

**ORDINANCE NO. 2011-11-15-001**  
**(revision of 2008-05-27-002)**

**AN ORDINANCE OF KEMPNER, TEXAS, TO AMEND IN ITS ENTIRETY ORDINANCE NO. 2008-05-27-002; PROVIDING A STATEMENT OF POLICY AND DEFINITIONS; DECLARING THE ACCUMULATION OF STAGNANT WATER, CARRION, FILTH, WEEDS AND OTHER IMPURE OR UNWHOLESOME MATTERS UPON PRIVATE PROPERTY TO BE UNLAWFUL; DECLARING SPECIFIED ACTIONS TO BE A NUISANCE; PROVIDING FOR THE ABATEMENT OF NUISANCES BY PROPERTY OWNER OR CITY; DECLARING THE DISCHARGE OF SEWAGE IN A MANNER TO CAUSE ODORS, OBNOXIOUS, UNHEALTHY AND UNWHOLESOME CONDITIONS TO BE A VIOLATION; PROVIDING FOR THE FILING OF LIENS TO SECURE CITY'S COST; PROVIDING PENALTIES; AND PROVIDING A SAVINGS CLAUSE.**

**WHEREAS**, the accumulation of litter, solid waste, garbage, trash and vegetative overgrowth impair the quality of life and are injurious to the prospects for economic development of our community;

**WHEREAS**, standing and stagnant water, the accumulation of solid waste, garbage, trash and vegetative overgrowth, together with overgrown grass, weeds and brush on lots and property, are a threat to the health of the community, create fire hazards, and otherwise detract from the quality of life in our community; and,

**WHEREAS**, the regulation, management and control of solid waste, garbage and trash, together with stagnant water and the growth of grass, weeds and brush on property within the City of Kempner, Texas are essential to the public health, safety and welfare of the community,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS THAT:**

**ARTICLE I. POLICY AND DEFINITIONS**

**Section 1.1. Adoption Of Findings Of Fact.** The findings and recitations set out in the preamble of this Ordinance are found to be true and correct and they are hereby adopted as findings of fact by the City Council as findings of fact and made a part hereof for all purposes.

**Section 1.2. Policy.** The terms and provisions hereof shall apply to stagnant water and to the accumulation and storage of any solid waste, including garbage and trash, and to the growth, accumulation, cutting and storage of grass, weeds and any other vegetative material upon property in the City of Kempner, Texas, to the end that property shall be maintained in a sanitary and healthful condition for the benefit of all residents and citizens of the community.

**Section 1.3. Definitions.** The following definitions shall apply in the interpretation and enforcement of this ordinance:

- (a) Brush. All uncultivated shrubs, bushes and small trees.
- (b) Earth and Construction Materials. Earth, rocks, bricks, concrete, other similar materials and waste materials resulting from construction or remodeling.
- (c) Garbage. 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.
- (d) 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, gasoline, paint, paint cans, toxic or corrosive materials or any material found harmful to personnel or equipment as determined by the director of public works.
- (e) Junk. All worn out, worthless and discarded material, in general, including, but not limited to, odds and ends, old iron or other metal, glass, paper, cordage, tires, furniture, construction materials or other waste or discarded materials.
- (f) Lot. means any tract, block or other parcel of land, or portion thereof, located within the City limits of the City of Burnet.
- (g) Person - shall mean and include an individual human, partnership, co-partnership firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, trust, estate, governmental entity, association or corporation or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.
- (h) Refuse. See "garbage."
- (i) Rubbish. 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, mean 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.

(j) Sewage or Wastewater - 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.

(k) Solid Waste. Household garbage and refuse and commercial garbage and refuse, brush cuttings and weeds.

(l) Solid Waste Service. Shall mean the collection and hauling of residential and business solid waste, e.g. garbage, trash and refuse, for disposal at a state licensed landfill; and the actions and services directly related thereto or necessary for the provision of such services to consumers or customers in the City.

(m) Trash. See "garbage."

(n) Unwholesome Matter. 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.

(o) Waste. Rejected, unutilized or superfluous substances in liquid, gaseous or solid form resulting from domestic, agricultural, commercial, or industrial activities.

(p) Weeds. All rank and uncultivated vegetable growth or matter which is liable to become an unwholesome or decaying mass or breeding place for flies, mosquitoes, snakes, rats or other vermin.

## **ARTICLE II. WEEDS AND OFFENSIVE CONDITIONS ON PRIVATE PROPERTY**

**Section 2.1. Prohibited Conduct.** It shall be unlawful for an owner, occupant, lessee or renter of any lot or parcel of ground within the City limits (herein cumulatively referred to as "owner" or "occupant") to fail to keep the property free from brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature, or fail to keep such property and the area from the property line to the established curb line next adjacent thereto, or if there is no curb line, to the centerline of the adjacent unpaved street or to the edge of the pavement of a paved but uncurbed street, including sidewalks, clear from weeds, tall grass, shrubbery, tree or tree limbs, or fail to keep drainage ditches and culverts free from any debris which may divert or cause stoppage of draining water, or fail to fill up any drain holes and depressions in which water

collects, or to re-grade any lots, grounds or yards or any other property owned or controlled by the owner, occupant, lessee, or renter which shall be unwholesome or have stagnant water thereon, or which from any other cause, is in such condition as to be liable to produce disease or to fail to keep any house, building, establishment, lot, yard or ground owned or occupied or under his or her control at all times free from filth, carrion or other impure or unwholesome matter of any kind.

**Section 2.2. Nuisance Declared; Duty To Abate.** Whenever brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever shall exist, covering or partially covering the surface of any lot or parcel of any real estate situated within the City, or when any of said lots or parcels of real estate as aforesaid shall have the surface thereof filled or partly filled with holes or be in such condition that the same holds or is liable to hold stagnant water therein, or if from any other cause shall be in such condition as to cause disease, or produce, harbor or spread disease germs of any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, or shall contain unwholesome matter of any kind or description, the same is hereby declared to constitute a public nuisance, the prompt abatement of which is hereby declared to be a public necessity. Any such nuisance shall be removed from the property by the owner or other person in possession or control of such property.

**Section 2.3. Right to Abate Dangerous Weeds.** Whenever an immediate danger to the health, life or safety of any person exists as a result of weeds which have grown to a height, at any point on the property, of greater than 48 inches, the City may abate the weeds without notice to the owner. In the event the City abates the nuisance under this section, the City shall forward notice to the owner within seven (7) days in the manner set forth in Section 2.5.

**Section 2.4. Right To Inspect.** The Code Enforcement Officer or designee is authorized to inspect any property within the City limits of the City of Kempner, at any reasonable time, subject, however, to the restrictions against such inspection and entry of private residence for health inspection as are provided for in the laws of the State of Texas.

**Section 2.5. Violations; Notice; Failure To Abate.**

(a) In the event the officer charged with enforcement of this article shall determine that a situation exists which immediately affects the health, safety and well-being of the general public and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or occupant of the property upon which such condition exists, as may be deemed appropriate and necessary.

(b) In the event the officer charged with enforcement of this article determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the City Council may, at a regular session or at an emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare. In such event, the City may prosecute an action in

any court of competent jurisdiction to recover its costs.

(c) In the event any owner or occupant shall fail or refuse to remedy any of the conditions prohibited by § 2.1 of this Ordinance within seven (7) days after notice to do so, the City may do such work or cause the same to be done, and pay therefor, and charge the expenses in doing or having such work done or improvements made, to the owners of the property, whereupon such charge shall be a personal liability of such owner to the City.

(d) Such notice may be in writing, served upon such owner and/or occupant in person by an officer or employee of the City, or may be by letter addressed to such owner or occupant at their post office address, or if personal service may not be had, or the owner and occupant's address be not known, then notice may be given by publishing a brief summary of such order at least once in the official newspaper of the City of Kempner, by posting a notice on or near the front door of each building on the property upon which the violation relates, or by posting notice on a placard attached to a stake driven into the ground on the property to which the violation relates if no buildings exist and addressed "Sanitary Improvements" "To Whom It May Concern," and such publication shall be deemed sufficient notice.

(e) In the event any owner is mailed a notice in accordance with subsection (d) and the United States Postal Service returns the notice as "refused" or "unclaimed" the validity of the notice is not affected, and the notice is considered as delivered.

(f) Notices provided by mail or by posting as set forth in subsection (d) may provide for year round abatement of the nuisance and inform the owner that should the owner commit any other violation of the same kind that pose 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 abate the violation at the owner's expense and assess the costs against the property.

**Section 2.6. Assessment Of City's Abatement Cost; Collections Of Cost; Appeals.**

In addition to the remedy provided in § 2.5 and cumulative thereto, the Code Enforcement Officer, after giving to the owner of the property seven (7) days notice in writing, as provided in § 2.5, if the owner's address or whereabouts be not known, may cause any of the work or improvements mentioned in § 2.1, 2.2, 2.3 and 2.5 to be done at the expense of the City, on the account of the owner of the property on which such work or improvements are done, and cause all of the actual cost to the City to be assessed on the real estate or lot on account of which such expenses occurred; provided, that the owner of any such real estate may appeal to the City Council from the order of the Code Enforcement Officer by filing a written statement with the Code Enforcement Officer within seven (7) days after receipt of the notice provided for above, stating that such real estate complied with the provision of § 2.1 before the expiration of a seven (7) day period. The City Council shall set a date, within thirty (30) days from the date of the appeal, for hearing upon such appeal to determine whether the real estate complied with the provisions of § 2.1 before the expiration of such seven (7) day period. The authority of the Code Enforcement Officer to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending, but if it shall be determined by the City Council that the premises complied with the provisions of § 2.1 before the expiration of such seven (7) day period then no personal liability of the owner shall

arise nor shall any lien be created against the premises upon which such work was done.

**Section 2.7. Cost Of City Abatement Constitutes Lien.** Cumulative of the City's remedy by fine, as set forth herein, the City may do such work or cause the same to be done to remedy such condition to remove such matter from such owner's premises at the City's expense and may charge the same to the account of the owners of such property and assess the same against the real estate or lot or lots upon which such expense is incurred.

(a) Expenditures plus ten (10) percent interest on the expenditures from the date of such payment by the City shall be charged to owner/occupant in violation for the real estate or lot or lots, if not already paid. Payment shall be due and payable in full by the owner or occupant at the time payment is due for abatement of any nuisance described herein.

(b) Upon filing with the county clerk of Lampasas County, Texas, of a statement by the City Secretary or designee of such expenses, the City shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent interest on the amount from the date of such payment so made by the City.

(c) The City may, additionally, institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy such condition or remove any such matter.

**Section 2.8. Limitation On Height Of Grass And Weeds.** It shall be unlawful for any person who shall own or occupy any improved lot or lots in the City limits to allow weeds and/or grass to grow on such lot or lots to a height of more than twelve inches (12"). Weeds and/or grass of a height exceeding twelve inches (12") are declared a nuisance. Provided, however, this section shall not apply to: (a) property used for the growing of agricultural crops or grass if such property has not been platted into lots; and (b) unimproved property of greater than ½ acre in size provided that the grass and/or weeds are maintained at less than twelve (12) inches in height for all portions of the property located within twenty feet (20') of an adjacent and abutting private property line, roadway or other public property.

**Section 2.9. Discharge Of Sewage and Hazardous Wastes.** Any person or persons who shall allow or permit sewage or hazardous wastes to discharge into the ground or subsurface soil, which shall have the effect of causing odors, obnoxious, unhealthy and unwholesome conditions to exist, is declared to have caused a public nuisance and shall be in violation of this ordinance.

**Section 3.0. Placement and Storage Of Garbage Containers.**

(a) When placing trash containers for pickup, caution should always be taken to prevent a safety hazard to vehicles traveling on streets/roads located within the city limits. Extra precaution should be taken during strong wind conditions to keep the containers from blowing into the street/roadway.

(b) **Hours for placement.**

(1) Daylight Savings Time. During the months of the year on Daylight Savings time, garbage containers shall not be placed upon any street/road right of way within the city limits for pickup prior to 6:00 p.m. on the evening before the assigned pickup day for the particular area of the city and all such aforementioned garbage containers shall be removed and placed back upon private property by 6:00 p.m. on the day of the pickup assignment.

(2) Central Standard Time. During the months of the year on Central Standard Time, garbage containers shall not be placed upon any street/road right of way within the city limits for pickup prior to 4:00 p.m. on the evening before the assigned pickup day for the particular area of the city and all such aforementioned refuse containers and garbage containers shall be removed and placed back upon private property by 6:00 p.m. on the day of the pickup assignment.

(c) At all other times, garbage containers shall be stored in an area on the owner's property which is screened from view from the public street/road.

**ARTICLE III. GENERAL PROVISIONS**

**Section 3.1. Penalties.** Any person convicted of violating any term or provision of this Ordinance shall be guilty of a misdemeanor and fined not less than \$25.00 nor more than \$2,000.00 for such offense and each day that such offense is maintained shall be a separate offense.

**Section 3.2. Prima Facie Evidence.** In any prosecution charging a violation of this ordinance governing the discharge of sewage, proof that the particular sewage described in the complaint was discharged into the ground or subsurface soil in violation of Section 2.9 above, together with proof that the defendant named in the complaint was, at the time of such discharge, the registered owner or occupant of such lot or lots, shall constitute in evidence a prima facie presumption that the registered owner or occupant of such lot or lots was the person who discharged such sewage when such violation occurred.

**Section 3.3. Remedies.** All remedies cited herein are in addition to and not in lieu of all remedies permitted to the City by law.

**Section 3.4. Repeal of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict only.

**Section 3.5. Severability.** If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion be inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 3.6. Effective Date.** This Ordinance shall, upon final passage, be published in the official newspaper of the City of Kempner, Texas, as required by law and shall become effective ten (10) days after the date of the last publication thereof.

**Section 3.7. Open Meetings Act.** That it is hereby officially found and determined that the meeting which this Ordinance was passed was open to the public as required by law and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act; Tex. Gov't Code.

**PASSED AND APPROVED** on this 15<sup>th</sup> day of November, 2011.

**Attest:**

**CITY OF KEMPNER, TEXAS**

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Frances Spinney, City Secretary

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Gene Isenhour, Mayor