

ORDINANCE NO. 8-3

NUISANCE ABATEMENT ORDINANCE

AN ORDINANCE OF THE CITY OF KENEDY ADDRESSING NUISANCE ABATEMENT; AND ADOPTING A CITY NUISANCE ABATEMENT ORDINANCE TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE; DEFINING PUBLIC NUISANCE; ESTABLISHING A COMPLIANCE PROCESS; PROVIDING FOR ASSESSMENT OF EXPENSES AND LIENS; DEFINING PROHIBITED ACTS; PROVIDING FOR ENFORCEMENT, PENALTIES AND REMEDIES; AND PROVIDING ADMINISTRATIVE PROVISIONS, CONTAINING A SAVINGS CLAUSE AND REPEALING ALL ORDINANCES IN CONFLICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KENEDY, TEXAS:

ARTICLE 1

GENERAL

1.1 TITLE

The following provisions shall be and constitute the Kenedy Nuisance Abatement Ordinance addressing Public Health Safety and Welfare.

1.2 STATUTORY REFERENCES

Sec. 342.001 to 342.007 V.T.C.A., Health and Safety Code.

Sec. 365.001 to 365.015 V.T.C.A., Health and Safety Code.

Sec. 54.001 V.T.C.A., Local Government Code.

Sec. 54.012 to 54.019 V.T.C.A., Local Government Code.

1.3 PURPOSE

It is deemed by the City Council of Kenedy, Texas, that it is dangerous to the public health, safety and welfare for lots in the city to have accumulation of stagnant water, litter or other unwholesome, impure or unsanitary matter that may produce disease or attract disease carrying pests, and it is dangerous and constitutes a fire hazard to have weeds, tall grass, brush and litter on lots in the city.

It is also deemed that dilapidated, substandard or buildings unfit for human habitation that are unsecured to the extent that it could be entered by or used by vagrants or other uninvited persons as a place of harborage or could be entered or used by children; constitutes a danger to the public even though secured from entry; or the means used to secure the buildings are inadequate to prevent unauthorized entry or use of the building.

ARTICLE 2

DEFINITIONS

BRUSH – Scrub vegetation, land covered with scrub vegetation, or undergrowth.

CODE ENFORCEMENT OFFICIAL – The designated authority charged with the enforcement of this ordinance, or his duly authorized representative.

CULTIVATED – Includes but is not limited to tending, maintaining and removal of litter and brush.

DILAPIDATED – Abandoned building, falling to pieces, unfit for human habitation.

DISPOSE – To discharge, deposit, inject, spill, leak, or place litter on or into land or water.

IMPROVED LOT – A lot on which a structure is located.

LITTER –

- (A) Decayable waste from a public or private establishment, residence, or restaurant, including yard trimmings, leaves or similar materials, animals and vegetation waste material from a market or storage facility handling or storing produce or other food products, or the handling, preparation, cooking or consumption of food, but not including sewage, body wastes, or industrial by-products; or
- (B) Non-decayable solid waste, except ashes, that consists of:
 - (1) Combustible waste material, including paper, rags, cartons, wood, furniture, rubber and plastics;
 - (2) Noncombustible waste material, including glass, crockery, tin, or aluminum cans, metal furniture, and similar material that do not burn at ordinary incinerator temperatures of 1800 degrees Fahrenheit or less; and
 - (3) Discarded or worn-out manufactured materials and machinery, including motor vehicles and parts of motor vehicles, tires, aircraft, farm implements, building or construction materials, appliances, and scrap metal.

LOT – Any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by legal instrument of record.

MAINTAIN – To provide for upkeep or support; to keep unimpaired or in proper condition.

MOTOR VEHICLE – Mean a vehicle that is subject to registration under Texas Transportation Code Chapter 501.

PERSON – An individual, corporation, organization, government, business trust, partnership, association, or other legal entity.

SANITARY – A condition of good order and cleanliness that precludes the likelihood of disease transmission.

SHRUB – All trees or shrubbery less than four feet in height with trunk or stems less than two inches in diameter which are not maintained, cared for cultivated.

ARTICLE 3

PUBLIC NUISANCES

3.1 UNLAWFUL

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 city limits, to permit or allow any public nuisance to exist on the real property.

3.2 PUBLIC NUISANCES DEFINED

The following shall be deemed to be a public nuisance and the prompt abatement of which is a public necessity.

3.2.1 Stagnant Water

Accumulations of stagnant water which attract or harbor mosquitoes or produce disease are hereby declared a public nuisance.

3.2.2 Unsanitary Conditions

Unwholesome, impure or unsanitary conditions that may produce disease or are likely to attract or harbor insects, rodents, vermin, snakes or disease carrying pests are hereby declared a public nuisance.

3.2.3 Weeds

Weeds, grass, brush and shrubs taller than twelve (12) inches that are uncultivated are hereby declared a public nuisance.

3.2.4 Abandoned Buildings

Abandoned, dilapidated buildings, improperly secured, that may produce unsanitary and/or unsafe conditions are hereby declared a public nuisance.

3.2.5 Litter

Accumulations of litter are hereby declared a public nuisance.

3.2.6 Discarded/Abandoned Vehicle(s)

A motor vehicle that is no longer usable for the purpose for which it was manufactured and which does not have affixed thereto one of the following: 1) and unexpired license plate or 2) a valid motor vehicle safety inspection certificate or 3) a motor vehicle in ordinary public view which remains mechanically inoperative for a continuous period of forty-five (45) days.

ARTICLE 4

NOTICE TO ABATE PUBLIC NUISANCE

4.1 NOTICE OF VIOLATION

The Code Enforcement Official or city employee designated by the Mayor, shall give written notice to the person in violation of this ordinance to abate a nuisance violation within 15 business days from the date of the notice. If the person notified has begun to abate the nuisance within the 15-day period, the Code Enforcement Official may extend the compliance period for an additional 15 business days.

4.2 METHOD OF NOTICE

4.2.1 The notice must be given:

- a. personally to the owner in writing; or
- b. by letter certified mail, return receipt requested 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
- c. if personal service cannot be obtained:
 1. by publication at least once;
 2. by posting the notice on or near the front door of each building on the property to which the violation relates; or
 3. by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

4.2.2 If a municipality mails a notice to a property owner in accordance with Subsection 4.21(b), 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.

4.2.3 In the case of community property, service upon either the husband or the wife shall be deemed sufficient notice under this section.

4.2.4 If the owner is a corporation, service of notice may be by delivery of such notice to any officer of the corporation, or to the registered agent of the corporation, or if such officer or agent cannot be found after reasonable effort, service may be made by letter addressed to its corporate headquarters.

ARTICLE 5

ACTION BY CITY

5.1 If a person provided a Notice of Violation in Article 4 shall fail to abate the nuisance, the City may:

- a. Issue a citation to the person with notice to appear in municipal court, or

- b. Do the work or make the improvements required, pay for the work done or improvements made, and charge the expenses to the owner of the property.

5.2 If the City shall do work or make improvements under Section 5.1b, the City may assess a lien on the real property as follows:

5.2.1 Invoice To Owner

The Code Compliance Official, or person designated by the Mayor, shall prepare an invoice to certify the expenses incurred in enforcing the provisions of this ordinance and deliver such invoice to the person in violation of this ordinance in person or mailed to the person's address as recorded in the appraisal records of the Appraisal District in which the property is located. The invoice shall demand payment within 30 days.

5.2.2 Expenses

The City may perform the work necessary to abate the nuisance itself and charge a reasonable fee for the labor and equipment necessary to abate the nuisance, or may contract with a third party to perform the service necessary to abate the nuisance. In either event, the invoice sent to the owner shall reflect these expenses incurred by the City. In addition to those expenses, the invoice shall also include related expenses, such as cost of inspection, testing or inspection, photography, publication cost, title search fees, attorney's fees, cost of disposal, and expenses incurred in identifying, locating or contacting the owner.

5.2.3 Recording Lien

If the invoice has not been paid in full within thirty days, the Mayor or person designated by the Mayor, shall record a lien on the real property by filing a statement of expenses with the County Clerk of the county in which the city is located. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches to the real property upon filing.

5.2.4 Interest

Interest on the amount due shall accrue interest at the rate of 10 percent from thirty days after the date of invoice by the City until paid.

5.2.5 Lien Privileged

The city's lien is a privileged lien subordinate only to tax liens and liens for street improvements.

5.2.6 Release of Lien

The lien shall be extinguished and released if the city is reimbursed for the total amount due. However, the city manager or person designate by the city manager, may negotiate a reduction in the amount of the lien due, including interest accrued under Section 5.24, under the following conditions:

- a. The property owner at the time the lien is placed on the property is not entitled to a reduction in the lien amount and must pay the total amount due, including interest, before the lien shall be released by the city.
- b. Any subsequent purchaser of the property must be a bona fide purchaser for value to receive a reduction in the amount of a lien.
- c. Any lien reduction may be paid in installment payments, with or without interest, over a period of 24 months, provided upon any default in payment by the owner, the original amount of the lien, including interest accrued up until the date of owner's default shall become immediately due. The lien is not released until all of the payments are made.
- d. Any reduction in a lien must be accompanied by the owner's written promise to keep the property in such a manner as to not violate any provisions of this ordinance or any other city ordinance regarding the upkeep of real property.
- e. Any reduction in a lien must be approved by the city council, which shall only be given upon a finding that such reduction is a benefit to the public at large.

5.2.7 Foreclosure

The city may authorize its attorney to bring a suit for foreclosure of a lien in the name of the city to recover the expenditures and interest due. Such suit may be filed in any court having jurisdiction over the matter, against any property for which such bill has remained unpaid sixty days after it has been rendered.

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

5.2.9 The remedy provided in Section 5.2 is in addition to the remedy provided in Section 5.1a.

5.3 FILING OF COMPLAINT

The Code Enforcement Official or the person designated by the Mayor, whenever a violation to this ordinance is found, may file a complaint with the municipal court, and the prosecutor of such municipal court shall prosecute the case, and upon conviction for violation of this ordinance, the person shall be fined in accordance with the following:

- a. First offenses shall have a minimum fine of \$100.00 and a maximum of \$2,000.00;
- b. Second offenses cited within twelve months shall have minimum fine of \$200.00 and a maximum fine of \$2,000.00;
- c. Third offenses cited within twelve months shall have a minimum fine of \$500.00 and a maximum fine of \$2,000.00;

Each day's violation of this ordinance shall constitute a separate offense.

ARTICLE 6

PROHIBITED ACTS

6.1 OBSTRUCTION

It shall be unlawful for any person to obstruct or interfere with the implementation of any action required by the order of the Code Enforcement Official.

6.2 DISPOSAL OF LITTER

6.2.1 Disposal of litter

It shall be unlawful to dispose or allow or permit the disposal of litter at a place that is not an approved solid waste site, including a place on or within 300 feet of a public highway, on a right-of-way, or other public or private property. (Refer to Sec. 365.012 H&SC).

6.2.2 Receive Litter

It shall be unlawful to receive litter for disposal at a place that is not an approved solid waste site, regardless of whether the litter or the land on which the litter disposed is owned or controlled by the person. (Refer to Sec. 365.012 H&SC).

6.2.3 Transport Litter

It shall be unlawful for a person to transport litter to a place that is not an approved solid waste site for disposal at the site. (Refer to Sec. 365.012 H&SC).

6.3 PUBLIC NUISANCE

It shall be unlawful for any person to cause, permit or allow a public nuisance as herein defined to exist or remain on any premises in the city.

ARTICLE 7

ENFORCEMENT AND REMEDIES

7.1 CRIMINAL

Certain violations specified in Section 6.2 of this ordinance may be classified as Class C, B or A misdemeanors, or 3rd degree felonies. Consult Chapter 365, Subchapter B, of the Health and Safety Code.

7.2 CIVIL ACTION

The city may direct its attorney to bring a civil action in a court of competent jurisdiction to enforce the provisions of this ordinance.

ARTICLE 8

ADMINISTRATIVE PROVISIONS

8.1 ADMINISTRATIVE LIABILITY

No officer, agent or employee of the city shall be personally liable for any damage that may occur to persons or property as a result of any act required or permitted in the discharge of his duties under this ordinance. Any suit brought against any officer, agent or employee of the city as a result of any act required or permitted in the discharge of these duties under this ordinance shall be defended by the city attorney until the final determination of the proceedings.

8.2 SEVERABILITY CLAUSE

If any section, paragraph, sentence, clause, phrase, or provisions of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

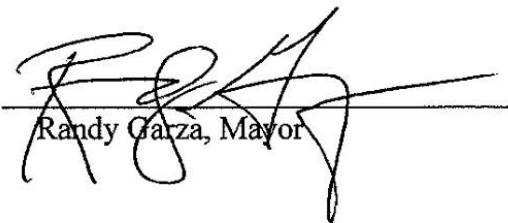
8.3 CONFLICT

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

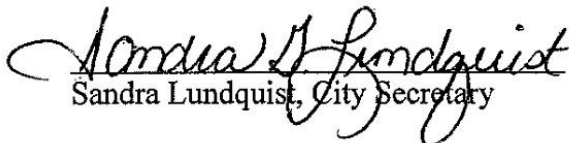
PASSED this 9th day of December 2008.

CITY OF KENEDY

BY:


Randy Garza, Mayor

ATTEST:


Sandra Lundquist, City Secretary