

ORDINANCE NO. 141

AN ORDINANCE OF THE TOWN OF CLINT, TEXAS ESTABLISHING REQUIREMENTS AND PROCEDURES FOR THE ABATEMENT OF WEEDS, TRASH AND OTHER NUISANCES, AND FOR THE RECOVERY OF COSTS THEREOF; TO REPEAL ORDINANCE NO. 26 AND ORDINANCE NO. 132 ON THE SAME SUBJECT; PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, PENALTIES, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE & MEETING; THE PENALTY BEING AS PROVIDED IN ARTICLE I, SECTION 3A, CREATING A MISDEMEANOR PUNISHABLE BY A FINE NOT TO EXCEED \$2,000.

WHEREAS, the City Council of the Town of Clint ("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 and the accumulation of rubbish, brush, or any other objectionable, unsightly, and unsanitary matter and litter within the City, and repeal the prior ordinances, Ordinance No. 26 and Ordinance No. 132, on the same subject; and

WHEREAS, the City Council has found and determined that to properly implement 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 rubbish, weeds, brush, and high grass, and to remove dead trees.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF CLINT, TEXAS:

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 Clint hereby enacts and adopts this ordinance which defines a nuisance and establishes the powers of the Town of Clint regarding such nuisances within the territorial limits of the Town of Clint and repeals Ordinance No. 26 and any amendments therein and replaces said Ordinance in its entirety,

Section 1. Definitions

A. *Nuisance* shall mean anything which is injurious to the health or morals, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property. For purposes of this Ordinance, any weeds, grass, plants permitted to grow on the premises within the City above twelve (12) inches shall be deemed a nuisance and dangerous to the health of the public and a fire hazard.

B. *Non-crop weeds and vegetation* means weeds and vegetation that is not part of a crop raised for consumption by humans or livestock.

C. *Occupant* means any person, firm or corporation, both public and private, claiming or having possessory control of any property.

D. *Owner* means any person, firm or corporation, both public and private, claiming title of any property.

Section 2. Duties of property owner and occupant.

A. An owner, occupant, or other person in control of real property shall maintain the property in a safe, sanitary condition, and it shall be his or her duty to keep the property free from stagnant water, from any and all other objectionable, unsightly or unsanitary matter of whatsoever nature to include but not be limited to filth, carrion or impure or unwholesome matter of any kind that can attract or harbor rats and other vermin that is a nuisance as defined in this Ordinance, to fill up, drain or regrade any lots, ground or yards and any other property owned by him or her which shall be unwholesome or have stagnant water thereon, and to keep the sidewalks in front of his or her property free and clear from vegetation and debris.

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, in a ditch, 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 in control of real property shall maintain the sidewalks in front of his or her property free and clear from any debris and vegetation, and no vegetation shall encroach upon or block the passageway of any sidewalk or driveway area. Tree branches must be pruned or cut eight (8) feet above sidewalk level.

D. An owner, occupant, or other person in control of real property shall remove all dead or discarded trees and similar refuse on 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:

1. Regularly cultivated ornamental, fruit bearing, vegetable bearing or flowering plants, bushes or trees, or native desert vegetation;
2. Regularly cultivated crops grown on property that is zoned as agriculture;
3. Pasture lands on property that is zoned as agriculture; provided however, that any non-crop weeds and vegetation shall not exceed a height of twenty-four inches; or a height of twelve inches if located within ten feet of a street, road or property line or within thirty-six inches of a fence, whichever distance is greater;
4. Property that the town clerk or other designee of the Mayor 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.

Section 3. Penalties and 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 Ordinance 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.

C. Nuisance, Weed and Trash Abatement.

1. The City shall exercise the powers granted in V.T.C.A., Health and Safety Code chapter 342 ("Chapter 342"), and as amended. This includes, but is not limited to:

- a. The City may assess expenses incurred under Section 342.006, as amended, against the real estate on which the work is done or improvements made.
 - (1) If the owner or occupant of property in the City does not comply with this Ordinance within seven days of notice of a violation, the City may:
 - (i) do the work or make the improvements required; and
 - (ii) pay for the work done or improvements made and charge the expenses to the owner of the property.

b. To obtain a lien against the property pursuant to Chapter 346 of the Health and Safety Code.

(1) The City shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the 30th day after the date of the abatement of weeds, the owner files a written request for a hearing with the City.

(2) The City shall conduct the administrative hearing not later than the 20th day after the date a request for hearing is filed. The owner may testify or present any witnesses or written information relating to the municipality's abatement of weeds.

(3) The City may assess expenses and create liens under this section in the same manner and subject to the same conditions set forth in the Health and Safety Code Section 342.007.

c. To exercise authority to abate dangerous weeds.

(1) The City may abate, without notice, weeds that:

- (i) have grown higher than 48 inches; and
- (ii) are immediate danger to the health, life, or safety of any person.

(2) The City shall give notice to the property owner, not later than the 10th day after the date the City abates weeds under this section.

(3) The notice shall contain:

- (i) an identification, which is not required to be a legal description, of the property;
- (ii) a description of the violations of the ordinance that occurred on the property;
- (iii) a statement that the city abated the weeds; and
- (iv) an explanation of the property owner's right to request an administrative hearing about the city's abatement of weeds.

2. General procedures for abatement.

a. The town clerk 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.

b. 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:

- (i) By publication in the official newspaper of the city at least once;
- (ii) By posting the notice on or near the front door of each building on the property to which the violation relates; or
- (iii) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

c. 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.

d. 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.

e. The person given such a notice or their representative may request a hearing with the town clerk within seven calendar days after receipt of the notice, to present their reasons for which this ordinance should not be enforced.

f. 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 town clerk 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 Ordinance.

g. The town clerk 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

h. 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 town clerk 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.

i. 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.

j. To obtain a lien against the property, the city council may by resolution, determine the actual cost of the expenses, which will include all costs to clean plus the cost of recording the lien and other related legal and administrative costs, and declare the amount to be a lien on the property. The town clerk shall file the lien for record in the office of the county clerk. 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.

k. This lien is inferior only to:

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

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

Section 4. Right of Entry

A. The Chief of Police or other authorized agent of the Town 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.

B. The Chief of Police or other authorized agent of the Town 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 Chief of Police or other authorized agent of the Town 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 Chief of Police or other authorized agent of the Town shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain an administrative warrant under the guidelines of the Texas Code of Criminal Procedure.

ARTICLE II. REPEAL OF PRIOR ORDINANCES

That Ordinance No. 26 along with any amendments thereto, and Ordinance No. 132 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.

ARTICLE III. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if set forth herein at length.

ARTICLE IV. REPEALER

If any provision of this Ordinance conflicts with any provision in another Ordinance, resolution or order of the Council, then the stricter provision shall apply.

ARTICLE V. SEVERABILITY

If any word, article, phrase, paragraph, sentence, clause or provision of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or application of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

ARTICLE VI. SAVINGS

All rights and remedies of the Town of Clint are expressly saved as to any other ordinances affecting nuisances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in

court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

ARTICLE VII. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage and publication as required by governing law.

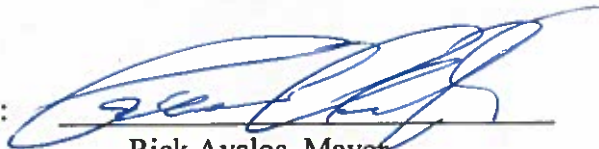
ARTICLE VIII. PROPER NOTICE AND OPEN MEETING

It is hereby 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 the meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED this the 10th day of June, 2015, by a vote of 4 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of the Town of Clint, Texas.

Town of Clint

By:



Rick Avalos, Mayor

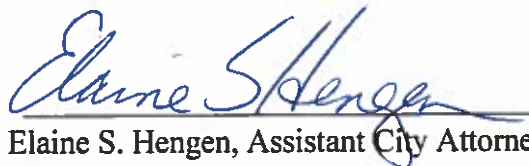
ATTEST:

By:



Susana Rodriguez, Town Clerk

APPROVED AS TO FORM:



Elaine S. Hengen, Assistant City Attorney

First Reading: 5/13/2015
Second Reading: 6/10/2015