

ORDINANCE NO. 98

AN ORDINANCE PROHIBITING CERTAIN CONDITIONS INCLUDING WEEDS AND TRASH ON AND ADJOINING PRIVATE PROPERTY AND PROVIDING EXCEPTIONS THEREFORE AND PROVIDING FOR A FINE FOR ANY VIOLATION HEREOF IN AN AMOUNT NOT TO EXCEED \$200.00 AND A SEVERABILITY CLAUSE.

WHEREAS, THE CITY COUNCIL OF THE CITY OF ROSE CITY, TEXAS, in order to protect the citizens of said City, finds that unrestricted accumulation of trash and weeds on property within the city limits of the City of Rose City, Texas, poses a serious threat to the community and that, as herein defined, accumulation of trash and weeds should be prohibited within the City, except as specified herein.

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

SECTION I. PROHIBITED CONDITIONS

A. It shall be unlawful and constitute an offense and creation and maintenance of a public nuisance for any person, firm or corporation who shall own or occupy any lot or premises to suffer or permit any of the following upon such property for any period of four consecutive days or longer:

1. Trash to accumulate, "trash" meaning debris of all kinds including but not being limited to any of the following:
 - (a) Discarded parts of motor vehicles;
 - (b) Discarded trailers or other discarded vehicles;

- (c) Discarded furniture, discarded appliances, discarded fixtures, discarded carpets or rugs, discarded bedding or other discarded furnishings;
- (d) Tree or lawn cuttings, lumber, paper, boxes, metal, rags and glass;
- (e) Other discarded personal property; and
- (f) Rubble and debris from any construction, remodeling, demolition or moving activity, except while such activity is actually in active progress and for a period of ten (10) days thereafter.

2. Filth, carrion or other impure or unwholesome matter of any kind;
3. Rubbish or any other objectionable, unsightly or unsanitary matter of whatsoever nature;
4. Weeds, grass, brush or uncultivated plants other than trees to grow to a height of more than twelve (12) inches from the surface of the ground on said property or on that portion of the easements, rights-of-way or alley which abut such property and lay between the centerline of any such easement, right-of-way, or alley and the property line of such property.

EXCEPTIONS:

- (a) Except, however, plants or vegetation upon the following shall be excepted from this Ordinance:
 - (1) Any portion of any lot or tract of land which is more than fifty (50) feet from the pavement of any public roadway and is not part of the right-of-way, and which has not been cleared of native vegetation or which has been used exclusively for agricultural purposes;
 - (2) Any ditch or drainage way, or portion thereof, which has been determined by the City Marshall to be of such depth or size that it constitutes a special or unusual hazard or maintenance problem, or the maintenance of which is the

designated responsibility of any governmental agency other than the City of Rose City.

(b) Except, however, rights-of-way meeting any of the following definitions shall not be the responsibility of the abutting owner or occupants.

- (1) Ditches exceeding a depth of four (4) feet as determined by the City Marshal or his designee;
- (2) Rights-of-way which governmental entities other than the city have a contractual obligation to maintain;
- (3) Major arterial streets as determined by the City Marshall or his designee;
- (4) Unpaved dedicated street rights-of-way
- (5) Street medians;
- (6) Property owned in fee by the city.

B. If it be shown that a person, firm or corporation has violated this section, the defendant, upon conviction, shall be punished by a fine of not less than twenty dollars (\$20.00) nor more than one hundred dollars (\$100.00) for each offense.

C. Upon a second conviction for a violation of this section, the defendant shall be punished by a fine of not less than seventy (\$70) nor more than two hundred dollars (\$200.00).

D. In addition to the fine and penalties provided for in this section, if a person, firm, or corporation owning any lot or premises in violation of this section fails or refuses, after notice, to comply with the requirements of such notice, the designated enforcement officer may cause such prohibited condition to be removed in accordance with SECTION IV. of this article.

E. In any prosecution charging a violation of this section, proof that the person whose name is listed on the tax rolls of the city as being the owner of the lot or premises; provided however, that such presumption may be rebutted by the person charged with violating this section with evidence to the contrary and provided further than the presumption established herein shall have the evidentiary consequence enumerated in the Texas Penal Code.

SECTION II. ADMINISTRATIVE AUTHORITY AND ENFORCEMENT

A. Whenever the term "Administrative Authority" or "enforcement officer" is used in this Ordinance it shall be construed to mean the City Marshall or his designee.

B. Duties of the Administrative Authority

The Administrative Authority shall efficiently administer the provisions of this Ordinance and amendments thereto and shall perform the following duties:

- (1) Enforce the provisions of this Ordinance and inspect all premises to assure compliance with provisions of this Ordinance or amendments thereto.
- (2) Issue such notices and orders as provided for in this Ordinance.
- (3) keep a record of all actions taken under this Ordinance, which shall be open to public inspection.

C. Right of Entry. The administrative Authority shall have the right of entry, during business hours, to inspect any and all premises or portion thereof in the performance of his duties.

D. Issuance of Order

Whenever upon investigation any condition regulated by the Ordinance is deemed a prohibited condition as being hazardous, dangerous, unsafe or a menace to life, health or property or otherwise in violation of this Ordinance, the Administrative Authority shall order any person, firm or corporation, using or maintaining such condition or responsible use or maintenance thereof to discontinue the use of or maintenance thereof or to repair, alter, or change same as many be necessary for the protection of life, health, or property. Such order shall be in writing to the owner, agent or person responsible for the premises on which such condition exists and shall specify a reasonable date or time when such order shall be complied with.

E. Compliance With Order

Refusal, failure or neglect to comply with the notice or order specified under this Ordinance shall be considered a violation of this Ordinance.

SECTION III. Notice to remove.

It shall be the duty of the enforcement officer to notify the owner and/or agent of any premises within the city not dedicated to an agricultural use, and which is in violation of SECTION I. to remove such prohibited condition within ten (10) days. This notice shall be in writing and may be served on the owner or agent by handing it to him in person, by regular mail, addressed to such owner or agent at this

post office address as shown on the tax roll of the City or by the publication as many as two (2) times within ten (10) consecutive days.

SECTION IV. Right of the city to remove prohibited condition, assessment of costs.

Should the owner of any lot premises upon which exists a prohibited condition in violation of this article fail or refuse to cut or remove such prohibited conditions within ten (10) days after notice, as provided in SECTION III., the enforcement officer is hereby authorized to cause such prohibited condition to be cut or removed at the expense of the City, and to assess the expenses thereof to the owner, as shown on the tax roll of the real estate or lot thereto the owner, as shown on the tax roll of the real estate or lot upon which such expense is incurred. The expenses asses to the owner shall be actual removal expense, not less than twenty-five dollars (\$25.00), plus an administrative fee of fifty dollars (\$50.00) to cover all administrative costs. A statement of expenses which includes administrative fees, incurred by the city for the cutting or removal of a prohibited condition in accordance with this section shall be mailed to the property owner shown on the tax roll at the time of service. This statement of expenses shall, in addition to giving the amount of such expense, provide the date upon which such work was done and description of the lot or premises upon which such work was done. Payment is due and is considered delinquent if not received by the city within thirty (30) days. If payment is of made within (90) days of such delinquency, the city authorized agent is hereby authorized to add a lien assessment fee of fifty dollars (\$50.00) to the state of expenses incurred by the city in the cutting or removal of such prohibited condition under this section and to file said statement of expenses

as a lien at the county clerk's office of this county against the premises which are in violation of this article. This statement of expenses shall, in addition to giving the amount of such expense, provide the date upon which such work was done and a description of the lot or premises upon which such work was done. The city shall have a privileged lien upon such lot or real estate upon which such work was done or improvements made to secure the expenditure so made, in accordance with provision of Texas Health and Safety Code, Section 342.007 (Vernon 1989), which lien shall be second only to tax liens and liens for street improvements. Suit may be instituted in the name of the city, and statement of expenses so made as aforesaid, or a certified copy thereof, shall be *prima facie* evidence of the amount expended for such work or improvements.

SECTION V. Repeal of Conflicting Ordinances. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION VI. Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance, or the application of the same to a particular set of persons or circumstances, should for any reason be held to be invalid, such invalidity shall in no way affect the remaining portion of this ordinance and to such end the various portions and provisions of this ordinance are declared to be severable.

PASSED AND APPROVED this 14TH day of September, 2006.

David Bush
Mayor

ATTEST:

Veronica Jarrell
City Secretary