

ORDINANCE NO. 052002-A

AN ORDINANCE TO PROTECT THE PUBLIC HEALTH AND PROMOTE THE PUBLIC WELFARE OF THE CITY OF NIEDERWALD, TEXAS, BY PROVIDING FOR THE FILLING UP AND DRAINAGE OF LOTS OR OTHER PARCELS OF REAL PROPERTY THAT SHALL HAVE UNWHOLESOME PLACE OR PLACES WHERE STAGNANT WATER MAY ACCUMULATE THEREON; THE CLEANING OF ANY BUILDING OR PREMISES OF FILTH, CARRION OR OTHER IMPURE AND UNWHOLESOME MATTER; REQUIRING OWNERS OR OCCUPANTS OF LOTS OR OTHER PARCELS OR OTHER PARCELS OF REAL PROPERTY FREE FROM WEEDS, RUBBISH, BRUSH, AND OTHER SIGHTLY OR UNSANITARY MATTER; PROVIDING FOR NOTICE TO BE GIVEN TO OWNER AND IN CASE OF FAILURE OF OWNER TO MAKE LOTS OR OTHER PARCELS OF REAL PROPERTY AND/OR PREMISES SANITARY AND SIGHTLY THAT THE SAME AMY BE DONE AT THE EXPENSE OF THE CITY OF NIEDERWALD; PROVIDING FOR THE FIXING OF A LIEN AGAINST SUCH LOTS OR OTHER PARCELS OF REAL PROPERTY FOR SUCH IMPROVEMENT.

WHEREAS, it is deemed by the City Council of the City of Niederwald, Texas, that is dangerous to the public health for lots or other parcels of real property in the City of Niederwald to have places thereon where stagnant water may accumulate and for filth, carrion or other impure and unwholesome matter to accumulate on lots or other parcels of real property in said city and that it is dangerous to public health and constitutes a fire hazard to have weeds, brush, rubbish, and other unsightly and unsanitary matter on lots or other parcels of real property in the City of Niederwald: and

WHEREAS, it is expressly provided by the provisions of Article 4436, Revised Civil Statutes of Texas, that cities shall have the power to correct the evils hereinbefore recited.

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

Section 1. General prohibition.

Whatever is dangerous to human life or health, or whatever renders the ground, the water, the air, or food a hazard or injury to human life or health or that is offensive to the senses or that is or threatens to become detrimental to the public health, is hereby declared to be a nuisance, and as such, liable to be abated, and the person guilty of causing, permitting, or suffering a nuisance to exist upon any premises or upon any building occupied or controlled by him or in any street, alley, sidewalk, or gutter immediately adjacent to such premises shall, upon conviction, be punished as provided in section 9.

Section 2. Specific enumeration.

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; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

1. **Weeds or grass.** Weeds and/or grass, or other uncultivated plants on any premises, which grow in such profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grass, or other uncultivated plants on any premises, which are permitted to, or do, attain a greater height than twelve (12) inches.
2. **Rubbish.** The keeping of any garbage, trash, debris, cultivated brush, rubbish, waste, wood and metal scrap, inoperative or abandoned appliances and furniture.
3. **Dilapidated structures and fences.** Any unsightly, partially destroyed, dilapidated, or unfinished building or structure, discarded building materials, or dilapidated fences.
4. **Offensive odors.** Any noxious, unpleasant, or strong odor or stench, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stench.
5. **Animal carcasses.** The carcasses of animals or fowl not disposed of within a reasonable time after death.
6. **Pollution of water.** The pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
7. **Stagnant water.** Any accumulation of unwholesome, impure, stagnated or offensive water permitted or maintained, as well as the conditions or other causes that give rise or permit such accumulation.
8. **Other impure matter.** Any accumulation of carrion, filth or other impure or unwholesome matter.
9. **Abandoned wells and sewers.** Any abandoned well, sewer, or excavation not properly protected.

Section 3. Abatement—Duty generally.

(a) **Owner or occupant shall abate nuisance.** It shall be the duty of the owner or his agent or the occupant of any lot, building, or place in this City where any nuisance may exist, to remove, abate, or destroy the same without delay. On any refusal by any owner or occupant of any lot, building, or place of any kind in this City where a nuisance

exists in the judgment of the Mayor or the Mayor's designee to remove or abate same, the Mayor or the Mayor's designee shall abate the nuisance as provided for in this ordinance.

(b) *Nuisances where no known person responsible.* Whenever any nuisance is found in any place in this City for the removal, abatement, or destruction of which no person can be held liable under the provisions hereof, the Mayor or the Mayor's designee may remove, abate, or destroy same.

Section 4. Same—Weeds and grass.

(a) It shall be unlawful and a violation of this ordinance for any person, firm, corporation, partnership, association of persons, owner, agent, occupant or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City, to suffer or permit grass, weeds or brush that is uncultivated to grow to a greater height than twelve (12) inches on any lot, tract or parcel of land within the corporate limits of the City.

(b) Exempted from the weed provisions of this section are the following:

- (1) Actively utilized crop production and/or grazing areas; and
- (2) Heavily wooded areas filled with uncultivated underbrush.

Section 5. Same—Notice to property owners.

(a) When any violation of this ordinance is found to exist in the judgment of the Mayor or the Mayor's designee, such individual shall serve the owner or occupant or any other person responsible for creating the violation with a citation alleging the specific criminal violations occurring and informing the owner of the owner's rights to contest the matter in Niederwald Municipal Court, together with a notice of abatement of the violation.

(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, by certified mail, return receipt requested; or
- (3) If personal service cannot be obtained or the owner's address is unknown:
 - 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) The notice shall inform the owner:

- (1) Of each violation causing the nuisance occurring on the property;
 - (2) That failure of the owner to abate, or cause abatement of, the violation within ten (10) calendar days of receipt of said notice as provided in subsection 5(b):
 - a. Shall subject the owner to further criminal penalties as set forth in this ordinance and
 - b. May result in the City abating the nuisance, assessing the costs against the owner and filing a lien on the property; and
 - (3) 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, and the City has not been previously informed, in writing, by the owner of an ownership change, the City, without further notice, may correct the violation at the owner's expense and assess the expense against the property; and
 - (4) An explanation of the property owner's right to request an administrative hearing before the City Council about the City's abatement of the nuisance.
- (d) The City shall conduct an administrative hearing on the abatement of nuisance under this ordinance if, not later than the fifth calendar day after the date of the notice of the nuisance, the property owner files with the Mayor a written request for a hearing. The fact that a hearing has been requested shall not affect the City's right to abate weeds and grass nuisances prior to such hearing.
- (e) An administrative hearing conducted under this section shall be conducted not later than the twentieth 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 the nuisance.

Section 6. Correction or removal of nuisance by City.

- (a) If the owner of property, notified as provided in section 5, does not comply with the City's requirements set forth in the notice within ten (10) calendar days after the date of notification, 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.

Section 7. Assessment of expenses; lien.

- (a) To obtain a lien against the property, the Mayor or city official designated by the Mayor shall file a statement of expenses, including administrative expenses, with the 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 county clerk.
- (b) The lien obtained by the City is security for the expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the City.
- (c) The lien is inferior only to:
 - (1) Tax liens; and
 - (2) Liens for street improvements.
- (d) The City Council may authorize the City Attorney to bring a suit for foreclosure in the name of the City to recover the expenditures and interest due.
- (e) 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.
- (f) The remedy provided by this section is in addition to the remedy provided by section 9.
- (g) The City Council may authorize the City Attorney to foreclose a lien on property under this ordinance in a proceeding relating to the property brought under Subchapter E, Chapter 33, Tax Code.

Section 8. Additional authority of City to abate dangerous weeds.

- (a) The City may abate, without notice, weeds that:

- (1) Have grown higher than forty-eight (48) inches; and
 - (2) Are an immediate danger to the health, life, or safety of any person.
- (b) Not later than the tenth calendar day after the date the City abates weeds under this section, the City shall give notice to the property owner in the manner required by section 5.
- (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 of the ordinance 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 before the City Council 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 calendar day after the date of the abatement of the weeds, the property owner files with the Mayor a written request for a hearing.
- (e) An administrative hearing conducted under this section shall be conducted not later than the twentieth 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 the weeds.
- (f) The City may assess expenses and create liens under this section as it assesses expenses and creates liens under section 7. A lien created under this section is subject to the same conditions as a lien created under section 7.
- (g) The authority granted by this section is in addition to the authority granted by section 6.

Section 9. Penalty.

Any person violating any provision of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined any sum not to exceed two thousand dollars (\$2,000.00) for each violation. Each day a violation continues shall be considered a separate offense.

Section 10. Abatement of nuisances.

Notwithstanding any penal provision herein, the City Attorney is authorized to file suit on behalf of the City for such injunctive relief as may be necessary to abate such nuisance whenever any nuisance as herein defined is found in any place within the City.

PASSED AND APPROVED this the 20th day of May, 2002.

EFFECTIVE DATE: May 23, 2002


Honorable Rickie R. Adkins, Mayor

ATTEST:


City Secretary

