

**ORDINANCE NO. #305- PUBLIC NUISANCE ORDINANCE**

**AN ORDINANCE OF THE CITY OF SHEPHERD, TEXAS, REPEALING ARTICLE II, ENTITLED “UNSANITARY, UNSIGHTLY CONDITIONS,” OF CHAPTER 8 OF THE CODE OF ORDINANCES OF THE CITY OF SHEPHERD, TEXAS, BY REPEALING ORDINANCE NO. 111, DATED FEBRUARY 13, 1984; ADDING REGULATIONS RELATED TO PUBLIC NUISANCES AND OTHER REGULATIONS REGARDING PUBLIC HEALTH AND SAFETY; PROVIDING DEFINITIONS; PROVIDING FOR NUISANCE ABATEMENT PROCEDURES AND THE ASSESSMENT OF COSTS AND LIENS; PROVIDING FOR CRIMINAL PENALTIES AND CIVIL ACTION; PROVIDING A REPEALING AND SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE AFTER PUBLICATION AS REQUIRED BY LAW.**

**WHEREAS**, the City of Shepherd, Texas is a Type-A general-law municipality; and

**WHEREAS**, it is the intent of the City Council for the City of Shepherd to promote the public health, safety and welfare of its citizens as it is authorized under Chapters 54 and 217 of the Texas Local Government Code, and by Chapters 341 and 342 of the Texas Health and Safety Code; and

**WHEREAS**, Section 217.002 of the Texas Local Government Code authorizes a municipality to define what constitutes a public nuisance; authorizes a municipality to abate and remove a public nuisance; and authorizes a municipality to punish by fine a person responsible for such nuisance; and

**WHEREAS**, Chapter 341 of the Texas Health and Safety Code contains minimum standards of sanitation and health protection measures; and

**WHEREAS**, Section 341.011 of the Texas Health and Safety Code provides that certain described conditions constitute public health nuisances; and

**WHEREAS**, Section 341.012(a) of the Texas Health and Safety Code provides that a person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists; and

**WHEREAS**, Section 341.013(a) of the Texas Health and Safety Code provides that premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition; and

**WHEREAS**, Section 341.013(e) of the Texas Health and Safety Code states that a person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health; and

**WHEREAS**, Chapter 342 of the Texas Health and Safety Code further provides for local municipal regulation of sanitation; and

**WHEREAS**, pursuant to Section 342.005 of the Texas Health and Safety Code, the governing body of a municipality may punish an owner or occupant of property in the municipality who violates an ordinance adopted under Texas Health and Safety Code Chapter 342, Subchapter A.; and

**WHEREAS**, Sections 342.006 and 342.007 Texas Health and Safety Code authorize municipalities to assess costs and obtain liens for corrections of health and safety violation; and

**WHEREAS**, the City Council finds that the health, safety and general welfare of the City and its inhabitants will be improved by adopting this Ordinance, which will provide for a more expeditious abatement of public nuisances;

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

**SECTION 1. FINDINGS:** The facts and recitations stated in the preamble of this Ordinance are hereby found to be true and correct, and they are hereby approved and incorporated into the body of this Ordinance.

**SECTION 2. AMENDMENT TO CITY CODE OF ORDINANCES:** Article II, entitled “Unsanitary, Unsightly Conditions,” of Chapter 8, “Health and Sanitation,” of the Shepherd City Code of Ordinances is hereby repealed and replaced by adding Article II, “Public Nuisances,” to the Code of Ordinances to read as follows:

\*\*\*\*\*

## **ARTICLE II. PUBLIC NUISANCES**

### **Section 8-26. DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABATE.** To eliminate by moving, clearing, grading, filling, removal, repair, rehabilitation, or demolition.

**CITY** means the City of Shepherd, San Jacinto County, Texas.

**CITY COUNCIL** means the governing body of the City of Shepherd, Texas.



**ENFORCEMENT OFFICER** means a law enforcement officer, building official, city mayor, code enforcement officer, or their designated representatives, charged with any enforcement and administration of this article.

**GARBAGE.** Decayable waste from a public or private establishment or residence.

**RECEPTACLE.** A bag or container that is designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

**RUBBISH.** Garbage, paper, and all other decayable and nondecayable waste from a public or private establishment or residence, including, but not limited to:

- (1) Discarded motor vehicle parts;
- (2) Discarded furniture, appliances, fixtures, carpets or rugs, bedding, or other furnishings;
- (3) Other discarded personal property; and

(4) Rubble or debris from any construction, remodeling, demolition, or moving activity, except while a permit authorizing the work is in effect and for a period of ten days thereafter.

**WEEDS.** All rank and uncultivated vegetable growth or matter.

#### **Section 8-27. PRESUMPTION AS TO PERSONAL PROPERTY.**

(A) An item of personal property is presumed to be discarded when:

(1) The item is allowed to remain in one place outside and exposed to the elements for ten or more consecutive days during which time there is not apparent use of the item; or

(2) The item is spoiled, rotted, corroded, broken, or inoperable and allowed to remain in one place outside for ten or more consecutive days.

(B) An item of discarded personal property is rubbish.

#### **Section 8-28. NUISANCES PROHIBITED.**

(A) The conditions prohibited by this article are hereby found and declared to be public nuisances.

(B) A person commits an offense if he or she causes or allows one or more of the following conditions to exist upon real property:

(1) The accumulation or storage of garbage, unless the garbage is entirely contained in a closed receptacle;

(2) The accumulation or storage of rubbish, including refrigerators, stoves, furniture, tires, and cans, unless the rubbish is completely enclosed within a building or is not visible from a public place;

(3) The accumulation of stagnant water, or the existence of holes or other areas which can retain water and allow it to become stagnant or any other condition that creates an unsanitary condition likely to harbor mosquitos, rodents, vermin, or disease-carrying pests; and/or

(4) The growth of weeds, brush, grass, or other uncultivated plants, not including trees, to a height greater than 12 inches on real property or any portion thereof which is:

(a) Visible from a public place; and

(b) Is located within 100 feet of the property line of other premises upon which there is located a residence, public building, or commercial establishment.

(C) A person is presumed to have caused or allowed the existence upon real property of a condition prohibited by this section if:

(1) The person owns, occupies, or controls the real property; and

(2) The nuisance remains unabated after the tenth day after the date on which the person is notified to abate the nuisance from the City Enforcement Officer, the mayor, or city attorney.

(D) This section does not apply to a site or facility that is permitted and regulated by a state agency.

### **Section 8-29. ABATEMENT BY MUNICIPALITY; NOTICE.**

(A) If the owner of property in the municipality does not abate a nuisance under this article within ten-days' 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) To the owner, in writing, either personally or by certified mail, return receipt requested, and addressed to the owner at the owner's post office address;

(2) If personal service cannot be obtained or the owner's post office address is unknown:

(a) By publication at least twice within ten consecutive days within a newspaper of general circulation within the City;

(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, if the property contains no buildings.

(3) The notice must state:

(a) The specific condition which constitutes a nuisance;

(b) The person receiving the notice shall abate the nuisance before the tenth day after the date on which the notice is received; and

(c) Failure to abate the nuisance may result in abatement by the City, assessment of costs, and a lien against the property on which the nuisance exists.

### **Section 8-30. CONTINUING NOTICE TO ABATE.**

Each written notice issued under this article shall inform the owner of the real 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 the notice, the City may, without further notice, correct the violation at the owner's expense and assess the expense against the property.

### **Section 8-31. ASSESSMENT OF EXPENSES; LIEN.**

(A) On behalf of the City Council, the Enforcement Officer shall assess a lien against any real property upon which a nuisance shall have been abated by the City under Section 8-29.

(B) To obtain a lien against the property, the Enforcement Officer must file a statement of expenses in the real property records of the county. In addition to the cost of abating the nuisance, the notice shall include an administrative fee equal to the cost of legal notification and any required title opinion, but in no event shall the administrative fee be less than \$50.

(C) The lien obtained by the City is security for the expenditures made and interest accruing at the rate of 10% on the amount due from the date of filing of the statement of expenses in the real property records.

(D) The lien is inferior to:

(1) Tax liens; and

(2) Liens for street improvements.

(E) The City Council 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 in doing the work or making the improvements.

(G) The City Secretary is authorized to execute and deliver a release of the lien upon full payment of the assessment together with interest thereon as provided by this section. Any compromise resulting in release for less than full payment together with accumulated interest shall be first approved by the City Council prior to execution and delivery of any release by the City Secretary.

**Section 8-31. ENFORCEMENT OFFICER.**

The City Enforcement Officer is hereby authorized pursuant to Tex. Code of Criminal Procedure, Art. 18.05, to obtain and execute administrative search warrants in connection with any inspection which may be necessary in the performance of his or her duties and for which a warrant may be required.

**Section 8-32. CRIMINAL PENALTY.**

Any person, firm, or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of no more than \$500, and every day that the violation continues shall constitute a separate offense.

**Section 8-33. CIVIL ACTION.**

Notwithstanding the City's right to assess a lien for its expenses under Section 8-31 and a criminal penalty as provided in Section 8-32, the City shall be entitled to seek civil penalties and injunctive relief from a state court of law for any violation of this article.

\*\*\*\*\*

**SECTION 3. SAVINGS CLAUSE:** If any provision, section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the remaining portions of this Ordinance. It is the intent of the City in adopting this Ordinance that no portion or provision thereof shall become inoperative or fail by reason of any invalidity or unconstitutionality of any other portion or provision and to this end all provisions of this Ordinance are declared to be severable.

**SECTION 4. HEADINGS:** Titles and headings of the sections herein shall be read as part of the sections used in determining the meaning thereof.

**SECTION 5. REPEALING CLAUSE:** City Ordinance No. 111, dated February 13, 1984, and any provisions in any city ordinances in conflict with the provisions of this Ordinance are hereby expressly repealed.

**SECTION 6. TEXAS OPEN MEETINGS CLAUSE:** It is hereby officially found and determined that the meeting at which this Ordinance was considered 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 of the Texas Government Code.

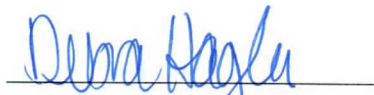
**SECTION 7. EFFECTIVE DATE:** This Ordinance shall become effective upon its publication as provided by law.

**PASSED AND APPROVED** on this, the 19TH day March 2018.



Earl Brown, Mayor

ATTEST:

  
Debra Hagler, City Secretary