

ORDINANCE NO. 262

AN ORDINANCE REPEALING ORDINANCE NOS. 16, 236, 250, & 251; PROHIBITING HIGH GRASS, WEEDS AND VEGETATION ON OCCUPIED OR UNOCCUPIED LOTS OR PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF SOUTHMAYD, TEXAS; PROHIBITING THE ACCUMULATION OF TRASH, JUNK, RUBBISH, ETC. ON LOTS OR PROPERTY WITHIN THE CITY LIMITS OF THE CITY OF SOUTHMAYD, TEXAS; PRESCRIBING ADDITIONAL AUTHORITY FOR MUNICIPALITY TO ABATE HIGH GRASS, WEEDS OR VEGETATION; PRESCRIBING AUTHORITY TO ABATE OTHER VIOLATIONS WITHIN THIS ORDINANCE; PRESCRIBING A METHOD BY WHICH THE CITY MAY ASSESS COSTS AND OBTAIN A LIEN TO COVER THE EXPENSES AND ADMINISTRATIVE COSTS FOR SUCH ABATEMENT; ESTABLISHING A MAXIMUM FINE OF \$2000 FOR VIOLATIONS OF ORDINANCE, ESTABLISHING A MAXIMUM FINE OF \$500.00 FOR UNAUTHORIZED REMOVAL OF ORDERS OR NOTICES POSTED UNDER THIS ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SOUTHMAYD, TEXAS;

**I. Short Title, Definitions**

SECTION 1: SHORT TITLE

This Ordinance shall be known for convenience, and may be cited as, the "Nuisances Ordinance" of the City of Southmayd.

SECTION 2: DEFINITIONS

Brush: Shall mean unsightly scrub vegetation of low or no economic value or unsightly or unwanted undergrowth vegetation, plants or grass clippings, leaves or tree trimmings.

Carrion: Shall mean the dead and putrefying flesh of an animal or any flesh that is unfit for food.

City: Shall mean the City of Southmayd, Texas.

City Council: Shall mean the City Council of the City of Southmayd, Texas.

Filth, unwholesome or unsanitary matter: Shall mean rotten, foul, diseased or unhealthy matter; or matter that is detrimental to physical, mental or moral well being.

High Grass, Weeds or Vegetation: Shall mean any grass, weeds or vegetation over 12 inches in height.

Mayor: Shall mean the Mayor of the City of Southmayd, Texas.

Open and Vacant Structures: Shall mean a structure that is not occupied and is not secured as to prevent unauthorized entry.

Outside Storage: Shall mean any item that is not customarily used or stored outside or is not made of material that is resistant to damage or deterioration from exposure to the outdoors.

Person: Shall mean any person, firm, corporation, organization or municipal entity incorporated or non-incorporated other than the City of Southmayd, Texas.

Plain View: Violations that are in 'plain view' shall mean any violations that are readily visible to a person who is on public property or who is on private property by permission of the owner or occupant of said private property.

Rubbish, Trash, Junk, Debris, Brush, Etc.: Shall mean any items that are unsightly, objectionable, unsanitary, unsafe or unhealthy.

Stagnant water: Shall mean a body of standing, motionless water, which has remained standing or motionless for a period of more than ten (10) days.

Weeds: Shall mean vegetation of low economic value that tends to grow freely and by it's presence to exclude or retard grass or more valuable vegetation; or, vegetation of exuberant growth and injurious effect; or, vegetation of low economic value and unsightly appearance.

## **II. Violations / Fines / Purpose**

### **SECTION 3: VIOLATION OF ORDINANCE**

- (a) A person commits an offense if he or she is an owner, occupant or person in control of occupied or unoccupied premises containing less than two (2) acres of land in the city and permits weeds, high grass or other vegetation located on the premises to grown to a height of greater than ten (10) inches.

- (b) A person commits an offense if he or she is an owner, occupant or person in control of occupied or unoccupied premises containing two (2) acres of land or more and is adjacent to property under different ownership which contains habitable buildings in the city and permits weeds, tall grass or other vegetation located within one hundred (100) feet of the adjacent property to grow to a height greater than twelve (12) inches.
- (c) It shall be a defense to prosecution under this parts (a) and (b) of this section that the vegetation is any of the following:
- (1) Agriculture crops, except grass or hay (100 foot fire lane/open fields);
  - (2) Cultivated trees;
  - (3) Cultivated shrubs;
  - (4) Flowers or other decorative ornamental plants under cultivation; or
  - (5) Wildflowers, but only until such time as seeds have matured following the final blooming of the majority of the plants.
- (d) It shall be the duty of any person having supervision or control of any lot, tract or parcel of land, or any portion thereof to cut or cause to be cut and removed as necessary to comply with this section all such weeds, tall grass or vegetation on the property as often as may be necessary to comply with the provisions of this section.
- (e) It shall be unlawful for the owner and/or occupant of any lot or premises in the city to allow or permit rubbish, trash, junk, brush, limbs, outside storage, filth, carrion, stagnant water, or any other unsightly, objectionable or unsanitary matter of whatever nature to accumulate and/or remain on such lot or premises.
- (f) Notice of violation- The city may give notice to owner, occupant or person in control of property in violation under this section by;
- (1) Personal service of notice;
  - (2) By mail by sending notice to last known address of owner or occupant;
  - (3) By posting notice on property, either on the face of any existing structures or by posting on a placard attached to a stake and driven into the ground on the property to which the violation relates.
- (g) A Notice of Violation shall contain a statement that:
- (1) Sets forth the requirements within this section;
  - (2) Sets forth the specific violation;
  - (3) Indicates the specific address or location of violation;
  - (4) That the owner, occupant or person in control of said property has ten (10) days from the date of the notice to correct the violation;
  - (5) If the owner, occupant or person in control of said property fails to abate or correct said violation, a citation or summons will be issued for the violation, and that each day that this violation continues to exist is a separate and distinct violation.

- (h) A citation or summons may be issued to a person under this section, and/or prosecution may be commenced, regardless of whether the City intends to take, or does take, any action allowed or required under the part of this Ordinance labeled **“III. Abatement of Violation(s)”**. Any person who is found to be in violation of this Section is subject to prosecution in the Municipal Court of the City of Southmayd, and may be assessed a fine not to exceed \$2000.00 per day, per violation. Prosecution may occur whether or not abatement is pursued.

SECTION 4:

PURPOSE OF ORDINANCE

It is the purpose of this Ordinance to: (1) Establish a maximum fine that may be assessed against persons found to be in violation of SECTION 3 of this Ordinance, regardless of whether the City intends to take, or does take, any action allowed or required under the part of this Ordinance labeled **“III. Abatement of Violation(s)”**; and, (2) provide a just, equitable and practicable method, to be cumulative with and in addition to any other remedy available at law, whereby high grass, weeds, vegetation, trash, junk, rubbish, stagnant water, filth and unsanitary or unwholesome matter, as defined in SECTION 2, above, may be required to be abated by the owner or occupant of the property where such condition exists, or alternatively, abated by the City, with expenses being assessed against the property owner or a lien filed on the property in question; and, (3) establish a maximum, fine that may be assessed against persons found to be in violation of SECTION 11 of this Ordinance.

**III. Abatement of Violation(s)**

SECTION 5:

NOTICE TO OWNER OR OCCUPANT,  
ABATEMENT BY CITY, COLLECTION OF  
COSTS, APPEAL.


- (a) If the owner or occupant of property fails or refuses to comply with section 4 of this Ordinance, the City shall give written notice to the property owner or occupant. This notice shall be delivered to the owner or mailed to the owner's last known address. If delivery is not possible or of the owner's address is unknown, notice shall be given as follows:
- (1) Posting the notice on or near the front door of each building on the property to which the violation relates; or
  - (2) If the property contains no buildings, posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
  - (3) Delivery in person to the owner/occupant.

(b) A notice of violation shall contain:

- (1) A general identification of the property in question, which is not required to be a legal description;
- (2) The name and address of the property owner, if known;
- (3) A brief description of the nature of the violation(s);
- (4) Sets forth the requirements of Section 4 of this Ordinance;
- (5) That if the owner or occupant of the property in question has failed to abate, or cause to have abated, the violation described in the notice within ten (10) days from the date notice was mailed, delivered or posted in the manner provided for in this Ordinance, the City may do the work or make the improvements required to bring the property into compliance with this Ordinance and pay for the work done or improvements made and charge the expenses to the owner of the property;
- (6) A notice that if the owner or occupant commits another violation of the same kind or nature that poses a danger or threat 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 owners expense(V.T.C.A. Local Government Code 342.006(d):
- (7) A notice that if the owner or occupant is aggrieved by any aspect of the notice of violation or the findings as set out in said notice of violation, that he/she may, prior to the expiration of the ten (10) day deadline as described in this Ordinance, request in writing to the City Secretary, that a hearing take place where the City Council shall address said grievance(s) and render a final determination;
- (8) A notice that any such written required for a hearing must include a specific description of all grievances that the owner or occupant of property wishes to have reviewed by the City Council, and a specific description of any relief requested by said owner or occupant;
- (9) A notice that, during the public hearing, the owner or occupant may be represented by an attorney or agent and may present witnesses or other evidence, and argument, for consideration by the City Council.

SECTION 6:

RIGHT OF ENTRY

 When any violation(s) of this Ordinance is within 'plain view' from a public roadway, easement, alley, or adjoining property, any person authorized by the City of Southmayd under this Ordinance to administer its provision may, without first obtaining a court order or warrant, enter upon said property to examine and inspect the extent of said violation(s) and obtain information as to the identity of the property on which a violation(s) is occurring, and take any action authorized by this Ordinance to bring the property into compliance with this Ordinance.

This right of entry shall include the right to reenter the property for the purpose of verifying that any action required to be taken under this Ordinance has been taken.

SECTION 7:

LIABILITY OF CITY OFFICER AND  
EMPLOYEES FOR ACTION UNDER THIS  
ARTICLE

No officer, agent or employee(s) of the City of Southmayd shall be personally liable for damages incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or performed in the discharge of his/her duties under this Ordinance, or in performing any necessary act preliminary to or incidental to such work, as authorized or directed pursuant thereto;

SECTION 8

ABATEMENT BY CITY

If the owner or occupant of the property in question fails to abate the violation(s) described in the notice and failed to request in writing to the City Secretary a hearing within ten (10) days after the date the notice was mailed, delivered or posted in the manner provided for in this Ordinance, the City may do the work or make the improvements required to abate the violation(s) and pay for the work done or improvements made and charge the expenses to the owner of the property. If the owner or occupant has properly and timely requested a hearing pursuant to this Ordinance, then the City may do the work or make the improvements required to abate the violation(s) and pay for the work done or improvements made and charge the expenses to the owner of the property, but only after the conclusion of the hearing and a final determination by the City Council.

SECTION 9

PUBLIC HEARING

- (1) If the owner or occupant in question requests a hearing in writing to the City Secretary before the expiration of ten (10) days after the date the notice was mailed, delivered or posted in the manner provided for in this Ordinance, the City Council shall stay any action to abate the violations, and shall conduct, within a reasonable amount of time, a public hearing to address any grievances and requests for relief that the owner or occupant of the property in question has specifically described in his/her written request for a hearing.

- (2) Any such written request for public hearing shall include;
  - (a) A specific description of all grievances that the owner or occupant of property wishes to have reviewed by the City Council. And,
  - (b) A specific description of any relief requested by said owner or occupant.
- (3) At any hearing conducted under this Ordinance, the owner or occupant may be represented by an attorney or other agent and may present witnesses or other evidence, and argument, for consideration by the City Council. The City Council may also hear testimony from additional witnesses and receive and consider evidence as it may deem necessary for a full review for the grievances and relief requested.
- (4) Upon conclusion of the hearing, the City Council shall make a final determination regarding the grievance(s) brought before it. The City Council may vacate, modify or uphold the notice of violation, or take any other appropriate action not in conflict with this Ordinance to address the grievance(s) brought before it. However, once a hearing has been initiated under this Ordinance, the City Council shall have full discretion to continue a hearing to a future date and time, and reconvene said hearing as many times as it deems necessary. If, upon the expiration of ten (10) days after the end of any hearing under this Ordinance, the City Council has not made a specific determination or taken a specific action with respect to any particular grievance brought before it, then the owner or occupant's request for relief associated with said grievance is deemed overruled by the City Council, unless the City Council has specifically continued said hearing by noting a future date and time that said hearing will continue to be held.

SECTION 10

ASSESSMENT OF EXPENSES/  
LIEN ON PROPERTY/  
LIEN STATEMENT/  
ADMINISTRATIVE FEES

- (1) If the City incurs any expense in bringing the property in question into compliance with this Ordinance, the City may send an invoice to the property owner for reimbursement to the City of said expenses and/or file in the Official Public Records of Real Property in Grayson County a lien statement against the property whereon the violation was abated. The lien is a privileged lien subordinate only to tax liens and liens for street improvements.
- (2) The City of Southmayd may also assess an administrative charge for each abated property in the amount of fifty dollars (\$50.00);

- (3) The lien statement shall state the following;
  - (a) The name of the owner;
  - (b) A legal description of the property;
  - (c) The amount of the expenses incurred by the city and the administrative fee(s); and,
  - (d) The total balance owed.
- (4) The lien is extinguished to the extent that a property owner or another person having an interest in the legal title to the property reimburses the City for its expenses and any administrative charges;
- (5) The lien is a security for the expenditures made, administrative charges and interest accruing at the rate of ten percent (10%) simple interest per annum, or as otherwise permitted by law, on the date due;
- (6) The City Council may elect to bring a suit for foreclosure in the name of the City to recover the expenditures, administrative charges and interest due.

#### SECTION 11

#### UNAUTHORIZED REMOVAL OF ORDERS OR NOTICES POSTED UNDER THIS ORDINANCE

It is a violation of this Ordinance to remove any notice or order posted as required in this Ordinance without first obtaining authorization from the City. Any person who, without City authorization, removes any notice or Order posted as required in this Ordinance shall be guilty of a violation of this Ordinance with a fine not to exceed \$500.00.

#### SECTION 12

#### ORDINANCE REPEALS CERTAIN ORDINANCES

The provisions of this Ordinance shall effectively repeal City of Southmayd Ordinances 16, 236, 250 and 251 in their entirety. This repeal shall be effective on the date that this Ordinance becomes effective.

#### SECTION 13

#### ORDINANCE DOES NOT AFFECT OTHER ORDINANCES


The provisions of this Ordinance shall not be deemed to repeal by implication any provision of the fire department code, the building code or any other Ordinance of the City, unless expressly stated herein, and the adoption hereof shall not be deemed to affect or diminish the power of authority of any officer or employee of the City to carry out any other duty or power under his/her authority.



PASSED and APPROVED this 20 day of MARCH, A.D. 2000.

  
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Mayor

ATTEST:

  
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City Secretary