

ORDINANCE NO. 2010-5

AN ORDINANCE CREATING CERTAIN REGULATIONS CONCERNING PUBLIC NUISANCES, WEEDS AND OTHER UNSANITARY MATTER AND DEBRIS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, it is the intent of the Town Council of the Town of San Felipe to protect the public health, safety and welfare; and

WHEREAS, Chapter 217 of the Texas Local Government Code authorizes the Town of San Felipe to define and declare what constitutes a nuisance, to authorize and direct the summary abatement of a nuisance in any manner the Town of San Felipe considers expedient and to punish by fine any person responsible for a nuisance; and

WHEREAS, Texas Health & Safety Code Section 342.003 authorizes the governing body of a municipality to regulate the cleaning of a building, establishment or ground from filth, carrion, or other impure or unwholesome matter; and

WHEREAS, Texas Health & Safety Code Section 342.004 authorizes the governing body of a municipality to require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter; and

WHEREAS, Texas Health & Safety Code Section 342.006 sets forth specific notice requirements, and authorizes a municipality to do any improvements itself and assess the costs against the property; and

WHEREAS, Texas Health & Safety Code Section 342.007 authorizes municipalities to place a lien on property by filing a statement of expenses with the County Clerk; and

WHEREAS, Texas Health & Safety Code Section 342.007 authorizes the Mayor of a municipality to designate an appropriate municipal official to be responsible for filing weed/debris liens with the County Clerk; and

WHEREAS, the Mayor of the Town of San Felipe believes that the Code Enforcement Officer of the Town of San Felipe should be designated as the municipal official responsible for filing weed/debris liens with the County Clerk.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SAN FELIPE, TEXAS:

I.

Section 1. Vegetation or grass of height greater than twelve inches (12") constitutes offense

(i) *Violation.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the limits of the Town commits an offense by permitting or allowing weeds, grass, brush, or any vegetation to grow to a height greater than twelve inches (12") upon any such real property. Such real property shall include, but not be limited to:

- (1) The parkway between the sidewalk and the curb;
- (2) The right-of-way between any fence, wall or barrier and the curb or pavement if such exists or the centerline of such right-of-way;
- (3) The area between a fence, wall or barrier and within any abutting drainage channel easement to the top of such channel closest to the property;
- (4) The area outside the property to an abutting curb line;
- (5) The area outside the property to a distance of ten feet (10') from the property line if such area is part of or adjacent to a drainage easement or creek; or
- (6) Any area directly across an alley or traveled way that borders the property which is between the edge of the alley or traveled way and a screening wall or other barrier.

Vegetation not regularly cultivated that exceeds twelve inches (12") in height shall be presumed to be a nuisance, objectionable, unsanitary and unsightly.

(b) *Exception.* It shall not be an offense under this Section to permit or allow weeds, grass, brush or other vegetation to grow to a height greater than twelve inches (12") if they are growing in an area designated as a natural conservation area, preserve or habitat by any federal or state law or agency and the removing or cutting of the vegetation within that area is prohibited by the federal or state law or agency.

Section 2. Property to be free of conditions constituting public nuisances

(a) *Accumulation.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the Town commits an offense by permitting or allowing stagnant or unwholesome water, filth, carrion, weeds, rubbish, rubble, junk or garbage, or impure or unwholesome matter of any kind, including, but not limited to, dead grass, tree limbs, tree stumps, improper composting or improper storage of landscape materials, waste paper, scrap wood or lumber, scrap metal, rags, rubber tires, plastic, metal, ceramic or glass bottles, canisters, barrels or cans, combustible materials, appliances, furniture, discarded or unused flooring material, dismantled or disassembled vehicle parts, discarded or abandoned construction materials and exposed or uncovered fill materials, or any objectionable, unsanitary or unsightly matter of whatever nature to accumulate or

remain on such real property, including the improvements thereon, or within any easement area on such real property or upon any adjacent right-of-way for streets and alleys between the property line for such real property and where the paved surface of the street or alley begins. Such conditions are hereby defined as public nuisances.

(b) *Nuisance Odors.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the limits of the Town commits an offense by permitting or allowing any dangerous, unwholesome, nauseous or offensive odors, gases or fumes to escape into the open air in such amounts as to be substantially offensive, uncomfortable and annoying to any community, family or person of ordinary sensibilities, tastes and habits at a distance of more than 50 feet from the building, premises or processing from whence the odors, gases or fumes emanate.

(c) *Unsanitary Conditions.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the limits of the Town commits an offense by permitting or allowing the property to be used in a manner that causes the breeding of flies or mosquitoes, or where sewage, human or animal excreta, wastewater, garbage or any other matter is deposited, stored, discharged or exposed in such a way as to be a potential instrument or medium in the transmission of disease to or between persons.

Section 3. Cultivated and uncultivated agricultural properties; height limitations

(a) *Uncultivated agricultural properties.* A person, owner, tenant or agent responsible for or claiming or having supervision or control over uncultivated agricultural property commits an offense if such person permits or allows:

(1) Vegetation to grow to a height greater than twelve inches (12") within fifty feet (50') from any adjacent property under different ownership, a right-of-way or easement; or

(2) Vegetation to interfere with the visibility requirements at any intersection of public thoroughfares.

(b) *Cultivated agricultural properties.* Where the distance between the growing crop and adjacent property under different ownership, a right-of-way or easement is less than 25 feet, the person, owner, tenant or agent responsible for or claiming or having supervision or control over cultivated agricultural property commits an offense if such person permits or allows:

(1) Vegetation to grow to a height greater than twelve inches (12") between such growing crop and any adjacent property under different ownership, a right-of-way or easement; or

(2) Such growing crop interferes with the visibility requirements at any intersection of public thoroughfares.

(c) *Definition of agricultural property.* For the purposes of this Section, property is considered to be agricultural property, whether cultivated or uncultivated, if it has been granted a property tax exemption by the county central appraisal district, or equivalent authority, pursuant to the Texas Property Tax Code or state Constitution, for agricultural or wildlife management or a property that has not been granted a property tax exemption by the county appraisal district but is routinely cultivated producing an agricultural crop during the past three (3) calendar years.

Section 4. Notice of violation

(a) In the event any owner, tenant, agent or person responsible for or claiming or having supervision or control over real property (hereinafter "owner") governed by this Ordinance fails to comply with the provisions of this Ordinance, the Town, by and through its code enforcement division or designee shall give notice of the violation to such owner. Such notice shall be given in any one of the following ways:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) If personal service cannot be obtained by:

a. Publication in the Town's official newspaper at least once;

b. Posting notice on or near the front door of each building on the property to which the violation relates; or

c. Posting a notice to a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

(b) If the Town mails a notice to the owner in accordance with subsection (a), and the United States Postal Service returns the notice as "refused," "unclaimed," or if the address required by subsection (a)(2) was used and the notice is returned as "not deliverable as addressed" (or an equivalent marking), the validity of the notice is not affected, and the notice is considered as delivered.

(c) In a notice provided under this Section the Town 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 on or before the anniversary of the date of the notice, the Town, without further notice, may correct the violation at the owner's expense and assess the

expense against the property or issue citations. If a violation covered by a notice under this subsection (c) occurs within one year, and the Town has not been informed in writing by the owner of an ownership change, then the Town, without notice, may take any action permitted by section 5 and assess its expenses as provided in section 6 of this Ordinance.

Section 5. Citations; work or improvements by the Town; charges against owner

If the owner fails or refuses to comply with the demand for compliance in the notice within ten days of such notice, the Town may:

- (a) Issue citations as provided herein; and
- (b) Do the work or make the improvement required, pay for the work done or improvements made and charge the expenses to the owner of the property as provided herein.

Section 6. Assessment of expenses; lien

(a) In the event the owner fails or refuses to pay such expenses charged to the owner under section 5(b) within 15 days after the first day of the month following the month in which the work was done, a lien may be obtained against the property. To obtain a lien, the Town's health or code enforcement authority or, as the Mayor's designee, the Code Enforcement Officer, must file a statement of the expenses incurred in correcting the condition of the real property with the county clerk of the county in which the property is located. The statement must also state the name of the owner, if known, and the legal description of the property. The lien attaches upon filing of the statement with the county clerk.

(b) The Town's lien shall be a prior lien on such property, second only to tax liens and liens for street improvements. The lien amount shall include simple interest, which shall accrue at the rate of ten percent (10%) per annum from the date the expenses were incurred by the Town. The Town may, and hereby authorizes the City Attorney to, bring a suit for foreclosure to recover the expenditures and the interest due.

Section 7. Authority to immediately abate dangerous tall vegetation

(a) Notwithstanding any of the foregoing sections, the Town may abate, without notification, weeds, grass, brush or any unsightly vegetation that has grown higher than 48 inches (hereinafter "tall vegetation"); and is an immediate danger to the health, life, or safety of any person. The Town must give notice, in the manner provided in section 4, to the property owner no later than the tenth day after the date the town abates the tall vegetation. The notification shall contain:

- (1) An identification, which is not required to be a legal description, of the property;
- (2) A description of the violation of this Ordinance that occurred on the property;
- (3) A statement that the Town abated the tall vegetation; and
- (4) An explanation of the property owner's rights to request an administrative hearing regarding the Town's abatement of the tall vegetation.

(b) The Town, by and through its Code Enforcement Officer or his designee, shall conduct an administrative hearing not later than the 30th day after the date of the abatement of the tall vegetation, if the owner files a written request for a hearing with the Town. The Town shall conduct the administrative hearing not later than the 20th day after the date a request for hearing is filed. At the administrative hearing, the owner may testify or present any witnesses or written information relating to the Town's abatement of the tall vegetation.

(c) The Town may assess expenses and create liens under this section in the same manner and subject to the same conditions as set forth in section 6.

Section 8. Authority to immediately abate dangerous Public Nuisances

(a) Notwithstanding any of the foregoing sections, the Town may abate, without notification, any Public Nuisance that is an immediate danger to the health, life, or safety of any person. The Town must give notice, in the manner provided in section 4, to the property owner no later than the tenth day after the date the Town abates the tall vegetation. The notification shall contain:

- (1) An identification, which is not required to be a legal description, of the property;
- (2) A description of the violation of this article that occurred on the property;
- (3) A statement that the Town abated the Public Nuisance; and
- (4) An explanation of the property owner's rights to request an administrative hearing regarding the Town's abatement of the Public Nuisance.

(b) The Town, by and through its Mayor or his designee, shall conduct an administrative hearing not later than the 30th day after the date of the abatement of the Public Nuisance, if the owner files a written request for a hearing with the Town. The Town shall conduct the administrative hearing not later than the 20th day after the date a request for hearing is filed. At the administrative hearing, the owner may testify or present any witnesses or written information relating to the Town's abatement of the Public Nuisance.

(c) The Town may assess expenses and create liens under this section in the same manner and subject to the same conditions as set forth in section 6.

Section 9. Penalty provision

Any owner, person, firm, corporation or business entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding \$2,000.00. Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the Town from filing suit to enjoin the violation. The Town retains all legal rights and remedies available to it pursuant to local, state and federal law.

II.

This Ordinance shall be cumulative of all provisions of ordinances of the Town of San Felipe, Texas, except where the provisions of the Ordinance are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

III.

It is hereby declared to be the intention of the Town Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Town Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

IV.

This Ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED: This the 9th day of February 2010.

TOWN OF SAN FELIPE, TEXAS

BY: 
Bobby Byars, MAYOR

ATTEST:



Sie Foley, CITY SECRETARY