

## ORDINANCE NO. 155

**AN ORDINANCE OF THE CITY OF DEVERS, TEXAS DECLARING WHAT CONSTITUTES A PUBLIC NUISANCE; DECLARING DEFINITIONS; DECLARING LITTERING, TRASH, GARBAGE, RUBBISH, STAGNANT WATER, BRUSH AND WEEDS AS A PUBLIC NUISANCE; PROVIDING PROCEDURES FOR THE ABATEMENT AND REMOVAL OF SUCH PUBLIC NUISANCES; PROVIDING FOR REVIEW OF APPEALS; PROVIDING PENALTY; PROVIDING SEVERABILITY; REPEALING ANY PRIOR ORDINANCE IN CONFLICT WITH THIS ORDINANCE; AND PROVIDING FOR PUBLICATION OF NOTICE OF THE ORDINANCE.**

**WHEREAS**, The City of Devers, Texas is responsible for the protection of its citizenry and deems it dangerous to the public health welfare and safety for lots or parcels of real estate in the city to have places where stagnant water may accumulate and for filth, trash, rubbish, and debris to accumulate on the lots or parcels of real estate in the city and that same constitutes a public safety, fire and health hazard to have weeds, brush, trash, rubbish, carrion, debris or any other unsanitary matter to accumulate and same is hereby declared to be a public nuisance;

**WHEREAS**, any condition on private property which endangers the public health, welfare and safety including, but not limited to an accumulation of stagnant water, carrion, filth, trash, rubbish, debris, brush, refuse, junk and other abandoned materials or items, metals, lumber and tires on such property or the unsightly and uncontrolled growth of weeds, grass, and any other plant material or rank vegetation that constitutes a fire or health and safety hazard. Such conditions are hereby found and determined to be a public nuisance and are subject to abatement in the manner hereinafter provided;

**WHEREAS**, each of the following is a public nuisance:

1. a condition or place that is a breeding place for flies and that is in a populous area;
2. spoiled or diseased meats intended for human consumption;
3. a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;
4. a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;
5. sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such way as to be a potential instrument or medium in disease transmission to a person or between persons;
6. a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

7. a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002 (12)(A), Water Code, occur;
8. a condition that may be proven to injuriously affect the public health and that may direct or indirectly result from the operations of bone boiling or for rendering plant, tallow or soap works, or other similar establishment;
9. a place or condition harboring rats in a populous area;
10. the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be diseased carries in a place in which sleeping accommodations are offered to the public;
11. the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies;
12. an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

**WHEREAS**, for the purposes of this ordinance, the terms used herein shall be interpreted as follows:

**SECTION 1 – DEFINITIONS**; Unless specifically defined below, words or phrases used in this Ordinance will be interpreted so as to give them the same meaning as they have in common usage and so as to give this Ordinance its most reasonable application

1. "Brush" will include all trees and shrubbery under seven (7) feet in height not cultivated and cared for by the person owning or controlling the premises.
2. "Appeals Administrator" means the Mayor or other representative appointed by the City Council of the City of Devers, Texas duly designated and authorized to resolve appeals made under the provisions of this Ordinance.
3. "Code Official" means the representative of the City of Devers, Texas duly designated and authorized to enforce the provisions of this Ordinance.
4. "Earth and Construction Materials" means earth, rocks, concrete and other waste materials resulting from construction or remodeling of a building or structure.

wastes, cans, bottles, rags, paper and food containers.

6. "Improved Lot" means any segregated or defined tract or parcel of land, or two or more such contiguous tracts or parcels of land under one ownership, which meets one or more of the following criteria:
  - 6.1 A residence or other structure has been constructed on the lot, or
  - 6.2 The lot has been landscaped, terraced or altered in such a manner as to change the natural condition and cause it to stand out among adjacent unimproved properties, or
  - 6.3 The lot is used to hold a residential or commercial septic field whether absorption or evaporative type .
7. "Lot" will have its meaning as an improved lot or unimproved lot as defined in this Ordinance, but will also include, in addition to the land within its boundaries, all land adjacent to and extending beyond the property line to the curb line of adjacent streets, and, where no curb exists, to the existing street surface.
8. "Owner" means any individual, partnership, firm, corporation, company or association that is in control of a property as the owner thereof, or any tenant, lessee, or other occupant of property under an existing agreement or understanding with the owner thereof.
9. "Person" means any individual, partnership, firm, corporation, company or association of any kind.
10. "Rubbish" and "Trash" mean solid waste consisting of either combustible or non combustible waste materials; combustible waste materials include paper, rags, cartons, wood, lumber, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and like materials; noncombustible waste materials include glass, crockery, metal cans, metal furniture, and like materials which will not burn at incinerator temperatures of sixteen hundred (1,600) to eighteen hundred (1,800) degrees Fahrenheit.
11. "Unimproved Lot" means any segregated or defined tract or parcel of land, or two or more such contiguous tracts or parcels of land under one ownership, which does not meet the criteria of an improved lot as defined in this Ordinance.
12. "Weeds" mean all uncultivated plant matter, other than brush as defined in this Ordinance and trees, which has grown to a height of more than twelve (12) inches.

the masculine gender include the feminine or neuter gender, words in the singular number include the plural number, and words in the plural number include the singular number.

14. "Filth" shall mean any matter in putrescent state.
15. Carrion shall mean the dead and putrefying flesh of any animal, fowl or fish.
16. "Impure Unwholesome or Unsanitary Matter" shall mean any putrescible or nonputrescible condition, object of matter which tends, may or could produce injury, death or disease to human beings.

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

**TEX. LOC. GVT CODE 217,002 provides Type B General Law Municipality the authority to abate and remove and prevent any nuisance and punish by fine the person(s) responsible for the nuisance:**

**SECTION 2- LITTERING, STAGNANT WATER, WEEDS, BRUSH, RUBBISH, TRASH, EARTH AND CONSTRUCTION MATERIALS DEEMED AS A PUBLIC NUISANCE:**

1. It will be unlawful and will be deemed a public nuisance for any person to throw, drop, place, sweep or deposit any trash, rubbish, weeds, brush, offal or other substances whatsoever of an offensive nature or deleterious to health; in or upon any street, sidewalk, park or other public place, or in or upon the waters of any canal, stream or other watercourse or public waters, or in any drain, sewer or receiving basin within the Corporate limits of the City of Devers, Texas.
2. It will be unlawful and will be deemed a public nuisance for an owner or occupant of any improved lot within the Corporate limits of the City of Devers, Texas to fail to keep the property owned or occupied by him and the sidewalks, or walkways adjoining such property free of stagnant water, weeds, brush, rubbish, trash or garbage (unless placed on property pursuant to and in compliance with other ordinances or regulations of the City of Devers, Texas).

receiving the request.

2. Upon hearing the evidence and arguments of all persons entitled to and having requested said hearing as set out herein, the Appeals Administrator will issue a resolution either dismissing the written notice or ordering the public nuisance removed and abated by the person requesting the hearing within ten (10) days following the date of the resolution.
3. Should the resolution of removal and abatement fail to be complied with in the time period specified therein; the Mayor will issue a citation to the property owner requiring their appearance before the Municipal Court of the City of Devers, Texas for maintaining a public nuisance in violation of this Ordinance which constitutes a Class C Misdemeanor and a fine of Fifty (\$50) to Five Hundred Dollars (\$500).
4. Should the responsible party fail in the matter of maintaining the public nuisance, the City of Devers, Texas shall have each nuisance removed at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists.

**SECTION 5-PENALTY:**

Any person who commits an offense under this Ordinance, on conviction in Municipal Court, is subject to penalties and fines as assessed by the Municipal Court. Each day of such violation will constitute a separate offense. Such penalty will be cumulative and not exclusive of any other rights or remedies the City of Devers, Texas may have. The Court will order the offending party to remove and abate the public nuisance.

**SECTION 6-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 will not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion thereof, or provisions or regulations contained herein, will become inoperative or fail by reason of any unconstitutionality of any other portion hereof and all provisions of this Ordinance are declared to be severable for that purpose.

**SECTION 7-REPEAL OF PRIOR ORDINANCES:**

Upon the effective date of this Ordinance, any prior Ordinance or part thereof in conflict with this Ordinance or any part hereof will be deemed and is hereby repealed and rendered null and void.

**SECTION 8-PUBLICATION:**

within the corporate limits of the City of Devers, Texas to fail to keep such unimproved lot free of rubbish, trash, or garbage.

4. It shall be unlawful for any owner or occupant of any lot or premises in the City to allow or permit the existence of any type tree on such lot when such tree is dead or damaged and such condition poses a serious threat to property or life on such lot or an adjacent lot or an adjacent public right-of way, and such condition are hereby declared to be a nuisance in the City.

**SECTION 3-NOTIFICATION FOR A PUBLIC NUISANCE:**

1. Whenever a public nuisance, as defined by this Ordinance, is alleged to exist on private property or on any public property of public right-of-way, the Mayor will investigate the alleged offense. If the Mayor concurs that a public nuisance exists, the Mayor will mail a written notice to remove and abate the public nuisance, by certified mail with a five (5) day return receipt requested, to the perpetrator of the public nuisance, if known, or to the last known owner or occupant of the private premises on which the public nuisance exists, or to the owner or occupant of the premises adjacent to the public property or public right-of-way on which the public nuisance exists, containing the following information:
  - 1.1. Stating the nature of the public nuisance; and
  - 1.2. Stating that the public nuisance must be removed and abated within ten (10) days of receipt of the notice; and
  - 1.3. Stating that the person to whom the notice is directed has the right to a hearing, upon request, and that request for such hearing must be made before the expiration of the ten (10) day period for removal and abatement.
2. If the written notice is returned undelivered by the United States Post Office, official action to abate the nuisance may be continued ten (10) days following the date of the return.
3. If the person entitled to notice fails to either remove or abate the public nuisance or to request a hearing within ten (10) days after service of written notice, then the Mayor may cause to be filed in Municipal Court a complaint against such person for maintaining a public nuisance in violation of this Ordinance:

**SECTION 4- HEARING, RESOLUTION OF, REMOVAL AND ABATEMENT:**

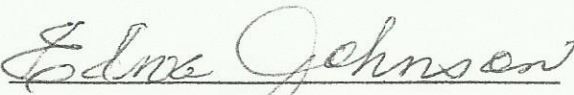
1. Any hearing conducted upon request of any person entitled to written notice as set out in this Ordinance, made within ten (10) days after receipt thereof, will be conducted by the

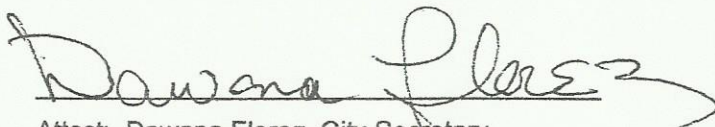
newspaper of City of Devers, Texas and said Ordinance will take effect from and after such publication.

**SECTION 9- OPEN MEETING:**

It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Texas Open Meetings Act, Chapter 551, Texas Government Code.

**PASSED AND APPROVED** by the City Council of Devers, Texas, at a regular meeting on the 11 day of December, 2012 with 4 votes in favor, 0 votes against and 0 abstentions.

  
Edna Johnson, Mayor

  
Attest: Dawana Florez, City Secretary