

ORDINANCE NO. 2004-016

AN ORDINANCE OF THE CITY OF EAST BERNARD, TEXAS, PROVIDING IT UNLAWFUL TO CREATE OR MAINTAIN A PUBLIC NUISANCE WITHIN THE CITY; PROVIDING DEFINITIONS; PROVIDING ABATEMENT PROCEDURES; PROVIDING FOR RECOVERY OF EXPENSES; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; PROVIDING FOR SEVERABILITY; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH.

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BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF EAST BERNARD, TEXAS:

Section 1. Definitions.

The following words, terms and phrases shall have the meanings ascribed thereto:

Brush shall mean all trees or shrubbery under seven feet (7') in height, which are not cultivated, maintained, or cared for by persons owning or controlling the premises upon which such trees or shrubbery are growing.

Nuisance and *public nuisance* shall mean whatever is dangerous to life or health; or whatever renders the ground, the water, the air, or any food or drink unhealthy and a hazard to life or health.

Objectionable, unsightly or *unsanitary matter of whatever nature* shall mean all uncultivated vegetable growth, objects and matter not included within the meaning of the other terms defined in this section, which are liable to produce or tend to produce disease or an unhealthy, unwholesome or unsanitary condition on the premises or within the general locality where the growth, objects or matter is situated, including, without limitation, the accumulation of stagnant water, carrion, filth, impure or unwholesome mater, weeds in excess of twelve inches (12"), rubbish, and brush.

Person shall mean an individual(s), partnership, corporation, and /or other business entity.

Rubbish shall mean all garbage, trash or refuse, discarded or useless articles, discarded clothing or textiles of all sorts, and, in general, all litter and other things usually included within the meaning of the term.

Weeds shall mean uncultivated vegetable growth or matter, including grasses, which has grown to a height of more than twelve inches (12") or which, regardless of height, has become an unwholesome or decaying mass or breeding place for mosquitoes or vermin.

Section 2 Certain conditions declared nuisances.

Within the City, each of the following, without limiting the definitions contained in Section 1 hereof, is specifically declared to be a public nuisance and, as such, is liable to be abated, and the person guilty of causing, permitting or suffering any such nuisance to exist upon a lot, parcel of real estate or premises, or in any building occupied or controlled by such person, or in or upon any street, alley, sidewalk, or gutter immediately adjacent to such premises, shall be deemed in violation of this Ordinance:

- (1) The accumulation of stagnant water;
- (2) The accumulation of carrion, filth or other impure or unwholesome matter of any kind.
- (3) Weeds, which have grown to a height of more than twelve inches (12") or which, regardless of height, have become an unwholesome or decaying mass or breeding place for mosquitoes or vermin; and
- (4) The accumulation of rubbish, brush or other unsightly, objectionable, or unsanitary matter.

Section 3. Abatement; collection of expenses by City.

(a) *Notice to owner.* Should the City health officer or other designated representative determine that a nuisance exists upon any lot or parcel of real estate within the City, written notice shall be given to the owner of the lot upon which the nuisance exists. Such notice shall identify the nuisance, identify the property upon which the nuisance exists, and direct the owner to take such action as the City deems reasonable, appropriate, and necessary to remove the nuisance. Such notice shall be delivered personally to the owner by letter addressed to the owner at the owner's address, as recorded in the records of the Wharton County Appraisal District, or, if personal service cannot be obtained, by publication at least once in the City's official newspaper, 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.

(b) *Abatement by City.* If the owner fails or refuses to remove the nuisance within seven (7) days following notice as provided in subsection (a) of this section, the City may do or cause to be done that which will abate such public nuisance, and may pay therefore, and charge the expenses incurred in performing such work or having such work performed, or improvements made, to the person who owns such lot or building. If such work is performed or improvements are made at the expense of the City, then such expenses shall be assessed on the real estate or lot for which such expense was incurred. In a notice provided under subsection (a) of 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 date of such 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 such notice occurs within said one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City, without further notice, may cause the work to be performed or make the improvements required, and pay for the work performed, or improvements made, and charge the expenses to the owner as otherwise provided herein.

(c) *Collection of expenses.* The mayor, City health officer or City official designated by the mayor, shall file a statement of expenses giving the name of the owner, if known, the amount of such expense, the date on which such work was performed, and the legal description of the premises upon which such work was performed, or improvements made, with the county clerk. The City shall have a privileged lien on such lot or real estate upon which such work was performed, or improvements made, to secure the expenditures so made, in accordance with V.T.C.A., Health and Safety Code, Chapter 342, which lien shall be second only to tax liens or liens for street improvements, and which amount shall bear interest at the rate of ten percent (10%) per annum, from the date of payment by the City. For any such expense and interest, suit may be instituted and recovery and foreclosure of such lien may be had in the name of the City, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

Section 4. Penalty. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2000. Each day of violation shall constitute a separate offense.

Section 5. Severability. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of East Bernard, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

Section 6. Conflicting Ordinances. All ordinances or parts of ordinances inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

PASSED, APPROVED, AND ADOPTED this 16th day of August 2004.



Buck Boettcher
Mayor

ATTEST:



City Secretary