

ORDINANCE NO. 008-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DE LEON, TEXAS REPEALING AND REPLACING ORDINANCE NO. 006-08; DECLARING SPECIFIED ACTIONS AS NUISANCES AND UNLAWFUL; ESTABLISHING POLICY AND DEFINITIONS FOR THE ABATEMENT OF NUISANCES INCLUDING HIGH WEEDS, ACCUMULATION OF GARBAGE, TRASH AND DEBRIS, STAGNANT WATER, AND THE DISCHARGE OF SEWAGE; CHARGES FOR BRUSH PICK UP AND PROVIDING FOR THE ENFORCEMENT OF THE PROVISIONS OF THIS ORDINANCE; PROVIDING A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING AN OPEN MEETINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the accumulation of litter, solid waste, garbage, trash, vegetative overgrowth, and standing water within the City of De Leon affect the quality of life in the city, including the health and safety of our citizens, and do not advance prospects for the economic development of our community; and

WHEREAS, the regulation, management and control of these nuisances are essential to the public health, safety and welfare of the community,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DE LEON, TEXAS THAT:

1. *Repeal.* Ordinance #006-08 is hereby repealed and are replaced by this Ordinance No. 008-10. All other ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.
2. *Enactment.* The following provisions are enacted as the Nuisance Ordinance for the City of De Leon effective immediately upon adoption by the City Council and publication as required by the Texas Local Government Code.

ARTICLE I

POLICY AND DEFINITIONS

Section 1.1. Findings of Fact.

The findings and recitations set out in the preamble of this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

Section 1.2. Statement of Policy

The terms and provisions hereof shall apply to stagnant water and to the accumulation and storage of any solid waste, including garbage, trash and debris, to litter, and to the growth, accumulation, cutting and storage of grass, weeds and any other vegetative material on property in the City of De Leon, Texas (the "City"), to the end that all property in the City shall be maintained in a sanitary and healthful condition for the benefit of all residents of the community.

Section 1.3. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

- (a) **Brush.** All uncultivated shrubs, bushes and small trees.
- a. **Earth and Construction Material.** Earth, rocks, bricks, concrete, other similar materials and waster materials resulting from construction or remodeling.
- b. **Garbage.** Rubbish, trash, kitchen and household waste, ashes, bottles, cans, rags, paper, food, food containers, lawn trimmings, tree trimming, hedge trimmings, leaves, grass, weeds and refuse, and all biodegradable wastes, including animal and vegetable matter, but not including sewage, hazardous, toxic or corrosive materials, earth and construction materials, as herein defined, or any other material which may be found to be harmful to garbage collection and handling personnel or equipment.
- c. **Junk.** All worn out, worthless, and discarded material, in general, including, but not limited to, odds and ends, old iron or other metal, glass, paper, cordage or other waste or discarded materials.
- d. **Lot.** In addition to land within the boundaries of the property lines, all land adjacent to and extending beyond the property lines of any lot or parcel of land to the curb lines or adjacent streets, or alleys, where curb lines have been established or, where no curb lines have been established, to eight (8) feet beyond the property lines, and to include utility right-of ways.
- (f) **Property.** Any real property located within the City whether under the possession and control of an owner, lessee, or other occupant and whether such property is occupied, unoccupied, vacant, developed or undeveloped.
- (g) **Refuse.** See "garbage"
- (h) **Rubbish.** All refuse, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, discarded clothing and textiles of all sorts, and in general all

litter. The words “any and all objectionable or unsanitary matters,” not included within the meaning of the other terms as herein used, mean those which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the general locality where the same are situated.

- (i) **Sewage.** All waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.
- (j) **Side Yard.** The area behind an imaginary line extending perpendicularly from the front corner of the residential structure to the side lot line, extending to an imaginary line perpendicular to the side lot line which touches the back corner of the residential structure closest to the side lot line at which point the rear yard begins
- (k) **Solid Waste.** Household garbage and refuse and commercial garbage and refuse, brush cuttings and weeds.
- (l) **Street or Highway.** Shall mean the entire width between the boundary lines of every way publicly maintained thoroughway when any part thereof is open to the use of the public for the purpose of vehicular traffic.
- (m) **Trailer.** Shall mean every vehicle with or without power including a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.
- (n) **Trash and Debris.** Shall mean all manner of refuse including, but not limited to: mounds of dirt, piles of leaves, grass and weed clippings; paper trash; useless fragments of building material; rubble; furniture, other than furniture designed for outdoor use; useless household items and appliances; items of salvage, such as scrap metal and wood; old barrels; automotive parts; parts of vehicles; old tires; objects that hold water for an extended time; tree and brush trimmings and other miscellaneous wastes or rejected matter.
- (o) **Unwholesome Matter.** All stagnant water, filth, carrion, impure matters and any condition liable to produce disease.
- (p) **Vector.** Shall mean an animal or insect that transmits a disease-producing organism.
- (q) **Vehicle.** Shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway, except devices moved by human power or used exclusively upon stationary rails or tracks.
- (r) **Weeds.** All rank and uncultivated vegetable growth or matter which is liable to become an unwholesome or decaying mass or breeding place for flies, mosquitoes or vermin.

ARTICLE II.

OFFENSIVE CONDITIONS ON PRIVATE PROPERTY

Section 2.1. Prohibited Conduct.

It shall be unlawful for an owner, occupant, lessee or renter of any real property within the City to fail to keep the property free from brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature; to fail to keep the sidewalks on the property clear and passable; to fail to keep the property free and clear from weeds and tall grass; to fail to drain and fill up holes and depressions on the property in which water collects; to excavate the surface of property in such away as to allow the accumulation of water which stands long enough to become unwholesome or stagnant and in such condition as to be liable to produce disease; or to fail to keep any house, building, establishment, lot, yard or ground owned or occupied or under his or her control at all times free from filth, impure, or unwholesome matter of any kind or description; the same is hereby declared to constitute a public nuisance, the prompt abatement of which is hereby declared to be a public necessity. Any such nuisance shall be removed immediately from the property by the owner or other person in possession or control of such property.

Section 2.2 Nuisance Declared; Condition of Property; Duty to Abate. A person creates a nuisance and commits an offense under this ordinance whenever any of the conditions described in this section 2.2. exist on real property owned by and/or in the possession or control of that person (the “owner and/or occupant”). The owner and/or occupant of property on which a violation exists has a duty to correct, remove or abate any such condition immediately.

(a) Accumulation of Trash, Debris, Garbage, Rubbish or Other Unwholesome Matter. Accumulation of brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, unwholesome matters and any other objectionable, unsightly, or unsanitary matter whatsoever.

(b) Sewage. The presence of any type of sewage on the property and the discharge or dumping of sewage of any kind.

(c) Weeds and Tall Grass. Weeds or grass in excess of 12 inches in height covering or partially covering the surface of the property.

(d) Standing Water. Holes or depressions in the surface of the property which collect or hold water or are liable to collect and hold water which stands long enough to become unwholesome or stagnant or in such condition as to cause disease, or produce, harbor or spread disease of any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or

obnoxious, or shall contain

(e) Accumulation of Recyclables. Accumulation of recyclables in a manner that the accumulation breeds or allows the harborage of vectors or creates an unreasonable and noxious odor in a public place.

(f) Littering. Litter, refuse or junk to allowed to accumulate or be thrown, deposited or left on the property, except in a receptacle designed to contain litter in a manner so as not to allow it to be blown, carried, scattered or deposited elsewhere by wind or animals.

(g) Obstruction of Sidewalk of Right of Way. Blocking or obstruction of any sidewalk or right-of-way in front of or adjacent to the property and any alley or right-of-way behind the property by the accumulation of litter, refuse, junk, trash and debris, garbage, earth or construction material, or the growth of brush, weeds, and grass.

Section 2.3. Right To Inspect.

The City Official assigned to enforce this nuisance ordinance, or the designee of the City Official, is authorized to inspect any property within the City limits of the City, at any reasonable time, subject, however, to the restrictions against such inspection and entry of private residence for health inspection as are provided for in the laws of the State of Texas.

Section 2.4. Violation; Notice; Abatement.

(a) Notice of Violation. In the absence of an emergency or in the absence of the need for immediate action, the owner and/or occupant of property that is in violation of this ordinance shall be given notice of the violation in writing, served upon such owner and/or occupant as required in section 2.4(f) of this ordinance; such notice will describe the violation and notify the person that the nuisance on the property must be removed or abated within ten (10) days from the date of receipt of the notice and that if the person does not remove or abate the nuisance within that time period, the City will proceed in the enforcement process, including, but not limited to abatement of the nuisance by the City. The notice of violation may also include a warning that if the owner commits another violation under this ordinance on or before the first anniversary of the date of this notice, the City may proceed in the enforcement process on that violation without further notice. When a condition exists on property that is a violation of this ordinance the owner and/or occupant of the property may be cited and prosecuted in Municipal Court for violation of this ordinance without notice other than delivery of the citation.

(b) Abatement by City. In the event any owner or occupant of property within the City shall fail or refuse to remedy any of the conditions prohibited by § 2.1 and 2.2 of this Ordinance, within ten (10) days after notice to do so, the City may do such work or cause the same to be done and charge the cost of the correction or abatement to the owner and/or occupant of the property; such charge shall be a personal liability of the owner and/or occupant to the City and will be assessed as a lien against the property if not paid immediately upon demand.

(c) Abatement of Tall Grass and Weeds Without Notice. The City Official may abate without notice, weeds or grass that have grown to a height of 12 inches or higher and that are an immediate danger to the health, life or safety of any person. The City Official is authorized to charge the cost of such abatement to the owner and/or occupant and create a lien against the property to recover the City's expenses if the owner and/or occupant fails to make payment immediately. The City Official shall give notice to the property owner not later than ten days after the tall grass or weeds are abated in the manner provided by Section 2.4 (f). The notice shall identify the property, describe the violations that have occurred on the property, itemize the costs incurred by the City and request payment of such costs. The notice will also inform the owner and/or occupant of the right to request an administrative hearing concerning the costs charged to the owner and/or occupant for abatement by the City. The owner and/or occupant must file with the City Official a written request for an administrative hearing before the City Council not later than the 30th day after the date of the abatement of weeds or grass. An administrative hearing conducted under this section shall be conducted no later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the weeds or grass. The City Council's decision in such administrative hearing shall be final.

(d) Emergency. In the event the City Official shall determine that a situation exists which immediately affects the health, safety and well-being of the general public and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or occupant of the property upon which such condition exists without prior notice, as may be deemed appropriate and necessary.

(e) Emergency in Absence of Owner or Occupant. In the event the City Official determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the City Council may, at a regular session or at an emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare. The City shall charge the cost of the correction or abatement to the owner and/or occupant of the property; such charge shall be a personal liability of the owner and/or occupant to the City and will be assessed as a lien against the property if not paid immediately upon demand. The City may prosecute an action in any court of competent jurisdiction to recover its costs.

(f) Service of Notice. The notice required by this Ordinance may be served on the owner and/or occupant by any of the following methods:

- (i) Personally to the owner and/or occupant in writing;
- (ii) By certified mail, return receipt requested to the owner's and/or occupant's residence or post office address;
- (iii) If personal service cannot be obtained and the owner's and/or occupant's

post office address is unknown, by publication in a newspaper of general circulation in the area at least twice within a ten day period; by posting the notice on or near the front door or 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.

(g) Receipt of Notice. The notices provided for above will be considered to have been received as of the date the notice was delivered personally to the owner and/or occupant. Mailed notice will be presumed to have been received three days after it is mailed. Notice by publication will be presumed to have been received on the last date that the last notice was published in the newspaper. Notice by posting on the property will be presumed to have been received ten days after the notice was posted.

Section 2.5. Assessment of City's Abatement Cost; Collection of Costs; Appeals.

Upon the correction or abatement by the City of a condition on property in violation of this ordinance, other than the abatement of tall weeds and grass under Section 2.4(c) of this ordinance, the City shall cause all of the actual cost to the City will be charged to the owner and/or occupant of the property and will create a lien against the property if not paid immediately upon demand. In the event of such an assessment, the owner and/or occupant of the property may appeal to the City Council from the order of the City Official by filing a written statement with the City Coordinator within ten (10) days after receipt of the notice provided for above, stating that such property complied with the provisions of §2.1 before the expiration of a ten (10) day period. The City Council shall set a date, within thirty (30) days from the date of the appeal, for hearing upon such appeal to determine whether the property complied with the provisions of § 2.1 before the expiration of such ten (10) day period. The authority of the City to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending, but if it shall be determined by the City Council that the premises complied with the provisions of § 2.1 before the expiration of such ten (10) day period then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done.

Section 2.6. Cost of City Abatement Constitutes Lien.

Cumulative of the City's remedy by fine, the City may do such work or cause the same to be done to remedy such condition to remove such matter from such owner's premises at the City's expense and may charge the same to the account of the owners of such property and assess the same against the real property upon which such expense is incurred. Upon filing with the county clerk of Comanche County, Texas, of a statement by the City Official or designee of such expenses, the City shall have a privileged lien upon said real property, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent interest on the amount from the date of such payment so made by the City. The City may institute suit and recover such expense and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy any condition or remove any matter.

Section 2.7. Depositing Litter.

It shall be an offense under this nuisance ordinance for any person to throw, deposit, drop, sweep or place any litter or junk into or onto any privately or publicly owned property, park, sidewalk, driveway, right-of-way or other place which is not a receptacle designed to contain litter in a manner so as not to allow it to be blown, carried, scattered or deposited elsewhere by wind or animals.

Section 2.8 City Collection of Brush Trimmings (Brush Pick Up Service)

For a fee, the City of De Leon will provide the service of picking up brush trimmings from the property of local utility customers upon request of the utility customer and to the extent that City personnel are available to provide such service. The City may establish a regular brush pick up schedule as determined by city management. Brush pick up service will be provided under the following conditions.

(a) Authorized Customer Any utility customer within the City of De Leon wishing to have brush trimmings collected by the City may contact City Hall to request brush pick up on property they own or have in their possession or control that is located in the territorial limits of the City. The utility customer requesting such service must be in good standing on his or her utility account with the City at the time service is requested and will be considered the Authorized Customer for the requested service. The customer will be required to complete a brush pick up request/agreement and will be given an estimate of the fee for such services, based on the schedule in section (b), below. The Authorized Customer will pay the estimated fee in advance of the service being provided. Brush trimmings will be picked up on the next regularly scheduled brush pick up for that area. If an Authorized Customer does not call to request brush pick up and pay the estimated fee prior to scheduled days for pick up in that area and then leaves brush trimmings for pick up, the Authorized customer will be assessed an enhanced fee as set out below.

(b) Fees The Authorized Customer will pay a fee for pick up services as set out below. The estimated fee must be paid in full before a service order will be issued to the Public Works Department for the brush pick up. If the estimated fee paid by the Authorized Customer is less than the actual fee based on the fee schedule below, the remaining amount will be invoiced to the Authorized Customer on the next monthly utility account invoice. Authorized Customers not making a request and paying in advance, will be charged an enhanced fee.

- (i) **With Request in Advance**
\$20.00 minimum for a pick up taking up to thirty (30) minutes.
\$10.00 for each fifteen (15) minutes after the first thirty (30) minutes.
- (ii) **Without Request in Advance**
\$40.00 minimum for a pick up taking up to thirty (30) minutes.
\$20.00 for each fifteen (15) minutes after the first thirty (30) minutes.

(c) Immunity from Prosecution Upon advance payment for brush pick up services, the Authorized Customer will be immune from citation or prosecution for a violation of this ordinance for the accumulation of the brush to be picked up until the City collects the brush. Any property owner or resident of the City who has not executed a brush pick up request/agreement and paid the estimated fee in full is responsible for the removal of brush from his or her property and will be in violation of this ordinance if the brush is not promptly removed from the property.

ARTICLE III

PENALTY

Section 3.1. Prosecution and Penalty. An offense under this ordinance shall be a Class C misdemeanor and, upon prosecution and conviction, a fine will be assessed within the limits permitted under the laws of the State of Texas for such an offense. The provision of notice as described in Section 2.4(a), is not a condition precedent to citation for and the prosecution of an offense alleged to have occurred under this ordinance. Failure to provide the notice specified by this ordinance shall not be a defense to the prosecution of an offense alleged to have occurred.

3. Severability. Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof; but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this Ordinance are declared to be severable.

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

5. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Council and publication as required by the Texas Local Government Code.

PASSED and APPROVED on the first reading this 16th day of August, 2010.

PASSED and APPROVED on second reading this 26th day of August, 2010.

The City of De Leon, Texas

Danny Owens, Mayor

ATTEST:

Karen Wilkerson, City Secretary