

ORDINANCE NO. 2010-06-23-4

AN ORDINANCE
PROVIDING FOR REGULATION OF WEEDS, RUBBISH, CARRION, FILTH AND
CARE OF PREMISES; REPEALING ORDINANCES IN CONFLICT; PROVIDING FOR
SEVERANCE; PROVIDING A PENALTY; AND PROVIDING AN EFFECTIVE DATE
AND FOR PUBLICATION

BE IT ORDAINED BY THE CITY COMMISSION OF THE TOWN OF AUSTWELL:

Section 1. **Permitting weeds, rubbish, carrion, filth to grow or accumulate on property.**

It shall be unlawful for any person who shall own or occupy any property in the town to permit or allow weeds, rubbish, brush, carrion, filth or any other unsightly, objectionable or unsanitary matter to accumulate or grow on such property. Such growth or accumulation is hereby declared to be a public nuisance.

Section 2. **Permitting accumulation of stagnant water on property.**

It shall be unlawful for any person who shall own or occupy any property in the town to permit or allow holes or places on such property where water may accumulate and become stagnant or to permit same to remain. Such accumulation is hereby declared to be a public nuisance.

Section 3. **Permitting accumulation of stagnant water on property.**

It shall be unlawful for any person who shall own or occupy any premises in the town to permit or allow the accumulation of stagnant water thereon or to permit same to remain. Such accumulation is hereby declared to be a public nuisance.

Section 4. **Permitting accumulation of brick, broken concrete, ashes, dirt on property.**

It shall be unlawful for any person who shall own or occupy any property in the City to permit or allow brick, broken concrete, plaster, sand, gravel, or lumber resulting from either residential or commercial construction or demolition, ashes, clinkers, cinders, dirt, automobile frames or other parts, appliances, furniture, manufactured homes, trailers or any other bulky material, including debris from vacant lots, to accumulate on such property. Such accumulation is hereby declared to be a public nuisance.

Section 5. **Permitting accumulation of carrion, filth on property.**

It shall be unlawful for any person who shall own or occupy any house, building, establishment, lot, yard, or property in the town to allow any carrion, filth or other impure or unwholesome matter to accumulate or remain thereat or thereon. Such accumulation is hereby declared to be a public nuisance.

Section 6. Care of premises.

It shall be unlawful for any person who shall own or occupy any building, structure or property to utilize the premises of such property for the open storage of any abandoned ice box, refrigerator, stove, glass, building material, building rubbish, manufactured home, appliance or similar items. It shall be the duty and responsibility of every such owner or occupant to keep the premises of such property clean and to remove from the premises all such abandoned items listed above and including, but not limited to weeds, dead trees, shrubs, trash and/or garbage. Such accumulation is hereby declared to be a public nuisance.

Section 7. Enforcement and notice.

(a) The provision of this Chapter shall be enforced by any regular employee of the City of Austwell that may be designated by the City Commission.

(b) The following procedures are hereby adopted and shall be followed for the removal or correction of any aforementioned public nuisance by the enforcement officer:

1. Whenever an enforcement officer determines there is a violation of this Chapter, the officer shall cause to be mailed, by certified mail, return receipt requested, written notice stating the nature of the public nuisance and that such public nuisance shall be removed or corrected within ten (10) days from the date of receipt of the notice as shown by the requested return receipt. If such notice is returned undelivered then such notice shall be delivered to the property. Such public nuisance shall be removed or corrected within ten (10) days from the date of such delivery. Such notice shall be mailed to the last known owner of the property upon which there has been determined to be a public nuisance.
2. The procedures and provisions of this Chapter are cumulative of the remedies otherwise available for the violation of the ordinances of the City of Austwell and nothing contained herein is intended to prohibit the prosecution of such violations or enforce the ordinances as allowed by law.

Section 8. Work or improvements by City.

(a) If the owner of the property does not comply with this Chapter within ten (10) days of notice as given under this Chapter, the City of Austwell may:

- (1) do the work or make the improvements required; and
- (2) pay for the work or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

- (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 in the official newspaper;

(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.

(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" or "unknown", the validity of the notice is not affected and the notice is considered as delivered.

(d) In a notice provided under this Chapter, 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 City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted under Subsection (a) and assess its expenses as provided herein.

Section 9. Assessment of expenses; lien

(a) The City Commission may assess expenses incurred under this Chapter against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the Mayor or City official designated by the Mayor must file a statement of expenses with the Refugio County Clerk. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the Refugio County Clerk.

(c) The lien obtained by the City Commission is security for the expenditures made and interest accruing at the rate of 10 percent on the amount due from the date of payment by the Town.

(d) The lien is inferior only to: (1) tax liens; and

(2) liens for street improvements.

(e) The City Commission may authorize the City Attorney to bring a suit for foreclosure in the name of the City of Austwell to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City in doing the work or making the improvements.

(g) The City Commission may foreclose a line on property under this Chapter in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Section 10. Additional authority to abate dangerous weeds

(a) The City of Austwell may abate, without notice, weeds that: (1) have grown higher than 12 inches; and

(2) are an immediate danger to the health, life or safety of any person.

(b) Not later than the 10th day after the date the weeds are abated under this section, the City shall give notice to the property owner in the manner required under Section 8.

(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 violation(s) of this Chapter that occurred on the property; (3) a statement that the City 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 Commission shall conduct an administrative hearing on the abatement of 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 Secretary a written request for a hearing.

(e) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of weeds.

(f) The City of Austwell may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 8.

Section 11. **Expenses**

The following fees shall be charged and paid to the City:

1. For the removal or correction of the public nuisance or weeds, the actual expenses incurred in doing such work or having such work done, plus One Hundred Dollars (\$100.00) as an administrative fee.

2. For the cost of each certified letter, the actual cost incurred plus Ten Dollars (\$10.00) for the preparation of the letter.

3. For the cost of filing a lien against such property, the actual cost incurred plus Ten Dollars (\$10.00) for the preparation of the statement of expenses.

4. For the recovery by the City of all expenses incurred, as defined and set forth above, the actual cost of recovery.

Section 12. All Ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 13. **Severance.**

If any sentence, paragraph or section or any part thereof of this Ordinance is held invalid or unenforceable for any reason by a court of competent jurisdiction then the remaining sentences, paragraphs or sections or parts thereof shall remain in full force and effect, it being the intention of the City Commission enact each sentence, paragraph or section or any part thereof without any other portion of this Ordinance.

Section 14. **Penalty and costs.**

A person commits an offense if the person maintains a public nuisance described in this Ordinance. An offense under this section is a misdemeanor punishable by a fine not to exceed \$200 upon conviction. Each day until abatement and/or removal that the violation continues is a separate offense and each separate offense is punishable upon conviction by a fine not to exceed

\$200. In addition, the City Attorney is authorized to pursue the remedies available including seeking a mandatory injunction from a court of competent jurisdiction requiring the abatement and removal of the nuisance. In addition, each nuisance abated or removed shall be at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.

Section 15. This Ordinance shall be effective upon the publication of the caption hereof in the official newspaper of the City of Austwell in accordance with State law.

PASSED and approved this the 14 day of July, 2010.

Mustafa Curtess
Mayor

ATTEST:

Mary Julia Flores
City Secretary