

ORDINANCE NO.05012018-02

AN ORDINANCE OF THE CITY OF POTEET, TEXAS (CITY) AMENDING THE POTEET MUNICIPAL CODE OF ORDINANCES REGULATING PUBLIC NUISANCES; REPEALING ALL PRIOR ORDINANCES INCONSISTENT WITH THIS AMENDMENT; PROVIDING FOR A SAVINGS CLAUSE;; DECLARING A PUBLIC PURPOSE, SETTING A PENALTY; AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Poteet has determined a municipal need to clarify, define and set forth acts in the municipal code of ordinances which constitute a public nuisance and are necessary to maintain the health, safety, governance and good order of the City; and

WHEREAS, the City wishes to amend the public nuisance ordinance of its municipal code in order to address a declared public need; and

WHEREAS, after publication in the manner prescribed by law the governing body of the City wishes to amend the Municipal Code of Ordinances of the City in the manner and form set forth below;

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

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Effective immediately following the publication of this ordinance in the local newspaper as required by Section 52.011 of the Texas Local Government Code, the following rules will apply within the corporate city limits the City of Poteet.

Section 1: Amendment

ARTICLE I. NUISANCES
HEALTH AND SANITATION

Section 1.00. Conditions and acts considered to be public nuisances.

The following conditions and acts, among others are hereby declared to be public nuisances:

- (1) Dead, decaying or putrid carcasses, flesh, fish, fowl or vegetables.
- (2) Deposits of manure or other unwholesome substances of any kind or description whatever.
- (3) Filthy or offensive water or slops, when thrown or conducted into or upon any street or alley or any ground or enclosure, so as to be unwholesome or offensive, or liable to become unwholesome or offensive.
- (4) Privies that are unsanitary or create offensive odors.
- (5) Markets, cellars, stores or other buildings or places which are not kept clean and free from filthy or unwholesome substances.
- (6) Deposits or substances that create offensive odors or are liable to engender disease.
- (7) Animal or poultry slaughtering establishments.
- (8) Barrels and receptacles containing water that has become stagnant, offensive or unwholesome.
- (9) Articles and substances which obstruct any street, sidewalk, alley, gutter, drain or public ground, except such as are permitted by ordinances of the city.
- (10) Throwing of glass, tin, queens ware, crockery or other rubbish, into or upon the streets, alleys, public thoroughfares, drains, gutters or commons.
- (11) Unwholesome food or beverage, or adulterated medicines.
- (12) Cattle, horse and hog pens, stables and enclosures in which any cattle, horses or hogs may be kept or confined, which from use have become offensive.

- (13) Nauseous, foul or putrid substances likely to be nauseous, foul, offensive or putrid, discharged, placed, thrown or conducted into or upon any street, alley, public ground or common.
- (14) Throwing, casting or depositing any filthy substance or thing into any public or private well or cistern.
- (15) Gates or doors opening upon any public street or sidewalk, unless such gates or doors are so constructed or hung as to be self-closing.
- (16) Keeping or leaving open of any cellar or trap door or the grating of any vault, in or upon any sidewalk, street, or public thoroughfare.
- (17) Making, keeping, or permitting any uncovered hole or opening in or across any sidewalk, street, or public thoroughfare, unless the same is kept open with proper authority, and is sufficiently guarded or protected to insure the safety of all persons passing by, over or near the same.
- (18) Sweeping or depositing of paper, filth or rubbish of any kind from business houses or from private premises into drains or gutters, or into or upon any sidewalk, street, alley or public thoroughfare, and failing to remove the same.
- (19) Burning of any substances except where allowed by law.

Section 1.01. **Nuisance a misdemeanor.**

Any person who shall cause, create, keep, permit or otherwise be guilty of maintaining a nuisance shall be deemed guilty of a misdemeanor. Upon conviction of any violation hereof, the defendant shall be punished by a fine not to exceed two hundred dollars (\$200.00). Each day shall constitute a separate distinct violation.

Section 1.02. **Administrative Fees.**

For each abatement of nuisance lots that are in violation of this Code, the fee for abatement administration is \$125.00. An additional \$75.00 fee will be charged to cover the administrative costs of filing a lien on the property in the records of the Atascosa County Clerk for non-payment of abatement bills.

Sec. 1.03. **Abatement—Duty of owner, etc., filing complaint.**

- (a) It shall be the duty of the owner or the owner's agent, or the occupant, of any lot, building or place of any kind where any nuisance exists, to remove, abate or destroy the same without delay.
- (b) It shall be the duty of the chief of police, fire inspector, or Code Enforcement if cognizant of any nuisance, either of such official's own knowledge or from creditable information, to make a complaint against the author thereof before the municipal court.

Sec. 1.04. **Same—By order of court; collection of costs.**

In all cases arising under this article, whenever it shall appear to the court trying such case that the nuisance continues at the time of conviction, the court shall order and adjudge the removal, abatement or destruction of such nuisance, as the case may require, and shall issue a separate warrant therefor, and the court shall inquire into the probable costs of such removal, abatement or destruction, and shall tax the cost thereof against the defendant, with the provision that the same be remitted if the defendant obeys the commands of such warrant without delay and without the interference of the chief of police or a police officer. Such costs shall be collected by the chief of police or any police officer in the manner that other costs are collected.

Sec. 1.05. **Same—When no person can be held accountable.**

Whenever any nuisance is found in any place in the city, for the removal, abatement or destruction of which no one can be held liable under the provisions of this article, it shall be the duty of the chief of police to remove, abate or destroy the same, at the expense of the city.

Sec. 1.06. **Emptying waste water into streets.**

It shall be unlawful for any person to lead waste water, soapsuds, slops, septic tank effluent or other liquids from any premises into any of the ditches or streets of the city.

Sec. 1.07. Discarding yard waste onto street.

It shall be unlawful for any person to discard leaves, grass, weeds, or other vegetable matter by blowing or sweeping or otherwise depositing said items into a street or gutter of the city.

ARTICLE II. CONTROL OF WEEDS, BRUSH, JUNK, UNSIGHTLY MATTER AND STAGNANT WATER

Sec. 2.00. Definitions.

(a) As used in this division, the following terms shall have the respective meanings ascribed to them:

Abate: Eliminate by mowing, clearing, grading, filling, removal, repair, rehabilitation or demolition.

Brush: All trees or shrubbery under seven (7) feet in height and less than three (3) inches in diameter which are not maintained, cared for, or cultivated.

Debris: Dirt, concrete, rocks, brick or other building materials not being used for onsite improvements pursuant to a duly issued building permit.

Developed Property: Any property that has been improved by the installation of a building, home or other physical improvement.

Director: Director of Public Works, or an authorized representative of such director.

Disease: Any condition that impairs the normal functioning of an organism or body, including, but not limited to, poisoning or anaphylaxis from stinging insects.

Junk: All worn out, worthless, and discarded material; other metals, glass, paper and cordage; furniture other than that designed for outdoor use; discarded motor vehicle parts; tires; and used and/or inoperable appliances, electrical or plumbing fixtures.

Lot: Land within the property lines and all areas of public right-of-way adjacent to and extending beyond the property line of said lot.

(1) To the curb line of adjacent streets, where a curb line has been established; or

(2) To the edge of pavement, where no curb line has been established; and

(3) To the center of adjacent alleys.

Objectionable, unsightly or unsanitary matter: Animal, vegetable or mineral matter or any composition or residue thereof.

Owner: Any person owning any interest in a lot, or any person leasing, occupying, or having supervision or control of a lot.

Stagnant water: Water which stands upon premises in such a manner, and over such a period of time, that it is likely to become a breeding place for mosquitoes.

Trash: All manner of refuse; including any household and/or yard and other miscellaneous wastes, litter or rejected matter.

Weeds: All rank and uncultivated vegetable growth or matter that:

(1) Has grown to more than twelve (12) inches in height; or

(2) May create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(b) As used in this article, the following shall apply:

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; or

(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. 2.01. Weeds, brush, junk, unsightly matter, stagnant water—Declared nuisance and prohibited.

(a) The existence of brush, debris, junk, objectionable, unsightly or unsanitary matter, stagnant water, trash, weeds, or any condition that may produce disease on property in violation of this division is hereby declared to constitute a public nuisance subject to the abatement procedures prescribed in this article.

(b) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit weeds or grass to grow to a height greater than twelve (12) inches upon said premises, with respect to the following:

- (1) contiguous lots or parcels of land of more than five (5) acres, the provision of Section 2.01(b) shall not be applicable to the area in excess of one hundred twenty (120) feet from any open public street or alley; or any adjacent developed property under different ownership;
- (2) lots and parcels of land five (5) acres or less must be maintained in accordance with this section in its entirety.
- (c) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit weeds, grass or any plant to grow in, upon or across any sidewalk or street adjacent to the lot or property. Cultivated vegetation may be adjacent to the sidewalk when not in violation of other sections of the City Code.
- (d) It shall be unlawful for any owner of any lot or parcel of land or portion thereof to allow any tree, shrub, vine, palm or any similar plant of any description or kind to be grown, maintained or cultivated on private property in such a manner that any portion of such tree, shrub, vine, palm, or other plant may overhang or obtrude upon or over any street in the city, unless there is 14-foot vertical clearance between the surface of all portions of such street and the overhanging tree, limb, shrub, vine, palm or plant.
- (e) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit any junk, brush, trash, debris, stagnant water or any other objectionable, unsightly, or unsanitary matter of whatever nature to accumulate upon any such lot or parcel of land.
- (f) All tires stored within the city must be kept in a structure that prevents their exposure to and collection of the elements of nature.
- (g) It shall be unlawful for any owner of a property to permit the presence of any condition that may produce disease, including, but not limited to, the presence of non-domesticated insects, such as bees nesting in areas other than frame hives, that have a sting capable of causing poisoning or anaphylactic shock in susceptible persons.

Sec. 2.02. Same—Duty to abate.

It shall be the duty of any owner of any lot 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 such brush, weeds, debris, trash, junk, stagnant water, and alleviate conditions that may cause disease, including, but not limited to, non-domesticated bees, 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 section 2.01 hereof.

Sec. 2.03. Notice of property owner to abate and work or improvements by the city.

- (a) The Chief of Police or designee shall notify the owner of a lot in writing of the existence of a violation of section 2.01 upon such lot. Such notice shall require the abatement of such violation within seven (7) days of such notice.
- (b) The Chief of Police or designee shall give the notice of violation:
 - (1) Personally, to the owner in writing;
 - (2) By letter 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
 - (3) If personal service cannot be obtained:
 - a. By publication at least once;
 - 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.
- (c) If the city mails a notice to a property owner in accordance with subsection (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.
- (d) In a notice provided under this section, the city may inform the owner by regular mail and a posting on the 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 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 city has not been informed in writing by the owner of an ownership change, then the city without notice may take any action

permitted by section 2.04 and assess its expenses and administrative fees in accordance with said section.

Sec. 2.04. Same—Abatement by city, assessment of expenses; lien.

- (a) If the owner of the property that does not comply with sections 2.01 or 2.02 fails to remedy the violation within seven (7) days of 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) After the work has been completed and paid for by the city, a statement of expenses incurred by the city to abate such conditions and administrative fees as prescribed in Section 1.02 shall be mailed to the owner of the property. The owner of the property shall pay for work and administrative fees within thirty (30) days of the date of mailing thereof.
- (c) In the event that the amount shown on said statement for the work and administrative fees has not been paid within thirty (30) days of mailing, the city's director of finance or his assigned representative is hereby designated by the mayor as the municipal official to execute and file a statement of expenses with the clerk of the county. The statement shall constitute a lien on the property. This lien statement shall state the name of the owner, if known, and the legal description of the property. The lien shall attach upon the filing of the lien statement with the county clerk. The lien shall accrue interest at a rate of ten (10) percent on the amount due from the date of payment by the city and shall be inferior only to tax liens and liens for street improvements. For any such expenditures, administrative costs, filing fees and interest, the city or its assignee may institute suit and recover and foreclose on the property, and the aforesaid statement or copy thereof shall be prima facie proof of the amount expended in any such work performed by the city.
- (d) In the event the owner of any such property requests in writing that the city do such work as is necessary in order to abate or prevent a violation of this article, then such request will negate the requirement for the above-described notification of violation by the city and the city will have the same remedies as above-stated.

Section. 2.05. Same—Collections and disposition of money under article.

All collections of money from lot owners in payment of charges for statement of violations of this article shall be received by and receipted for by the director of finance or a duly authorized assistant.

Section 2.06. Same—Mosquito prevention.

It shall be unlawful for any person to own, use, keep or maintain, or allow to remain on such person's premises, or premises under such person's control, any cistern or other receptacle for use in catching water, or containing water, or in which water is kept or permitted to remain for more than three (3) days without having the top and all openings to such cistern or other receptacle closed over by a cover of wood or other durable material or by wire or cloth screen, or by wire gauze, not coarser than eighteen (18) mesh to the inch, or the surface of the water covered with kerosene oil. If the wire gauze or cloth screen or cover, as herein provided for, shall be used, the same shall be so constructed and adjusted as to prevent mosquitoes from entering such cistern and other receptacle, or having access to the water contained in same, and from any manner coming in contact with the water so contained in same.

Section 2.07. Additional authority to abate dangerous weeds.

- (a) The city may abate, without notice, weeds that:
 - (1) Have grown higher than 48 inches; and
 - (2) Are an immediate danger to the health, life, or safety of any person.
- (b) Not later than the tenth day after the date the city abates the weeds under this section, the city shall give notice to the property owner in the manner required by section 2.03.
- (c) The notice shall contain:
 - (1) An identification, which is not required to be a legal description, of the property;
 - (2) A description of the violations of the ordinance that occurred on the property;
 - (3) A statement that the municipality abated the weeds; and

- (4) An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.
- (d) The city shall conduct an administrative hearing on the abatement of weeds under this section if, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files with the municipality a written request for a hearing. An administrative hearing conducted under this section shall be conducted not later than the twentieth day after the date a request for a hearing is filed. The City Administrator or the City Administrator's duly authorized agent shall preside over the administrative hearing. At the hearing, the owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.
- (e) The city may assess expenses and create liens under this section as it assesses expenses and creates liens under section 2.04. A lien created under this section is subject to the same conditions as a lien created under section 2.04.
- (f) The authority granted to the city by this section is in addition to the authority granted by section 2.03.

Section 2: Penalty

It shall be unlawful to do or perform any act prohibited in this Ordinance, and it shall be unlawful to fail to do or perform any act required in this Ordinance. Hearings under this Ordinance will be held before a Municipal Court Judge. Upon conviction of any violation hereof, the defendant shall be punished by a fine not to exceed Two Hundred dollars (\$200.00). Each day shall constitute a separate distinct violation.

Section 3: Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsections, sentences, clauses, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void.

Section 4: Repealer

All ordinances in effect when this Ordinance becomes effective which as inconsistent with, or in conflict with this Ordinance are hereby expressly repealed insofar as said ordinances are inconsistent with or are in conflict with this Ordinance.

Section 5: Effective date

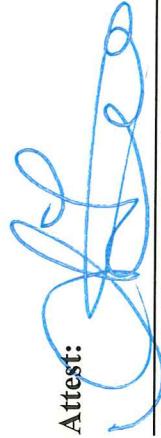
Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the following rules will apply within the corporate city limits of Poteet.

**PRESENTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF POTEET
TEXAS THIS 1ST DAY OF MAY, 2018.**



Albert Trevino, Mayor

Attest:



Abigail Frautschi, City Secretary