAIN CONDITIONS; DECLARING AND DEFINING “PUBLIC NUISANCE”; PROVIDING FOR THE ABATEMENT OF A PUBLIC NUISANCE BY THE CITY; PROVIDING FOR QUASI ENFORCEMENT BY THE CITY COUNCIL OF ISSUES INVOLVING ACCUMULATION OF GRASS, WEED, VINES, AND BRUSH AS DEFINED HEREIN; PROVIDING FOR THE ASSESSMENT OF ABATEMENT EXPENSES; PROVIDING A PENALTY AND SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT; AND ESTABLISHING AN EFFECTIVE DATE.

**THEREFORE, BE IT ORDAINED THAT THIS ORDINANCE IS
ADOPTED BY THE CITY OF DEPORT, TEXAS**

WHEREAS, Accumulation of garbage, trash, waste, and other refuse on public and private property with the City limits of the City of Deport creates health and sanitation problems and is a nuisance to the Citizens of Deport; and

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

WHEREAS, Accumulations of garbage, trash, junk, waste, leaves, and other refuse, and the overgrowth of grass, shrubs, weeds, and brush is unsanitary and lowers the quality of life for citizens in the City; and

WHEREAS, Accumulations of garbage, trash, junk, waste, leaves, and other refuse, and the overgrowth of grass, shrubs, weeds, and brush is a public health and safety matter by harboring insects and rodents, increasing fire hazards, and facilitating crime by decreasing visibility; and

WHEREAS, Stagnant water and other unsanitary conditions harbor and attract rodents and insects, resulting in the production of disease; and

WHEREAS, Illegal dumping of garbage, trash, junk, waste, leaves, brush, and other refuse harms the environment, creates a danger to public health and safety, and reduces property values; and

WHEREAS, Open fires for the purpose of burning garbage, trash, junk, waste, leaves, weeds, rubbish, brush, carrion, and other refuse create unsafe and unsanitary conditions that lower the quality of life for citizens of the City by increasing fire hazards and creating health issues; and

WHEREAS, Pursuant to Texas Local Government Code section 51.001 the City Council is authorized by law to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, Pursuant to Texas Local Government Code section 51.032 the City Council is authorized by state law to adopt an ordinance, not inconsistent with the state law, that the City Council considers proper for the government of the City; and

WHEREAS, Pursuant to Texas Local Government Code Chapter 217 the City has the statutory authority to define and abate nuisances and impose fines; and

WHEREAS, Pursuant to the Texas Health and Safety Code, including but not limited to Chapter 342, the City Council is authorized by law to regulate public health and sanitation within the City in the areas of stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary, and unwholesome conditions; and

WHEREAS, Pursuant to Texas and local government code Section 54.033 ET SEQ., The City Council has quasi-judicial enforcement of accumulations of grass, weeds, vines, and brush which provide harborage for the breeding of insects and rodents; and

WHEREAS, The City Council finds that it is necessary and proper for the good government, peace, and order of the City and for proper public health and sanitation to in the City to adopt an ordinance on public health and sanitation that regulates stagnant water, garbage, trash, weeds, junk, waste, carrion, weeds, grass, shrubs, brush, and other unhealthy, unsanitary, and unwholesome conditions in the City; and

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

SECTION 1. The recitals contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. Ordinance number 2011-02 of the City of Deport is hereby repealed and replaced by this Ordinance.

SECTION 3. DEFINITIONS.

(A) General. Words and phrases used in this Ordinance shall have the meanings set forth in this section. Other words and phrases shall be given their common, ordinary meanings unless the

context clearly states otherwise. Headings and captions are for reference purposes only and shall not be used in the interpretation of this ordinance.

(B) Specific.

1. Animal Carcass: The carcass (including parts) of any animal in such a state that noxious or disagreeable odors may escape there from.
2. Brush: Any tree, greasewood, cacti, or shrubbery occurring naturally in the area that has a central trunk with a girth of less than ten inches (10”) at its base. Brush expressly excludes ornamental or shade trees that were planted and maintained.
3. Brush Trimmings: Tree and shrub trimmings, including trimmings from ornamental or shade trees, which cannot be maintained as live plants, and which are not susceptible to placement in trash collection bins.
4. Carrion: The decaying flesh of dead animals
5. City: The City of Deport, an incorporated municipality located in Lamar County, Texas
6. City Limits: The incorporated municipal boundary of the City of Deport.
7. Code Enforcement Official: The City Secretary or designee. The Code Enforcement Officer or licensed police officer employed by the City of Deport is also a Code Enforcement Official.
8. Cultivated Vegetation: Includes crops and those vegetables wherein land is prepared and worked in order to work or improve the growth of the plant or crops through labor and attention.
9. Debris: Dirt, concrete, rocks, bricks, scrap wood, other waste or building materials.
10. Dumping: Disposing or allowing or permitting disposal of waste, garbage, trash, junk, brush, grass clippings, debris, animal carcass, carrion, refuse or rubbish in a place not approved to receive same.
11. Garbage: Waste or spoiled food and other refuse as from a kitchen or household but also including commercial by-products including food waste, discarded and useless material and trash as defined herein.
12. Grass: Low green plants consisting of large numbers of thin, spiky, green leaves, most commonly found in residential front yards, but also cultivated as a pasture crop for feeding certain animals. This phrase includes ornamental grasses/plants which meet this definition of grass of whatever size and independent of any blooms or seeds.

13. Junk: Worn out, worthless, discarded material, including but not limited to scrap metal, glass, paper, tires, pieces and parts of machinery or automobiles.
14. Lot: A lot as defined in the zoning regulations plus any additional real property located between the property line and curb or the property line and one half the width of the alley
15. Offal: Waste meat products or parts of a butchered animal rejected as unfit for use.
16. Owner: Any person or entity having some interest, including lease or rental interest, to the title in Real Property, or having a management, possessory, or financial interest in Real Property.
17. Person: any human individual, association, corporation, institution, or governmental entity occupying, owning, leasing, renting, or residing upon a lot that is subject to this ordinance. The fact that a person is a present occupant of the premises shall be *prima facie* evidence that the person has supervision and control of said property. If the premises are unoccupied, the fact that the current person is listed by the current tax roll as the owner shall be *prima facie* evidence that the person is the owner and has supervision and control of said lot.
18. Refuse: means garbage, rubbish, paper, plastic, and other waste both capable and not capable of decay, including vegetable matter and fish and animal carcasses.
19. Rubbish: waste not capable of decay from a public or private establishment.
20. Sanitary: A condition of good order and cleanliness that precludes the probability of disease transmission.
21. Trash: Animal carcasses, brush, garbage, debris, junk, offal, refuse, rubbish, including but not limited to any household trash, yard trash (grass clippings, leaves, etc.) or construction trash.
22. Undeveloped lot, tract, or parcel of land: Land that has not been cleared either fully or partially, and is in an undisturbed, natural condition for the Deport area of the State of Texas.
23. Weeds: all rank and uncultivated vegetable growth or matter that may create an unsanitary condition or become a harborage for rodents, vermin, or other disease carrying pests, regardless of the heights of the weeds, or the identity of the plant.

SECTION 2. Declaration of Nuisance

All grass, weeds, vegetation, or brush not regularly cultivated, which exceeds twelve (12) inches in height as prohibited herein, and all debris, garbage, junk, filth, refuse, rubbish, trash,

and stagnate water as defined or as prohibited herein shall be presumed to be objectionable and therefore a threat to public safety or public health and are hereby declared to be a public nuisance. All debris, garbage, junk, filth, refuse, and trash which have been illegally dumped; or any accumulation of debris, garbage, junk, filth, refuse, rubbish, trash, stagnate water, or unsanitary matter as defined or as prohibited herein, are hereby declared to be a public nuisance.

SECTION 3. *Illegal Dumping:*

(A) It shall be unlawful for any person to dump, litter, abandon or otherwise illegally dispose of any trash, debris, garbage, junk, refuse, brush or grass trimmings, carrion, animal carcass, or rubbish of any kind on public or private property.

(B) It is an affirmative defense to this section that the items that were dumped, littered, abandoned, or otherwise disposed were dumped, littered, abandoned, or otherwise disposed of consistent with lawful authority.

SECTION 4. *Prohibited Conditions:*

(A) **Weeds, Brush, and Grass:** Growth and Location Restrictions:

(1) It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate City Limits of the City, to suffer, permit, or allow: weeds, brush, or uncultivated grass, to grow to a height greater than twelve (12) inches on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved.

(2) It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped to suffer, permit, or allow grass, weeds, or any plant to grow:

- a. in, upon or across a sidewalk or street adjacent to the real property; or
- b. that obstructs the line of sight for motorists or pedestrians; or
- c. that hinders municipal use of the public right of ways.

(3) It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped to suffer, permit, or allow grass, weeds, or any plant to grow on real property zoned for agriculture use, to a height greater than twelve (12) inches within one hundred (100) feet of adjacent dedicated public street, or within one hundred (100) feet on any side boundary line to any adjacent lot upon which a structure that is used for a residence, business or public or private facility is located.

(4) Affirmative Defenses: The following shall be affirmative defenses to any charge of permitting grass, weeds, or brush to grow in violation of Section 4(A)

a. The grass, weeds or brush is/are located on public property owned by the State of Texas, or any of its subdivisions, and such governmental entity has determined that it is in the public interest that such property should remain in its natural, undisturbed condition and the vegetation on such property is in its native biome and the condition of such property does not present a danger or hazard to adjacent properties.

b. The topography of the land makes compliance with the subsection (A) of this section impractical;

c. The density of the brush makes compliance with subsection (A) of this section impractical or impossible;

d. An act of the City makes compliance with subsection (A) of this section impractical or impossible; and the land does not otherwise present a danger or hazard to adjacent properties.

(B) Accumulation of refuse, rubbish, junk, liter, trash, debris, garbage, discarded items, carrion, filth, animal, or human feces, etc.

It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate City Limits of the City, to suffer, permit, or allow: refuse, rubbish, junk, liter, trash, debris, garbage, discarded items, carrion, filth, animal or human feces, or any other unsightly or unsanitary matter to accumulate or remain on any lot, tract, or parcel of land within the corporate City limits of the City, regardless of the size of the lot.

(C) Stagnate Water

It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved, or unimproved, developed, or undeveloped, within the corporate City Limits of the City, to suffer, permit, or allow any holes, places, objects, containers or any material, including organic and inorganic, on any lot, tract, or parcel of land where water accumulates and becomes stagnate, or to permit the same to remain.

(D) Unsafe and unhealthy conditions

It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate City Limits of the City, to

suffer, permit, or allow any condition to exist that constitutes a threat to the public health or safety or that constitutes a nuisance.

(E) Animal Carcasses – dumping

(1) No person shall dump or place the exposed carcass of any animal on any street, alley, highway, or public place or on private property.

(2) No person shall allow or permit dumping of an exposed animal carcass in or upon any street, alley, lot, or other location in the City.

(F) Animal Carcasses- Nuisance.

(1) An exposed animal carcass is deemed to be a nuisance and a danger to the public health, safety, and welfare. Notwithstanding any other remedy or remedies available to the City, a Code Enforcement Official or Law Enforcement Officer for the City of Deport or any other City employee may enter upon any premises whether public or private, without advanced notice, where an animal carcass is located to retrieve that carcass and dispose of it in compliance with legal authority.

(2) Removing an exposed animal carcass and properly disposing of an exposed animal carcass by the City is deemed nuisance abatement based on public health and safety. Therefore, any expenses incurred by the City for such removal shall be recovered by the City by deducting that amount from any commercial value derived from the carcass or assessing the amount against the owner of the animal in addition to penalties and/or fines for violating this section.

SECTION 5. ~~Open Fires Prohibited; Exception.~~ Section 5 Revoked by separate Ordinance 2021-006A , Deport City Council 5-12-2021

~~It shall be unlawful for any person to burn outdoors the following: trash, rubbish, refuse, brush, grass clippings, leaves, or any other material within the corporate limits of the City, except: wood, charcoal, propane fires limited to the preparation of food, so long as such fire is maintained in a fireproof container made of brick, stone, metal, or other fireproof materials and managed in such a manner as to prevent the fire from escaping the container.~~

SECTION 6. Inspection of Premises.

The Code Enforcement Official may inspect or cause to be inspected any property that is, or for which the Code Enforcement Official has probable cause to believe is in an unsanitary condition. In order to perform inspections of private properties reasonably suspected of being in violation of

this Ordinance but which is not in plain view, the Code Enforcement Official is authorized to seek a search warrant from any judge of competent jurisdiction.

SECTION 7. Notice of Violation.

(A) Notice required. Except as provided by specific sections of this ordinance, in the event that any occupant or any person owing any real property, occupied or unoccupied, improved, or unimproved, developed or undeveloped, within the corporate limits of the City fails or refuses to comply with the provisions of this Ordinance, the City shall give seven (7) days' notice of the violation to the Owner(s) prior to abating the violation, as provided herein.

(B) Contents of Notice. The notice shall contain the following:

1. The name and address of the owner(s), including any lien holders;
2. An identification, which is not required to be a legal description, of the property upon which the violation is located.
3. The offending conditions and the work necessary to correct the violation(s).
4. A statement advising the owner that if the work is not completed within seven (7) days, the City will perform the work and assess the cost of the work to the owner.
5. A statement that if the City performs the work and the owner fails to pay the cost, a priority lien may be placed upon the property.
6. A statement that the City may **at any time file** a criminal misdemeanor complaint in Municipal Court with a maximum fine of \$1,000.00 for each day the violation exists. In addition to or in lieu of any other remedy provided by law.
7. A statement that the owner is entitled to a hearing regarding the violation but must request the hearing in writing within the seven (7) days following receipt of notice.

(C) Manner of notice. The term owner as used in this section has the meaning set forth in Section 1 (B) of this Ordinance. Notice shall be given:

1. Personally, to the owner in writing; or

2. By letter addressed to the owner at the owner's address as recorded in the appraisal district's records; or
3. If personal service cannot be obtained, notice may be given by:
 - a. By publication twice within ten (10) consecutive days; or
 - b. Posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. 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.
4. Any notice forwarded to the owner by mail as provided in Subsection 2 above and returned by the United States Postal Service as "refused" or "unclaimed" shall not affect the validity of the notice, and the notice shall be considered delivered to the owner.

(D) Annual Notice: After a property owner has been given one (1) notice of violation on a lot, tract, or parcel of land, the City may elect to notice the owner, regarding the same lot, tract, or parcel of land for subsequent violations by annual notice. If the City opts to provide annual notice, such notice shall be mailed to the owner at the address recorded with the appraisal district and posted on the property. Once the City has given such annual notice, no further notice shall be required prior to abatement for that lot, tract, or parcel of land for a one (1) year period. If the City does not receive notice in a change of ownership, the City may abate any nuisance contained on the property covered by this Ordinance without further notice and assess expenses to the owner.

If annual notice is given, the notice shall include, in addition to the foregoing, that the City may enter upon the premises to remedy a violation at no less than thirty (30) day intervals during the year, and the costs of the subsequent remedial acts by the City can be assessed against the owner and/ or a lien filed on the property.

SECTION 8. Additional authority to abate dangerous weeds and grass without prior notice.

(A) Authority. The City may abate without prior notice, weeds or grass that:

1. Have grown higher than 48 inches; and
2. Are an immediate danger to health, life, or safety of any person.

(B) Notice after Section 8 Abatement. Not later than the tenth (10) day after the date the City abates dangerous weeds or grass under Section 8, the City shall give notice to the property owner in the manner required under Section 7(C). The notice shall contain the item(s) specified in Section 10(A).

(C) Hearing. The City shall conduct an Administrative Hearing under this section on the abatement of the weeds or grasses if the property owner files with the City a written request for a hearing within seven (7) days of receipt of notice by the owner. If a hearing is requested, it shall be conducted consistent with Section 10 (C) of this Ordinance.

SECTION 9. Abatement, Expenses, and Lien.

(A) Abatement: If the owner of any lot, tract, parcel of land or portion thereof does not comply with the provisions of this Ordinance within seven (7) days of receipt of Notice of Violation the City or its Agents may:

1. Enter upon such premises and do such work as necessary, or cause the same to be done, in order that the premises may comply with the requirements set forth in this ordinance; and
2. Pay for the work or improvements made and the charge the expenses to the owner of the property.

SECTION 10. Post Abatement - notice of cost - hearing on cost

(A) Notice of Cost. After the City abates a violation of this ordinance, the City shall give notice to the property owner in the manner required by Section 8 C of this Ordinance. The notice shall contain the following:

1. The name and address of the owner
2. An identification, which is not required to be a legal description, of the property
3. A description of the violations that occurred on the property
4. A statement that the City abated the violations
5. The amount of expenses incurred by the City and owed by the Property Owner
6. A statement that if the owner fails to pay the expenses within thirty (30) days of the receipt of the notice or fails to timely request the hearing as authorized herein, a priority lien maybe placed on the property to secure payment.
7. An explanation of the property owners right to request in writing an Administrative hearing regarding the City's Abatement of the violation and the time period in which this written request must be submitted to the City.

(B) Hearing. The City shall conduct an Administrative hearing on the assessment of costs and expenses, upon the timely, written request from the property owner.

(C) Conduct of Hearing. The following shall apply to the conduct of post abatement hearing:

1. The City will conduct an Administrative Hearing by the Municipal Court Judge not later than the thirtieth (30th) day after the day a request for a hearing is filed.

2. The owner and the City may present evidence and/or witnesses or written information related to the City's Abatement of the violation.
3. The City has the burden to show, based on a preponderance of the evidence, that a violation of this Ordinance existed, notice was giving in substantial compliance of this Ordinance, and the cost incurred to Abate the violation were reasonable.
4. At the close of the Hearing, the Municipal Court Judge shall approve the assessment, deny the assessment, or adjust the amount of the assessment and approve it, as adjusted. Court cost and attorneys' fees may be assessed as a part of the cost assessment of the Administrative Hearing.

(D) No Stay of subsequent abatements. A post abatement request for hearing by a property owner does not act as a stay or bar against the City to enforce subsequent abatements against the same owner on the same lot, tract, parcel of land.

SECTION 11. Filing a lien

The expenses and cost incurred by the City for Abatement consistent with this Ordinance shall be levied, assessed, and collected by the City. In the event the owner of premises upon which the abatement was conducted, and charges were incurred, fails or refused to pay the charges and expenses within thirty (30) days after written notification, there shall be assessed those charges, expenses, and cost incurred by an assessment against the real estate upon which the abatement was conducted. Thirty (30) days after the written notification or thirty (30) days after an administrative hearing (if one has been requested by the owner), The City Attorney or any other designated City Official may file a statement with the County Clerk, which may be captioned "Abatement Lien" stating the expenses incurred by the City in the Abatement. Once filed, the City shall have a privileged lien on any lot(s), mentioned in the Abatement Lien, second only to tax liens and liens for street improvements. The Abatement lien shall state the name of the owner, if known, and the legal description of the property at a minimum. A copy of the Abatement Lien filed with the County Clerk shall be mailed to the owner, if known. Said privileged Abatement Lien shall bear interest at the rate of 10% per annum from the date cost and expenses were incurred by the City. The City may institute a suite or a foreclosure in the name of the City or in such proceeding the Abatement Lien stated herein, or a certified copy thereof, shall be prima facie proof of the amounts expended by the City in connection of the Abatement.

SECTION 12. Releases of Lien

Upon payment of the expenses, cost, charges described in the Abatement Lien as well as the interest accrued thereon, or such lesser amounts as the Mayor and City Council may deem appropriate and in the best interest in the City, the City through any designed agent, is authorized to execute for and on behalf of the City, a release of the Abatement Lien.

SECTION 13. Enforcement - multiple remedies - Civil and Criminal Penalties

(A) **General:** The City shall have the power to administer and enforce the provisions of this Ordinance as may be required consistent with governing law. Any violation of this Ordinance is hereby declared to be a nuisance.

(B) **Criminal Prosecution:** Any person violating any provisions of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00) per occurrence. Each day that a provision of this Ordinance is violated shall constitute a distinct and separate offense. An offense under this ordinance is a misdemeanor. Criminal Prosecutions are separate from abatement, injunctive, and other civil remedies. A Criminal Prosecution is not conditioned on the notice requirements of this Ordinance regarding abatement.

(C) **Civil Remedies:** Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to the following:

1. *Injunctive relief* to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
2. A *civil penalty* up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was notified of the provisions of this ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with this Ordinance;
3. Any other relief available under the law.

(D) **Quasi-Judicial Enforcement:** The City may exercise quasi-judicial enforcement of health and safety Ordinances consistent with Subchapter C Section 54.031 et seq of the Texas Local Government Code. Under this Ordinance, the exercise of quasi-judicial enforcement is limited to those conditions caused by accumulations of refuse, vegetation, or other matters that create breeding and living spaces for insect and rodents. All matters not involving this issue are considered nuisances if so stated in previous sections of this Ordinance and must be handled and determined using procedures other than quasi-judicial enforcement.

1. Quasi-Judicial enforcement of this Ordinance is authorized consistent with Subsection 54.031, and this section of the Ordinance is implemented consistent with Section 54.031 of the Texas Local Government Code.
2. A Building Standard Commission is hereby established consistent with Section 54.03 of the Local Government Code to hear and determine cases concerning violations of this Ordinance, specifically those conditions caused by accumulations of refuse, vegetation, or other matters that create breeding and living spaces for insects and rodents.
3. The Building Standard Commission is a five-member Board consisting of the 5 elected members of the City Council plus the Mayor (who is appointed as an alternate) who are appointed for two-year terms consistent with their elected or appointed positions. In

addition, the City Council may appoint up to two additional alternates who may be summoned to serve on the Commission at any time to ensure that a quorum is present for decision making.

4. The City Attorney or the City Secretary shall present cases to the Building Standards Commission.
5. Notice to owners and those in possession must be made consistent with Section 7 of this Ordinance; however, the notice for quasi-judicial enforcement must also include a date, time, and place for a hearing before the Buildings Standard Commission. (See Section 54.035 "Notice" of the Local Government Code.)
6. Decisions by the Building Standards Commission are by majority vote of the quorum present. (See Section 54.034 & 54.038 of the Local Government Code.)
7. This Building Standard Commission has the authority set forth in Section 54.036 of the Local Government Code and specifically may order repairs, removal, and may issue orders to any Peace Officers, including the Sheriff, to carry out orders of the building standard commission.
8. The Building Standard Commission has the authority to assess and determine the amount and duration of any civil penalty as part of the quasi-judicial enforcement. This civil penalty may be a fine not to exceed \$1,000.00 per day.
9. The Building Standard Commission will issue a written Order following a hearing which includes the decisions and requirements made by the building standard commission. The decision will also set forth any time deadlines. Any party to the quasi-judicial enforcement decision has the right to appeal within 30 calendar days after the date a copy o the final decision of the building standard commission is personally delivered, mailed by first class mail with return receipt, or delivered by the United States Post Office with signature confirmation to all effected parties. Such language regarding appeal and timelines shall be set forth in the building standard commission order.
10. The Order of the Building Standard Commission including civil penalties is enforceable as provided in Section 214.001(k) (m) (n) (o) & Section 54.040 of the Local Government Code. An abstract of the judgment can be ordered against all parties found to be the owners of the subject property or in possession of the property. A lien holder does not have standing to bring a proceeding under Section 54.039 on the ground that the lien holder was not notified of proceedings before the Building Standard Commission or was otherwise unaware of the condition of the property unless the lien holder has first appeared before the Commission and entered an appearance in opposition to the proceeding.

SECTION 14. Forfeiture of the right to receive water and/or sewer services

Any person, entity, owner, agent or occupant or anyone having supervision or control over any lot, tract, parcel of land or a portion thereof, occupied or unoccupied, within the City Limits found violating this ordinance may forfeit the right to receive water and/or sewer service from the City to any property owned, leased, or occupied by that person, entity, or agent in the City.

Notice Required:

Prior to termination of water or sewer services, the City must provide notice consistent with the guidelines of Section 7(B) and in the manner stated in Section 7(C). In addition, the notice contents shall include a statement that includes reference to the violation of this particular ordinance, the date or the event which triggers the "finding a violation", and the City's intent to

suspend water or sewer services with a description of the properties where the City intends to suspend service.

If the owner makes written demand for a hearing under this specific section within seven (7) days of receipt of the notice, a hearing shall be held by the City on the issue of forfeiture of water and sewer rights consistent with hearing process in Section 10(C) of this Ordinance. At the close of the Hearing the Municipal Judge shall enter an Order forfeiting water and sewer rights, refusing to forfeit water and sewer rights, or amending and adjusting provision of water and sewer.

SECTION 15. No Mental state required: A culpable mental state is not required to be plead in criminal complaints for violations of this Ordinance.

SECTION 16. Severability. It is hereby declared that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of any such unconstitutional phrase, clause, sentence, paragraph, or section.


SECTION 17. This Ordinance was considered and passed consistent with a posted public agenda and during an open meeting of the City Council.

SECTION 18. Publication. The City Council hereby directs the City Secretary to publish the caption of this ordinance.

SECTION 19. Effective Date. This ordinance shall take effect immediately from and after its adoption and it is accordingly so ordained.

Signed this 19 day of May 2021.

ATTEST:



DENISE GLOCK, City Secretary



CRAIG FOLSE, Mayor Pro Tem



DAVID HAMILTON, City Attorney Deport, Texas