



# Development Services Department

## STAFF REPORT

### Amending of Ch. 16, Article II Weeds, Wild Growth, and Unsanitary Conditions.

**Date:** January 9, 2023

**Hearing Dates:** Planning & Zoning Commission – January 23, 2023  
City Council – February 7, 2023

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#### REQUEST SUMMARY

In review of commonly used City Codes by the Code Enforcement Division, it came to the attention of the Department that this Code has not been updated since 2016. In consultation with the City Attorney, it was decided this Code needed an update. Code standards used by other neighboring cities in the Austin Metropolitan Area have been reviewed and incorporated into these proposed changes.

The changes are as follows:

1. Sec. 16-21 Definitions: Addition of the definitions of “abate”, “building”, “city”, “person”, “premises” to assist in interpretation of the Code. Changes to the definitions of “brush”, “objectionable, unsightly, or unsanitary matter”, “refuse”, “rubbish”, & “weeds” to clarify and strengthen the definition.
2. Sec. 16-22 Unlawful accumulation: Added verbiage for clarification & makes blockage or failure to maintain a drainage easement an offense.
3. Sec. 16-23 Notice of violations: Adds clarifications and changes “building official” to “code enforcement” as enforcement authority, makes City Manager the administrative authority over determinations of compliance on appeal from Code Enforcement versus the Board of Adjustment.
4. Sec. 16-24 Notice: Changes a word to reflect new definition standards of “City”.

**ORDINANCE NO. 2023-02-07-??**

**AN ORDINANCE AMENDING CHAPTER 16, ARTICLE II WEEDS, WILD GROWTH, AND UNSANITARY CONDITIONS; REVISED CODE OF ORDINANCES, CITY OF ELGIN, TEXAS; REPEALING ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR A SAVINGS CLAUSE.**

**WHEREAS**, the City Council of Elgin, Texas (“City Council”) desires to update certain regulations regarding weed, wild growth, and unsanitary condition regulations; and

**WHEREAS**, City staff has determined that the proposed amendments better the applicable Code; and

**WHEREAS**, City staff has posted proper notice and conducted public hearings in accordance with state law; and

**WHEREAS**, City Council finds that the proposed amendments are in the best interests of the City and its residents.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ELGIN, TEXAS:**

**I.**

That Chapter 16, Article II revised Code of Ordinances, City of Elgin, Texas, is hereby amended as shown in Exhibit “A”.

**II.**

A. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

B. The invalidity of any section or provision of this Ordinance shall not invalidate other sections or provisions thereof.

C. The City Council hereby finds and declares that written notice of the date, hour, place, and subject of the meeting at which this Ordinance was adopted was posted and that such meeting was open to the public as required by law at all times during which this Ordinance and the subject matter hereof were discussed, considered and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

**READ, PASSED, and ADOPTED** on first (1<sup>st</sup>) reading this the \_\_\_\_\_ day of \_\_\_\_\_ 2023.

\_\_\_\_\_  
THERESA Y. MCSHAN, Mayor  
City of Elgin, Texas

ATTEST:

\_\_\_\_\_  
JENNIFER STUBBS, City Secretary

## EXHIBIT A

Amendments to Chapter 16, Article II of the Elgin Code of Ordinances are shown in red. Only the text in ~~red strikethrough~~ or red underline shall change.

## **ARTICLE II. WEEDS, WILD GROWTH AND UNSANITARY CONDITIONS<sup>1</sup>**

### **Sec. 16-21. Definitions.**

- (a) The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Abate means to eliminate or remedy by removal, repair, rehabilitation, demolition, remediation, storage, transportation, disposal or other means of waste management.

Brush means scrub vegetation, ~~or~~ dense undergrowth, ~~or~~ piles of such scrub vegetation, dense undergrowth or tree limbs that have been cut.

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

*Carrion* means the dead and putrefying flesh of any animal, fowl or fish.

City means the City of Elgin, Texas.

*Filth* means any matter in a putrescence state.

*Garbage* means all decayable wastes.

*Impure or unwholesome matter* means any putrescible or nonputrescible condition, object or matter which tends, may or could produce injury, death or disease to human beings.

*Junk* means all worn out, worthless, or discarded material, including, but not limited to, old machinery or parts of same, old iron or other metal, glass, cordage or building materials.

*Objectionable, unsightly or unsanitary matter* means any matter, condition or object which could attract rodents, reptiles or insects, and which is or could ~~be objectionable, unsightly or unsanitary~~ cause material distress or discomfort to a person of ordinary sensitivities.

*Owner* means a person having title to or claiming, occupying, or having supervision or control of real property.

Person means any individual, firm, partnership, association, business, corporation, or other entity.

Premises means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property, any easements on the property, and the area from the boundary line of the property to the paved surface of the street or curb line adjacent to the property.

*Refuse* means an ~~heterogeneous~~ accumulation of worn out, used up, broken, rejected, or worthless materials, and includes ~~discarded household appliances~~, garbage, rubbish, paper or litter, and other decayable or nondecayable waste, including but not limited to vegetable matter, animal carcasses, and fish carcasses.

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<sup>1</sup>State law reference(s)—Unsightly, unsanitary conditions, V.T.C.A., Health and Safety Code § 342.001 et seq.

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*Rubbish* means non-decayable waste, including but not limited to, trash, debris, rubble, stone, fragments of building materials or other miscellaneous useless waste or rejected matter from a public or private establishment or residence.

*Weeds* means all rank and uncultivated vegetation growth that because of its height (12 inches or higher) is objectionable, unsightly or unsightly, creates unsanitary conditions, or become a harborage for rodents, vermin or other disease-carrying pests regardless of the height of the weeds, but excluding:

- (1) Shrubs, bushes and trees;
  - (2) Cultivated flowers and cultivated wild flowers;
  - (3) Cultivated crops.
- (b) Any word not defined herein shall be construed in the context used and by ordinary interpretation not as a word of art.

### **Sec. 16-22. Unlawful ~~accumulation~~actions.**

(a) Unlawful accumulations. No person owning, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, within the city limits shall permit or allow any stagnant or unwholesome water, trash, filth, carrion, weeds, rubbish, brush, lumber, building materials, refuse, junk, discarded household items, machinery or garbage, or impure or unwholesome matter of any kind, or objectionable, unsightly matter of whatever nature to accumulate or remain on ~~such real property~~the premises -or within any easement area on such real property or upon any adjacent right-of-way for streets and alleys between the property line of such real property and where the paved surface of the street or alley begins. Such condition or conditions are hereby declared to be public nuisances, pursuant to V.T.C.A., Local Government Code § 217.002.

(b) Actions concerning drainage easements. Fill or block a drainage easement, fail to maintain a drainage easement, maintain a drainage easement in a manner that allows the easement to be clogged with debris, sediment, or vegetation.

### **Sec. 16-23. Notice of violations.**

- (a) In the event that any person fails to comply with the provisions of this article, the city ~~building official~~code enforcement~~or his designee~~, shall give notice to such person setting forth the noncompliance with this article. Such notice shall be in writing and may be served upon such person in any one or more of the following ways:
- (1) Personally delivered to the owner in writing;
  - (2) By letter ~~addressed~~mailed 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
  - (3) If personal service cannot be obtained:
    - a. By publication at least once in a newspaper of general circulation within the City; or
    - b. By posting the notice on or near the front door of each-a 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 there are no buildings on the premises.

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- (4) If the city mails a notice to a property owner in accordance with subsection (2) of this section, 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 served on the date that such notice was mailed.
- (b) If such person fails or refuses to comply with the demand for compliance contained in the notice, within seven days after notice or publication is served; notwithstanding any provisions of this article to the contrary, the ~~building official-City code enforcement officer or his-their~~ designee, ~~or any health officer~~ has authority to issue immediate citations to persons violating any provision of this article in the presence of said official. The ~~building official-City code enforcement officer and the health officer~~, upon showing proper identification, are hereby authorized to enter upon any private property at reasonable times to inspect for violations of this article, and to ensure compliance with same. It shall be unlawful for any person to interfere with the ~~building official-City code enforcement officer or his designee, or a health officer~~ in the exercise of ~~their his~~ duties under this article. If such person fails or refuses to comply with the demand for compliance contained in the notice, within seven days of the date of delivery of such notice or publication, the city may do such work or cause such work to be done to bring the real property into compliance with this article. The costs, charges and expenses incurred in doing or having such work done or improvements made to the real property shall be a charge to and personal liability of such person (called "charges"). The owner of any such ~~real-estate premises~~ may appeal to the ~~board of adjustment, created in chapter 46, article II, division 3, City Manager~~ from the order of the city ~~building official code enforcement officer or their designee~~ by filing a written statement with the city secretary within seven days after receipt of the notice provided for in subsection (a) of this section, stating that such real estate complied with the provisions of this article before the expiration of such seven-day period.
- (c) The ~~board of adjustment-City Manager~~ shall set a date for an administrative hearing, no later than the 20<sup>th</sup> day after the date of the request by the property owner. The purpose of the hearing upon such appeal is to determine whether the real estate complied with the provisions of this article before the expiration of such seven-day period. The authority of the ~~building official-City code enforcement officer or health officer~~ to proceed to cause such work to be done shall be suspended while an appeal from his order is pending, ~~unless an emergency health hazard requiring immediate action is determined to exist by the city manager~~. If it shall be determined by the ~~board of adjustment-City Manager~~ that the premises complied with the provisions of this article before the expiration of such seven-day period, then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done. The owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.
- (d) If a notice, as provided herein, is delivered to the owner of such real property, and he fails or refuses to comply with the demand for compliance within the applicable time period as herein provided, the aforementioned costs, charges and expenses shall be in addition to a charge to and personal liability of the owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the ~~building official code enforcement officer or his-their~~ designee, shall first give such owner written notice requiring compliance.
- (e) If the owner fails or refuses to make complete payment of the charges within 20 days of the delivery of the notice, the ~~building official code enforcement officer or his-their~~ designee, shall file a written statement of such charges with the county clerk in which the real property is located, for filing in the county land records. The statement shall be sufficient if it contains the following:
- (1) The name of the owner;
  - (2) A legal description of the real property;
  - (3) The amount of the charges including interest thereon;
  - (4) A statement that all prerequisites required by this article for the imposition of the charges and the affixing of the lien have been met;

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- (5) Signed by the ~~building official code enforcement officer~~ or ~~his~~-~~their~~ designee, under oath, that the statements made therein are true and correct.

The statement may also contain such other information deemed appropriate by the ~~building official code enforcement officer~~ or ~~his~~-~~their~~ designee.

- (f) All charges shall bear interest at the maximum legal rate per annum from the date the city incurs the expense. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The statement, as provided herein, or certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner or any other person responsible as provided herein, shall be jointly and severally liable for the charges.

#### **Sec. 16-24. Notice.**

In a notice provided under this article, ~~a municipality~~ the City may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, 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 municipality without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the municipality has not been informed in writing by the owner of an ownership change, then the municipality without notice may take any action permitted by section 16-23 and assess its expenses as provided by V.T.C.A., Local Government Code § 342.007.

#### **Sec. 16-25. Penalty for violations.**

A person commits an offense by violating the terms of this article, and upon conviction thereof shall be punished as provided in section 1-15. Each and every day that such violation continues shall constitute a separate offense.

#### **Secs. 16-26—16-53. Reserved.**