

ORDINANCE NO. 09-311

AN ORDINANCE OF THE CITY OF MASON PROHIBITING ACCUMULATIONS DUMPING, STAGNANT WATER, TRASH, AND OTHER UNSIGHTLY OR UNSANITARY MATTER DECLARED A NUISANCE; ESTABLISHING DUTY OF OWNER AND/OR OCCUPANT TO CUT AND REMOVE WEEDS, BRUSH, AND UNSIGHTLY MATTER; PROVIDING FOR INSPECTIONS AND NOTICE OF VIOLATION AND DEMAND TO ABATE; PROVIDING CONSEQUENCES FOR FAILURE TO COMPLY INCLUDING CORRECTION BY CITY; GRANTING ADDITIONAL AUTHORITY TO ABATE NUISANCE; PROVIDING FOR RECOVERY OF EXPENSES INCURRED BY CITY AND FOR CREATION OF LIEN; DELEGATING ENFORCEMENT; SETTING PENALTY UPON FAILURE TO COMPLY; AND REPEALING ORDINANCES NO. 127,190, AND ALL OTHER ORDINANCES AND PARTS THEREOF IN CONFLICT WITH THIS ORDINANCE.

WHEREAS, This ordinance is adopted pursuant to the authority provided by the Texas Local Government Code, Chapter 54, which chapter provides for the enforcement of municipal ordinances

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF MASON, TEXAS:

SECTION 1

Prohibited accumulations dumping, stagnant water, trash, and other unsightly or unsanitary matter declared a nuisance

(a) It is unlawful and declared a nuisance for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city, to permit or allow any stagnant or unwholesome water, sinks, refuse, filth, carrion, weeds, rubbish, brush and refuse, trash, debris, junk, garbage, impure or unwholesome matter of any kind, or objectionable or unsightly matter of whatever nature to accumulate or remain upon any such real property or within any public easement on or across such real property or upon any adjacent public street or alley right-of-way between the property line of such real property and where the paved surface of the street or alley begins.

(b) It shall be unlawful and declared a nuisance for any person to dump, or permit to be dumped, upon or along any drain, gutter, alley, sidewalk, street, park, right-of-way or vacant lot into or adjacent to

water, or any other public or private property within the corporate limits of the city, any unwholesome water, refuse, rubbish, trash, debris, filth, carrion, weeds, brush, junk, garbage, impure or unwholesome matter of any kind or other objectionable or unsightly matter of whatever kind.

(c) It shall be the duty of all such persons to keep the sidewalks in front of their property free and clear of all such matter, and to fill up, drain or re-grade any lots, ground or yards which shall have stagnant water thereon, and to cleanse and disinfect any house, building, establishment, lot, yard or ground from refuse, rubbish, trash, filth, carrion, or objectionable, unsightly or unsanitary matter of any kind, or other impure or unwholesome matter of any kind.

SECTION 2

Weeds

(a) It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city, to permit weeds, brush, or any objectionable or unsightly matter to grow to a greater height than 18 inches upon real property located within 150 feet of any property line which abuts street rights-of-way, alleys, utility easements, subdivided additions, developed property or any buildings or other structures. All vegetation, except regularly cultivated row crops, and which exceed 18 inches in height, shall be presumed to be objectionable and unsightly matter; provided further that regularly cultivated row crops shall not be allowed to grow within the right-of-way of any public street or easement nor shall they be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein. This does not apply to "Xeriscaping" (landscaping with plants native to the region).

(b) With respect to lots, tracts or parcels of land, the provisions of this section shall not apply to any area greater than 150 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and greater than 150 feet from any adjacent property under different ownership and on which any building is located or on which any improvement exists, as measured from the property line.

SECTION 3
Inspections

For the purpose of ascertaining whether violations of this code exist, the code enforcement officer, or his/her designee, is authorized to inspect:

(a) The exterior of a structure and premises which contain no structure; and

(b) If entry onto the property is refused, the code enforcement officer may, without violating the citizen's rights under Article 1, Section 9 of the Texas Constitution, secure entry onto the premises through available legal means. If the owner, occupant, or person in control cannot be identified or located, the code enforcement officer may enter the property only as allowed by applicable law.

SECTION 4
DEFINITIONS

(a) The City Commission does hereby establish the definitions in the Attachment (1), which is hereby incorporated into this Ordinance by this reference for all purposes.

SECTION 5
Duty of owner and/or occupant to cut and remove weeds, brush, and unsightly matter

(a) It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, as described in the above sections 1 and 2, to remove, drain and/or fill all prohibited matter or conditions and to cut and remove all weeds, brush, vegetative growth, and other objectionable or unsightly matter as often as may be necessary to comply with sections 1 and 2 and to use every precaution to prevent the same from occurring or growing on such property.

SECTION 6
Notice of violation and to abate; failure to comply; correction by city

(a) It shall be the duty of the code enforcement officer or inspector or his/her duly appointed representative to give a minimum of ten (10) days notice in writing to any person violating the terms of this article, subject to the provisions herein stated. The notice shall be in writing

and may be served on such person violating the terms of this section by:

(1) Delivering it to him or her in person;
(2) By letter or written notice addressed to such person at the person's address as recorded in the tax appraisal district in which the property is located and delivered by United States Certified Mail, return receipt requested, with a second optional copy by United States Regular Mail; or

(3) If service cannot be obtained as set out in (1) or (2) above:

(i) By publication once in the city's official newspaper;
(ii) By posting the notice on or near the front door of each building on the property to which the violations 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.

(b) If any person violating the terms of this article fails or refuses to comply with the demand for compliance contained in the aforementioned notice, within ten (10) days after the date of notification as provided herein, the city may go upon such property and do or cause to be done the work necessary to obtain compliance with this article. All costs, charges and expenses (hereinafter "charges") incurred in doing or in having such work done shall be a charge to, and a personal liability of, such person. Those charges shall be based upon the current City of Mason Fee schedule or, when City employees cannot conveniently or timely perform the work, such work shall be contracted for by the City, and the charges shall be the amount paid by the City for such work.

(c) If the city mails a notice to the property owner in accordance with section (a) (2) above 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.

(d) The city, in the notice provided herein, may inform the owner by certified mail, return receipt requested, or by regular mail, and a posting on the property, 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 such notice, the city, without further notice, may correct the violation at the owner's expense and assess the expense against the property. If the violation, covered by a notice under this subsection, occurs within said 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 section 6 below, and assess its expenses as provided by section 7 below.

SECTION 7
Additional authority to abate nuisance

- (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, herein. 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 the 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.
- (c) The City Commission shall conduct an administrative hearing concerning the abatement of weeds under this section if, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files with the city a written request for a hearing. An administrative hearing conducted under this section shall be conducted not later than the twentieth 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.
- (d) The City Commission may assess expenses and create liens under this section as it assesses expenses and creates liens under section 7. A lien created under this section is subject to the same conditions as a lien created under section 7. The authority granted the city by this section is in addition to the authority granted by section 7.

SECTION 8
Expenses incurred by city; lien

- (a) If a notice as provided for herein is delivered to the owner of such real property, and he or she fails or refuses to comply with such demand for compliance within the ten (10)-day time period established herein, the aforementioned expenses and charges shall be, in addition to a charge to and personal liability of said owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the code enforcement officer, or his/her duly appointed representative, shall first give such owner written notice of demand for payment of such charges. Such written notice may be given by any one of the methods

provided for herein for the giving of the initial notice demanding compliance with the terms of this article.

(b) If such owner fails or refuses to make complete payment of said charges within 30 days of his or her receipt of said notice, the mayor, or other municipal official designated by the mayor, such as the code enforcement officer, shall file a written statement of such charges with the county clerk of the county for filing in the county land and deed records. Said statement shall be deemed sufficient if it contains the following minimum information; however, it may also contain such other information deemed appropriate by the mayor, the code enforcement officer or their respective designee, or his/her duly appointed representative:

- (1) The name of the owner of the real property, if known;
- (2) A legal description of the real property;
- (3) A statement of the charges incurred by the city in doing or in having such work done as necessary to bring the real property into compliance with this ordinance; and
- (4) A notarized affidavit executed by the code enforcement officer, or his/her duly appointed representative, stating that all prerequisites required by this ordinance for the imposition of the charges and the affixing of the lien have been met and that all statements and/or representations made therein are true and correct. The lien attaches upon the filing of the lien statement with the county clerk.

(c) All such charges shall bear interest at the rate of ten percent per annum from the date of payment by the city. The lien obtained is security for the expenditures made and is inferior only to tax liens and liens for street improvements. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The written statement of such charges provided for herein, or a certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner of the real property and any other person claiming, occupying or having supervision or control of the real property shall be jointly and severally liable for such charges.

(d) This remedy is in addition to any penal provision provided herein.

SECTION 9
Enforcement

The provisions of this article shall be enforced by the code enforcement officer and his/her duly appointed representative(s), and it shall be unlawful for any person to interfere with or hinder the code enforcement officer and his/her duly appointed representative(s) in the exercise of their duties under this article. Notwithstanding any provisions contained herein to the contrary, the code enforcement officer and his/her duly appointed representative(s) are hereby granted the authority to issue immediate citations to persons violating any provision of this article in their presence.

SECTION 10
Penalty upon failure to comply

(a) Any person violating or failing to comply with any provision or requirement of this article, who continues to violate or fails to comply with same after ten (10) days from the date notice is given and received as set forth in Section 6, shall also be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not to exceed \$200.00, such offenses being violations of the health and safety ordinance of the city. A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs or continues to occur. This section shall be in addition to and cumulative of the provisions for abatement of the nuisance by the city and charging the cost of same against the owner of the property.

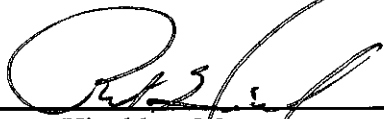
(b) Notwithstanding the foregoing, any violation of any provision of this article which constitutes an immediate danger or threat to the health, safety and welfare of the public may be enjoined in a suit brought by the city for such purpose.

(c) In addition to any other remedies or penalties contained herein, the city may enforce the provisions of this article pursuant to the applicable provisions of Chapter 54 of the Texas Local Government Code, which chapter provides for the enforcement of municipal ordinances.

(d) Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

Section 11
Effective Date

PASSED and APPROVED this the 14 day of December, A.D.,
2009.

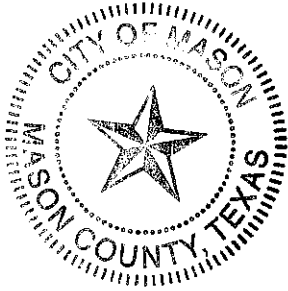


Brent Hinckley, Mayor

ATTEST:



Pattie Grote, City Secretary



ATTACHMENT (1)

1. Definitions.

For the purpose of this article, the terms used herein shall be interpreted to read as follows, and any words not herein defined shall be construed in the context used and by ordinary interpretation and not as a word of art:

"Brush" shall mean scrub vegetation or dense undergrowth.

"Carrion" shall mean the dead and putrefying flesh of any animal, fowl or fish.

"Dump" shall mean to dispose, discharge, place, deposit, throw, leave, sweep, scatter, unload, and toss.

"Filth" shall mean any matter in a putrescent state.

"Garbage" shall mean any kitchen refuse, food stuffs or related material, including all decayable waste.

"Impure or unwholesome matter" shall mean any putrescible or non-putrescible condition, object or matter which tends, may or could cause injury, death or disease to human beings.

"Junk" shall mean all worn out, worthless or discarded material, including but not limited to any of the following materials, or parts of said materials or any combination thereof: new or used iron, steel or nonferrous metallic scrap, brass or waste materials; used and/or inoperative household appliances, household electrical or plumbing fixtures, floor coverings and/or window coverings not currently in use; used lumber, brick, cement block, wire, tubing and pipe, tubs, drums, barrels, and/or roofing material not currently in use; air conditioning and heating equipment not currently in use; used vehicle components and parts not currently in use; used furniture other than that designed for outdoor use or that which would normally be considered as antique furniture; used and/or inoperative residential lawn care equipment and machinery not currently in use; used pallets, windows or doors not currently in use; new or used sheet metal, structural steel and/or chain not currently in use; used and/or inoperable vending machines, radios and/or televisions not currently in use; and any other type of used and/or inoperable machinery or equipment not currently in use.

"Litter" shall mean all garbage, refuse and rubbish, as defined herein and all other material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare.

"Littering" shall mean the discarding of garbage, paper, and other forms of refuse in any place other than officially designated refuse containers or disposal units.

"Matter" shall mean that of which any physical object is composed.

"Nuisance" shall mean 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, any objectionable, unsightly, or unsanitary matter of whatever nature.

"Objectionable, unsightly or unsanitary matter" shall mean any matter, condition or object which is objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

"Owner" shall mean any person or entity shown as the property owner on the latest property tax assessment rolls or any person having or claiming to have any legal or equitable interest in the property, including any agent who is responsible for managing, leasing or operating the property.

"Person" shall mean any individual, firm, partnership, association, business, corporation or other entity.

"Property" shall mean all privately owned, occupied or unoccupied property, including vacant land, and/or a building designed or used for residential, commercial, business, industrial or religious purposes. The term shall also include a yard, ground, wall, driveway, fence, porch, steps or other structure appurtenant to the property.

"Public Highway" shall mean the entire width between property lines including the non-paved area of a street right-of-way, of any road, street, way, thoroughfare, bridge, public beach, or park in this City not privately owned or controlled, when any part thereof is opened to the public for vehicular traffic or which is used as a public recreational area and/or over which the City has legislative jurisdiction under its police power.

"Putrescible" shall mean the decomposition of organic matter with the formation of foul-smelling, incompletely oxidized products.

"Refuse" shall mean heterogeneous accumulation of worn out, used, broken, rejected or worthless materials, including but not limited to garbage, rubbish, paper or litter, and other decayable or non-decayable matter.

"Rubbish" shall mean junk, trash, debris, rubble, stone, useless fragments of building materials, and other miscellaneous, useless waste or rejected matter.

"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 outside use, useless household items and appliances, items of salvage, such as scrap metal and wood, old

barrels, old tires, objects that hold water for an extended time, tree and brush trimmings, and other miscellaneous wastes or rejected matter.

"Vegetative growth" shall mean any grass, weeds, shrubs, trees, brush, bushes or vines.

"Weeds" shall mean any vegetation that because of its height is objectionable, unsightly or unsanitary, excluding: shrubs, bushes and trees, cultivated flowers, and cultivated crops.