

ORDINANCE #230221-02

**AMENDED ARTICLE OF 6.02 OF CHAPTER 6
HEALTH AND SANITATION- RUBBISH, WEEDS AND OTHER OBJECTIONABLE
MATTER**

AN ORDINANCE OF THE CITY OF BIG LAKE, TEXAS, BY THE CITY COUNCIL TO AMEND ARTICLE 6.02 RUBBISH, WEEDS AND OTHER OBJECTIONABLE MATTER; CITY OF BIG LAKE CODE OF ORDINANCES, CHAPTER 6 HEALTH AND SANITATION; PROVIDING DEFINITIONS; PROVIDING FOR JUNK AND UNSIGHTLY MATERIAL; PROVIDING FOR UNSANITARY CONDITIONS ON PROPERTY; PROVIDING FOR DEPOSITING, DUMPING, OR BURNING; PROVIDING FINES AND PENALTIES; REPEALING ALL PARTS OF ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING SEVERABILITY AND OPEN MEETINGS CLAUSE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the health, safety and quality of life of the citizens of the City of Big Lake, Texas (herein the “City”) is of primary importance to the City Council;

WHEREAS, the health, safety, and welfare of the citizens of Big Lake requires that the City Council enact provisions to bring all properties within the City into compliance with regulations on weeds, rubbish, brush, and other objectionable unsightly, or unsanitary matter;

WHEREAS, Texas Health and Safety Code Section 342.004, et seq provides municipalities with the power to require the owner and/or occupant of a lot within the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter;

WHEREAS, keeping the City free of weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter will improve the quality of life of the citizens of Big Lake by improving the aesthetics of the City, by eliminating harbors for rodents, by decreasing the illegal dumping and littering, by eliminating fire hazards and by deterring crime by increasing visibility and access; and

WHEREAS, the rules, regulations and requirements established by ordinance may not be inconsistent with State law;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BIG LAKE, TEXAS, THAT CHAPTER 6, ARTICLE 6.02 RUBBISH, WEEDS AND OTHER OBJECTIONABLE MATTER BE AMENDED TO READ AS FOLLOWS:

SECTION 1.0. Findings of Fact. All of the above premises are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

SECTION 2.0. Rubbish, Weeds, and Other Objectionable Matter Amendments Adopted. The City Council hereby adopts the amendments in “Exhibit A” for the control and regulation of rubbish, weeds, and other objectionable matter within the City of Big Lake to read as set forth in and attached hereto entitled “Exhibit A” attached to and incorporated in this ordinance as though fully transcribed herein for all purposes.

SECTION 3.0. Amendment of Ordinances. Big Lake Code of Ordinances, Chapter 6, Article 6.02 Rubbish, Weeds, and Other Objectionable Matter, is hereby amended to include the following additions and amendments as attached and all ordinances or parts thereof conflicting or inconsistent with the provisions of this ordinances as adopted and amended herein, are hereby amended to the extent of such conflict. In the event of a conflict or inconsistency between this ordinance and any other code or ordinance of the City, the terms and provisions of this ordinance shall govern.

SECTION 4.0. Savings Clause. All rights and remedies of the City of Big Lake are expressly saved as to any and all violations of the provisions of any ordinances affecting Rubbish, Weeds, or Objectionable Matter within the City which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 5.0. Effective Date. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

SECTION 6.0. Severability. It hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of the Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to the end the provisions of this Ordinance are declared to be severable.


SECTION 7.0. 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 and said meeting was given as required by the Open Meetings Act.

INTRODUCED AND APPROVED ON THE 21st DAY OF FEBRUARY, 2023, AND;

PASSED AND ADOPTED ON THE 7th DAY OF MARCH, 2023; by a vote of

4 (ayes) to 0 (nays) and 1 (abstentions) of the City Council of the City of Big Lake, Texas.

THE CITY OF BIG LAKE, TEXAS


Cindy O'Bryan, Mayor Pro Tem

ATTEST:


Sheri Benson, City Administrator

Attachment to “Ordinance #230221-02”

ARTICLE 6.02 RUBBISH, WEEDS AND OTHER OBJECTIONABLE MATTER

Sec. 6.02.001 Definitions

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

Junk. Worn-out, worthless, and discarded material, including odds and ends, old iron or other metal, glass and paper.

Objectionable. Any outdoor storage or display of items, articles, vessels, or any objects not manufactured for outdoor use, display, or storage purposes. The same shall apply to outdoor items or articles not being used for their original intent.

Rubbish. All refuse, trash, tin cans, unsealed, rusting, or decaying vessels of all sorts, useless articles, discarded clothing and in general all manufactured items that are no longer being used for their intended purpose, litter and other things usually included within the meaning of the term.

Weed. All rank and uncultivated vegetation or matter which has grown to more than 12 inches in height or which, regardless of height, is liable to become an unwholesome or decaying mass or breeding place for mosquitoes or vermin or liable to pose a fire danger.

Sanitary. A condition of good order and cleanliness that precludes the probability of disease transmission.

Sec. 6.02.002 Grass and Weeds

(a) Maximum height. It shall be unlawful for any person having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to suffer or permit grass, weeds, or any plant that is not cultivated to grow to a height greater than 18 inches upon said premises. With respect to lots, tracts, or parcels of land of one or more acres under single ownership, the provisions of this section shall not be applicable to the area in excess of 300 feet from any open public street or alley or to the area in excess of 300 feet from any adjacent property under different ownership on which habitable dwellings are located. Lots, tracts, or parcels of land under one acre must be maintained in accordance with this section in its entirety.

(b) Obstructing view and/or flow of traffic. It shall be unlawful for any person having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to suffer or permit grass, weeds, trees, or any plant, cultivated or not cultivated, to grow in, upon, or across the sidewalk or street adjacent to the lot or property in such a manner as to create a hazard to pedestrians or motorist to:

1. See approaching traffic, or that obscures traffic-control signs or signals for a distance of 100 feet.
2. Use the street or sidewalk in a free flowing and unobstructed manner.
 - A. The following are declared to be hazards:
 - a. Any bush, tree or other vegetation within the parkway which exceeds a height of two and one-half (2-1/2) feet above the gutter elevation of the adjacent street or which overhangs

a sidewalk, except single trunk trees which are pruned to eliminate all leaves and branches as follows:

- (i) Below seven (7) feet in height above the ground beneath the tree;
- (ii) Below eight (8) feet in height above a sidewalk beneath the tree; or
- (iii) Which would tend to obstruct the view of a traffic-control device.

B. Any bush, tree or vegetation which hangs over any street or alley which is not pruned as follows:

- a. To eliminate all leaves and branches below a height of thirteen and one-half (13-1/2) feet above the street or alley; or
- b. To eliminate all leaves or branches which would tend to obstruct the view of a traffic-control device.

State law references—Authority of municipality to regulate weeds, grass, etc., V.T.C.A., Health and Safety Code, sec. 342.004 et seq.; authority of type A general-law municipality to require removal of weeds, unclean matter or trash from street, sidewalk or gutter, V.T.C.A., Transportation Code, sec. 311.003.

Sec. 6.02.003 Junk and unsightly matter

It shall be unlawful for any person or entity owning or having supervision or control (including building contractors) of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to permit any junk, debris, and any and all other objectionable or unsightly matter of whatever nature to accumulate upon any such lot, tract or parcel of land.

Sec. 6.02.004 Unsanitary conditions on property

It shall be unlawful for any person or entity owning or having supervision or control (including a building contractor) of any lot, tract, parcel of land or portion thereof, whether occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to permit any of the following unsanitary conditions to exist on, or emanate from, any such lot, tract or parcel of land:

- 1. Stagnant water or any collection of water that may allow the breeding of insects, exposed animal carcasses, or any open drain, sewer, or cesspool;
- 2. Any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires, or other waste of any kind that is stored, deposited or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water or the breeding of insects or rodents;
- 3. Any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires, or other waste of any kind that is accumulating in, being discharged into or flowing into or on any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city, or in or on any lot, vacant or occupied, driveway or other private property in the city; or
- 4. Any garbage or waste receptacle or container that is in an unsanitary condition.

Section 06.02.005 Responsibility for compliance.

Supervision and control shall be determined as follows:

1. The present occupant of the premises shall give rise to prima facie presumption of supervision and control.
2. If the property is unoccupied, then supervision and control shall be presumed to be in the owner as determined by the current tax roll.

Sec. 6.02.006 Removal required

It shall be the duty of any person having supervision or control of any net lot, tract or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city, to cut, or cause to be cut, and remove or cause to be removed, if necessary to comply with this article, all such grass, weeds, plants, rubbish, brush and any and all other objectionable, unsightly or unsanitary matter of whatever nature as often as may be necessary to comply with the provisions of this article. (1997 Code, sec. 92.03)

Sec. 6.02.007 Failure to comply; abatement by city

1. If any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city, fails to comply with the provisions of this article, it shall be the duty of the code enforcement officer and/or city administrator to give a minimum of seven days' written notice to such person violating the terms of this article.
2. The notice shall be in writing and may be served on such person violating the terms of this article by:
 - a. Delivering it to him in person;
 - b. Letter or written notice 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 and delivered by United States Certified Mail, return receipt requested. 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; or
3. If personal service cannot be obtained, by:
 - a. Publication at least once in the city's official newspaper;
 - b. Posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
4. Annual notice. After a property owner has been given one notice of violation on a lot, tract or parcel of land, annual notice may be given to the property owner. Annual notice must be mailed to the owner at the address recorded with the appraisal district and posted on the property. Once the city has given such annual notice, no further notice shall be required prior to abatement for that lot, tract or parcel of land for a one-year period. If the city receives notice of a change of

ownership of the property during the one-year period, notice of a violation must be sent in compliance with subsection (b) of this section. If the city does not receive notice of a change in ownership, the city may abate any nuisance contained on the property covered by this division without further notice and assess expenses to the owner.

5. Contents of notice. The notice of violation shall at a minimum contain the following:
 - a. The name of the owner, if known, of the premises proposed to be entered upon by the city;
 - b. The address or legal description of the premises proposed to be entered upon by the city;
 - c. The offending conditions existing on the lot, tract or parcel of land;
 - d. A statement that the recipient has seven days from the date of notice to correct the violation, that if he/she fails to do so, the city will enter upon the premises and remedy the same, and that the city is entitled to attach a lien to the property to secure payment for the services rendered; and
 - e. A statement that the recipient is entitled to a hearing.
6. Additional statement in annual notice. If an annual notice is given, it shall state, in addition to the foregoing, that the city may enter upon the premises to remedy any violation at 30-day intervals during the year.
7. Owner-requested work. In the event the owner of any such property requests that the city do such work as is necessary in order to abate or prevent a violation of this chapter, then such request will negate the requirement for notification of violation by the city, and the city will have the same remedies as hereinafter set forth.
8. Exception. Notwithstanding the foregoing provisions, city may abate, without prior notice, any weeds that have grown to a height of 48 inches and are an immediate danger to the health, life or safety of any person. In the event that the city abates weeds pursuant to this subsection, the requirements set forth in the Texas Health and Safety Code for such abatement shall govern.

State law references—Additional authority to abate dangerous weeds without notice, V.T.C.A., Health and Safety Code, sec. 342.008.

Sec. 6.02.008 Dangerous weeds

1. The code enforcement officer and/or city administrator may go upon property and do or cause to be done the work necessary to obtain compliance with this article without notice when:
 - a. Weeds have grown higher than 48 inches; and
 - b. Are an immediate danger to the health, life, or safety of any person.
2. No later than the tenth day after the date the town causes the work to be done under this section, the city shall give notice to the property owner in the manner required by section 6.03.005.
3. The notice shall contain:
 - a. An identification, which is not required to be a legal description, of the property;
 - b. A description of the violations of this section that occurred on the property;

- c. A statement that the city abated the weeds;
 - d. An itemized 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 section; and
 - e. An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.
4. The municipal court judge shall conduct an administrative hearing on the abatement of the 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 manager a written request for a hearing.
 5. 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.
 6. The city may assess expenses and create liens under this section as it assesses expenses and creates liens as provided in section 6.03.006.
 7. The provisions of this section shall be enforced by the code enforcement officer and/or city administrator, and it shall be unlawful for any person to interfere with or hinder the building official and his duly appointed representatives in the exercise of their duties under this section.

Sec. 6.02.009 Depositing, dumping or burning

It shall be unlawful for any person to burn, dump, place, deposit or throw, or otherwise dispose of, or permit or cause to be burned, dumped, placed, deposited or thrown, any garbage, trash, brush, wire of any kind, broken glass, bottles, loose waste or refuse of any kind on public or private property in the city, unless the same has been deposited in accordance with the garbage collection provisions of this code. A violation of this section, when committed against or upon public property or property owned or occupied by another, shall constitute a trespass on such property. Violations of this section shall include but are not limited to the following:

1. Vegetation and trimmings. The throwing, placing, dumping or depositing of any lawn trimmings, hedge trimmings or any other cuttings or trimmings of weeds, flowers or other vegetation on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city, or in or on any lot, vacant or occupied, driveway or other private property in the city.
2. Garbage and refuse. The throwing, placing, dumping or depositing of any garbage or refuse of any kind on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city, or on or in any lot, vacant or occupied, driveway or other private property in the city.
3. Unsanitary matter. The throwing, placing, dumping or depositing of any animal, vegetable or mineral matter, or any composition or residue thereof, which is in an unsanitary condition or injurious to public health on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city, or on or in any lot, vacant or occupied, driveway or other private property in the city.
4. Firewood. Wood being burned for recreational purpose may be excepted from this ordinance when burned in a contained fire pit with a screen cover.

Sec. 6.02.010 Penalty

1. Any person violating or failing to comply with any provision or requirement of this section who continues to violate or fails to comply with such after seven days after notice is given and received as set forth herein, shall also be deemed guilty of a class C misdemeanor and, upon conviction thereof, shall be fined. 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.
2. Notwithstanding the provisions of subsection (1) of this section, any violation of any provision of this section 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 town for such purpose.
3. In addition to any other remedies or penalties contained in this section, the town may enforce the provisions of this section pursuant to the applicable provisions of chapter 54 of the Texas Local Government Code, as amended, which chapter provides for the enforcement of municipal ordinances.
4. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this section.