

**ORDINANCE NO. 18-107**

**A ORDINANCE OF THE CITY OF GARRETT, TEXAS, DEFINING AND ENUMERATING NUISANCES AND PROHIBITING SAME; PROVIDING FOR NOTICE AND ABATEMENT OF NUISANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED FIVE HUNDRED DOLLARS (\$500.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Chapter 217 of the Texas Local Government Code authorizes a Type A General Law Municipality to: abate and remove a nuisance and punish by fine the person responsible for the nuisance; and, define and declare what constitutes a nuisance and authorize and direct the summary abatement of the nuisance, and abate in any manner the governing body considers expedient any nuisance that may injure or affect the public health or comfort; and

**WHEREAS**, the City is zoned to lessen congestion in the streets, to secure safety from fire, and other dangers; to promote health and general welfare, to provide adequate clean air, to prevent the overcrowding of land and abutting traffic ways; to avoid undue concentrations of the population; and to establish zones where family values, and the blessings of quiet seclusion makes the area a sanctuary for people; and

**WHEREAS**, the City Council in compliance with the laws of the State of Texas, and the ordinances of the City, and the exercise of the City's legislative discretion and police powers pursuant to Section 51.001 of the Texas Local Government Code, have concluded that the regulations set forth herein should be adopted.

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

**SECTION 1. DEFINITIONS**

For the purpose of this Ordinance, "Nuisance" includes, but is not limited to, whatever is dangerous to human life or health, whatever renders the ground, the water or the air or the food a hazard or injurious to human life or health or that is offensive to the senses or that is or tends to become detrimental to the public health.

*Administrator* shall mean City of Garrett Code Enforcement Officers, Mayor or designee who administrators, implements, and enforces the provisions of this Ordinance.

*Attractive Nuisance* shall mean (1) the place where the condition that is maintained is one upon which the possessor knew or should have known that small children would likely frequent the place and play about it; (2) the condition was one which the possessor knew, or should have known, involved unreasonable risk of death or bodily harm to such children; (3) the child, because of its tender years, did not realize the risk involved in exposing itself to the condition; and (4) the utility, if any, to the possessor of eliminating the condition was slight as compared to the probability of injury.

*Brush* shall mean all trees or shrubbery under seven feet (7') in height which are not cultivated, maintained or cared for by persons owning or controlling the premises on which such trees or shrubbery are growing.

*Objectionable, unsightly or unsanitary matter of whatever nature* shall mean all uncultivated vegetable growth, objects and matter not included within the meaning of the other terms defined in this section, which are liable to produce or tend to produce disease or an unhealthy, unwholesome or unsanitary condition on the premises or within the general locality where the growth, objects or matter is situated, including, without limitation, the accumulation of stagnant water, carrion, filth, impure or unwholesome matter, weeds in excess of eight inches (8"), rubbish and brush.

*Rubbish* shall mean all garbage, trash or refuse, discarded or useless articles, discarded clothing or textiles of all sorts, and in general all litter and other things usually included within the meaning of the term.

*Vehicle* shall include but not be limited to cars, trucks, trailers, recreational vehicles, travel trailers, boats or other watercraft or motorcycles.

*Weeds* shall mean uncultivated vegetable growth or matter, including grasses, which has grown to a height of more than eight inches (8") or which, regardless of height, has become an unwholesome or decaying mass or breeding place for mosquitoes or vermin.

## **SECTION 2. PROHIBITED ACTS OR CONDITIONS WHICH CONSTITUTE A NUISANCE.**

The following acts, commissions, omissions, conditions or deeds by any person shall be and hereby are declared to be a nuisance:

A. The act of allowing to exist any full or overflowing privy, vault, cesspool, septic tank, garbage can, container, or other receptacle for filth, waste, garbage, and human and/or animal

excrement upon any premises owned or controlled by any person or the failure to maintain in proper condition any cesspool, septic tank, or other sewage or septic system.

B. The act of allowing to be pumped the contents of cesspools or septic tanks so as to flow over, seep up, pool, or otherwise exist on any premises without proper pre-treatment for sanitation.

C. The act of allowing any imperfect or faulty trap, sink or water closet or any other drainage appliance or fixture to exist in any house or building within the City from which there shall arise any foul or offensive gas or odor.

D. The act of casting, draining, throwing or causing to be cast, drained, thrown or distributed into any public street or highway, gutter, alley or other public grounds within the City any kitchen water, water from exhaust pipes, laundry water, air conditioners or other waste water, slops, swill or liquid filth, or any other similar unsanitary matter.

E. The act of keeping or causing to be kept any animals in pens or enclosed areas upon any premises owned or controlled by a person in such a manner so as to produce foul, obnoxious, or other offensive odors or smells to persons living in the vicinity of such premises.

F. The act of failing to keep, or the permitting to remain in a condition or manner, any stable, stall, shed or apartment, or any yard or appurtenance, in which any animal(s) shall be kept, on any premises owned or controlled by any person, in which manure or liquid discharge of such animals shall be collected and accumulate (1) which constitutes a breeding place for flies, mosquitoes, or other harmful or disease carrying insects, or (2) which is producing foul, obnoxious, or other offensive odors or smells to persons living in the vicinity of such premises, provided that nothing in this subsection shall be so construed as to include manure deposits upon private property for the purpose of cultivation or to be used as fertilizer so long as such fertilizer does not otherwise constitute a nuisance under this Ordinance.

G. The act of keeping or maintaining of a pool, pond, water retention areas, and/or other accumulation of water upon any premises owned or controlled by any person (1) which is unwholesome, impure, stagnant or (b) which constitutes a breeding place for flies, mosquitoes, or other harmful or disease carrying insects, or (2) which produces or is capable of producing foul, obnoxious, or other offensive odors or smells to persons living in the vicinity of such premises. Nothing in this subsection shall be construed as to require the removal, drainage, or cleaning of naturally occurring pools, ponds, water retention areas and accumulation of water upon any premises owned or controlled by any person, unless same constitutes a nuisance under this Ordinance.

H. The act of failing or refusing by any owner, operator, agent, or driver of any truck, trailer or other vehicle that is or has been used for the hauling of any livestock, animals or fowls,

which contains manure, excreta or liquid discharge and which is parked in or on any highway, road, street, alley, lot, tract of land, or other premises, either public or private, to move such truck, trailer or other vehicle, when notified by the City, to such location as will not disturb the inhabitants of the City by the reason of the foul, obnoxious, or other offensive odor, gases, or fumes caused by the contents of such truck, trailer or other vehicle.

I. The act of failing or refusing to act by any person owning or controlling any premises to keep, maintain, preserve such premises free and clear from all garbage, trash, discarded building materials, and other debris.

J. The act of allowing paper, plastic, bottles, tires, discarded lumber, rocks, junk or other trash or debris to accumulate or remain on any premises by a person owned or controlling such premises (1) in such a manner as to create a harborage or breeding place for rats, vermin or insects, (2) in such a manner as to be offensive or injurious to the public health, or (3) in such a manner (a) as to be unpleasant and disagreeable in sight, or (b) as to produce foul, obnoxious, or other offensive odor, gases, or fumes, to persons living in the vicinity of such premises, to persons who may be in a public place or public right-of-way, or to persons who file an official complaint with the City.

K. The act of allowing or permitting on any premises owned or controlled by such person the emission of music, sound or other noise in a continuous, or for extended periods of time, in such a manner as to disturb persons living in the vicinity of the premises. It shall be presumed to be a violation of this Ordinance if the continuous, or extended periods of time, produce sound or other noise at the property line of such property in excess of (a) 75 decibels, between the hours of 6 a.m. to 11 p.m., and/or (b) 65 decibels, between the hours of 11 p.m. and 6 a.m.

L. The act of creating, maintaining, or allowing on premises owned by, and/or subject to a person's control:

(1) The continuous, or for extended periods of time in such a manner as to disturb persons living in the vicinity of the premises, operation of motors, or the running, and/or driving of motorized units, including, but not limited to all terrain vehicles of either three or four wheels, motorcycles, go-carts, golf carts, cars, trucks, or any other form of motorized or self-propelled vehicle. It shall be presumed to be a violation of this Ordinance if such continuous, or extended periods of operation, either with an individual motorized unit, or in the aggregate with other motorized units at the same time, produce a noise or sound at the property line of such property as follows: (a) 75 decibels, between the hours of 6 a.m. to 11 p.m., and/or (b) 65 decibels, between the hours of 11 p.m. and 6 a.m.; or

(2) The act of operating a motorized unit(s) so as to produce dust, dirt or other airborne particles, which individually or in the aggregate with other motorized units at the same time which substantially interfere with the comfortable enjoyment of adjacent properties; or

(3) The act of operating a motorized unit(s) described above, either individually or in the aggregate with other motorized units at the same time, so as to pollute the air at the property line with noxious or offensive odors, gases, smoke and/or vapors, and/or which produce material discomfort and annoyance to those residing in the vicinity, or which injure their health or property; or

(4) Any combination of noise, dust, and/or pollution emanating from a property as the result of operation of one or more motorized units shall also constitute a nuisance if such factors are present on a continuous basis, or for extended periods of time, causing material discomfort and annoyance to those residing in the vicinity, or which injures their health or property.

M. The ownership, operation, or existence of a track, path, motor cross practice area, or other area which is designed for, or which is used by persons operating motorized units in a manner which results in a violation of Section 3(L) of this Ordinance is prohibited.

N. The act of allowing the accumulation of carrion, filth or other impure or unwholesome matter of any kind on premises owned by, and/or subject to a person's control.

O. The act of allowing to exist on developed areas of premises owned by and/or subject to a person's control, weeds which have grown to a height of more than eight (8") or which, regardless of height, have become an unwholesome or decaying mass or breeding place for mosquitoes, insects, or vermin.

P. The act of allowing to exist on premises owned by and/or subject to a person's control the accumulation of rubbish, or other unsightly, objectionable or unsanitary matter.

Q. All common and public nuisances defined by Chapter 125 of the Texas Civil Practice and Remedies Code within the authority and jurisdiction of the City of Garrett and its Municipal Court are hereby adopted as regulated nuisances by the City, in accordance with said statute.

R. The act, or the failure to act, resulting in an attractive nuisance on property owned or subject to a person's control.

S. With the exception of one general purpose trailer, one horse or stock trailer, or one boat trailer, unsightly storage items shall be fully screened from adjacent properties, streets and alleys by a six-foot-high solid wood screening fence or by vegetation, at least six feet in height, that is sufficiently dense as to completely screen the storage area. Unsightly items being stored must not be stacked higher than five feet.

### SECTION 3. ABATEMENT PROCEDURE

*Notice to owner.* Should the Administrator or other designated representative determine that a nuisance (defined in Section 2) exists on any lot or parcel of real estate within the City, written notice shall be given to the owner of the lot upon which the nuisance exists. Such notice shall identify the nuisance, identify the property upon which the nuisance exists, and direct the owner to take such action as the City deems reasonable, appropriate and necessary to remove the nuisance. Such notice shall be delivered personally to the owner or occupant in writing, by letter addressed to the owner or occupant at the owner's address or occupant's address as recorded in the records of the Ellis County Appraisal District, or, if personal service cannot be obtained, or sent by certified mail to the owner or occupant's address.

*Abatement by City.* If the owner fails or refuses to remove the nuisance within ten (10) days following notice as provided in this section, the City may do or cause to be done that which will abate such public nuisance and enter upon the property, and may pay therefore, and charge the expenses incurred in doing such work or having such work done or improvements made to the person who owns such lot or building. If such work is done or improvements made at the expense of the City, then the expenses shall be assessed on the real estate or lot for which such expense was incurred.

In a notice provided under this section, the City may inform the owner by regular mail and a posting on the property 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 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 covered by such notice occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without further notice may cause the work to be done or make the improvements required and pay for the work done and improvements made and charge the expenses to the owner as otherwise provided herein.

*Collection of expenses.* The abatement of a nuisance under the provisions of this Ordinance shall constitute a lien against the property upon which such nuisance existed, which lien shall be filed, proven and collected as provided for by law. Such lien shall be notice to all persons from the time of its recording and shall bear interest at the legal rate thereafter until satisfied.

The Administrator or City official designated by the Mayor shall file a statement of expenses giving the name of the owner, if known, the amount of such expense, the date on which such work was done, and the legal description of the premises upon which such work was done or improvements made with the county clerk. The City shall have a privileged lien on such lot or real estate upon which such work was done, or improvements made, to secure the expenditures so made, in accordance with V.T.C.A., Health and Safety Code, Chapter 342, which lien shall be

second only to tax liens or liens for street improvements. For any such expense and interest, suit may be instituted, and recovery and foreclosure of such lien may be had in the name of the City, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

**SECTION 4.** That all ordinances of the City of Garrett, Texas in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City of Garrett, Texas not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 5.** If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**SECTION 6.** That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provide.

**SECTION 7.** Any person, firm or corporation violating any of the provisions of this ordinance or the provisions of any other ordinance of the City of Garrett, Texas, as amended hereby, shall be deemed guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed the sum of five hundred (\$500.00) dollars for each offense, and each and every day such offense shall continue shall be deemed to constitute a separate offense.

**SECTION 8.** That all recitals contained in this Ordinance are fully incorporated herein as if fully written.

PASSED AND APPROVED this 15 day of May, 2018.

APPROVED:

By: \_\_\_\_\_

  
Matt Newsom, Mayor

ATTEST:

By: \_\_\_\_\_

  
Judy Braddock, City Secretary