

ORDINANCE NO. 2016-09-06-2

AN ORDINANCE OF THE VILLAGE OF VINTON, TEXAS PROHIBITING PUBLIC NUISANCES, GRANTING THE CITY OF EL PASO AND EL PASO COUNTY CONCURRENT AUTHORITY TO ENFORCE WITH IN THE VILLAGE OF VINTON, PROVIDING FOR CRIMINAL PENALTIES AND ABATEMENT PROCEDURES AND AUTHORIZING ENTRY ONTO PRIVATE PREMISES.

WHEREAS, the Village Council of the Village of Vinton, Texas finds that the existing nuisance ordinances in effect in the Village do not adequately proscribe public nuisances as defined herein and that a more comprehensive nuisance ordinance is necessary to protect the health, safety and welfare of Village residents.

WHEREAS, the Village Council of the Village of Vinton, Texas desires to promote the comprehensive and uniform enforcement of this Ordinance by granting the City of El Paso, Texas and the County of El Paso, Texas, acting by and through their respectively appointed public health and safety authorities, concurrent authority to enforce this ordinance to the fullest extent allowed by law and/or by interlocal agreement with the Village of Vinton, in addition to the Village of Vinton Police Department and the Village of Vinton Code Enforcement Officer.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VINTON, TEXAS as follows:

SUBCHAPTER A. GENERAL PROVISIONS

1. Definitions

- (1) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.
- (2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment or other moveable property.
- (3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal and fish offal and animal and fish

carcasses, but does not include sewage, body waste, an industrial by-product or compost.

- (4) "Neighborhood" means
 - (A) a platted subdivision; or
 - (B) property contiguous to and within 300 feet of a platted subdivision.
- (5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.
- (6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps or other structure appurtenant to the property.
- (7) "Public street" means the entire width between property lines or a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare or bridge is open to the public for vehicular or pedestrian traffic.
- (8) "Receptacle" means an enclosed container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin or other pests.
- (9) "Refuse" means garbage, rubbish, paper and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.
- (10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

- (11) "Weeds" means all rank and uncultivated vegetable growth or matter, excluding natural desert vegetation, that:
- (A) has grown to more than 18 inches in height; or
 - (B) may create an unsanitary condition or become a harborage for rodents, vermin or other disease-carrying pests, regardless of the height of the weeds.
- (12) "Flea market" means an outdoor or indoor market, conducted on non-residential premises, for selling secondhand articles or antiques, unless conducted by a religious, educational, fraternal or charitable organization.
- (13) "Abandoned vehicles" means any motor vehicle without current registration (license) or safety inspection sticker, and/or which is unable to travel on public streets or highways legally under its own power.

Effect of Ordinance on Other Laws

This Ordinance is not intended to affect a right, remedy or penalty which may be provided for under other state, county or local law.

SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

1. Public Nuisance Prohibited

- (a) This section applies to all property owners and occupants of land located within the boundaries of the Village of Vinton.
- (b) A person may not cause, permit, or allow a public nuisance under this section on any premises.
- (c) A public nuisance is:

- (a) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
- (b) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for ten (10) days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
- (c) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
- (d) allowing weeds to grow on premises ;
- (e) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;
- (f) maintaining on property in a neighborhood a swimming pool that is not protected with:
 - (a) a fence that is at least four feet high with spaces of four (4) inches or less and that has a latched gate that cannot be opened by a child;
and
 - (b) if not in use and regularly maintained, drained or a cover over the

- entire swimming pool that cannot be removed by a child;
- (g) maintaining a flea market in a manner that constitutes a fire hazard.
 - (h) discarding refuse or creating a hazardous visual obstruction on:
 - (a) Village-owned land; or
 - (b) land or easements owned or held by a special district that has the Village Council, El Paso City Council or Commissioners Court of El Paso County as its governing body; or
 - (i) discarding refuse on the smaller of:
 - (a) the area that spans 20 feet on each side of a utility line; or
 - (b) the actual span of the utility easement.

This subchapter does not apply to a site or facility that is permitted and regulated by a state agency.

2. Criminal Penalty

- (a) A person commits an offense if:
 - (a) the person violates any part of Subchapter B.; and
 - (b) the nuisance remains unabated after 30th day after the date on which the person receives notice from a Village of Vinton, City of El Paso or County of El Paso official, agent or employee to abate the nuisance.
- (b) An offense under this ordinance is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.00.
- (c) If it is shown on the trial of the defendant that the defendant has been previously convicted of an offense under this ordinance, the defendant is punishable by a fine

of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.

- (a) Each day a violation occurs is a separate offense.
- (b) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section.

3. Injunction

- (a) A county or district court may by injunction prevent or restrain a violation of this ordinance.
- (a) The Village of Vinton, City of El Paso, County of El Paso or a person affected or to be affected by a violation under this chapter, including a property owner, residence of a neighborhood, or organization of property owners or residents of a neighborhood may bring suit under Subchapter B, subparagraphs (a) through (g). The Village of Vinton, City of El Paso or County of El Paso may bring suit under Subchapter B, subparagraphs (a) through (i). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs.

SUBCHAPTER C. VILLAGE, CITY of EL PASO AND COUNTY of EL PASO AUTHORITY RELATING TO NUISANCE

1. Authority to Prosecute Violations

The Village of Vinton, the City of El Paso and/or the County of El Paso has authority to prosecute violations of this ordinance in the Municipal Court for the Village of Vinton.

2. Authority to Abate Nuisance

The Village of Vinton, the City of El Paso and/or the County of El Paso may abate a

nuisance under this chapter by demolition or removal by following the abatement procedures adopted by the City of El Paso, Commissioner's Court or the Village Council for abatement of nuisances occurring in the unincorporated portions of El Paso County that are consistent with the general purpose of this ordinance and that conform to this ordinance.

3. Abatement Procedures

- (a) The abatement procedures adopted by the Village Council (which may be those adopted by the City of El Paso or the Commissioners Court) must be administered by a regularly salaried, full-time governmental employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.
- (b) The abatement procedures must require that written notice be given to:
 - (1) the owner, lessee, occupant, agent or person in charge of the premises; and
 - (2) the person responsible for causing a public nuisance on the premises
when:
 - (A) that person is not the owner, lessee, occupant, agent or person in charge of the premises; and
 - (B) the person responsible can be identified.
- (c) The notice must state:
 - (1) the specific condition that constitutes a nuisance;
 - (2) that the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served or, in the event of imminent threat to public safety or health, within forty-eight (48) hours after the date on

which the notice is served. In the event that the nuisance is alleged to be an imminent threat to public safety or health the notice shall so state;

- (3) that failure to abate the nuisance may result in:
 - (A) abatement by the City of El Paso, County of El Paso or the Village of Vinton;
 - (B) assessment of costs to the person responsible for causing the nuisance when that person can be identified; and
 - (C) a lien against the property on which the nuisance exists, if the person responsible for causing the nuisance has an interest in the property; and
 - (4) that the person receiving notice is entitled to submit, before the 31st day after the date on which the notice is served or, in the event of imminent threat to public safety or health, within forty-eight (48) hours after the date on which the notice is served, a written request for a hearing.
- (d) The notice must be given:
- (1) by service in person or by registered or certified mail, return receipt requested, and if by certified mail, also by regular first-class mail; or
 - (2) if personal service cannot be obtained or the address of the person to be notified is unknown by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.
- (e) The abatement procedures must require a hearing before the City of El Paso,

County of El Paso or Village of Vinton abates the nuisance if a hearing is requested. The hearing may be conducted before the Village Council or any board, commission, or official designated by the Village Council. The Village Council may designate a board, commission or official to conduct each hearing.

4.Assessment of Costs: Lien

- (a) The Village may:
 - (1) assess the cost of abating the nuisance, the cost of legal notification by publication and an administrative fee of not more than \$100 on the person receiving notice under Subchapter C.3.(d).
 - (2) by resolution or order, assess the cost of abating the nuisance, the cost of legal notification by publication and an administrative fee of not more than \$100 against the property on which the nuisance exists.
- (b) The Village may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Subchapter C, Section 3.(d).
- (c) To obtain a lien against the property to secure an assessment, the Village must file a notice that contains a statement of costs, a legal description of the property sufficient to identify the property and the name of the property owner, if known, with the county clerk of the county in which the property is located.
- (d) The Village's lien to secure an assessment attaches when the notice of lien is filed and is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the Village's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is

located before the date on which the Village files the notice of lien with the county clerk.

- (e) The Village is entitled to accrue interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.
- (f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance.

5. Authority to Enter Premises

- (a) A Village of Vinton, City of El Paso or County of El Paso official, agent or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the Village at a reasonable time to inspect, investigate or abate a nuisance or to enforce this ordinance; provided, however, that the occupant shall have the right to deny access. In the event that access is denied by the occupant, it shall be incumbent upon the enforcement officer to seek an order permitting access from the Municipal Court or other Court of competent jurisdiction. To obtain an order permitting access, the enforcement officer shall

be required to submit an affidavit specifying with particularity the area for which access is sought and shall further specify with particularity the factual basis creating probable cause for the enforcement officer to reasonably believe that a violation of this ordinance is occurring on the subject premises and the purpose(s) that will be served by the inspection. Any order granting access pursuant to this ordinance for purpose of inspection shall be strictly limited to accomplish its

essential purposes.

- (b) Before entering the premises, the official, agent or employee must exhibit proper

identification to the occupant, manager or other appropriate person and if access is denied by the occupant, the official agent or employee must also exhibit a copy of the order permitting access.

6. Enforcement

A court of competent jurisdiction in the county may issue any order necessary to enforce this ordinance.

Effective Date


This ordinance supercedes Ordinance 040604 and all other ordinances in conflict herewith and shall take effect immediately.

PASSED AND APPROVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF VINTON, TEXAS ON THIS 20 day of September, 2016.


MADELEINE PRAINO, Mayor

ATTEST:

JESSICA GARZA, Village Administrator

APPROVED AS TO FORM:

SHANE A. ENGLISH, Village Attorney