

**ORDINANCE NO. 2017-02**

**AN ORDINANCE OF THE CITY OF OVILLA, TEXAS, AMENDING ARTICLE 8.02 OF THE OVILLA CODE OF ORDINANCES; PROVIDING ENHANCED ENFORCEMENT PROVISIONS INCLUDING THE IMPOSITION OF CRIMINAL PENALTIES, CIVIL ACTIONS UNDER CHAPTER 54 OF THE TEXAS LOCAL GOVERNMENT CODE, AND ADMINISTRATIVE ENFORCEMENT THROUGH THE ABATEMENT OF NUISANCES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERANCE CLAUSE; PROVIDING FOR INCORPORATION INTO THE OVILLA CODE OF ORDINANCES; PROVIDING FOR IMMEDIATE EFFECT; AND PROVIDING FOR PUBLICATION.**

**WHEREAS**, the City Council of the City of Ovilla, Texas, finds and determines that it is in the best interest of the citizens of the City of Ovilla to promote and preserve the aesthetic appeal of the City; and

**WHEREAS**, the City Council further finds and determines that certain conditions of property can constitute a nuisance which substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities attempting to use and enjoy land and can detrimentally affect the aesthetic appeal of the City; and

**WHEREAS**, the City Council further finds and determines that the City's current nuisance ordinance should be amended to provide enhanced and non-exclusive enforcement provisions in order to serve and protect the health, safety and welfare of the citizens of the City of Ovilla.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OVILLA, TEXAS, THAT:**

**SECTION 1. AMENDMENT OF ARTICLE 8.02 OF THE CODE OF ORDINANCES OF THE CITY OF OVILLA**

Article 8.02 of the Code of Ordinances of the City of Ovilla is hereby amended to read as follows:

**ARTICLE 8.02 NUISANCES**

**Division 1. Nuisances Prohibited; Criminal and Civil Enforcement**

**Sec. 8.02.001 Purpose**

The purpose of this article is to:

- (1) Promote the public health, safety and welfare by requiring a minimum level of maintenance of private property to protect the livability, appearance, and economic stability of the city.
- (2) Protect the public from the health and safety hazards and the impairment of property values that result from the neglect and deterioration of property.
- (3) Eliminate property conditions that contribute to blighted neighborhoods.
- (4) Prevent the spread of disease.
- (5) Safeguard the health, safety and welfare of the people by maintaining property in a safe condition.
- (6) Reduce the threat to health, safety, welfare, and reduced economic value due to the decline in property conditions by delineating the circumstances under which such conditions may be considered illegal nuisances and or blight.

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- (7) Provide for enforcement of this article through the issuance of citations for violations, civil enforcement under Chapter 54 of the Texas Local Government Code, and/or by abatement of nuisances, in order to serve the best interest of the health, safety and welfare of the residents of the city.

### **Sec. 8.02.002 Violations; Criminal and Civil Enforcement and Remedies**

(a) It shall be an offense, punishable by a fine upon conviction in the municipal court, for any person firm or entity to cause, create or maintain a nuisance in the City of Ovilla as set forth in this Division 1 or violate any provision of this Article 8.02.

(b) Unless otherwise specified herein, no culpable mental state is required for the commission of an offense under this article.

(c) In addition to imposing a criminal penalty, the City shall have the power to enforce any other provision of this article, including abatement as set forth in Division 2, and any applicable civil enforcement provisions of subchapters B and C of chapter 54 of the Texas Local Government Code. No enforcement remedy shall be exclusive of any other remedy the City may have under state law, this ordinance, or any other City ordinance.

### **Sec. 8.02.003 Nuisance Defined; Generally**

For purposes of this article, a nuisance is generally defined as follows:

- (1) A public nuisance known and established at common law or in equity jurisprudence.
- (2) Any attractive nuisance known at common law or in equity jurisprudence including without limitation, any abandoned wells, shafts, basements or excavations, inoperable motor vehicles, or any structurally unsound fences or structures, or any lumber, trash, fence, debris or vegetation which are or may be hazardous to children.
- (3) Whatever is dangerous to human life or is detrimental to health, and is contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city.
- (4) Overcrowding a room with occupants, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city.
- (5) Insufficient ventilation or illumination, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city.
- (6) Inadequate or unsanitary sewage or plumbing facilities, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city.
- (7) Uncleanliness, contrary to the public health, safety or welfare or in violation of the codes and ordinances of the city.
- (8) Whatever renders air, food, or drink unwholesome or detrimental to the health of human beings, and is contrary to the public health, safety or welfare in violation of the codes and ordinance of the city.

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- (9) A live tree, shrub or other similar plant of any description which creates a hazard or risk of damage or destruction to persons or property, contrary to the public health, safety or welfare or in violation of the code and ordinances of the city.
- (10) The existence of any one or more of the conditions or activities described in Section 8.02.004 constitutes property nuisance.
- (11) A building, structure or premises is in a state of disrepair when any nuisance enumerated in section 8.02.004 exists.
- (12) Any other nuisance or public nuisance as set forth in this article or the codes and ordinances of the city.

### **Sec. 8.02.004 Prohibited**

(a) No person, whether as owner, agent, manager, operator, lessee, tenant, sublessee, or occupant in possession of a property, shall maintain a blighted or nuisance property or cause or permit property to be maintained as a blighted or nuisance property.

(b) No person, whether as owner, agent, manager, operator, lessee, sublessee, tenant or occupant of a property, shall take any action or allow any action to be taken at that property in violation of any provision of this article or any order issued pursuant to the provisions of this article.

### **Sec. 8.02.005 Nuisances enumerated**

The following shall constitute nuisances when caused, allowed, maintained, or suffered to exist within the jurisdiction of the city, including but not limited to any front, side or rear yard in public view or view from an adjacent or neighboring property; any property, public or private; buildings of any character; carports; unfinished enclosures; sheds; stables; pens; grounds; cellars; lots; alleys; vaults; drains; bar ditches; swimming pools; wells; cisterns; privies; or sewers where:

(1) Graffiti. Any part of the property, including any building or structure located on the property that is visible from a street or neighboring property that contains graffiti. Any property containing personal property items which contain graffiti and which may be viewed from the public street, road or a neighboring property constitutes property blight.

(2) Unclean premises. Accumulations of containers of any type, including trash receptacles, outside storage of miscellaneous items, miscellaneous industrial equipment, miscellaneous items cluttering driveways, front or side entry carports or unfinished enclosures visible from the street or neighboring property when not screened by a screening fence, litter, refuse, garbage, rubbish, trash, fallen trees, brush pile, junk, dead carcasses, decaying flesh, fish, fowls, rotting vegetables, stagnant water, or other stagnant fluids, flammable liquids not properly stored, slops, or other deposits or substances of any and every character, which are likely to or do become unwholesome, unclean, filthy, unsightly, offensive, or unsanitary or likely to create or engender disease constitutes nuisance and property blight.

(3) Unclean premises shall also be areas or conditions that harbor rodents or parasitic insects, or promotes mosquito breeding; or areas with dilapidated fences, or poison oak or poison ivy or other poisonous plants within fifty (50') feet of a public street, road, structure or fence line and constitute nuisance and property blight.

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(4) Stagnant, foul and offensive water. Any stagnant, foul or offensive water upon any lot or other premises or under the floor of any building constitutes property blight.

(5) Animals. Keeping, breeding or raising animals in or about any place or premises in such numbers or in such manner that the same may become annoying, offensive or disturbing to the adjacent residents of or those passing by such places or premises or which by reason of numbers create filth in or about such premises or premises adjacent thereto constitute property blight.

(6) High weeds. Weeds, brush or any vegetation including wild flowers which is unsightly, unclean, strewn with litter, unsanitary or unsafe growing to a height greater than nine (9") inches upon any property is a nuisance. It shall be the duty of all persons to keep the area from the line of their property to the curb line, edge of asphalt, concrete or point at which the roadway begins, regardless of the type of said roadway adjacent to the property, free and clear of the matter referenced above. Bushes, shrubs and vegetation of any type which blocks the view at intersections shall be removed or trimmed low enough for shrubs and high enough for trees as not to obstruct the view from any vehicle. All vegetation not regularly cultivated which exceeds nine (9") inches in height shall be presumed to be objectionable, unsanitary and unsightly. Each condition hereof constitutes property blight. It is an affirmative defense to prosecution that the flowers, weeds, bushes or vegetation which is growing to a height greater than nine (9") inches is a manicured flower bed, manicured flower garden, food garden, a State Exempt Natural Habitat Preservation Area, a manicured hedge, a manicured bush or agricultural crop or a decorative garden unless the aforementioned obstructs the view at intersections of oncoming traffic.

(7) Household appliances. Any broken, discarded or abandoned refrigerator, freezer, water heater, dishwasher, range, oven, trash compactor, washing machine, clothes dryer or similar appliance located in the front, rear or side yard, including porches, covered porches, carports, unfinished enclosures and unsecured garages, of any premises used as a residence regardless of zoning, or on any vacant lot constitutes property blight.

(8) Landscape in an unsafe state of disrepair. Any vegetation, landscape, trees, bushes, shrubs, vines, brush, weeds or ground cover plants that due to lack of trimming, pruning, or shaping or other neglect are in a state of disrepair. It shall be the duty of all persons, whether as owner, agent, manager, operator, lessee, sublessee, tenant or occupant of a property of any real property within the city to keep the area from the line of their property to the curb line, edge of asphalt, concrete or point at which the roadway begins, regardless of the type of said roadway adjacent to the property, to keep bushes and trees, on residential property including bushes and trees in the right-of-way trimmed not less than four (4') feet back from the edge of the street, road or thoroughfare. Bushes and trees with limbs overhanging streets shall be trimmed not less than sixteen (16') feet above the center of the street, road or thoroughfare. It shall be an affirmative defense if a tree trunk larger than six (6") inches is closer than four (4') feet to the edge of the street, and if the trunk is trimmed bare of limbs to a height of not less than sixteen (16') feet above the center of the street, road or thoroughfare. Landscape in an unsafe state of disrepair may include trees or shrubs or vines or brush or ground cover that presents a safety hazard due to death or disease or damage, including damage to passing vehicles and constitute property nuisance and blight.

(9) Nuisance outside storage. Storage or accumulation outside of an enclosed structure including the storage or accumulation under a front or side entry carport or covered patio or unfinished enclosure or other projecting overhang on any lot, tract or parcel of land or portion thereof of any objectionable, cluttered, impure, unwholesome, filthy, or unsanitary matter including the storage or accumulation of the following items that present health or safety hazards:

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- (A) New, broken, inoperable, deteriorated, dismantled or discarded indoor (non-weather resistant) furniture, appliances, machines, tools, boxes, tool boxes, cartons, lawn maintenance equipment, fertilizer, lawn mulch, and flower or flowerbed additives;
- (B) New, used, deteriorated or discarded building materials, including, but not limited to loose bricks, stones, fence material or supplies;
- (C) Wet, broken or leaking barrels or boxes;
- (D) New, used, discarded, or broken automotive, truck, lawn maintenance, industrial equipment tools or boat parts or equipment including engines, transmissions, electrical parts, suspension parts, vehicle body parts, batteries, tires, wheels, hubcaps and other motor vehicle parts, discarded boats, discarded tractors, discarded trailers, discarded industrial equipment;
- (E) Trash, garbage or other refuse;
- (F) Any other material, which tends to decay or become putrid or provides harborage for rodents and other vermin; or
- (G) Vacant or uninhabited residences, barns, sheds, buildings including commercial buildings shall keep all doors, windows, garage entrances closed and locked to prevent injurious conditions detrimental to the health, safety or welfare of the general public. Inoperable locks, broken doors permitting entrance or broken glass shall be repaired within ten (10) days of verbal or written notification by the city manager or their designee. Failure to adhere to the aforementioned is a public nuisance.

### **Sec. 8.02.006 Exceptions and affirmative defenses; outside storage**

(a) The following are exceptions to nuisance outside storage:

- (1) Building materials stored in a workmanlike manner as part of and in conjunction with, an active building permit and is in compliance with all other city ordinances.
- (2) Nonhazardous materials or items of any kind:
  - (A) Awaiting for city trash service;
  - (B) In a container or bag approved by the city; or
  - (C) In an approved location for the city trash service or other trash service pick-up.

The following is an affirmative defense for nuisance outside storage:

Outside storage with a legal land use and is in compliance with all other city ordinances.

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### Sec. 8.02.007 Penalties

(a) Any person, firm or entity, whether as owner, agent or lessee or other person having charge or control of any property in the city, who causes, creates or maintains any nuisance in violation of this article involving the dumping of refuse shall be fined not more than four thousand dollars (\$4,000.00) for each offense.

(b) Any person, firm or entity, whether as owner, agent or lessee or other person having charge or control of any property in the city, who causes, creates or maintains any nuisance in violation of this article involving fire safety, zoning, or public health and sanitation, other than the dumping of refuse, shall be fined not more than two thousand dollars (\$2,000.00) for each offense.

(c) Any person, firm or entity, whether as owner, agent or lessee or other person having charge or control of any property in the city, who causes, creates or maintains any nuisance in violation of this article other than a violation involving fire safety, zoning, or public health and sanitation, or dumping of refuse, shall be fined not more than five hundred dollars (\$500.00) for each offense.

(d) Each and every instance of a violation of this Ordinance shall constitute a separate offense and shall be punishable by separate fines for each offense.

### Division 2. Administrative Enforcement; Abatement of Nuisances

#### Sec. 8.02.008 Notice of nuisance and abatement

Whenever the code enforcement officer or his authorized designee finds, upon the recommendation of a duly authorized employee involved in code enforcement, that a nuisance as defined in this article exists in or on any building, structure or property within the city, he may, in addition to issuing a citation under Division 1, advise the property owner, occupant, mortgagee or other person in control of the property of the nuisance and direct him or her to abate the nuisance. If a notice is issued under this Section, the notification will be in writing and shall detail the violations and establish a reasonable abatement period. Notification shall be made by certified mail, return receipt requested if a mailing address is known, and by posting a copy of the notice in a conspicuous place at the subject property. Posting notice on the property shall constitute official notification for purposes of this section. If the letter or written notice is returned by the United States Postal Service as refused or unclaimed, the validity of the notice is not affected, and the notice is considered as delivered.

#### Sec. 8.02.009 Extension of time

Whenever a notice of nuisance and abatement has been given by the code enforcement officer or his authorized designee to abate or remove any nuisance that may exist upon any lot or premises, under the provisions of this article, the owner thereof shall have the right, within the period of time given in the order of abatement, to appear at the office of the code enforcement officer or his designee to show cause why such order should not or cannot be complied with, and the code enforcement officer or his designee may, at his discretion, revoke the notice of nuisance and abatement or give such a specific extension of time in a signed written agreement with the city for the abatement or removal of such nuisance as maybe necessary, provided that there is no immediate danger to the public health.

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### **Sec. 8.02.010 Voluntary abatement**

The owner of any building, structure or property found to be a nuisance under the provisions of this Article may abate the nuisance at any time within the abatement period by repair or removal. The code enforcement officer shall be advised of the abatement and shall inspect the premises to ensure that the nuisance has been abated. Should any of the items which constitute a nuisance be placed on other public or private property without consent from the owner or person in control of such property, such action will constitute a separate violation and appropriate enforcement action shall be taken by the code enforcement officer.

### **Sec. 8.02.011 City abatement procedure**

If a nuisance is not properly abated within the period established under the provisions of this Division, the city council shall hold a public hearing to determine if the nuisance should be abated under the police powers of the city.

### **Sec. 8.02.012 Notice of public hearing**

A written notice of the public hearing before the city council shall be served on the property owner at least ten (10) days prior to the date set for the public hearing. Service shall be made upon the owner by personal service, or by certified or registered mail. If there is no known address for the owner, the notice shall be sent in care of the property address, and notice of the hearing shall be published in a newspaper of general circulation in the city at least ten (10) calendar days before the hearing. The failure of any person to receive such notice shall not affect the validity of the proceedings.

### **Sec. 8.02.013 Hearing by the city council**

At the public hearing, the city council shall hear and consider all relevant evidence, objections or protests and shall receive testimony from owners, witnesses, city personnel and interested persons relative to such alleged public nuisance and to propose abatement measures. The hearing may be continued from time to time.

### **Sec. 8.02.014 Decision of the city council**

Following the public hearing, the city council shall consider all evidence and determine whether the property or any part thereof, constitutes a public nuisance as alleged. If the city council finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, the city council shall make a written order setting forth the findings and ordering the owner or other person having charge or control of the property to abate the nuisance by repair or removal in the manner and by the means specifically set forth in that order. The order shall set forth the times within which the abatement shall be completed.

### **Sec. 8.02.015 Service of abatement order**

Within five (5) days following the decision of the city council, the property owner or the person having charge or control of the premises shall be served with a copy of the written order in the manner provided in section 8.02.012.

### **Sec. 8.02.016 Appeal; judicial review**

Any owner, lienholder, or mortgagee of record of property jointly or severally aggrieved by an abatement

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order of the city council may file in district court a verified petition setting forth that the decision is of the city council is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner, lienholder, or mortgagee within 30 calendar days after the respective dates a copy of the abatement order is personally delivered to them, mailed to them by first class mail with certified return receipt requested, or delivered to them by the United States Postal Service using signature confirmation service, or such abatement order shall become final as to each of them upon the expiration of each such 30 calendar day period.

### **Sec. 8.02.017 Abatement by property owner**

The property owner, or person having charge or control of the property, may, at his own expense, abate the nuisance as prescribed by the abatement order of the city council prior to the expiration of the period set forth in section 8.02.016. If the nuisance has been inspected by the code enforcement officer and has been abated in accordance with the order, the proceedings shall be terminated.

### **Sec. 8.02.018 Abatement by city**

If a nuisance is not completely abated within the time prescribed in section 8.02.016, the code enforcement officer, city manager, or other designated city official is authorized and directed to cause the nuisance to be abated by city forces or private contract. In furtherance of this section, the code enforcement officer, city manager, or their designated agent or private contractor is expressly authorized to enter upon the property to abate the nuisance.

### **Sec. 8.02.019 Record of abatement costs**

(a) The code enforcement officer, city manager, or designee shall keep an account of the costs (including incidental expenses) of abating the nuisance on each separate lot or parcel of land where the work is done and shall report to the building advisory and appeals board showing the cost of abatement of said nuisance, including any salvage value relating thereto.

(b) The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the city in the preparation of notices, specifications and contracts, inspection of work and costs of printing, mailing and publication required hereunder.

### **Sec. 8.02.020 Assessment of costs against property lien**

(a) The total cost of abating such nuisance shall constitute a special assessment against the respective lot or parcel of land to which it relates, and, upon recantation in the office of the county clerk of a notice of lien, as so made and confirmed, shall constitute a lien on said property for the amount of such assessment.

(b) After such confirmation and recordation, a copy of the notice of lien may be turned over to the city tax office, whereupon it shall be the duty of the tax collector to add the amounts of the respective assessments to the next regular city tax bills for said respective lots and parcels of land, and thereafter, said amounts shall be collected at the same time and in the same manner as ad valorem taxes are collected and shall be subject to the same penalties and the same procedure under foreclosure and sale as in the case of delinquent ad valorem taxes.

(c) At any time after recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.



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### **Sec. 8.02.021 Disposition of certain articles of personal property**

(a) The code enforcement officer or designee shall hold any articles of personal property, except motor vehicles, removed during nuisance abatement proceedings, which are still usable for the purpose for which they were originally intended. Any such items which remain in the custody of the city for a period of thirty (30) days without being claimed by the owner, whether known or unknown, may be sold by the city purchasing agent at public auction. Any proceeds from such a sale shall be credited first to costs of abatement of the nuisance and the public auction, if any, and any excess shall be returned to the owner.

(b) Any such articles of personal property which are claimed by the owner from the code enforcement officer or designee during such thirty-day period shall be returned only if the owner gives adequate signed written assurances that such property will not continue to be used or stored in such a manner as to constitute a nuisance.

(c) Any articles of personal property which are not usable for the purpose for which they were originally intended may be disposed of by the code enforcement officer or designee.

### **SECTION 2. SAVINGS CLAUSE**

In the event that any other Ordinance of the City of Ovilla, Texas, heretofore enacted is found to conflict with the provisions of the Ordinance, this Ordinance shall prevail.

### **SECTION 3. SEVERANCE CLAUSE**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

### **SECTION 4. INCORPORATION INTO THE CODE OF ORDINANCES**

The provisions of this ordinance shall be included and incorporated in the City of Ovilla Code of Ordinances and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

### **SECTION 5. EFFECTIVE DATE**

Because of the nature of interest and safeguard sought to be protected by this Ordinance and in the interest of the citizens of the City of Ovilla, Texas, this Ordinance shall take effect immediately after passage, approval and publication, as required by law.

### **SECTION 6. PUBLICATION**

The City Secretary is hereby authorized and directed to cause publication of the descriptive caption and penalty clause hereof as an alternative method of publication provided by law.

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PASSED, ADOPTED AND APPROVED by the City Council of Ovilla, Texas on this the

13 Day of MARCH, 2017.



Richard Dormier, Mayor

ATTEST:

  
Pamela Woodall, City Secretary

APPROVED AS TO FORM:

  
Ron G. MacFarlane, Jr., City Attorney