

**ORDINANCE NO. 20190108A**

**AN ORDINANCE MAKING IT UNLAWFUL TO LEAVE OR PERMIT TO REMAIN UPON ANY PRIVATE OR PUBLIC PROPERTY WITHIN THE CITY OF BURTON, TEXAS, ANY JUNK , TRASH, GARBAGE, OR LITTER, DECLARING THE LEAVING OR PERMITTING TO REMAIN, OF ANY JUNK, TRASH, LITTER, OR GARBAGE, UPON PUBLIC OR PRIVATE PROPERTY IN THE CITY OF BURTON, TEXAS, (EXCEPT AS PROVIDED HEREIN) TO BE UNLAWFUL AND ESTABLISHING PROCEDURES FOR ABATEMENT AND REMOVAL OF JUNK, TRASH, GARBAGE, LITTER AND PUBLIC NUISANCES, FROM PRIVATE PROPERTY OR PUBLIC PROPERTY, PROVIDING THAT NOTICE BE GIVEN; PROVIDING A PENALTY UP TO \$200; AND PROVIDING A SAVINGS CLAUSE.**

**WHEREAS**, the City Council of the City of Burton, Texas, previously adopted Ordinances of the City of Burton, which established a junk and garbage prohibition; and

**WHEREAS**, the City of Burton recognizes that previous junk and garbage ordinances are outdated and lack a number of requisite notices and guidelines necessary to abate and penalize junk and garbage; and

**WHEREAS**, the City of Burton has investigated and determined that it is the best interest of the public to repeal any other past ordinances or resolutions in conflict with this ordinance, and adopt an updated junk and garbage ordinance as set forth below; and

**WHEREAS**, the accumulation of litter, garbage, trash and junk is injurious to the quality of life and the economic development of the community; and

**WHEREAS**, the regulation, management and control of garbage, trash, litter, and junk on property within the City is essential to the public health, safety and welfare of the community; and

**WHEREAS**, property conditions and uses that cause unsanitary conditions, noxious odors, and unsafe conditions on neighboring streets, public property, or upon the private property of another person, damage the public welfare, property values, economy, and the quality of life in the City; and

**WHEREAS**, the City of Burton, Texas, finds amounts of litter, waste, garbage, junk, and trash (see Definitions) present within the City, that said junk and garbage creates hazards and that the same constitutes an attractive nuisance, creating a hazard to the health and safety of minors, and the same are detrimental to the economic welfare of the City by producing the urban blight which is adverse to the maintenance and continuing development of the City of Burton, Texas;

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Burton, Texas:**

**SECTION 1.0    SHORT TITLE**

This Ordinance may be cited as "Junk and Garbage Ordinance."

The following terms whenever used or referred to in this ordinance shall have the same respective meaning unless a different meaning clearly appears for the context:

1. "City" shall mean the City of Burton, Texas.
2. "Administrator" shall mean a designated employee of the City of Burton.
3. "Earth and Construction Materials" shall mean earth, rocks, bricks, concrete, other similar materials and waste materials resulting from construction or remodeling.
4. "Garbage" shall mean all rubbish, trash, kitchen and household waste, ashes, bottles, cans, rags, paper, food, food containers, lawn trimmings, tree trimmings, hedge trimmings, leaves, grass, weeds and refuse, and all decayable wastes, including animal and vegetable matter.
5. "Hazardous Waste" shall mean solid or liquid waste, in any amount, which is defined, characterized, identified or designated as hazardous by the United States Environmental Protection Agency or appropriate State Agency by or pursuant to Federal or State law, or waste, in any amount, which is regulated under Federal or State law, including motor oil and radiator, engine crank case, transmission or differential fluid, gasoline, paint, paint cans, toxic or corrosive materials or any material found harmful to personnel or equipment as determined by State or Federal law.
6. "Junk" shall mean all worn out, worthless, and discarded material, in general, including, but not limited to, wood products, scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys, and bones, rags, glass, paper, cordage, cloth, rubber, rope, tinfoil, bottles, old cotton, machinery, tools, construction materials, appliances, furniture, fixtures, utensils, boxes or crates, pipe or pipe fittings, automobile or airplane tires, boats, boat trailers, or travel trailers or parts thereof, or other manufactured goods or odds and ends that are worn out, worthless, deteriorated, burned, obsolete, discarded material or other wastes, especially those that are unusable in their existing condition.
7. "Litter" shall mean any quantity of paper, metal, plastic, glass, or miscellaneous solid waste which may be classed as trash, debris, rubbish, refuse, garbage, or junk not placed in a solid waste container, except that which is bundled to no more than forty-eight (48) inches in length or thirty (30) pounds in weight and which are securely fastened together and clearly set out for collection by the City's solid waste provider.
8. "Lot" shall mean any tract, block or other parcel of land, or portion thereof, located within the City limits of the City of Burton.
9. "Refuse" See "garbage."
10. "Rubbish" shall mean all refuse, junk, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, waste wood, wood products, tree trimmings, grass cuttings, dead plants, weeds, leaves, dead trees or branches thereof, chips, shavings, sawdust, printed matter, paper, pasteboard, rags, straw, used and discarded clothing, used and discarded shoes and boots, combustible waste, pulp and other products used for packaging or wrapping crockery and glass, ashes, cinders, floor sweepings, glass, mineral or metallic substances, textiles and objects of all sorts, and in general all litter. The words "any and all objectionable or unsanitary matters," not included within the meaning of the other terms as herein used, means those which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the general locality where the same are situated.

11. "Sewage or Wastewater" shall mean a combination of waterborne wastes from residences, business buildings, institutions, and commercial and industrial establishments, together with such ground, surface and storm waters as may be present.
12. "Solid Waste" shall mean household garbage and refuse and commercial garbage and refuse, brush cuttings and weeds.
13. "Trash" See "garbage."
14. "Unsanitary Matter" means all stagnant water, filth, carrion, impure matters and any condition liable to produce, harbor or spread disease or germs or cause noxious, foul and offensive odors, including foodstuff or by-product thereof of any animal nature, or any fruit, vegetable or other thing which may become tainted, diseased, fermented or decaying or otherwise unwholesome or unclean.
15. "Waste" shall mean rejected, unutilized or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, commercial, or industrial activities.

### **SECTION 3.0 JUNK AND GARBAGE DECLARED A PUBLIC NUISANCE**

Junk, garbage, trash, and litter located in any place where they are visible from a public place or public right-of-way, are detrimental to the safety and welfare of the general public, tend to reduce the value of private property, invite vandalism, create fire hazards, constitute an attractive nuisance creating a hazard to the health and safety to minors, and are detrimental to the economic welfare of the State, by producing urban blight which is adverse to the maintenance and continuing development of the municipalities in the State of Texas, and such garbage, trash, junk, and litter is, therefore, declared to be a public nuisance.

### **SECTION 4.0 MAKING IT UNLAWFUL TO CREATE OR TO MAINTAIN SUCH NUISANCE**

It shall be unlawful for any individual, company or corporation to leave or permit to remain upon public or private property (except as hereinafter provided), within the City of Burton, Texas, any junk, garbage, litter, or trash. A person who commits an offense under this article is subject to prosecution in the municipal court, which court may impose the punishment and remedies prescribed by the laws of Texas and may be sued in a civil lawsuit to the extent authorized by this article, by statute, or by common law.

### **SECTION 5.0 AUTHORITY TO ENTER PROPERTY FOR INVESTIGATION**

- A. To investigate whether junk, garbage, trash, or litter is a public nuisance under this article, the Administrator may enter:
  - a. Vacant property, provided that:
    - i. The Administrator does not alter or damage the property; and
    - ii. The entry does not constitute an offense under Section 30.05, Texas Penal Code; and
  - b. Occupied property, but only with written or verbal permission from an owner, manager, or other person who reasonably appears to be in control of the property.
- B. If the Administrator is denied permission to enter property pursuant to this section, or if entry would constitute an offense under Section 30.05, Texas Penal Code, entry shall be made only under authority of an inspection warrant or a search warrant.
  - a. In applying for a warrant pursuant to this section, the Administrator shall submit to the magistrate an affidavit, which may be based on information supplied by others,

describing with reasonable specificity the property on which entry is sought, stating facts giving rise to the Administrator's reasonable belief that junk, garbage, trash, or litter on the property is a public nuisance, and, to the extent known by the Administrator after reasonable inquiry, the name and contact information of the owner, manager, or other person in control of the property.

- b. If the magistrate finds that probable cause exists for the Administrator's entry on property pursuant to this section, the magistrate may issue an inspection warrant or a search warrant authorizing the entry. The warrant shall constitute authority for the Administrator to enter and to inspect the nuisance
- c. , to gather evidence by any reasonable means, including photography and videography, as reasonably necessary to determine the existence of a violation of this article. It is unlawful for a person to interfere or to refuse compliance with a warrant issued pursuant to this section.

## **SECTION 6.0 NOTICE**

- A. Upon determination by the Administrator of this ordinance, that a nuisance, as defined herein, exists in the City of Burton, the Administrator shall give or cause to be given to the person maintaining or suspected of maintaining such nuisance, in writing, a ten (10) day notice, stating the nature of the public nuisance and that it must be removed and abated within said ten (10) day period, such notice to be mailed, by certified or registered mail, with a five (5) day return requested to:
  1. the last known owner of the property on which the nuisance is present;
  2. the owner or occupant of:
    - i. the property on which the nuisance is located; or
    - ii. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- B. The notice must state that:
  1. the nuisance must be abated and removed not later than the tenth (10th) day after the date on which the notice was mailed; and
  2. any request for a hearing must be made before that ten (10) day period expires.
- C. If the post office address of the last known registered owner or inhabitant of the property on which the nuisance is located is unknown, notice may be placed on the nuisance or, if the owner is located, hand delivered.
- D. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the eleventh (11th) day after the date of the return.
- E. A public hearing shall be held prior to the removal of the nuisance, the same should be held before the Municipal Judge of the City of Burton, when such hearing is requested by the owner or occupant of the premises on which said nuisance is located, within (10) days after service of notice to abate the nuisance. Should the owner or occupant of the premises on which said nuisance is located fail to request a hearing, a public hearing shall be conducted in absentia before the Municipal Court Judge who shall determine if the object/s is/are a nuisance. If the information is available at the location of the nuisance, a resolution or order requiring removal of the nuisance must include a detailed description of the nuisance.

## **SECTION 7.0 ORDER BY MUNICIPAL JUDGE**

After the hearing is held by the Judge of the Municipal Court of the City of Burton, as herein provided, if said Municipal Judge finds that such a nuisance is herein defined exists, she shall order the owner or occupant of the premises on which said nuisance is located to remove it within ten (10) days after said order is given to such owner or occupant of the premises on which said nuisance is located.

If the owner or occupant of the premises on which said nuisance is located fails to attend the public hearing where the order is issued, the Administrator shall deliver or cause to be delivered said order to the last known address of the owner or occupant of the premises on which said nuisance is located. It shall be unlawful and a violation of this ordinance for any such person to whom such order is given to fail or refuse to comply therewith to remove such nuisance within the time provided by said order.

#### **SECTION 8.0 DUTY OF OWNER OR OCCUPANT OF THE PREMISES**

In the event the owner or occupant of the premises does not request a hearing, as hereinabove provided, it shall be his duty to comply with the provisions of the notice given him and to abate such nuisance within ten (10) days after the date of the receipt of such notice.

#### **SECTION 9.0 RELOCATION**

The relocation of trash, garbage, junk, or litter that is a public nuisance to another location in the City, after proceeding for the abatement and removal of the public nuisance has commenced, has no effect on the proceeding if the trash, garbage, junk, or litter constitutes a public nuisance at the new location.

#### **SECTION 10.0 WHERE ARTICLE DOES NOT APPLY**

This Ordinance shall not apply to junk, garbage, trash, or litter:

1. that is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or
2. that is temporarily placed in an authorized area for trash or garbage collection so long as said placement does not persist for more than 5 days.

#### **SECTION 11.0 ADMINISTRATION OF ORDINANCE**

The administration of this Ordinance shall be by a designated employee of the City of Burton, except that the removal of the nuisance from property may be by any other duly authorized person.

#### **SECTION 12.0 REMOVAL OF NUISANCE**

Within ten (10) days after notice has been delivered to the owner or occupant of the premises on which a nuisance is located if a hearing is not requested, or if a hearing is requested, within ten (10) days after an order requiring the removal of such nuisance has been served upon or delivered to the last known owner or occupant of the premises on which said nuisance is located, the Administrator of this ordinance, may, if said nuisance has not been abated, petition the Municipal Court Judge for an order to remove or cause to be removed the nuisance. The person authorized to administer the procedures may only remove or cause to be removed nuisances after an order is received from the Municipal Court Judge. A person authorized to administer the procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance and to remove or direct the removal of the nuisance.

**SECTION 13.0 SALE OR DISPOSAL OF NUISANCE**

Any junk, trash, garbage, or litter that has been removed may be disposed of by sale, be processed as scrap or salvage, or be disposed of in a lawful place.

**SECTION 14.0 PENALTY**

Any person who shall violate the terms and provisions of this ordinance shall, upon conviction thereof, be punished by a fine or not less than One Dollar (\$1.00) and not more than Two Hundred Dollars (\$200.00) and each and every day this ordinance is violated shall constitute a separate offense. The Court hearing a case under this ordinance shall order abatement and removal of the nuisance on conviction.

**SECTION 15.0 SAVINGS CLAUSE**

If any article, paragraph or part of a paragraph of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the same shall not invalidate or impair the validity, force or effect of any other article, paragraph or part of a paragraph of this ordinance which shall remain in full force and effect.

PASSED AND APPROVED this 8th day of January, 2019.

David Zajick

Mayor, City of Burton, Texas

Angela Hamington

Secretary or Attorney

City of Burton, Texas