

ORDINANCE NO. 0017

AN ORDINANCE DEFINING A NUISANCE AND ESTABLISHING THE POWERS OF THE TOWN OF HORIZON CITY REGARDING SUCH NUISANCES WHICH EXIST WITHIN THE TOWN LIMITS AND THE EXTRATERRITORIAL LIMITS OF THE TOWN OF HORIZON CITY, TEXAS: TO PROHIBIT THE CREATION AND MAINTENANCE OF NUISANCES, TO REQUIRE THE ABATEMENT OF NUISANCES AND PROVIDE AUTHORITY FOR THE TOWN TO ABATE WASTE, WEEDS AND OTHER NUISANCES, AND TO CREATE A DUTY FOR PROPERTY OWNERS TO REMOVE GRAFFITI; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, REPEALER, AND SEVERABILITY; AND REPEALING AND REPLACING ORDINANCE NO. 0017 AND ANY AMENDMENTS THEREIN; THE PENALTIES BEING AS PROVIDED IN SECTION 0017.020 OF THIS ORDINANCE.

WHEREAS, the City Council of the Town of Horizon City ("City Council") is authorized by the Texas Government Code, Section 51.001, to adopt an ordinance that is for the good government, peace, or order of the City and is necessary or proper for implementing a power granted by law to the City; and

WHEREAS, the City Council has determined it should adopt this Ordinance prohibiting the growth of grass, weeds, and other vegetation in an uncultivated manner, the accumulation of rubbish, brush, or any other objectionable, unsightly, and unsanitary matter and litter within the City, and to declare other nuisances; and

WHEREAS, the City Council has found and determined that to properly implement portions of this Ordinance and abate violations thereof, it is necessary to investigate complaints, determine the property owner's name and address, prepare and send out appropriate notices, file certain notices and liens with the county clerk, and supervise the conduct of the work; and

WHEREAS, pursuant to Chapter 342 of the Texas Health and Safety Code, as amended, the City Council wishes to establish regulations requiring owners of lots within the City to keep the lots free of refuse, rubbish, weeds, brush, and high grass; and

WHEREAS, pursuant to Section 250.006 of the Texas Health and Safety Code, as amended, the City Council wishes to establish regulations requiring owners of certain properties within the City to keep the properties clean of graffiti.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS that;

ARTICLE I. ADOPTION OF THE ORDINANCE

Pursuant to Sections 51.001 and 51.012 of the Texas Local Government Code, the City Council of the Town of Horizon City hereby enacts and adopts this ordinance which defines a nuisance and establishes the powers of the Town of Horizon City regarding such nuisances within the territorial limits of the Town of Horizon City and repeals Ordinance No. 0017 and any amendments therein and replaces said Ordinance in its entirety, as follows with new matters set forth following each italicized section number, provided however, only the section number has been revised in Section 0017.060, RIGHT OF ENTRY:

Sec. 0017.010 DUTY TO MAINTAIN PROPERTY IN SANITARY CONDITION

(A) An owner, occupant, or other person in control of real property shall maintain the property in a safe, sanitary condition.

(B) An owner, occupant, or other person in control of real property may not keep, store or allow the following to accumulate on the property, or in the area from the property line to the adjacent curb line, also known as the parkway:

(1) weeds and other vegetation such as grasses and uncultivated plants, other than those excepted under Subsection (F) that on average are more than 12 inches tall, under the following conditions:

(a) any individual lot or tract of land smaller than three acres upon which weeds and vegetation exceed an average height greater than twelve inches;

(b) any individual lot or tract of land three acres or greater upon which weeds and vegetation exceed an average height greater than twelve inches and are within one hundred fifty feet of the curb line of adjacent streets, and where no curb line exists, to the edge of the street or road surface, or within one hundred fifty feet of any public or private property line;

(2) rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street; or

(3) refuse, unless the refuse is entirely contained in a closed receptacle designed and used for commercial or residential refuse pick-up.

(C) An owner, occupant or other person may not allow stagnant water that is likely to promote disease to accumulate on the property or otherwise maintain the premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests, including but not limited to storing any object or tire outdoors that is capable of retaining rainwater. A person shall drain, fill, or re-grade the person's property to remove or prevent a violation of this subsection.

(D) An owner, occupant or other person may not allow the accumulation of any garbage, rubbish or refuse; pile(s) of dirt, sand or rocks; weeds or grasses of any height; or other waste in the street gutters abutting the property or the parkway adjacent to the property.

(E) Any accumulation or growth of such weeds and vegetation or other creation of a nuisance prohibited by subsections (B), (C) or (D) on properties covered by this Section, unless exempted by Subsection (F), is deemed to be deleterious to the public health, comfort and welfare and is declared to be a public nuisance, the prompt abatement of which is a public necessity. The

abatement of said public nuisance shall not be conducted in a manner that exposes the site to wind or water erosion, including but not limited to leaving the site barren (without ground cover) or grading to avoid mowing.

(F) The following weeds and vegetation in the city shall be exempt from the requirements of this Section:

- A. Regularly cultivated ornamental, fruit bearing, vegetable bearing or flowering plants, bushes or trees, or native desert vegetation;
- B. Regularly cultivated crops grown on property that is classified as agriculture exempt according to tax rolls;
- C. Pasture lands on property that is classified as agriculture exempt according to the tax rolls;
- D. Property that the director of public works determines should be exempted because of the lack of harm to the public health, safety, and welfare (e.g. steep slopes, undeveloped properties, wet ponding areas or areas far removed from population centers and similar areas) or property that has been stabilized in accordance with an approved grading plan pursuant to applicable city ordinances.

Sec. 0017.020 SPECIFIC NUISANCES

(A) Unless specifically stated otherwise, any nuisance as set forth in this section is hereby declared a nuisance if it exists within the corporate limits of the city or within five thousand (5,000) feet of such limits.

(B) The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property any of the following items, conditions or actions, which are hereby declared to be and constitute a nuisance

- (1) Any building, other structure or improvements thereto which is in such a dilapidated condition that it is unfit for human habitation; or kept in such an unsanitary condition or where the structural elements, electrical wiring or apparatus, plumbing and fixtures, illumination, or any required fire warning devices, sprinklers or other fire suppression devices have become so damaged, fallen into such disrepair or are no longer in compliance with the city's technical codes that it is a menace to the health, safety or welfare of people residing in the building or structure or in the vicinity thereof or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- (2) Any building or other structure which is overcrowded or, is not provided with adequate means of ingress or egress.
- (3) Any building or other structure that is missing windows, doors or other coverings, or which has windows, doors or other coverings in such a dilapidated condition that access into the structure can be readily made by uninvited persons or animals.
- (4) All nauseous, foul or offensive odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (5) The carcasses of animals, fish or fowl not disposed of within a reasonable time after death or before the carcass begins decaying or is putrid, or other filth or carrion in a building or located on the ground.
- (6) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.

- (7) Dense smoke, or noxious fumes, gas, soot or cinders.
- (8) Graffiti, consisting of any markings, including but not be limited to, any inscription slogan, drawing, painting, symbol, logo, name, character, or figure, that is made on tangible property next to or visible from any public property or right-of-way in the city in any manner to include but not be limited to the use of any pen, marker, stick, brush, paint, spray paint or other liquid solution in aerosol containers, or by use of any other object capable of being used in the marking or defacing of property.
- (9) The keeping or allowing to be kept in any pen, place, or premises of any animals, in such manner as to be offensive or any annoyance to any person whomsoever.
- (10) All cellars, vaults, drains, pools, privies, sewers, yards, grounds or premises which have for any cause become foul, nauseous or not provided with adequate means of ingress or egress or not sufficiently supported, ventilated, drained, or cleaned.
- (11) The act of burning hair, leather, rubber, rags or any other substance of any kind which causes or produces an offensive smell, smoke or odor capable of annoying persons living in the vicinity or persons passing along the streets, alleys, or public thoroughfares.
- (12) The act of defecating or urinating upon the streets, alleys, or public grounds, including construction sites or in any place that may be seen from a private residence, or by persons passing along the streets, alleys, or public thoroughfares.
- (13) The disposal or accumulation of any vile, decaying or putrescent substance or other offensive material dangerous to public health, in or upon any lot, street, or highway; or the escape of any gases or odors to such an extent that the same or any of them shall by reason of such offensive odors become a source of discomfort to persons living or passing in the vicinity.

Sec. 0017.030 CRIMINAL PENALTIES AND CIVIL REMEDIES

(A) Criminal Penalties

- (1) It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance or to violate any provision of this ordinance.
- (2) An offense under this ordinance is a misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.
- (3) If an offense defined under this chapter does not include a culpable mental state, then one is not needed and the offense shall be one of strict liability.

(B) Civil Remedies

- (1) The city may invoke Sections 54.012—54.017 of the Texas Local Government Code and petition the state district court or the applicable county court at law, through the city attorney, for either injunctive relief, civil penalties, or both injunctive relief and civil penalties, whenever it appears that a person has violated, or continues to violate, any provisions of this ordinance that relate to:
 - a. The preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
 - b. The preservation of public health, safety or welfare or to the fire safety of a building or other structure or improvement;
 - c. The establishment of criteria for land subdivision or construction of buildings,

including street design;

d. Dangerously damaged or deteriorated structures or improvements;

e. Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.

(2) Pursuant to Section 54.016 of the Texas Local Government Code, the city may obtain against the owner or the owner's representative, a temporary or permanent injunction, as appropriate, that:

a. Prohibits specific conduct that violates any provision of this ordinance; and

b. Requires specific conduct that is necessary for compliance with this ordinance.

(3) Pursuant to Section 54.017 of the Texas Local Government Code, the city may recover a civil penalty of not more than one thousand dollars (\$1,000.00) per day for each violation.

(4) Filing a suit for civil penalties or other remedies shall not be a bar against, or a prerequisite for, taking any other action against a violator.

Sec. 0017.040 NUISANCE, WASTE AND WEED ABATEMENT

(A) Unless specifically stated otherwise, any nuisance as defined within this ordinance is hereby declared a nuisance if it exists within the corporate limits of the city or within five thousand (5,000) feet of such limits. An accumulation of growth of such weeds and vegetation, refuse or rubbish on properties covered by Section 0017.010 (B) or (D) of this ordinance, unless exempted under Section 0017.010 (F), or the existence of an unsanitary condition under Section 0017.010 (C) is deemed to be deleterious to the public health, comfort and welfare, and is declared to be a public nuisance, the prompt abatement of which is a public necessity.

(B) The director of public works, the building official, the code enforcement officer, or their designees (hereafter, "authorized agent") is authorized to notify the owner of property about the condition of the property constituting a public nuisance due to accumulation of refuse, rubbish, weeds and vegetation, or the existence of an unsanitary condition in violation of this ordinance.

(C) The notice must 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 records of the appraisal district in which the property is located and sent certified mail, return receipt requested. However, if personal or certified mail service cannot be obtained, notice will be given:

a. By publication in the official newspaper of the city at least once;

b. By posting the notice on or near the front door of each building on the property to which the violation relates; or

c. 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.

(D) If the city mails a notice to a property owner in accordance with this section, and the United States Postal Services returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(E) The notice will state that if the current property condition is not corrected within ten calendar days from the service of such notice, the city may without further notice abate the public nuisance by cleaning the property, and charge the cost of expense incurred in doing such work to the owner of such property and fix a lien thereupon as provided by this ordinance.

(F) The person given such a notice or their representative may request a hearing with the director of public works or his designee within seven calendar days after receipt of the notice, to present their reasons for which this ordinance should not be enforced.

(G) If the owner fails to remove an accumulation of solid waste, weeds and vegetation, other waste, or any other unacceptable, unsightly or unsanitary matter in violation of this ordinance within ten calendar days after the receipt or posting of notice, the authorized agent may arrange to have the cleaning, disposal or removal of solid waste, weeds and vegetation, other waste, or any other unacceptable, unsightly or unsanitary matter in violation of this ordinance done and assess the cost of such clean up, disposal or removal at the owner's expense and to take any action as provided by this chapter.

(H) If the immediate abatement is deemed necessary by an authorized agent, for the reason that the weeds have grown higher than 48 inches and are an immediate danger to the health, life, or safety, the authorized agent may proceed to abate the nuisance as permitted under section 342.008, Texas Health and Safety Code.

(I) The authorized agent may additionally inform the owner in a notice sent by mail and by 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 environment or to the public health and safety on or before the first anniversary date of the original notice, the City may without further notice correct the violation at the owner's expense and assess the expense against the owner's property

(J) All costs incurred by the city for clean-up, disposal or removal performed pursuant to this ordinance, including the cost of giving notice as required, shall be initially paid by the city and charged to the owner of the property. The authorized agent shall send notice in writing requesting payment to the city within thirty calendar days of receipt by the property owner. The notice shall state the cost to the city or other entity, to clean the property, including labor costs, administrative costs of inspection and re-inspection, transportation expenses, publication costs, expenses for use of equipment and materials, and costs of disposal.

(K) Any and all costs incurred by the city for clean-up, disposal or removal performed as authorized by this ordinance, shall constitute a lien against the property, which lien shall be filed, proven and collected as provided for by law.

(L) To obtain a lien against the property, the authorized agent shall file a statement of expenses, which will include all costs to clean plus the cost of recording the lien and other related legal and administrative costs, with the county clerk for the county in which the property is located. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall be security for the costs incurred and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the city.

(M) This lien is inferior only to:

(1) Tax liens; and

(2) Liens for street improvements.

(N) A lien may not be filed against real estate protected by the homestead provisions of the Texas Constitution.

Sec. 0017.050 DUTY OF PROPERTY OWNER TO REMOVE GRAFFITI

(A) The city finds and determines the prompt abatement of graffiti which constitutes a nuisance under this ordinance, is a public necessity to avoid the detrimental impact of such graffiti on the

city and its residents, to prevent the further spread of graffiti and other criminal acts, and to protect the health, safety and welfare of the residents of the city.

(B) Before issuing a citation for a violation under Section 0017.020(B)(11), the authorized agent shall serve the property owner with written notice to remove the graffiti from the property within 15 calendar days after the date the notice is served. The notice may be served by handing it to the owner in person or by United States certified mail, return receipt requested, addressed to the owner at the address shown in the records of the appraisal district in which the property is located. If the owner cannot be found and the notice is returned by the United States Postal Service, then the owner may be notified by

- (1) publication at least once in a newspaper of general circulation in the city;
- (2) posting the notice on or near the front door of each building on the property to which the violation relates; or
- (3) posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(C) The 15 calendar days will be counted:

- (1) from the date the notice is personally served on the owner or from the sixth day after the notice is placed in the United States certified mail; or
- (2) if the owner cannot be found or the notice is returned by the United States Postal Service, from the date the notice is:

- (a) published in accordance with Subsection (B)(1) of this section; or
- (b) posted in accordance with Subsection (B)(2) or (B)(3) of this section.

(D) Before the authorized agent may issue a notice to remove graffiti under Subsection (B), all of the following must occur:

- (1) The city must offer to remove the graffiti from the owner's property at no charge to the property owner. The offer must be in writing and must include a date by which the property owner must accept or refuse the offer.
- (2) The property owner must refuse the city's offer to remove the graffiti free of charge. The refusal must be provided to the director in writing. Failure to accept or refuse the city's offer by the date set forth in the offer is deemed to be consent for the city to remove the graffiti from the property free of charge.

(E) If the authorized agent serves notice to a property owner under Subsection (B) and the property owner fails to remove the graffiti within the time required by Subsection (B), then the city may remove the graffiti and charge the expenses of removal to the property owner in accordance with a fee schedule adopted by city council ordinance or resolution. The city's expenses to remove the graffiti will be collected from the owner, or levied, assessed, and collected against the property on which the work is performed. To obtain a lien against the property, the authorized agent, on behalf of the city council, shall file a statement of expenses with the county clerk of the county in which the property is located setting out the actual expenses incurred by the city, the name of the property owner, if known, and a legal description of the property. The city's lien attaches when the statement of expenses is filed in the real property records of the county in which the property is located. The city's lien is subordinate to any previously recorded lien and to the rights of a purchaser or lender for value who acquires an interest in the property before the statement of expenses is filed.

(F) It is a defense to prosecution under this Ordinance that:

- (1) the city did not offer to remove the graffiti at no charge to the property owner in compliance with Subsection (D)(1);

- (2) the property owner did not refuse the city's offer to remove the graffiti free of charge in compliance with Subsection (D)(2);
- (3) no notice was served on the property owner in compliance with Subsection (B); or
- (4) the graffiti is located on transportation infrastructure and the removal of the graffiti would create a hazard for the person performing the removal.

Sec. 0017.060 RIGHT OF ENTRY

- (A) An authorized agent may enter premises or vehicles regulated by this ordinance at all reasonable times, whenever it is necessary to make an inspection to enforce any of the provisions of this ordinance, to inspect permits and records required by the Town of Horizon City, to collect air, water, waste, or wastewater samples, or whenever probable cause exists to believe that a violation of this chapter or other environmental laws exists on such premises.
- (B) The authorized agent shall first present his credentials and demand entry if the premises are occupied. If the premises are unoccupied, he shall first make a reasonable attempt to locate the owner or person in control of the premises and demand entry.
- (C) Where premises have security measures in force which require proper identification and clearance before entry into its premises, the person in control of the premises shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the authorized agent will be permitted to enter without delay for the purposes of performing specific responsibilities.
- (D) If entry is denied or if a person in control cannot be located, the authorized agent shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure.

ARTICLE II. REPEAL OF PRIOR ORDINANCE

That Ordinance no. 0017 along with any amendments thereto, as previously adopted by the Town Council, are hereby repealed and this ordinance shall replace said ordinance in its entirety. A copy of the prior ordinance which is repealed is set forth in its entirety as Exhibit "A" and marked out by brackets.

ARTICLE III. FINDINGS OF FACT

That this ordinance was duly enacted with all requisites and formalities incident thereto the enactment of ordinance, and such is evidenced by the signatures below; and further that the foregoing recitals are incorporated into this ordinance by reference as findings of fact as if expressly set forth herein.

ARTICLE IV. REPEALER

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the effect of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

ARTICLE V. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE VI. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage and publication.

ARTICLE VII. PROPER NOTICE AND MEETING

It is officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52, Texas Local Government Code.

PASSED AND APPROVED this the 13th day of August, 2013, by a vote of 7 (ayes) to 0 (nays) to 0 (abstentions) of the Town Council of Horizon City, Texas.

Town of Horizon City

By:



Walter L. Miller, Mayor

ATTEST:

By:

 For
Karen Ellefson, City Clerk

APPROVED AS TO FORM:


Elaine S. Hengen, Assistant City Attorney



First Reading: 7/30/2013
Second Reading: 8/13/2013

EXHIBIT "A"

ORDINANCE NO. 0017

[AN ORDINANCE DEFINING A NUISANCE AND ESTABLISHING THE POWERS OF THE TOWN OF HORIZON CITY REGARDING SUCH NUISANCES WHICH EXIST WITHIN THE TOWN LIMITS AND THE EXTRATERRITORIAL LIMITS OF THE TOWN OF HORIZON CITY, TEXAS, REPEALING AND REPLACING ORDINANCE NO 0017 AND ANY AMENDMENTS THEREIN.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF HORIZON CITY, TEXAS that;

Pursuant to Sections 51.001 and 51.012 of the Texas Local Government Code, the City Council of the Town of Horizon City hereby enacts and adopts this ordinance which defines a nuisance and establishes the powers of the Town of Horizon City regarding such nuisances within the territorial limits of the Town of Horizon City and repeals Ordinance No. 0017 and any amendments therein and replaces said ordinance in its entirety.

Sec. 0017-010 DEFINITION

For the purposes of this ordinance, the word "nuisance" is hereby defined as any person doing an unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (1) Injures or endangers the comfort, repose, health or safety of others; or
- (2) Offends decency; or
- (3) Is offensive to the senses; or
- (4) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (5) In any way renders other persons insecure in life or the use of property; or
- (6) Essentially interferes with the comfortable enjoyment of life and property, or tends to depreciate the value of the property of others.

Sec. 0017.020 SPECIFIC NUISANCES

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (1) Noxious weeds and other rank vegetation.
- (2) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things.
- (3) Any condition which provides harborage for rats, mice, snakes, arachnids and other vermin.
- (4) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- (5) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (6) The carcasses of animals or fowl not disposed of within a reasonable time after death.

- (6) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (7) The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (8) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (9) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (10) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (11) Graffiti being defined as the placing, scratching, scribbling, writing, drawing, inscribing, throwing, dabbing or otherwise applying any line, drawing, figure, logo, symbol, initial, inscription, name character or any other mark of the type which is commonly known as "graffiti" by use of any pen, marker, stick, brush, paint, spray paint or other liquid solution in aerosol containers or any other form capable of being used in the marking or defacing of property within the city.
- (12) The accumulation of water in which mosquito larvae breed.
- (13) The keeping or allowing to be kept in any pen, place, or premises within the city or within five thousand (5,000) feet of the city, of any animals, in such manner as to be offensive or any annoyance to any person whomsoever.
- (14) All cellars, vaults, drains, pools, privies, sewers, yards, grounds or premises which have for any cause become foul, nauseous or not provided with adequate means of ingress or egress or not sufficiently supported, ventilated, drained, or cleaned.
- (15) The act of burning hair, leather, rubber, rags or any other substance of any kind which causes or produces an offensive smell, smoke or odor capable of annoying persons living in the vicinity or persons passing along the streets, alleys, or public thoroughfares.
- (16) The act of defecating or urinating upon the streets, alleys, or public grounds, including construction sites or in any place open that may be seen from a private residence, or by persons passing along the streets, alleys, or public thoroughfares.
- (17) The disposal or accumulation of any vile, decaying or putrescent substance or other offensive material dangerous to public health, in or upon any lot, street, or highway; or the escape of any gases or odors to such an extent that the same or any of them shall by reason of such offensive odors become a source of discomfort to person living or passing in the vicinity.

Sec. 0017.030 CRIMINAL PENALTIES AND CIVIL REMEDIES

It shall be unlawful for any person to cause, permit, maintain or allow the creation or maintenance of a nuisance.

(A) Criminal Penalties

- (1) An offense as defined under this chapter is a misdemeanor punishable by a fine not to exceed two thousand dollars (\$2,000). Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.
- (2) If an offense defined under this chapter does not include a culpable mental state, then one is not needed and the offense shall be one of strict liability.

(B) Civil Remedies

- (1) The city may invoke Sections 54.011--54.017 of the Texas Local Government Code and petition the state district court or the applicable county court at law, through the city attorney, for either injunctive relief, civil penalties, or both injunctive relief and civil penalties,

whenever it appears that a person has violated, or continues to violate, any provisions of this ordinance that relate to:

- a. The preservation of public safety, relating to the materials or methods used in construction of any structure or improvement of real property;
- b. The preservation of public health or to the fire safety of a building or other structure or improvement;
- c. The establishment of criteria for land subdivision or construction of buildings, including street design;
- d. Dangerously damaged or deteriorated structures or improvements;
- e. Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents.

(2) Pursuant to Section 54.016 of the Texas Local Government Code, the city may obtain against the owner or the operator of a facility, a temporary or permanent injunction, as appropriate, that:

- a. Prohibits any conduct that violates any provision of this ordinance that relates to any matter specified in subsection (B)(1) above; or
- b. Compels the specific performance of any action that is necessary for compliance with any provision of this ordinance that relates to any matter specified in subsection (B)(1) above.

(3) Pursuant to Section 54.017 of the Texas Local Government Code, the city may recover a civil penalty of not more than one thousand dollars (\$1,000.00) per day for each violation of any provision of this chapter that relates to any matter specified in subsection (B)(1)(a)–(e).

(4) Filing a suit for civil penalties or other remedies shall not be a bar against, or a prerequisite for, taking any other action against a violator.

Sec. 0017.040 NUISANCE ABATEMENT

(A) Unless specifically stated otherwise, any nuisance as defined within this ordinance is hereby declared a nuisance if it exists within the corporate limits of the city or within five thousand (5,000) feet of such limits.

(B) The director of public works, the building official, the code enforcement officer, or their designees and any police officer of the Town of Horizon City may give notice to cease, abate, remove or otherwise remedy a nuisance immediately to:

(1) The owner of property upon which a nuisance is located or from which a nuisance originated or is emanating. If the person creating, allowing, or maintaining the nuisance is not the owner of the property, notice shall also be given to such person.

(2) Any person creating, allowing, or maintaining a nuisance.

(C) ~~The notice must be given:~~

- (1) Personally to the owner/person in writing; or
- (2) By letter addressed to the owner/person at the owner's/person's post office address and sent certified mail, return receipt requested. However, if personal or certified mail service cannot be obtained or the owner's/person's post office address is unknown, notice may be given:
 - a. By publication in the official newspaper of the city at least twice within ten (10) consecutive days;

b. By posting the notice on or near the front door of each building on the property to which the nuisance relates; or

c. By posting the notice on a placard attached to a stake driven into the ground on the property to which the nuisance relates, if the property contains no buildings.

(D) The notice may direct that the remediation, abatement, and/or restoration be accomplished on a specified compliance schedule and/or be completed within a specified period of time. An order issued under this section does not relieve the violator of liability for any violation, including any continuing violation.

(E) If the owner/person does not comply with the notice within ten (10) days of service, the authorized agent may enter any public or private property containing the nuisance and do any work necessary to abate the nuisance, except the demolition of buildings.

(F) If the immediate abatement of the nuisance is deemed necessary by an authorized agent to protect the environment or the public health, safety, or welfare from an imminent and substantial endangerment, such authorized agent may, without complying with the notice provisions of this section or without waiting the ten-day period, enter the subject property and do or cause to be done any work necessary to abate the nuisance and remediate and restore the environment.

(G) After abating the nuisance, the authorized agent may inform the owner/person in a notice sent certified mail, return receipt requested, that if the owner/person commits another violation of the same kind or nature that poses a danger to the environment or to the public health and safety on or before the first anniversary date of the original notice, the city may without further notice correct the violation at the owner's expense and assess the expense against the owner's property. Notice shall be deemed received when such notice is sent as prescribed by this subsection.

(H) All costs incurred by the city to abate a nuisance and remediate and restore the environment, including the cost of giving notice as required, shall be initially paid by the city and charged to the owner of the property.

(I) Any and all costs incurred by the city in the abatement of a nuisance under the provisions of this ordinance shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording, and shall bear interest at the rate of ten (10) percent on the amount due and thereafter until satisfied.

(H) To obtain a lien against the property, the authorized agent causing the abatement shall file a statement of expenses, which will include all related legal and administrative costs, with the county clerk for the county in which the property is located. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall be security for the costs incurred and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the city.

(I) This lien is inferior only to:

- (1) Tax liens; and
- (2) Liens for street improvements.

(J) A lien may not be filed against real estate protected by the homestead provisions of the Texas Constitution.

Sec. 0017.050 RIGHT OF ENTRY

(A) An authorized agent may enter premises or vehicles regulated by this ordinance at all reasonable times, whenever it is necessary to make an inspection to enforce any of the provisions of this ordinance, to inspect permits and records required by the Town of Horizon City, to collect

air, water, waste, or wastewater samples, or whenever probable cause exists to believe that a violation of this chapter or other environmental laws exists on such premises.


(B) The authorized agent shall first present his credentials and demand entry if the premises are occupied. If the premises are unoccupied, he shall first make a reasonable attempt to locate the owner or person in control of the premises and demand entry.

(C) Where premises have security measures in force which require proper identification and clearance before entry into its premises, the person in control of the premises shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the authorized agent will be permitted to enter without delay for the purposes of performing specific responsibilities.


(D) If entry is denied or if a person in control cannot be located, the authorized agent shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure.

This ordinance was duly enacted together with all requisites and formalities incident thereto the enactment of ordinances and such is evidenced by the below signatures.

SIGNED and EXECUTED on this 9th day of November, 2004.]


DIANE WHITTY
Mayor, Town of Horizon City

ATTEST:


Sandra Sierra, City Clerk

APPROVED:


Robert A. Duran, City Attorney

First Reading: 10/12/04
Second Reading: 11/09/04
Approved: 11/09/04