

NUISANCE ABATEMENT PROGRAM

ORDINANCE 162-042011

The City of Garden Ridge has determined that nuisances are detrimental to the safety and welfare of the public and tend to reduce property values; therefore a Nuisance Abatement Program has been established with the adoption of Ordinance 162-042011 on April 6, 2011. The program defines nuisances, sets out notification requirements, hearing procedures and establishes fines and penalties for the abatement of nuisances. The adoption of Ordinance 162-042011 further repeals Ordinance 27 and is now in effect. The program covers junked vehicles, the accumulation of garbage, trash, weeds, brush and other matters and general nuisances. Ordinance 162-042011 follows as approved and citizens are encouraged to familiarize themselves with the Nuisance Abatement Program. Citizens are also encouraged to contact either the City Administrator or the Chief of Police with questions concerning the Nuisance Abatement Program.

ORDINANCE 162-042011

AN ORDINANCE OF THE CITY OF GARDEN RIDGE TEXAS ESTABLISHING A NUISANCE ABATEMENT PROGRAM FOR THE CITY OF GARDEN RIDGE, TEXAS; DECLARING JUNKED VEHICLES A PUBLIC NUISANCE; PROHIBITING THE ACCUMULATION OF GARBAGE, TRASH, WEEDS, BRUSH AND OTHER MATTERS; ESTABLISHING GENERAL NUISANCES; SETTING FORTH PUBLIC HEARING AND ABATEMENT/REMOVAL REGULATIONS & REQUIREMENTS; ESTABLISHING CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING FOR SEVERABILITY; AND, REPEALING ORDINANCE 27 AND ALL OTHERS TO THE EXTENT THEY ARE IN CONFLICT; DECLARING AN EFFECTIVE DATE

WHEREAS, the City of Garden Ridge Texas is a Type A General Law City as that term is defined within the Texas Local Government Code; and,

WHEREAS, the City of Garden Ridge desires to continue to protect and ensure the public health, safety, welfare and environment of the public, it's residents and businesses by regulating public health nuisances; and,

WHEREAS, the City of Garden Ridge has determined that a nuisance abatement program is necessary to provide for and protect the public health, safety and welfare of the public

WHEREAS, the City of Garden Ridge has determined that nuisances as defined by this ordinance, including junked vehicles are detrimental to the safety and welfare of the public, tend to reduce the value of private property, and constitute nuisances; and

WHEREAS, Chapter 683 of the Texas Transportation Code and Chapters 341- 343 of the Texas Health & Safety Code authorize a municipality to adopt procedures for the abatement of nuisances and the abatement and removal of a junked vehicles from private or public property; and

WHEREAS, the City Council desires to adopt regulations governing such nuisances and junked vehicles consistent with Texas law.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS THAT:

ARTICLE I – GENERAL PROVISIONS

Section 1.1 Purpose of this Article

The purpose of this article is to protect the public health, safety, environment and general welfare of the citizens of the City of Garden Ridge through this nuisance abatement program.

Section 1.2 Definitions

The following words, terms, and phrases, when used in this article shall have the following meanings:

Abate means to eliminate a nuisance by removal, repair, rehabilitation, or demolition.

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

Building means a structure built for the support, shelter or enclosure of a person, animal, chattel, machine, equipment or other moveable property.

Graffiti means any unauthorized inscription, works, signature, symbol, design or other marking of any sort that is etched, written, painted, drawn or applied in any other way to any structure, building, tree, vehicle, or property of any sort or to any portion or element thereof, whether the property is public or private.

Garbage means waste from public and private establishments (including residences and restaurants), including vegetable, animal and fish carcasses, but does not include sewage body waste or industrial byproduct.

Deteriorated Fence means a fence that:

- 1) is out of vertical alignment more than one (1) foot from vertical measured at the top of the fence, except for fencing four (4) feet or less in height, which shall not be out of vertical alignment more than six (6) inches from vertical measured at the top of the fence; or
- 2) is broken, loose, damaged, has removed or missing parts including but not limited to pickets, slats, posts, wood rails, stones, bricks and/or panels; or
- 3) is braced by guy wires, braces or any other material that may be viewable from any public streets, rights-of-way, alleyways, or property and easements over which the city or general public has domain and control or viewable from any private streets or private right-of-way accessible to the public, unless the use of such braces is incorporated in a commercially available fence design.

Harborage means the state of being protected or safeguarded as from danger; sanctuary, shelter or refuge.

Junked Vehicle means a vehicle as defined by Section 683.071 of the Texas Transportation Code that may be self-propelled and meets any of the conditions described below for 30 consecutive days if on private property or for 72 consecutive hours, if the vehicle is on public property:

- 1) does not have lawfully attached to it:
 - a. an unexpired license plate; or
 - b. a valid motor vehicle inspection certificate; or
 - c. is wrecked, dismantled or partially dismantled, or discarded; or
 - d. is otherwise inoperable.

Motor vehicle collector means a person who (a) owns one or more antique or special interest vehicles; and (b) 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.

Improved Property means any property regardless of zoning on which a structure exists for purposes of a residence, office or, business.

Unimproved Property means any property regardless of zoning on which a structure does not exist for the purposes of a residence, office or business.

Refuse means garbage, rubbish, paper and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses and may include waste.

Rubbish means nondecayable waste from a public or private establishment or residence.

Special interest vehicle means a motor vehicle of any age that has not been materially changed from its original manufacturer's equipment or specifications or by its very appearance and character is clearly being preserved/modified by a hobbyist.

Vehicle shall include but not limited to cars, trucks, trailers, recreational vehicles, travel trailers, boats or other watercraft, or motorcycles.

Weeds mean all rank and uncultivated vegetable growth or matter that:

- 1) has grown to more than 12 inches in height; or
- 2) regardless of height, may create an unsanitary condition or become a harborage for rodents, vermin or other disease carrying pests.

Article II – ABATEMENT AND REMOVAL OF JUNKED VEHICLES

Section 2.1 Junked Vehicles Declared a Public Nuisance

In accordance with Section 683.072 of the Texas Transportation Code, junked vehicles, including a part of a junked vehicle not enclosed in garage or other structure is a public nuisance.

Section 2.2 Offense/Penalty

A person commits an offense if the person maintains a junked vehicle as defined by Section 2.1 of this Article. An offense under this section is a misdemeanor punishable

by a fine not to exceed \$200.00. The Court, upon a finding of guilty shall also order the abatement and removal of the Junked Vehicle at the cost and expense of the person committing the offense.

Section 2.3 Inapplicability

Article II will not apply to any vehicle or vehicle part that is stored in a lawful manner on private property in connection with the business of a licensed vehicle dealer or 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 are not a health hazard, are maintained in an orderly manner, and are screened from ordinary public view by appropriate means.

Article II does not apply to any vehicle or any part thereof that is completely enclosed in a building in a lawful manner and is not visible from the street or from other public or private property.

Section 2.4 Abatement Procedures

Section 2.4.1. Notice:

Notice requiring abatement and removal of a Junked Vehicle, or Junked Vehicle Part from private property shall be furnished by the Chief of Police or his designee not less than ten (10) days before the date the junked vehicle, or part of the junked vehicle, must be abated or removed. The notice must be sent by certified mail return receipt requested or presented to the owner by hand delivery to (1) the last known registered owner of the junked vehicle or motor vehicle part; (2) each lien holder of record of the junked vehicle or junked vehicle part; (3) the owner or occupant of the property on which the junked vehicle or junked vehicle part is located.

Notice requiring abatement and removal of a Junked Vehicle, or Junked Vehicle Part, if a Junked Vehicle or Junked Vehicle Part is located on a public right-of-way or a private right-of-way accessible to the public shall be placed/affixed on the junked vehicle or junked vehicle part and written notice shall be provided at the door/gate of the property closest to the Junked Vehicle or Junked Vehicle Part. The notice shall include an admonition that any request for a public hearing regarding the abatement and removal of the Junked Vehicle or Junked Vehicle Part must be made not later than the tenth day after the date on which the notice was provided.

Section 2.4.2. Public Hearing:

If a person receiving Notice provided in Section 2.4.1, requests a public hearing, the city council shall conduct the public hearing. If a public hearing is requested by a person for whom notice has been sent under Section 2.4.1., the public hearing shall be held not earlier than the 11th day after the date of the service of notice. At the public hearing, the

Junked Vehicle or Vehicle Part is presumed, unless demonstrated otherwise by the owner, to be inoperable. If the information is available an order requiring removal of the junked vehicle or junked vehicle part shall include the vehicle's description, vehicle identification number, and license plate number.

Section 2.4.3. Junked Vehicle Disposal:

A junked vehicle, including any part of a junked vehicle, may be removed to by a towing service under Contract with the City to provide towing and impound services to their storage facility. The junked vehicle or junked vehicle part shall not be reconstructed or made operable after removal. The Chief of Police or his designees shall furnish notice of the removal of a junked vehicle or junked vehicle part to the Texas Department of Transportation within five (5) days after the date of removal. The relocation of a junked vehicle or junked vehicle part to another location in the city after a proceeding for the abatement and removal of the junked vehicle or junked vehicle part has commenced has no effect on a proceeding if the junked vehicle or junked vehicle part also constitutes a public nuisance.

ARTICLE III – ACCUMULATION OF GARBAGE, TRASH, WEEDS, BRUSH AND OTHER MATTERS

Section 3.1 Accumulation of Garbage, Trash, Weeds, Brush or Other Matters

Section 3.1.1. Unlawful to allow accumulation of garbage, weeds, brush, rubbish, or other matters

It shall be unlawful and a nuisance for any person to allow garbage, brush, rubbish, trash, or any other objectionable, unsightly, and unsanitary matter of whatever nature to accumulate on any property under his control and within the city limits.

It shall be unlawful and a nuisance for any person to permit grass and/or weeds to grow to a height in excess of twelve (12) inches. The following provisions relate only to the height of grass and weeds on properties with an area or areas which have remained in their natural state:

a) On improved property: that portion of the property that has remained in its natural state - grass and weeds shall not be permitted to grow to a height in excess of twelve (12) inches in that portion and/or area and is not found to be a harborage for rodents, vermin and other pests which may be disease carrying.

b) On unimproved property: that portion that remains in its natural state - grass and weeds are not permitted to grow to a height in excess of twelve (12) inches adjacent to a paved roadway and for a distance of twenty-five (25) feet into the property from said roadway and within ten (10) feet of adjoining property and/or area is not found to be a harborage for rodents, vermin and other pests which may be disease carrying.

c) On unimproved property: grass and weeds are not permitted to grow to a height in excess of twenty-four (24) inches beyond the perimeter as defined in (b, above), unless the vegetation is for agricultural purposes, and/or the area is not found to be a harborage for rodents, vermin and other pests which may be disease carrying.

Section 3.2. Abatement Procedures

Section 3.2.1. Notice Requirement

High grasses, weeds, or brush. When any violation of high grasses, weeds or brush is found to exist, a notice in writing sent by certified mail return receipt requested as allowed under this article will be addressed to the owner of the property in question. If the address of the property owner is unknown or notice is returned, then notice may be given by publication one (1) time in a local newspaper of general circulation regularly used by the City for public notices or any other means allowed by law, including that provided by Texas Health & Safety Code § 342.006. The property owner will have ten (10) days from the date of the notice/publication to correct the violation.

High grasses, weeds, or brush in excess of forty-eight (48) inches. In the event that high grasses, weeds, or brush is higher than forty-eight (48) inches the city may go upon the property found in violation of this article and abate such violation without notice to the property owner. No later than the tenth day after the city causes the work to be done under this section, the city shall send an itemized bill to the property owner by certified mail.

Section 3.2.2. Contents of Notice

When notice is required under Section 3.2.1 the notice to abate a nuisance the notice shall contain:

- (1). The location of the nuisance, if the same is stationary.
- (2) A description of what constitutes the nuisance.
- (3) An order to abate the nuisance within a stated time, which shall be reasonable under the circumstances, or to request a hearing within ten (10) days after service of notice to abate the nuisance. Request for hearing shall be in writing and shall be addressed to the municipal court judge in which court the procedure to abate the nuisance is pending.
- (4) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city may abate such nuisance and assess the cost of abatement against such person.

Section 3.2.3. Hearing on Nuisance

If a person receiving Notice provided in Section 3.2.1, requests a public hearing within seven (7) days, the city council shall conduct the public hearing. If a public hearing is requested by a person for whom notice has been sent under Section 3.2.1., the public

hearing shall be held not earlier than the 11th day after the date of the service of notice. At the public hearing, the nuisance is presumed, unless demonstrated otherwise by the owner. If the information is available an order declaring the condition of the property shall issue for use in enforcing the ordinance pursuant to Texas law and Chapter 54 of the Texas Local Government Code.

Such hearing and findings are independent from any criminal provision or application of this Ordinance. Upon the failure of the person, firm, or corporation upon whom notice to abate a nuisance was served pursuant to this Article or to request a hearing, the city representative may proceed to enter upon the property to abate such nuisance and shall prepare a statement of costs incurred in the abatement thereof.

Section 3.3 Penalties

Section 3.3.1. Assessment of city's expenses

Expenses incurred due to the action taken by the city to correct any condition coming under the nuisance provisions of this Article, including service charges to cover administrative costs, attorneys' fees and penalty charges, shall be assessed against the owners of all outstanding interests in the lot or parcel of land involved. An itemized bill of such costs will be mailed to each such owner if the address is known.

Section 3.3.2. City's Expenses Declared Lien

The expense of such removal or cutting shall be assessed against the real estate or lots shall constitute a privileged lien. Such lien shall be notice to all persons from the time of recording, and shall bear interest at the legal rate of interest from the date that the city pays for such removal or cutting. For any such expenditures, and interests, as aforesaid, suit may be instituted and foreclosure had in the name of the city.

ARTICLE IV – GENERAL NUISANCES

Section 4.1 Prohibited Acts which constitute a Nuisance:

Whatever is dangerous to human health or welfare, or whatever enters the ground, the water, the air, or food that is a hazard to human health is hereby declared a nuisance. The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions or actions are hereby declared to be and constitute a nuisance and are therefore prohibited and unlawful; provided, however, this list shall not be deemed or construed to be conclusive, limiting, or restrictive:

- (1) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, stagnant water or any object or matter that may cause injury, death or disease to human beings.
- (2) Any condition that provides harborage for rats, mice, snakes and other vermin

- (3) A polluted well, or cistern, spring or stream, or the pollution of any body of water used for drinking or recreational purposes.
- (4) Accumulation of any water, stagnant, flowing, or otherwise which may become a breeding place for mosquitoes or otherwise a potential health hazard, unless such accumulation or collection of water is treated so as effectually to prevent such breeding.
- (5) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation, or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a heightened fire hazard in the vicinity where it is located.
- (6) Any building, structure or other place or location where any activity which is in violation of local, state or federal law is conducted, performed or maintained.
- (7) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches including dense smoke, noxious fumes, gas, soot or cinders.
- (8) The carcasses of animals or fowl not disposed of within twenty-four (24) hours after death.
- (9) Dead, diseased, or insect harboring trees when such trees constitute a hazard to life or property.
- (10) All appliances intended for indoor use, working or nonworking, used, stored, abandoned or junked anywhere outside of a structure.
- (11) Furniture intended for indoor use that is used, stored, abandoned or junked outside, including on a porch, in a yard, or under a carport.
- (12) Fences in a deteriorated condition.
- (13) Graffiti visible to the public.
- (14) Human waste or wastewater that is deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in disease transmission.

Section 4.2 Abatement Proceedings:

Section 4.2.1. Notice

Wherever a nuisance is found to exist the city representative shall give ten (10) days written notice by certified mail and regular mail, or hand delivery with signed receipt to the owner or occupant of the property upon which such nuisance exists or to the person causing or maintaining the nuisance. If the owner of the property is not to be found, notice shall be attached to the door of the last known address of the property owner and published in the newspaper of general circulation normally used by the City for publication of public notices. If such notice is returned, official action to abate such nuisance shall be continued to a date not less than ten (10) days from the date of such return.

Section 4.2.1. Contents of Notice

The notice to abate a nuisance shall contain:

- (1.) the location of the nuisance, if the same is stationary;
- (2.) a description of what constitutes the nuisance;
- (3.) an order to abate the nuisance within the stated time, which shall be reasonable under the circumstances, or to request a hearing within ten (10) days after service of notice to abate the nuisance. Request for a hearing shall be in writing and shall be addressed to the municipal court judge in which court the procedure to abate the nuisance is pending.
- (4.) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the city may abate such nuisance and assess the cost of abatement against such person.

Section 4.2.2. No Required Notice

In the event of an immediate danger to the health and safety of the public, the City Administrator or designee may go upon the property where the nuisance(s) is found, and abate or cause to be abated such nuisance(s) without notice to the property owner. No later than the tenth day after the date the city abates or causes to be abated the nuisance(s) upon the property, the city shall send notice to the property owner in the manner required by section 4.2.1. The notice shall contain:

- (1) a description of the nuisance(s) that was found on the property;
- (2) a statement that the nuisance(s) was abated by the city;
- (3) an itemized statement of the costs and fees incurred by the city for work done to abate the nuisance; and
- (4) an explanation of the property owner's right to request a hearing before the municipal court judge concerning the city's abatement of such nuisance(s).

Section 4.3 Penalties

Section 4.3.1. Assessment of city's expenses

Expenses incurred due to the action taken by the city to correct any condition coming under the nuisance provisions of this Article, including service charges to cover administrative costs, attorneys' fees, Texas Local Government Code Chapter 54 penalties, assessments, court costs, expert fees, and all related expenses and other penalty charges, shall be assessed against the owners of all outstanding interests in the lot or parcel of land involved. An itemized bill of such costs will be mailed to each such owner if the address is known.

Section 4.3.2. City's Expenses Declared Lien

All City expenses for such removal or cutting including all listed expenses in Section 4.3.1 shall be assessed against the real estate or lots and shall constitute a privileged lien. Such lien shall be notice to all persons from the time of recording, and shall bear interest

at the legal rate of interest from the date that the city pays for removing the nuisance. For any such expenditures, and interest, as aforesaid, suit may be instituted and foreclosure had in the name of the city.

Section 4.3.3. Fines

Any person found to be in violation of this Ordinance, unless otherwise specifically stated, shall be fined \$500 per day for each day and specific independent violation existing. Upon a finding that the violation constitutes a danger to public health and sanitation, including dumping of refuse, such fine shall be no less than \$500 and shall not exceed \$2,000.00. Where the offense is one for which a penalty is fixed by state law, the penalty for such offense shall be the same as fixed by state law. Such fine shall be in addition to all assessments, penalties and expenses provided by other law, including but not limited to those provided by Texas Local Government Code Chapter 54.

Section 4.3.4. Additional Penalties

Violation of provisions of this Article or failure to comply with any of its requirements shall constitute a Class C misdemeanor. Any person, firm or corporation violating any of the provisions of the Ordinance, or any parent or legal guardian of a child under seventeen (17) years of age, who intentionally, knowingly, recklessly, or with criminal negligence allows another person under their control to place graffiti upon any structure or property or to otherwise violate this Article shall be deemed to have committed a misdemeanor and upon conviction shall be subject to fines in addition to any person placing graffiti upon the structure or property.

Each day each instance of any violation continues to exist shall constitute a separate and distinct offense.

Section 4.3.4. Severability.

The provisions of this Ordinance are declared to be severable. If any section, sentence, clause, or phrase of the Ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decisions shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect; it being the legislative intent that this Ordinance shall remain in effect notwithstanding the validity of any part. In the event that changes are made to Texas Health & Safety Code §§ 342 or 343, or Texas Transportation Code § 683, the provisions of state law will govern in the event of a conflict.

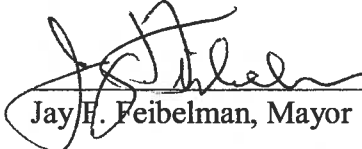
Section 4.3.5. Repeal

Ordinance 27 is repealed and all other ordinances or parts of ordinances in conflict with any of the provisions of this ordinance are hereby repealed insofar as the same is in conflict with the provisions hereof.

Section 4.3.6. Effective Date.

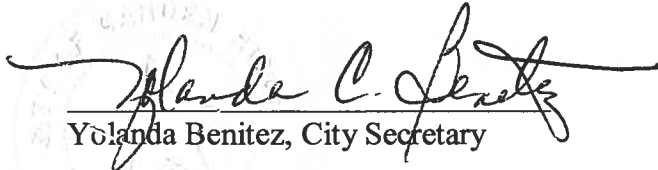
This ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

Passed and approved this 6th day of April, 2011.



Jay F. Feibelman, Mayor

Attest:



Yolanda Benitez, City Secretary