

NO. 11.16.2017-30

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SMILEY, TEXAS ESTABLISHING RULES AND
REGULATIONS REGARDING STAGNANT WATER,
OVERGROWN WEEDS AND/OR GRASS AND OTHER
UNSANITARY MATTER ON PROPERTY.**

WHEREAS, it has come to the attention of the City Council of the City of Smiley that it is necessary and reasonable for the City to ordain regulations concerning stagnant water, overgrown grass and/or weeds and other unsanitary matter on property and that the City Council has the power to amend, revise and enact such regulations;

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

I. Purpose and Policy

It is the purpose of this Amended and Revised Ordinance and City of Smiley (City) policy to comply with all applicable State and Federal laws. This Ordinance contains provisions to regulate stagnant water, overgrown weeds and/or grass and other unsanitary matter on property within the City; providing for abatement by the City and assessment of expenses as lien on the property; and creating an offense with corresponding fines and establishing the Court of Jurisdiction for said offense. This Ordinance will supersede any prior Ordinance in conflict with this Ordinance previously passed and approved by the City of Smiley, Texas. This Ordinance is ordained pursuant to Chapter 342 of the Texas Health & Safety Code, and any past, present or future amendments, which authorizes cities to regulate such unhealthy and unsanitary conditions within the limits of the municipality.

II. Compliance with Amended and revised Ordinance Required

The City of Smiley and any person, who is a current resident with superior access and/or control to property OR owns property but is not a resident within the corporate city limits of Smiley, Gonzales County, Texas or within its jurisdiction, shall be required to comply with this ordinance and be subject to the fees, penalties and fines as set forth below.

III. Scope

This Ordinance sets forth uniform requirements to be met by The City of Smiley, Texas and current citizens, residents and/or property owners within the corporate city limits of Smiley, Gonzales County, Texas or within its jurisdiction. This Ordinance is written to enable the City and its citizens to comply with and enforce all applicable State and Federal laws, if any, pertaining to the regulation of stagnant water, overgrown weeds and/or grass and other unsanitary matter on property.

IV. Objectives

The City Council for the City of Smiley finds that stagnant water, weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter pose a risk to the health of the community; and

The City Council finds that abatement of such conditions are commonly ignored by property owners; and

The City Council desires to regulate such conditions and provide for effective abatement within the City of Smiley, Texas.

V. Jurisdiction

This Ordinance shall be given full force and effect inside the corporate limits of the City and within those unincorporated areas located outside of the corporate limits of the City but within the City's extraterritorial jurisdiction. Except as otherwise provided, the City shall be responsible for the implementation, administration and enforcement of this Ordinance and any violation of this Ordinance shall be prosecuted in the Court of Jurisdiction for the City of Smiley, Texas which has been determined to be Smiley Municipal Court.

VI. Now, Be It Ordained by the City Council of the City of Smiley, Texas:

1. It shall be unlawful for any person, or his or her agent, owning, renting or having superior control, of any lot or premises, whether vacant or improved, with the City to permit the same to be covered in whole or in part, with weeds or grass in excess of twelve (12) inches high, downed timber or brush, old logs, decaying vegetable matter, trash and/or garbage piles, stagnant water, junk, scrap, open garbage, filth, or debris whatsoever, and same are declared to be public nuisance, a hazard, and/or menace to public health and/or a fire hazard.

2. It shall be unlawful for any person, or his or her agent, owning, renting, or having under his or her control any lot or premises, whether improved or vacant, within the City, which lot or premises consists in part of City owned easements or rights of way (whether sidewalk, construction, utility, or drainage) to permit same to be covered with weeds or grass in excess of twelve (12) inches high or any of the unsightly and/or unsanitary conditions enumerated in the preceding paragraph.
3. The Mayor, City Secretary, Fire Chief, City Marshal, Deputy Sheriff, and/or the City Health Officer (if one exists) shall each have the power to declare when any such situation shall constitute a health or fire hazard, or both, to summarily abate same, or have same abated, using City Fire Fighters, City Law Enforcement Officers and/or City Employees.
4. The City Enforcement Official shall notify the owner and/or agent of any premises within the City which is in violation of this ordinance, including but not limited to premises that are grown up in weeds and/or grass to a height greater than twelve (12) inches to cut/shred such weeds and/or grass within ten (10) days from the date of said notice. The notice must be given:
 - a. Personally to the owner in writing; and
 - b. By letter addressed to the owner at the owner's post office address by certified mail; or
 - c. If personal service cannot be obtained or the owner's post office address is unknown:
 - i. By publication at least twice within ten (10) consecutive days;
 - ii. By posting the notice on or near the front door of each building on the property to which the violation relates; OR
 - iii. By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.
5. If the owner and/or agent of the property does not comply with the requirements of this ordinance within ten (10) days of the date of notice of violation, the City Enforcement Official may, under implied consent for the failure to cure the violation:

- a. Do the work necessary to abate the unsafe or unhealthy condition or make the improvements required; and
 - b. Pay for the work done or improvements made and charge the expenses to the owner and/or agent of the property. Expenses and costs for abatement will be calculated at \$15.00 per hour per City Employee utilized for the necessary abatement. The City will also bill the owner of the property and/or the owner's agent, \$25.00 per hour, per piece of equipment used for the necessary abatement. In addition, to charges for all work performed in the field, the total charge assessed shall include an additional cost of not less than \$250.00 representing administrative and consultant costs. The total amount of the charges provided herein shall be levied, assessed, and collected by the City and are payable at Smiley City Hall (207 US Hwy 87 S., Smiley, Texas 78159), and if any owner and/or agent of the property shall fail to pay such charges so assessed within ten (10) calendar days after proper notice of said charges, the authorized official will file, with the County Clerk of Gonzales County, Texas, a statement by the City Enforcement Official setting out the expenses that the City has incurred, including costs associated with said filing with the Clerk, pursuant to the provisions of this section. The City shall thereby perfect a privileged lien on the property involved, second only to tax liens and liens for street improvement, to secure the expense to the City, together with ten (10) percent (%) per annum interest from the date such payment is due. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the County Clerk of Gonzales County, Texas.
6. The City Enforcement Official and the notice of a violation may inform the owner by certified mail, return receipt requested, 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 (1st) anniversary of the 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 not paid as set forth above. If a violation covered by a notice under this section occurs within a one (1) year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice, may take any action permitted herein and assess its expenses as provided by this ordinance.
7. The City Enforcement Official may abate, without notice, weeds that have grown higher than forty-eight (48) inches, or any other violation of this ordinance, that pose an *immediate danger* to the health, life, or safety of any person. Not later

than the tenth (10th) day after the date the City Enforcement Official abates weeds under this section, he shall give notice to the property owner in the manner set forth above. The notice shall contain:

- a. An identification, which is not required to be a legal description of the property;
 - b. A description of the violation(s) of the ordinance that occurred on the property;
 - c. A statement that the City abated the weeds or other violation; and
 - d. An explanation of the property owner's right to request an administrative hearing about the municipality's abatement of the weeds or other violation that posed an immediate danger. The City Enforcement Official shall conduct an administrative hearing on the abatement under this section if, not later than the thirtieth (30th) day after the date of the abatement, the property owner files with the City a written request for a hearing. An administrative hearing conducted under this section shall be conducted not later than the twelfth (12th) day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement. The City Enforcement Official may assess expenses and create liens under this section as it assesses expenses and creates liens under the preceding sections. A lien created under this section is subject to the same conditions as a lien created under the preceding section.
8. A violation of this ordinance shall constitute a misdemeanor, punishable by a fine of not less than \$250.00 but not to exceed \$1,000.00 exclusive of any other fees or expenses associated with abatement of said violation by the City. Each calendar day that an unlawful condition continues shall be considered a separate offense. Citations for violations of this ordinance shall be issued by the City of Smiley City Marshal and shall be prosecuted by the City attorney in Smiley Municipal Court. Being assessed charges for abatement as described above, does not limit the ability of the City Marshal to issue citations for the violation of this ordinance. All fines associated with a citation issued for the violation of this ordinance shall be paid to the Smiley Municipal Court. The Smiley City Marshal need not issue the citation in person to the property owner and/or agent if said person is not present at the time of the violation. Said citation may be issued and mailed to the alleged violator no later than the tenth (10th) calendar day after said violation occurs.

9. If abatement is necessary for failure to cure a violation of this ordinance after proper notice or under the provisions of paragraph 7 above, by a property owner or his/her agent, the City will not be responsible for any damage to the property or any fixtures to said property in furtherance of the abatement. In addition, should the property owner and/or agent whom has unpaid charges for the City's abatement of a condition in violation of this ordinance, attempt to reinstitute City of Smiley utilities associated with the property that was in prior violation, said service may be withheld by the City until all outstanding charges have been paid by the property owner and/or agent responsible for the property.
10. The fact that an accumulation of stagnant water, overgrown grass and/or weeds, and junk on city lots are a public nuisance and a danger to the health of the inhabitants of the City of Smiley constitutes an emergency and an urgent public necessity requiring that all rules and ordinances requiring that this ordinance shall take effect upon enactment thereof.

VII. Ordinance Review and Update

The City of Smiley shall review and update this Ordinance including possible adjustments of fines, fees and costs, as appropriate or as any other new or updated information becomes available, but at a minimum of every five (5) years.

VIII. Publication of Caption

The penal provisions contained in this Ordinance shall be effective from and after the date of publication of the caption of same in the official City newspaper, in accordance with law.

PASSED AND APPROVED on this 16 day of November, 2017.

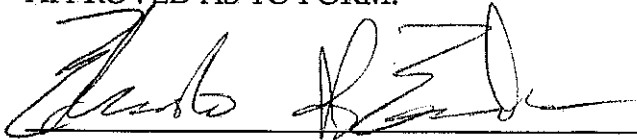
CITY OF SMILEY, TEXAS

By: Ellis Villasana
Ellis Villasana, Mayor

ATTEST:

Rebecca R. Mejia
City Secretary

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to read 'Eduardo Escobar', written over a horizontal line.

Eduardo "Eddie" Escobar, City Attorney

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