

**Ordinance No. 2009-3
City of Eden
County of Concho
State of Texas
October 6, 2009**

**ORDINANCE NO. 2009-3
City of Eden
Health and Sanitation Ordinance**

AN ORDINANCE OF THE CITY OF EDEN, TEXAS, PROMOTING PUBLIC HEALTH AND SANITATION THROUGH THE REGULATION OF PRIVATE SEWAGE TREATMENT FACILITIES, STAGNANT FILTH, CARRION, WEEDS, DANGEROUS WEEDS AND OTHER UNHEALTHY, UNSANITARY AND UNWHOLESOME CONDITIONS IN THE CITY, PROVIDING FOR: FINDINGS OF FACT; A POPULAR NAME; PURPOSE; DEFINITIONS; SANITATION REQUIREMENTS; SANITATION RESTRICTIONS; INVESTIGATION AND NOTICE OF VIOLATIONS; DANGEROUS WEED ABATEMENT; ENFORCEMENT INCLUDING MAXIMUM FINE OF \$2,000 AND MAXIMUM CIVIL PENALTY OF \$1,000 PER OFFENSE; INJUNCTIVE RELIEF AND OTHER AVAILABLE REMEDIES; CONFLICTING PROVISIONS; SEVERABILITY; SAVINGS CLAUSE; EFFECTIVE DATE AND PROPER NOTICE AND MEETING.

WHEREAS, the City Council of the City of Eden ("City Council") seeks to promote the health, safety and general welfare of the citizens of the City of Eden ("City") by preventing death, injury, property damage and urban blight within the City limits; and

WHEREAS, the City Council finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects, will result in the production of disease, and decrease the aesthetics of the City; and

WHEREAS, the City Council finds that the inadequate construction and maintenance of private sewage treatment facilities (septic systems) will result in increased sanitation problems, will increase disease, and will increase the improper treatment of disposal of sewage and other waste matter; and

WHEREAS, refuse, garbage, tall grass, weeds, trash, litter, accumulation of rocks and fill become a haven for rodents, reptiles and skunks, increase illegal dumping and littering, increase fire hazards and increase crime by limiting visibility and access; and

WHEREAS, pursuant to section 51.001, Texas Local Government Code, the City Council is authorized to adopt an ordinance that is for the good government, peace or order of the City and is necessary for carrying out a power granted by law to

the City; and

WHEREAS, pursuant to section 51.012, Texas Local Government Code, the City may adopt an ordinance, not inconsistent with state law, that is necessary for the government, interest, welfare or good order of the City as a body politic; and

WHEREAS, pursuant to Local Government Code Chapter 217, the City has authority to define and abate nuisances and impose fines against those responsible for creating or maintaining a nuisance; and

WHEREAS, pursuant to Texas Health and Safety Code, including but not necessarily limited to Chapter 342, the City is authorized to regulate public health and sanitation within the City; and

WHEREAS, pursuant to section 54.012, the City may bring a civil action for, among other things, an ordinance relating to conditions caused by accumulations of refuse, vegetation, or other matter that creates breeding and living places for insects and rodents; and

WHEREAS, the Council adopts the amendments contained herein, for the purpose of promoting the health, safety and general welfare of the community in order, among other things, to enable each resident to enjoy a safe and agreeable environment and protect the rural residential quality of the neighborhoods;

NOW THEREFORE, be it ordained by the City Council of the City of Eden, County of Concho, State of Texas that:

SECTION 1.0 FINDINGS OF FACT

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Eden and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2.0 POPULAR NAME

This Ordinance shall be commonly referred to as the City's "Health and Sanitation Ordinance."

SECTION 3.0 PURPOSE

This Ordinance is adopted so the City Council may promote the public health, safety and general welfare within the City through the regulation of private sewage treatment facilities, stagnant filth, carrion, weeds, dangerous weeds and other unhealthy, unsanitary and unwholesome conditions in the City. By prohibiting the creation and maintenance of such nuisances, the City Council seeks to protect property values and prevent bodily injury, death, and property damage within the City.

SECTION 4.0 DEFINITIONS

For the purpose of this Ordinance, the following terms, phrases and words shall have the meaning given in this Section. The words shall and will are always mandatory

- 4.1 Animal-Proof Container: a container with a secured lid constructed of material sufficiently strong to prevent domestic pets or other animals from tearing, opening or breaking.
- 4.2 Agricultural/Livestock Vegetation: any improved grass or grain grown for the purpose of feeding livestock or other agricultural use. This includes, but is not limited to, grass such as bermuda and coastal varieties.
- 4.3 Building: any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind.
- 4.4 City: the City of Eden, Texas.
- 4.5 City Council: the governing body of the City of Eden, Texas.
- 4.6 Code Officer: the person or persons officially designated by the City to assist the City Council in implementing and enforcing this Ordinance. Such person may be a volunteer, member of the City Council, an employee of the City, a person contracted by the City or a person otherwise designated to serve in this capacity, and such assistance shall include, but is not limited to, investigating alleged violations of this Ordinance.
- 4.7 Dangerous Vegetation: tall grass, leaves, stems, plants or some other natural material, living or dead, that, creates little to no visibility for drivers, is unsightly or poses an immediate danger to the health, life or safety to any person or property.
- 4.8 Decorative/ornamental Vegetation: any plant, bush, shrub, grass, or other type of vegetation, not defined as dangerous vegetation, which serves the function of providing aesthetic qualities to a landscaped area.
- 4.9 Fire safety buffer Zone: a green strip consisting of shrubs, plants or other type of vegetation that are low-lying, moist and drought resistant placed for the purpose of resisting fire ignition; may also include paved roadways, golf cart paths, maintenance roads and similar areas of non-combustible material.
- 4.10 Junk: worn out, worthless and discarded material, including odds and ends, old iron or other metal, glass, paper, bottle or cans.
- 4.11 Litter: refuse, rubbish, garbage, trash, objectionable, unsightly or unsanitary matter.
- 4.12 Long Term: in excess of time normally required to complete intended

construction or utilization. In the absence of intended construction or utilization, a period in excess of ninety (90) days.

- 4.13 Matter: that of which any physical object is composed.
- 4.14 Nuisance: filth, carrion, stagnant water, rubbish, impure or unwholesome matter of any kind, unsightly or unsanitary matter of whatever nature.
- 4.15 Objectionable, unsightly or unsanitary matter: any matter, condition or object which is or should be objectionable, unsightly or unsanitary to a person of ordinary sensitivities.
- 4.16 Open Storage: storing, accumulating, keeping or displaying any unsightly item(s) or material(s) that is open to the public view, regardless of sheltering or covering, on public or private property for more than twenty four (24) hours. This includes, but is not limited to junk, litter, objectionable, unsightly or unsanitary matter, refuse, or rubbish.
- 4.17 Person: an individual, corporation, organization, government agency, business, trust, partnership, association, or any other legal entity.
- 4.18 Private sewage treatment facility: include, but are not limited to, sewers, privies, septic tanks and on-site sewage facilities.
- 4.19 Privy: a facility for the disposal of human excreta.
- 4.20 Refuse: accumulation of worn out, used, broken, rejected or worthless materials.
- 4.21 Rubbish: trash, garbage, debris, rubble, rocks, wrappings, unused fragments of building materials, tree trimmings, brush and other miscellaneous waste or rejected matter.
- 4.22 Septic tank: a covered water-tight tank designed for sewage treatment.

SECTION 5.0 SANITATION REQUIREMENTS

- 5.1 A person who is an owner, tenant, resident, occupant or has supervision or control over any lot, tract, or parcel of land, or a portion thereof, occupied or unoccupied, or is the owner, tenant, resident, occupant or has supervision or control over a building, establishment or structure, occupied or unoccupied, within the municipal boundaries of the City must:
 - a. Fill, drain or regulate any hole or place which contains stagnant water, an unwholesome condition, or any other condition that may produce disease;
 - b. Keep the same free of filth, carrion, refuse, rubbish or other impure or unwholesome matter; and

- c. Build, make, fill, alter, repair, clean, disinfect, maintain and regulate on-site sewage facilities, sewers, private sewage systems, and privies in accordance with the laws, regulations and requirements of Concho County, Texas, and the State of Texas.

SECTION 6.0 SANITATION RESTRICTIONS

- 6.1 It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property within the municipal boundaries of the City to permit the following:
 - a. Long-term storage of construction material, fill material, excavated material, building supplies and construction equipment.
 - b. An accumulation or piling of rocks or debris in an unnatural and/or unsightly manner, unrelated to landscaping or beautification of residential and commercial buildings or development.
 - c. Open storage or accumulation of junk, inoperable appliances, broken furniture, useless waste or rejected matter.
 - d. Allowing the growth of, or accumulation of, dangerous vegetation.
 - e. Storage or accumulation of any material or rubbish which the City Fire Marshal determines to be a fire hazard.
- 6.2 Persons, when building on site, shall be responsible to insure that:
 - a. The site and surrounding areas are kept free from junk, refuse, rubbish, and litter with no significant accumulation outside of a trash enclosure for more than four (4) days.
 - b. Any matter which may blow is secured at all times to prevent a nuisance to adjoining property owners or residents.
 - c. Animal-proof containers are provided for discarded food, drink cans, unsightly or unsanitary matter of whatever nature.
 - d. A portable toilet is provided for the onsite workers.
- 6.3 All exterior-stored household garbage must be stored in an animal-proof container.
- 6.4 Containers used for exterior stored household garbage for weekly pickup shall not remain at curbside for longer than one (1) day before and one (1) day after the date of scheduled pickup.

- 6.5 It shall be unlawful for any person to throw, dump, leave, or deposit junk, rubbish, refuse, trash or garbage on any road, right of way, green belt, common area, park or other public or private property.
- 6.6 It shall be unlawful for any person owning, claiming or having supervision or control of any occupied or unoccupied residential lot to permit dangerous vegetation to grow to a height greater than twelve (12) inches upon such property. In the event such dangerous vegetation reaches a height in excess of twelve (12) inches, the City shall remove said vegetation at the owner's expense. It is an exception to this subsection if the vegetation is classified as decorative grasses. Improved grasses and grains grown for agricultural and livestock uses shall also be deemed exempt from the twelve (12) inch limitation.
- 6.7 All occupied or unoccupied businesses or facilities shall maintain a 35 foot fire safety buffer zone along the perimeter of said business or facility property. Any person, organization, business or non-profit corporation owning, claiming or having supervision or control of any occupied or unoccupied residential or commercial lot or combination of contiguous lots totaling more than one (1) acre shall submit a plan, to the City Council for approval, for the creation and maintenance of a fire buffer zone on the property. Should there be any conflict between the submitted plan and any provision of an Eden City Ordinance, the more restrictive document shall govern.
- 6.8 In addition to the provisions and restrictions set for above, it shall be unlawful for any person owning, claiming or having supervision or control of any occupied or unoccupied property, as provided above, to permit dangerous vegetation to grow to a height that is determined by the city's fire marshal, to be hazardous to the safety and welfare of the community.

SECTION 7.0 INVESTIGATIONS AND NOTICE OF VIOLATIONS

- 7.1 The code officer, on his/her own knowledge or on the basis of a complaint by a resident or property owner of the City, shall investigate alleged violations of this Ordinance
- 7.2 The code officer may enter upon any lot where a violation of this Ordinance is alleged to have occurred, at any reasonable time, in order to examine the alleged violation outside a private residence.
- 7.3 The code officer may enter and inspect a private residence where a violation of this Ordinance is alleged to have occurred, at any reasonable time, in order to examine the alleged violation and to remove or direct removal of the same, if necessary, pursuant to Texas Health and Safety Code section 161.011, upon receiving:
- a. Permission obtained from a lawful adult occupant of the residence; or

- b. An authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of this Ordinance.
- 7.4 If the code officer determines there is a violation of this Ordinance, the officer shall give notice in writing to such persons violating the provisions of the Ordinance. The notice will inform the person that he/she has seven (7) days from receipt of the notice to remedy the violation, and if this action is not taken, the City may, but is not obligated to:
 - a. Authorize that the necessary work be done or improvements made; and
 - b. Pay for the expenses incurred in having the work done or improvements made and bill the expenses to the property owner.
- 7.5 The notice of a violation must be given to the owner personally in writing, either at the time of inspection by personal delivery, by posting the notice on or near the front door of each building, or by certified mail, addressed to the owner of the property at the owner's address as recorded in the Concho County Central Appraisal District, as may be appropriate. If notice by personal service cannot be obtained, the Officer may give notice by:
 - a. Publication of the notice, at least once, in a newspaper of general circulation;
 - b. Posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- 7.6 If such person fails or refuses to comply with the provisions of this Ordinance within seven (7) days after the receipt of notice, the City may go upon such property and do or cause to be done the work necessary to obtain compliance with this Ordinance.
- 7.7 The City, in the notice of violation, may inform the owner 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 occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, the City without notice may take action to remedy the violation.
- 7.8 The City may abate, without notice, dangerous vegetation.

- 7.9 If the City incurs expenses for the work done or improvements made, the City Council or its designee shall assess the expenses and create a lien, including possible foreclosure, against the property as follows:
- a. The code officer shall send a statement of expenses to the owner, requesting that payment be made to the City within sixty (60) days after receipt of the statement of charges. The expenses to be charged shall include: the amount paid by the City for the work done or improvements made; the costs of inspection; the costs of providing notice; the costs of identifying and notifying the owner of the property; and any incidental expenses.
 - b. If the person does not pay the expenses within sixty (60) days after receiving a statement of charges, the mayor, or his/her designee, shall file with the County Clerk of Concho County a statement of expenses, stating the owner's name, if known, and the legal description of the property. When such statement is filed, the City shall have a privileged lien on such property, second only to tax liens and liens for street improvements, to secure the payment of the amount so expended. For such expenditures and interest, suit may be instituted and recovery and foreclosure had by the City. The statement of expense filed with the County Clerk or a certified copy thereof shall be prima facie proof of the amount expended in such work, improvement or correction of the property. The lien is security for the expenses incurred by the City and interest accruing at the rate of ten percent (10%) per year on the amount due from the date of payment by the City

SECTION 8.0 PENALTIES

- 8.1. The City shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provisions of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.
- 8.2 Any person violating any provision of this Ordinance shall be subject to a fine upon conviction in Municipal Court, of not more than two-thousand (\$2,000) dollars, and each day of violation of this Ordinance shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.
- 8.3 Culpable Mental State
- a. A person does not commit an offense under this Ordinance unless he or she intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.
 - b. Culpable mental states are classified according to relative degrees, from highest to lowest and as described as follows:
 1. INTENTIONAL – A person acts intentionally, or with intent, with

respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result;

2. KNOWING – A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct, when he is aware that his conduct is reasonably certain to cause the result;
3. RECKLESS – A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint; and
4. CRIMINAL NEGLIGENCE – A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

8.3 Nothing in this Ordinance shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Ordinance, and to seek remedies as allowed by law, including, but not limited to the following:

- a. Injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- b. A civil penalty up to one thousand dollars (\$1,000.00) per day, with each day constituting a separate offense when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- c. Other available relief.

SECTION 9.0 REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SECTION 10.0 CONFLICTING PROVISIONS

If any provision of this Ordinance conflicts with any provision in other City ordinances the stricter provision shall prevail.

SECTION 11.0 SEVERABILITY CLAUSE

If any paragraph, clause, phrase or provision of this Ordinance shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of provision thereof, other than the part so decided to be invalid or unconstitutional.

SECTION 12.0 SAVINGS CLAUSE

The repeal of any ordinance or parts of ordinances effectuated by the enactment of the amendments to this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinance at the time of passage of this Ordinance.

SECTION 13.0 EFFECTIVE DATE

This Ordinance shall become effective up on passage and approval of the City Council of the City of Eden, Texas and after publication as may be required by governing law.

SECTION 14.0 PROPER NOTICE & OPEN MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, as required by law, and that public notice of the time, place and purpose of said meeting was given as required by the Texas Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED THIS 6 DAY OF OCTOBER 2009, by a vote of 5 (ayes) to 0 (nays) and 0 (abstentions) of the City Council of the City of Eden, Texas.

CITY OF EDEN

by: Eugene Spann, Mayor

ATTEST

by: Celina Hemmeter, City Administrator

*Approved as to form:
Alan J. Bojorquez*