

ORDINANCE AMENDING THE CITY CODE OF ORDINANCES RELATING TO SECTIONS OF CHAPTER 38, ARTICLE 1; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAY CITY, TEXAS that the following amendment(s) is/are adopted as Amendment(s) to Chapter 38, Article 1, in its Code of Ordinances.

Section 1. The amendments in the attached Exhibit "A" are to be made to Section(s) of the Code of Ordinances. All insertions are made with underlined letters and all deletions are shown as such.

Section 2: Other than as amended herein, all remaining sections of Chapter 38, Article 1, remain in full force and effect. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PASSED AND APPROVED on this _____ day of _____, 2022.

Robert Nelson, Mayor
City of Bay City, Texas

ATTEST:

APPROVED AS TO FORM:

Jeanna Thompson, City Secretary
City of Bay City Texas

Anne Marie Odefey, City Attorney

PART II - CODE OF ORDINANCES
Chapter 38 - ENVIRONMENT
ARTICLE I. IN GENERAL

Chapter 38 ENVIRONMENT

ARTICLE I. - IN GENERAL

Sec. ~~38~~-38.01. - Definitions:

Brush means scrub vegetation; and covered with scrub vegetation; or a dense growth and undergrowth.

Easement means a grant by the property owner to the city, a corporation, or persons of the use of a strip of land for specific purposes.

Gutter The construction adjoining the curb and forming a part of the street surface used by vehicles and whose primary function is to provide surface drainage along the street.

Hazardous Vegetation Dead and dying trees, tree limbs or other natural growth which, by reason of rotting, deterioration, physical damage, or storm damage constitutes a hazard to persons or structures within the vicinity thereof.

Noxious weeds mean a weed which is considered to be harmful to the environment or animals, especially one which may be the subject of regulations governing attempts to control it.

Objectionable, unsightly, or unsanitary vegetation or matter means any matter, condition, or object which is or should be objectionable unsightly, or unsanitary to a person of ordinary sensitivities.

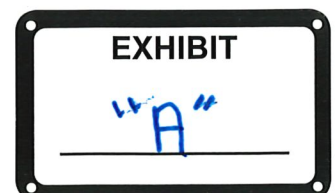
Protected tree means a hardwood tree having a minimum caliper size of 8 inches or greater, as measured five (5) feet above ground level. Hardwood trees include elms, oaks, maples, pecan, and sycamore, as well as any trees listed in Chapter 62 Natural Resources, Sec. 62-19(b)(9); as well as identified as hardwoods by the Texas A&M Forest Service.

Right-of-way means a strip of public land, however designated, dedicated or acquired, in which a street, avenue, boulevard, alley or thoroughfare has been, or may be, constructed.

Shrub means a woody plant which is smaller than a tree and has several main stems arising at or near the ground.

Tree shall mean any self-supporting woody plant together with its root system, growing upon the earth usually with one trunk, or a multi-stemmed trunk system, supporting a definitely formed crown.

Uncultivated plants mean of a plant: growing spontaneously and freely in nature without human intervention uncultivated.



Weed means an introduced plant growing in the ground that is or has been in cultivation usually to the detriment of the crop or to the disfigurement of the place; an economically useless plant; a plant of unsightly appearance; one (1-) of wild or rank growth; a tree or shrub of low economic value that tends to grow freely and by its presence to exclude or retard more valuable plants; wild growth usually in the nature of rank grass or undergrowth.

Sec. 38-1. Civil enforcement of health and safety ordinances.

(a) — The city may bring a civil action for the enforcement of any ordinance relating to the following:

(1) — The preservation of public safety, relating to the materials or methods used to construct a building or other structure or improvement, including the foundation, structural elements, electrical wiring or apparatus, plumbing and fixtures, entrances, or exits;

(2) — The preservation of public health or to the fire safety of a building or other structure or improvement, including provisions relating to materials, types of construction or design, interior configuration, illumination, warning devices, sprinklers or other fire suppression devices, availability of water supply for extinguishing fires, or location, design, or width of entrances or exits;

(3) — The use of land or classification of a parcel of land according to the municipality's district classification scheme;

(4) — Establishing criteria for land subdivision or construction of buildings, including provisions relating to street width and design, lot size, building width or elevation, setback requirements, or utility service specifications or requirements;

(5) — Dangerously damaged or deteriorated structures or improvements;

(6) — Conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; or

(7) — The interior configuration, design, illumination, or visibility of a business premises exhibiting for viewing by customers while on the premises live or mechanically or electronically displayed entertainment intended to provide sexual stimulation or sexual gratification.

(b) — Jurisdiction and venue of an action allowed under subsection (a) of this section shall be in the district court, county court, or the municipal court of the city, if it is a court of record.

(c) — On a showing of substantial danger of injury or an adverse health impact to any person or to the property of any person other than the defendant, the city may obtain against the owner or owner's representative with control over the premises an injunction that:

(1) — Prohibits specific conduct that violates the ordinance.

(2) — Requires specific conduct that is necessary for compliance with the ordinance.

(3) — It is not necessary for the city to prove that another adequate remedy or penalty for a violation does not exist or to show that prosecution in a criminal action has occurred or has been attempted.

(d) — In a suit against the owner or the owner's representative with control over the premises, the city may recover a civil penalty if it proves that:

(1) ~~_____~~ The defendant was ~~actually~~ notified of the provisions of the ordinance.

(2) ~~_____~~ After the defendant received notice of the provisions of the ordinance, the defendant committed acts in violation the ordinance or failed to take action necessary for compliance with the ordinance.

(3) ~~_____~~ A civil penalty under this article may not exceed \$1,000.00 a day for violation the ordinance

(e) ~~_____~~ The city may bring an action to compel the repair or demolition of a structure or obtain approval to remove the structure and recover removal costs.

(f) ~~_____~~ In an action under this section, the city may also bring a claim for civil penalties under V.T.C.A., Local ~~_____~~ Government Code § 54.017.

(g) ~~_____~~ The city may file a notice of lis pendens in the office of the county clerk. If the city files the notice, a subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and subsequent orders of the court.

(Code 1985, § 18-20; Code 2000, § 38-1)

State law reference(s)—Administrative application, V.T.C.A., Local Government Code §§ 54.012 et seq., 54.031 et seq.

Secs. 38-2—38-35.- Reserved.

ARTICLE II.- OFFENSIVE CONDITIONS[‡]

Sec. 38-36.- Prohibited.

- (a) It shall be unlawful for the owner of any lot or other premises in the city to allow or permit holes or places where water may accumulate and become stagnant to be or to remain on such lot or premises or to allow or permit the accumulation of stagnant water thereon, or to permit the same to remain thereon.
- (b) It shall be unlawful for the owner of any lot, building, house, establishment, or other premises in the city to allow or permit any carrion, filth or any other impure or unwholesome matter of any kind to accumulate or remain thereon. Such an act is hereby declared to constitute a public nuisance.

[‡]State law reference(s)—Authority to prohibit offensive conditions, V.T.C.A., Health and Safety Code § 342.001 et seq.; covering well or cistern, V.T.C.A., Health and Safety Code §§ 756.001, 756.002.

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- (c) It shall be unlawful for any person to dispose of waste oil or other refined natural petroleum products at any location within the city other than a legal disposal site. Any such prohibited disposal is declared to constitute a public nuisance.
- (d) It shall be unlawful for any owner, occupant, or person in charge of any premises within the city to allow weeds, grass or uncultivated plants to grow upon such premises or to allow trash or rubbish to accumulate upon such premises to such an extent that it is reasonably calculated to create a fire hazard or to such an extent that the accumulation is deemed injurious to the health and welfare of the citizens of the city. Any such act is hereby declared to constitute a public nuisance.

(1) It shall be the duty of such person to keep the area from the line of his property to the back of the curb line next adjacent to it, if there is a curb line, and if not, then to the centerline of the adjacent unpaved street or alley, or to the edge of the pavement of a paved but uncurbed street or alley, free and clear of the matter referred to above.

- (e) It shall be unlawful for any owner, occupant, or person in charge of any premises to permit weeds, grass, or uncultivated plants to grow upon such premises to a height greater than 12 inches on an average ~~or to grow in rank profusion thereon~~. Any premises upon which any weeds, grass or uncultivated plants grow above such height or in rank profusion shall be deemed a public nuisance.

~~(f)(1)~~ It shall be the duty of such person to keep the area from the line of his property to the back of the curb line next adjacent to it, if there is a curb line, and if not, then to the centerline of the adjacent unpaved street or alley, or to the edge of the pavement of a paved but uncurbed street or alley, free and clear of the matter referred to above.

(2) It shall be the duty of any owner, occupant, or person in charge of any premises to remove or cause to be removed all weeds, grass, or uncultivated plants as often as may be necessary to comply with ~~subsection (e) of this section~~. Failure to comply with this subsection is hereby declared to constitute a public nuisance.

- ~~(f)~~ It shall be unlawful for a person to throw, deposit or sweep any materials such as grass, weeds, leaves or tree trimmings into, upon or along any drain, gutter, ditch, alley, sidewalk, street, parkway, right-of-way, or vacant lot, or upon any public or private premises within the corporate limits of the city. Such an act is hereby declared to constitute a public nuisance.
- ~~(f)~~ It shall be unlawful for the owner, lessee or tenant of any premises abutting any sidewalk, curb, or gutter in the city to permit such sidewalk, curb, or gutter to be covered with sand, leaves, or dirt or to become unclean, or to permit grass or weeds to grow on or extend over such sidewalk, curb, or gutter.
- ~~(g)~~ Trees and shrubs shall not be planted or placed on rights-of-way or city parkways without the approval of the Director of Public Works. Plantings within utility or public easements owned by the City may be planted with prior written permission of the Director of Public Works, subject to the city's right to remove the plantings if entrance to the easement is needed.

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- (h) Maintenance of Sight Lines. A person may not construct, replace, or maintain, or permit another person to construct, replace, or maintain, any improvements, structures, or vegetation on property located at or near an intersection in such a manner as to obscure an operator's view over, under, around, or through the improvement, structures, or vegetation of potential conflict with vehicles or pedestrians.
- (i) Duty of property owner to maintain trees, bushes, or vegetation, in safe condition. Every person owning, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied within the city limits who owns any trees, bushes, shrubs or other vegetation shall take any and all action necessary to ensure that said trees, bushes, shrubs and other vegetation do not grow unattended so as to create a hazardous visual obstruction to the free flow of traffic, or in any way threaten the health, safety and welfare of anyone utilizing said streets, or in any way threaten the health, safety, and welfare of citizens of the city. Property owners shall:
- (1) Trim or remove vegetation blocking signal lights, pedestrian signs, and all signage.
 - (2) Remove trees, plants, and other vegetation within three (3) feet from all fire hydrants.
 - (3) Maintain vegetation within ten (10) feet from a corner curb at a maximum height of two (2) feet.
 - (4) Remove, maintain, and not permit any vegetation to grow over or place anything on top of or otherwise obscure manholes from view
 - (5) Not place, maintain, or permit a tree or plant to overgrow or obstruct a sidewalk to prevent public use of the area.
 - (6) Maintain grass and weeds throughout property and to the edge of the street or alley in accordance with the height established in [Chapter 38 of the Municipal Code of Ordinances](#) [this Article](#).
 - (7) Trim trees within the right-of-way or easement abutting the property so that such trees hang no lower than fourteen (14) feet over any street, right-of-way, or easement and no lower than (9) feet over any sidewalk within the city.
 - (8) Not allow or permit any diseased tree to remain on a lot or parcel of land. For purposes of this chapter, a diseased tree means a tree or plant infected by a lethal disease communicable to another tree or plant as determined by a certified arborist.
 - (9) Not allow or permit any hazardous vegetation to remain on a lot or parcel of land.
- (j) It is a defense to prosecution for violations of subsections (h) and (i) hereof that the tree which otherwise violates subsections (h) or (i) hereof is Protected Tree or that the weeds, grasses, trees, or vegetation observed on the subject property do not reduce or impair visibility or line of sight at, of, or for right-of-way, vehicles, cyclists, or pedestrians, and the over-height weeds or grasses observed were located at or on one or more of the following:

(1) An area within an improved ditch with sides sloping greater than one foot of rise for each two feet of run as measured from the centerline of the ditch to the high bank, or adjacent to a stream, waterway, or water quality facility.

(2) A landscaped area arranged and managed consistent with a plan accepted by the city which the area includes native or adapted vegetation, where weed control and other periodic maintenance occurs; or

(3) City parkland, a greenbelt, nature preserve, or other publicly maintained open space.

(Code 1985, § 18-16; Code 2000, § 38-36)

State law reference(s)—Offensive and unsightly conditions prohibited, V.T.C.A., Health and Safety Code §§ 342.001—342.004.

Sec. 38-37.- Notice to owner to remedy or remove.

- (a) Whenever any condition described in this article is found to exist on any premises within the city, the owner of such premises shall be notified by the city, to correct, remedy or remove the condition within seven days after such notice and it shall be unlawful for any person to fail to comply with such notice.
- (b) The notice provided for in subsection (a) of this section 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;
 - 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.
- (c) If a municipality mails a notice to a property owner in accordance with subsection (b) 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 delivered.
- (d) The city, in the notice of a violation, 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 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 38-38 and assess its expenses as provided by section 38-38.

(Code 1985, § 18-17; Code 2000, § 38-37)

State law reference(s)—Similar provisions, V.T.C.A., Health and Safety Code § 342.006.

Sec. 38-38. ~~Correction or removal by city.~~

- (a) In the event the owner of any lot or premises upon which a condition described in this article exists fails to correct, remedy or remove such condition within seven days after notice to do so is given in accord with this article, the city may do such work or make such improvements as are necessary to correct, remedy or remove such condition, or cause the same to be done, and pay therefor and charge the expenses incurred thereby to the owner of such property. Such expenses shall be assessed against the real estate upon which the work was done, or the improvements made. The doing of such work by the city shall not relieve such person from prosecution for failure to comply with such notice in violation of section 38-37.
- (b) To obtain a lien against the property, the mayor, city health authority, or city official designated by the mayor must file a statement of 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.
- (c) The lien obtained by the city is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the city.
- (d) The lien is inferior only to:
 - (1) ~~—~~ Tax liens; and
 - (2) ~~—~~ Liens for street improvements.
- (e) The city council may bring a suit for foreclosure in the name of the city 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 remedy provided by this section is in addition to the remedy provided by V.T.C.A., Health and Safety Code § 342.005.

(h) The city council may foreclose a lien on property under this article in a proceeding relating to the property brought under V.T.C.A., Tax Code § 33.001 et seq.

(i) ~~Such~~ lien shall bear interest at the rate of ten percent per annum from the date the lien statement was filed. For any such expenditure and expense, suit may be instituted, and recovery and foreclosure of the lien may be had in the name of the city and the statement of expenses made in accordance with subsection (a) of this section or a certified copy thereof shall be prima facie proof of the amount expended for such work or improvement.

(Code 1985, § 18-18; Code 2000, § 38-38)

State law reference(s)—Similar provisions, V.T.C.A., Health and Safety Code § 342.007.

Sec. 38-39. ~~Misdemeanor conviction and fine.~~

A complaint may be filed in the municipal court for violation of maintaining a public nuisance. If a person is found guilty of maintaining a public nuisance, he shall be guilty of a misdemeanor. The court shall order a fine to be paid by the defendant. If the violation endangers public health or fire safety, the maximum fine shall be as provided in section 1-16.

(Code 1985, § 18-19; Code 2000, § 38-39)

~~Secs. 38-40—38-70. Reserved.~~