

## CHAPTER 95: HEALTH AND SANITATION

### § 95.01 POPULAR NAME.

This chapter shall be commonly referred to as the City's "Health and Sanitation Ordinance". (Ord. 09-122, 6-10-2009)

### § 95.02 PURPOSE.

This chapter is adopted so that the City Council may promote the public health, safety and general welfare within the City through the regulation of private sewage treatment facilities (Septic Systems), ~~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.~~ The City also promotes public health through regulation of nuisances such as, but not limited to ~~of~~ stagnant water, filth, carrion, and dangerous weeds to prevent establishment of vermin, rodents, mosquitoes and other pests that may spread disease, cause injury, or destroy property.

(Ord. 09-122, 6-10-2009)

### § 95.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The words "shall" and "will" are always mandatory.

*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.

*Building.* Any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, ~~tangible personal property chattel~~ or property of any kind.

*City.* The City of Woodcreek, Texas.

*City Council.* The governing body of the City of Woodcreek, Texas.

*Code Officer.* The person or persons officially designated by the City to assist the City Council in implementing and enforcing this chapter. 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 chapter.

*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.

*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.

~~*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.~~

*Junk.* Worn out, worthless and discarded material, including odds and ends, old iron or other metal, glass, paper, bottle or cans.

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*Litter.* Refuse, rubbish, garbage, trash, objectionable, unsightly or unsanitary matter.

*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 90 days.

*Matter.* That of which any physical object is composed.

*Nuisance.* Filth, carrion, stagnant water, rubbish, ~~impure or unwholesome matter of any kind, unsightly or unsanitary matter of whatever nature~~ or a condition with the potential to cause or promote pathogens, infection, or disease in any individual or the public in general.

~~*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.~~

*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 24 hours. This includes, but is not limited to, junk, litter, objectionable, unsightly or unsanitary matter, refuse or rubbish.

*Person.* An individual, corporation, organization, government agency, business, trust, partnership, association or any other legal entity.

*Private Sewage Treatment Facility.* Include, but are not limited to, sewers, privies, septic tanks and on-site sewage facilities.

*Privy.* A facility for the disposal of human excreta.

*Refuse.* Accumulation of worn out, used, broken, rejected or worthless materials.

*Rubbish.* Trash, garbage, debris, rubble, rocks, wrappings, unused fragments of building materials, tree trimmings, brush and other miscellaneous waste or rejected matter.

*Septic Tank.* A covered water-tight tank designed for sewage treatment. (Ord.

09-122, 6-10-2009)

## **§ 95.04 SANITATION REQUIREMENTS.**

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 ~~location 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 (**Septic System**) and privies in accordance with the laws, regulations and requirements of the county and the state.

(Ord. 09-122, 6-10-2009)

State law reference(s)—Penalty, see § 95.99

## **§ 95.05 SANITATION RESTRICTIONS.**

(A) 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:

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- (1) Long-term storage of construction material, fill material, excavated material, building supplies and construction equipment;
- (2) 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;
- (3) Open storage or accumulation of junk, inoperable appliances, broken furniture, useless waste or rejected matter;
- (4) Allowing the growth of, or accumulation of, dangerous vegetation; and
- (5) Storage or accumulation of any material or rubbish which the City Fire Marshal determines to be a fire hazard.
- (B) Persons, when building on site, shall be responsible to ensure that:
- (1) 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 days;~~
- (2) Any matter ~~which is within 100ft of the construction site is assumed to be from the site and must be disposed of daily.~~ ~~may blow is secured at all times to prevent a nuisance to adjoining property owners or residents;~~
- ~~(3) Animal proof containers are provided for discarded food, drink cans, unsightly or unsanitary matter of whatever nature; and~~
- ~~(4) A portable toilet is provided for the on-site workers.~~
- (C) All exterior-stored household garbage must be stored in an animal-proof container.
- (D) Containers used for exterior stored household garbage for weekly pickup shall not remain at curbside for longer than one day before and one day after the date of scheduled pickup.
- (E) 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.
- (F) It shall be unlawful for any person owning, claiming or having supervision or control of any occupied or unoccupied residential lot to permit ~~dangerous dry~~ vegetation that ~~has grown to grow~~ to a height greater than ~~twelve (12) six~~ inches upon such property. ~~Grasses in parking areas should be maintained at six (6) inches or less for fire safety. It is an exception to this division (F) if the vegetation is classified as decorative grasses.~~ In the event such dangerous vegetation reaches a height in excess of ~~that permitted six inches~~, the City shall remove said vegetation at the owner's expense.
- ~~(G) 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 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 a City ordinance, the more restrictive document shall govern.~~
- (G) 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.

(Ord. 09-122, 6-10-2009)

Cross reference(s)—Penalty, see § 95.99

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## § 95.06 INVESTIGATIONS AND NOTICE OF VIOLATIONS.

- (A) The Code Officer, on his or 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 chapter.
- (B) The Code Officer may enter upon any lot where a violation of this chapter is alleged to have occurred, at any reasonable time, in order to examine the alleged violation outside a private residence.
- (C) The Code Officer may enter and inspect a private residence where a violation of this chapter 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 Tex. Health and Safety Code § 161.011, upon receiving:
- (1) Permission obtained from a lawful adult occupant of the residence; or
  - (2) 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 chapter.
- (D) If the Code Officer determines there is a violation of this chapter, the Officer shall give notice in writing to such persons violating the provisions of the chapter. The notice will inform the person that he or she has seven 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:
- (1) Authorize that the necessary work be done or improvements made; and/or
  - (2) Pay for the expenses incurred in having the work done or improvements made and bill the expenses to the property owner.
- (E) 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 County Central Appraisal District, as may be appropriate. If notice by personal service cannot be obtained, the Officer may give notice by:
- (1) Publication of the notice, at least once, in a newspaper of general circulation;
  - (2) Posting the notice on or near the front door of each building on the property to which the violation relates; or
  - (3) Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- (F) If such person fails or refuses to comply with the provisions of this chapter within seven 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 chapter.
- (G) 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.
- ~~(H) The City may abate, without notice, dangerous vegetation.~~
- (H) 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.

(1) The Code Officer shall send a statement of expenses to the owner, requesting that payment be made to the City within 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.

(2) If the person does not pay the expenses within 60 days after receiving a statement of charges, the Mayor, or his or her designee, shall file with the County Clerk 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 10 percent per year on the amount due from the date of payment by the City.

(Ord. 09-122, 6-10-2009)

### **§ 95.99 PENALTY.**

(A) The City shall have the power to administer and enforce the provisions of this chapter as may be required by governing law. Any person violating any provisions of this chapter is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this chapter is hereby declared to be a nuisance.

(B) Any person violating any provision of this chapter shall be subject to a fine upon conviction in Municipal Court or another court of competent jurisdiction, of not more than \$2,000.00, and each day of violation of this chapter shall constitute a separate offense. An offense under this chapter is a misdemeanor.

(C) (1) A person does not commit an offense under this chapter unless he or she intentionally, knowingly, recklessly or with criminal negligence engages in conduct as the definition of the offense requires.

(2) Culpable mental states are classified according to relative degrees, from highest to lowest and as described as follows.

(a) *Intentional.* A person acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.

(b) *Knowing.* A person acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of his or her conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct, when he or she is aware that his or her conduct is reasonably certain to cause the result.

(c) *Reckless.* A person acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when he or she 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.

(d) *Criminal negligence.* A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his or her conduct or the result of his or her conduct when

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he or she 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.

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

(1) Injunctive relief to prevent specific conduct that violates the chapter or to require specific conduct that is necessary for compliance with the chapter;

(2) A civil penalty up to \$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 chapter and after receiving notice committed acts in violation of the chapter or failed to take action necessary for compliance with the chapter; and

(3) Other available relief. (Ord. 09-122, 6-10-2009)