

ORDINANCE NO. 04102018 AMENDED

AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF ELKHART, TEXAS, DECLARING CERTAIN CONDITIONS OF PROPERTY TO BE A NUISANCE; ESTABLISHING GUIDELINES FOR MAINTENANCE OF PROPERTY; PROVIDING FOR REMEDIAL ACTIONS TO BE TAKEN BY THE CITY AND AUTHROZING THE CITY TO ASSESS THE PROPERTY OWNER FOR THE COSTS OF SUCH REMEDIAL ACTIONS;THE CITY ESTABLISHING REGULATIONS CONCERNING JUNKED MOTOR VEHICLES; DECLARING CERTAIN JUNKED VEHICLES TO BE A PUBLIC NUISANCE; AUTHORIZING REMEDIAL ACTIONS TO BE TAKEN BY THE CITY CONCERNING JUNKED VEHICLES AND AUTHORIZING THE CITY TO ASSESS THE PROPERTY OWNER FOR THE COSTS OF SUCH REMEDIAL ACTIONS; ESTABLISHING CERTAIN RAT CONTROL MEASURES TO BE REQUIRED WITHIN THE CITY; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Elkhart, Texas is a Type-A, General Law Municipality organized and existing pursuant to the laws of the State of Texas; and

WHEREAS, in an effort to protect and maintain the health, safety and general welfare of its citizenry, the City Council of the City of Elkhart, Texas finds it necessary to establish regulations concerning the condition of property located within the City limits, and

WHEREAS, in an effort protect the health, safety and general welfare of its citizens, the City Council for the City of Elkhart finds it necessary to establish regulations concerning junked vehicles located on property found within the City limits; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF ELKHART, TEXAS, THAT:

ARTICLE I.

NUISANCES, CLEANLINESS, AND SANITATION OF PROPERTY

Section 1 - Definitions.

A. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

(1) *Nuisance* means any condition, object, material or matter that is dangerous or detrimental to human life or health; or that renders the ground, the water, the air or food a hazard or likely to cause injury to human life or health; or that is offensive to the senses; or that threatens to become detrimental to the public health; and shall include, but not be limited to, any abandoned wells, shafts or basements, abandoned refrigerators, stagnant or

unwholesome water, sinks, privies, filth, carrion, rubbish, junk, trash, debris or refuse, impure or unwholesome matter of any kind, objectionable, unsightly or unsanitary matter of whatever nature, any obstruction to the free use of property so as to interfere with the comfortable enjoyment of the same, or any obstruction that may endanger life. Further, a nuisance is hereby declared to include the following:

(2)

- (a) All dead, decaying or putrid flesh, fish, fowl or vegetables left or strewn in any highway, public road or in any street or alley or in or upon any enclosure within the City.
- (b) All deposits of manure or other unwholesome substance or flesh of any kind or description, and all offensive and filthy water or slops thrown or conducted into or upon any street or alley, drain, gutter or public ground, or into or upon any enclosure, either public or private, so as to become offensive or unwholesome.
- (c) All markets, cellars, stores or other buildings that are not kept clean and free from unwholesome substances or offensive smells.
- (d) Any box, barrel, or other receptacle containing water or slops, which has become offensive or stagnant.
- (e) The intentional throwing or depositing of any unwholesome or filthy substance into any public or private well or cistern.
- (f) The keeping or leaving open of any cellar or trap door or the grating of any cellar or vault in or upon any public sidewalk, street, alley, thoroughfare, or passway.
- (g) The making, keeping, or permitting any opening, hole or ditch in or across any public sidewalk, street, alley, thoroughfare, or passway.
- (h) Defecating or urinating in or on any public sidewalk, street, alley, thoroughfare, passway, other public place, or in any place that may be seen from such locations or from any private house.
- (i) All cesspools or wells or other excavations into which any sewage, filth, or other unwholesome substances or deposits are conducted and permitted to remain; unless such place is provided with some approved disposal or septic tank system.

Section 2 – Accumulation of Water.

It shall be unlawful and declared a nuisance for any person who shall own or occupy any lot in the City, to permit or allow the accumulation of stagnant water thereon, or to permit same to remain thereon.

Section 3 – Accumulating of Carrion, Filth, Etc.

It shall be unlawful and declared a nuisance for any person who shall own or occupy any house, building, establishment, lot or yard in the City to permit or allow any carrion, filth or other impure or unwholesome matter to accumulate or remain thereon or to maintain a premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitos, rodents, vermin, or other disease-carrying pests.

Section 4 – Weeds, Grass, and Other Accumulations of Uncultivated Vegetation.

A. It is unlawful for any person, owner, agent, occupant, or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City to allow uncultivated vegetation to grow to a height greater than 18 inches on such tract. However, these restrictions shall not apply to natural or nature park areas so designated by the City Council. Uncultivated vegetation means weeds, grass or other vegetation excluding trees, flowers, or shrubs, that are not regularly or systematically cut, mowed, pruned, fertilized, or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth.

B. It is unlawful for any owner, occupant, agent, or other person in control of a premises to allow fallen trees, fallen tree limbs or fallen branches, brush, or underbrush growth to accumulate upon such premises. However, these restrictions shall not apply to natural or nature parks so designated by the City Council.

C. It is unlawful for any owner, occupant, agent, or other person in control of a premises to allow rubbish, including newspapers, refrigerators, stoves, furniture, tires, cans and appliances, trash, garbage, refuse, junk, or debris to collect upon such premises.

D. Any prohibited accumulation or collection of vegetation or debris in violation of subsections A, B, or C of this Section is a public nuisance.

E. Allegation and evidence of a culpable mental state is not required for proof of an offense defined by this Article.

Section 5 – Work or Improvements by Municipality; Notice.

A. If the owner of property in the City does not comply within seven days of notice of a violation, the City may:

- (1) Do the work or make the improvements required; and
- (2) Pay for the work done or improvements made and charge the expenses to the owner of the property.

B. The notice must be given:

- (1) Personally, to the owner in writing;
- (2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
- (3) If personal service cannot be obtained:
 - (a) By publication 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.

C. The notice hereunder shall inform the owner of the property that:

- (1) The property is to be maintained so as to keep weeds, grass and other specified vegetation at a height of less than 18 inches, or is to be kept free from rubbish or other specified matter;
- (2) The owner has seven days from the date of notice to correct the violation; and
- (3) If the owner does not comply with the notice, the City will enter upon the property and will mow or do the work or make improvements required, or will pay for the mowing or work done or improvements made.

D. If a notice is mailed to a property owner in accordance with subsection B of this Section, and the United States Postal Service returns the notice as refused or unclaimed, the validity of the notice is not affected, and the notice is considered as delivered.

E. In a notice provided under this Section, the City may inform the owner by regular mail and a 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 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 owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by subsections A.1. and A.2. of this Section and assess its expense as provided by Section 6 herein.

Section 6 – Assessment of Expenses; Lien.

A. The City may recover its expenses incurred against the real estate on which the work is done or improvements made.

B. To obtain a lien against the property, the mayor or municipal official designated by the mayor must file a statement of expenses with the county clerk. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.

C. The lien is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the City.

D. The lien is inferior only to:

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

E. The City may bring a suit for foreclosure in the name of the City to recover the expenditures and interest due.

F. The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City doing the work or making the improvements.

G. The remedy provided by this Section is in addition to and cumulative of any and all other remedies available to the City by ordinances and/or state law.

H. The City may foreclose on its lien on property the subject of this Ordinance.

Section 7 – Additional Authority to Abate Dangerous Weeds.

A. The City may abate, without notice, weeds that:

- (1) Have grown higher than 48 inches; and
- (2) Are an immediate danger to the health, life, or safety of any person.

B. Not later than the tenth day after the date the City abates weeds under this Section, the City shall give notice to the property owner in the manner required by Section 5 of this Ordinance.

C. The notice shall contain:

- (1) An identification, which is not required to be a legal description, of the property;
- (2) A description of the violations of this Ordinance that occurred on the property;
- (3) A statement that the City abated the weeds; and
- (4) An explanation of the property owner's right to request an administrative hearing

about the City's abatement of the weeds.

D. 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 the weeds, the property owner files with the City a written request for a hearing.

E. An administrative hearing conducted under this Section shall be conducted not 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.

F. The City may assess expenses and create liens under this Section as it assesses expenses and creates liens under Section 6 of this Article.

G. The remedy provided by this Section is in addition to and cumulative of any and all other remedies by City ordinances and/or state law.

ARTICLE II. JUNKED MOTOR VEHICLES

Section 1 – Authority to Administer Regulations.

The City Council may appoint an employee or independently contract the services of a qualified individual to administer the regulations in this article.

Section 2 – Definitions.

A. In this article, “junked vehicle” means a vehicle that:

- (1) is self-propelled and:
- (2) is:
 - (a) wrecked, dismantled or partially dismantled, or discarded; or
 - (b) inoperable and has remained inoperable for more than:
 - (i) 72 consecutive hours, if the vehicle is on public property; or
 - (ii) 30 consecutive days, if the vehicle is on private property

B. For purposes of this article, “junked vehicle” includes a motor vehicle, aircraft, or watercraft. This article applies only to:

- (1) a motor vehicle that displays an expired license plate or does not display a license plate;
- (2) an aircraft that does not have lawfully printed on the aircraft an unexpired federal

aircraft identification number registered under Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; or

- (3) a watercraft that:
 - (a) does not have lawfully on board an unexpired certificate of number; and
 - (b) is not a watercraft described by Section 31.055, Parks and Wildlife Code.

Section 3 – Declaring a Public Nuisance.

A. Junked vehicles, including parts thereof, located in any place where they are visible at any time of the year from a public place or public right-of-way:

- (1) Are detrimental to the safety and welfare of the general public;
- (2) Tend to reduce the value of private property;
- (3) Invite vandalism;
- (4) Create a fire hazard;
- (5) Are an attractive nuisance creating a hazard to the health and safety of minors;
- (6) Produce urban blight adverse to the maintenance and continuing development of the City; and
- (7) Are a public nuisance.

B. A person commits an offense if the person maintains a public nuisance described by this Section, punishable by a fine not to exceed \$200.00. Pursuant to Texas Transportation Code § 683.073(c), the court shall order abatement and removal of the nuisance on conviction.

Section 4 – Authority to Abate; Notice to State.

A. The City has the authority to abate and remove a junked vehicle or part of a junked vehicle as a public nuisance from private or public property or a public right-of-way pursuant to Texas Transportation Code § 683.074. If, after notice is given, as set out in subsection D of this Section, no request for a hearing is made and the owner or occupant of the premises does not abate the nuisance, a City-authorized agent shall go upon the premises and remove the junked vehicle or parts thereof.

B. The City's duly authorized agent, who must be a full-time employee of the City, may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

C. The City's authorized agent shall, within five days after the date of removal of the junked vehicle, give the notice provided pursuant to the Texas Transportation Code § 683.074 (identifying the vehicle or part of the vehicle removed) to the state department of transportation.

D. The relocation of a junked vehicle that is a public nuisance to another location in the City after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

Section 5 – Notice Owner to Abate.

A. Whenever any such public nuisance exists concerning a junked vehicle within the City in violation of Section 3 of this Article, the City's authorized agent shall provide notice by either personal delivery or certified mail with a five-day return requested. Notice must be given to:

- (1) The last known registered owner of the nuisance;
- (2) Each lien holder of record of the nuisance; and
- (3) The owner or occupant of either:
 - (a) The property on which the nuisance is located; or
 - (b) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

B. Such notice shall be in writing and specify the public nuisance and its location and must state that:

- (1) The nuisance must be abated and removed not later than the tenth day after the date on which the notice was personally delivered or mailed; and
- (2) Any request for a hearing must be made in writing to the City secretary at his office at city hall before that ten-day period expires.

C. If the post office address of the last known registered owner of the nuisance is unknown, notice may be:

- (1) Placed on the nuisance; or
- (2) If the owner is located, personally delivered.

D. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

Section 6 – Hearing.

After a public hearing is requested in the manner provided in Section 5 of this Article, the City secretary shall cause the notice to be forwarded to the Mayor to be put upon the City Council agenda for hearing. The hearing shall be held not earlier than the 11th day after the date of the service of notice. At the hearing, the junked motor vehicle is presumed, unless demonstrated by the owner, to be inoperable. The City Council shall determine whether or not the junked motor vehicle, or parts thereof, constitute a public nuisance and, after a hearing and ruling, shall, by resolution, make such orders as it deems proper. If the City Council finds that the violation complained of does constitute a public nuisance, it shall order a city-authorized agent to remove same. This order shall include a description of the vehicle, or parts thereof, the car identification and license number of the vehicle if available at the site. The order shall contain a provision that, after such vehicle has been removed, it shall not be reconstructed or made operable, and that it will become City property for removal and disposal. The order shall further state that the expense of the removal, in addition to a service charge as established from time to time by ordinance, shall be paid by the owner or occupant of such premises who requested the hearing.

Section 7 – Exceptions.

A. The following words, terms and phrases, when used in this Section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Antique vehicle means a passenger car or truck that is at least 25 years old.

Motor vehicle collector means a person who:

- (1) Owns one or more antique or special interest vehicles; and
- (2) Acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

Special interest vehicle means a motor vehicle of any age that has not been changed from the original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

B. This Article shall not apply to a vehicle or vehicle part:

- (1) That is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property; or
- (2) That is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:

- (a) Maintained in an orderly manner;

(b) Not a health hazard; and

(c) Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

Section 8 – Disposal of Junked Vehicles.

Junked vehicles, or parts thereof, may be removed to a scrap yard, a motor vehicle demolisher, or a suitable site operated by the City.

Section 9 – Authority to Enforce; Right of Entry.

A. Any person authorized by the City to administer the provisions of this Article may enter upon private property for the purposes specified in this Article, including:

(1) To examine vehicles or parts thereof;

(2) To obtain information as to the identity of vehicles; and

(3) To remove or direct the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this Article.

B. The municipal court of the City shall have authority to issue all orders necessary to enforce this Article. The municipal court shall order abatement and removal of the nuisance on conviction, and shall prohibit a vehicle from being reconstructed or made operable after removal.

Section 10 – Vehicles Blocking Traffic.

Nothing in this Article shall affect statutes that permit immediate removal of a vehicle left on public property that constitutes an obstruction to traffic.

Section 11 – Notice to State of Removal.

The City shall give notice to the state department of transportation within five days after the date of removal identifying the vehicle or part thereof. Said department shall forthwith cancel the certificate of title to such vehicle pursuant to state law, as amended.

ARTICLE III.

MAINTENANCE OF DRAINAGE EASEMENT OR RIGHT-OF-WAY

Section 1 – Maintenance.

The property owner shall maintain all drainage easements and rights-of-way located on the property owner's property including those drainage easements and rights-of-way conveyed to the City. Maintenance of a drainage easement or right-of-way includes the abatement of a nuisance

existing in or on the drainage easement or right-of-way. At the City's discretion, the City may maintain a drainage easement or right-of-way itself instead of requiring the property owner to maintain the drainage easement or right-of-way. The City may recoup the cost of maintaining the drainage easement or right-of-way only after the City requests that property owner maintain the drainage easement or right-of-way, the property owner fails to comply, and the City maintains the drainage easement or right-of-way.

Section 2 – Inspection.

Duly authorized inspectors of the City shall have the right of entry on the land or premises where property owners are required to maintain drainage easements or rights-of-way, at reasonable times, for the purpose of inspection of the maintenance required.

Section 3 – Noncompliance.

- A. It shall be unlawful for the property owner to fail to maintain all drainage easements and rights-of-way located on the property owner's property as described in Section 1 of this Article.
- B. Where noncompliance with this Article is found, the City may notify the property owner of the violation by notice given:
 - (1) Personally, to the property owner in writing; or
 - (2) By letter addressed to the property owner at the property owner's post office address; or
 - (3) If personal service cannot be obtained or the property owner's post office address is unknown:
 - a. By publication in the official newspaper at least twice within ten consecutive days;
 - b. By posting the notice on or near the front door of the main residence or building on the property on which the condition deemed to be a violation is located; or
 - c. By posting notice on a placard attached to a stake driven into the ground on the property on which the condition deemed to be a violation is located.
 - (4) Following the expiration of not less than seven (7) days from the date of the notice, the City may enter upon the property and may do such work as is required in this Article or cause the same to be done and assess the property owner for the City's actual cost; or
 - (5) Bring an action for mandatory injunction to require the property owner to

accomplish the necessary maintenance.

ARTICLE IV. RAT CONTROL

Section 1 – Health Officer.

For purposes of this Article, the health officer shall be the Public Works Director or their designee.

Section 2 – Rat Control Required.

It is hereby required that all buildings in the City shall be rat proofed, freed of rats, and maintained in a ratproof and rat-free condition to the satisfaction of the health officer.

Section 3 – Animal Feed Storage.

All food and feed within the City for feeding chickens, cows, pigs, horses, and other animals shall be stored in rat-free and ratproof containers, compartments, or rooms unless stored in a ratproof building.

Section 4 – Storage and Disposal of Waste; Storage of Lumber, Boxes, Etc.

A. Within the corporate limits of the City, all garbage or refuse consisting of waste animal or vegetable matter upon which rats may feed, and all small dead animals, shall be placed and stored until collected in covered metal containers of a type approved by the health officer. It is further declared unlawful for any person to dump or place on any premises, land or waterway, any dead animals, or any waste vegetable or animal matter of any kind.

B. It shall be unlawful for any person to place, leave, dump, or permit to accumulate any garbage, rubbish, or trash in any building or on any premises, improved or vacant, or on any open lot, street or alley in the City, so that the same shall or may afford food or harborage for rats, except under the direction of the health officer.

C. It shall be unlawful for any person to permit to accumulate on any premises, improved or vacant, or on any open lot or alley in the City, any lumber, boxes, barrels, bottles, cans, containers or similar materials that may be permitted to remain thereon unless the same shall be placed on open racks that are elevated not less than eighteen (18) inches above the ground, and evenly piled or stacked.

ARTICLE V. SEVERABILITY

Should any clause, phrase, sentence or section of this Ordinance be deemed invalid or unconstitutional by a court of competent jurisdiction, said finding shall not affect the remaining clauses, phrases, sentences or sections of this Ordinance.

**SECTION 14
PENALTY**

Any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction in the municipal court of the City shall be subject to a fine not to exceed Five Hundred (\$500.00) Dollars for each offense, except however, where a different penalty has been established by state law for such offense the penalty shall be that fixed by state law; and each and every day said violation is continued shall constitute a separate offense.

**SECTION 15
REPEALING CLAUSE**

All provisions in conflict with the provisions of this Ordinance, specifically such regulations found within Ordinance No. 122, shall be, and the same are hereby repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**SECTION 16
SEVERABILITY CLAUSE**

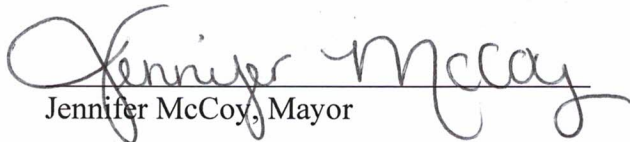
Any provision, word, sentence, paragraph, clause, phrase, or section of this Ordinance or its application to any person or circumstances in adjudged or held invalid, void, or unconstitutional, the invalid, void or unconstitutional portion shall not affect the validity of the remaining portion of this Ordinance which shall remain in full force and effect.

**SECTION 17
EFFECTIVE DATE**

This Ordinance shall become effective following its passage and publication as allowed by law.

PASSED, APPROVED, and ADOPTED on the 5 day of July, 2022.

APPROVED:


Jennifer McCoy, Mayor

ATTEST:


Jan Stuteville, Interim City Secretary