

ORDINANCE NO. 290

AN ORDINANCE PROHIBITING NUISANCES AND PROVIDING FOR THEIR ABATEMENT; ADOPTING ENVIRONMENTAL CODE SECTIONS 6.005 TO 6.025; 6.800 TO 6.830 AND 6.990; REPEALING PRIOR CONFLICTING ORDINANCES AND DECLARING AN EMERGENCY.

The City of Drain ordains as follows:

Section 1. The following sections are hereby adopted as a part of the City of Drain's Environmental Code:

6.005 Definitions. For purposes of section 6.010 to 6.527, the following words and phrases mean:

Person in charge of property. An agent, occupant, lessee, tenant, contract purchaser, or other person having possession or control of property or the supervision of a construction project on the property.

Person responsible for abating a nuisance.

(a) The owner of the property on which the nuisance exists;

(b) The person in charge of that property; and/or

(c) The person who causes the nuisance to come into or continue in existence.

6.010 Nuisances Affecting the Public. No person shall cause or permit a nuisance on public or private property. The following are nuisances which may be abated as provided in this Code:

(a) Animal carcasses, etc. The deposition of an animal carcass or part thereof, or any excrement or sewage, or industrial waste, or any putrid, nauseous, decaying, deleterious, offensive, or dangerous substance in a stream, well, spring, brook, ditch, pond, river, or other inland waters within the city, or the placing of such substances in such position that high water or natural seepage will carry the same into such waters.

(b) Attractive nuisances. No owner or person in charge of property shall permit thereon:

1. Unguarded machinery, equipment, or other devices which are attractive, dangerous, and accessible to children.

2. Lumber, logs, or pilings placed or stored in a manner so as to be attractive, dangerous, and accessible to children.

3. An open pit, quarry, cistern, or other excavation without safeguards or barriers to prevent such places from being used by children.

This section shall not apply to authorized construction projects with reasonable safeguards to pre-

vent injury or death to playing children.

(c) Debris. An accumulation of decomposed animal or vegetable matter, garbage, rubbish, manure, offal, ashes, discarded containers, waste, paper, debris, trash, hay, grass, straw, weeds, litter, rags, or other refuse matter or substance which by itself or in conjunction with other substances is deleterious to public health or comfort, or is unsightly, or creates an offense odor.

(d) Fences.

1. A fence, barrier, partition or obstruction electrically charged or connected with any electric source in such a manner as to transmit an electrical shock or charge to any person, animal or thing which might come in contact therewith.

2. A barbed-wire fence along a sidewalk or public way except barbed-wire placed on top of fences to prevent access to enclosed hazardous areas.

(e) Iceboxes and other containers. An abandoned, unattended or discarded icebox, refrigerator or other container accessible to children which has an airtight door, or lock which may not be released for opening from the inside. This definition does not include iceboxes, refrigerators, or other containers offered for sale by commercial establishments provided that the same are kept within enclosures from which children are excluded at all times except business hours.

(f) Odors. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition.

(g) Privies, etc. A privy, vault, cesspool, septic tank or drain which emits a noisome and offensive smell, or which is prejudicial to public health.

(h) Stagnant water. An accumulation of stagnant or impure water which affords or might afford a breeding place for mosquitoes or other insects.

(i) Trees. A dead or decaying tree that is a hazard to the public or to persons or property on or near the property.

(j) Vision obstructions. A tree, shrub, bush or plant higher than 18 inches above the crown of the adjacent roadway in that portion of the roadway between the property line and the curb line within 25 feet from the intersection of curb lines, if extended, at any street, avenue, or highway intersection. Where curbs have not been established, no such use of street area shall be made within 15 feet of the intersection of property lines if extended at any street, avenue, or highway intersection. The terms "bush," "shrub," or

"plant," as used in this section shall include climbers and other vegetation growing upon or supported by poles, wires or trellises.

(k) Others. Any other thing, substance, condition, or activity prohibited by state law, common law, this Code, other ordinances, or which is determined by the council to be injurious or detrimental to the public health, safety, or welfare of the city.

6.015 Obnoxious Vegetation - Definitions, Prohibitions, Abatement.

(1) As used in sections 6.015 to 6.025, the term "obnoxious vegetation" does not include an agricultural crop, unless that crop is a health hazard or a fire or traffic hazard within the meaning of subsection (2) of this section.

(2) As used in sections 6.015 to 6.025 the term "obnoxious vegetation" includes:

- (a) Poison oak.
- (b) Poison ivy.
- (c) Blackberry bushes that extend into a public thoroughfare or across a property line.
- (d) Vegetation that is:
 1. A health hazard.
 2. A fire hazard because it is near other combustibles, or
 3. A traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous.

(3) As used in sections 6.015 to 6.025, the term "obnoxious vegetation" includes:

- (a) Weeds more than 10 inches high.
- (b) Grass more than 10 inches high and not within the exception stated in subsection (1) of this section.

(4) Except as section 6.020 provides to the contrary, no owner or person in charge of property may allow obnoxious vegetation to be on the property or in the right of way of a public thoroughfare abutting on the property. Obnoxious vegetation so located is a public nuisance.

(5) In accordance with sections 6.800 to 6.830:

- (a) The city may abate the nuisance; and
- (b) The costs that the city incurs in the abatement may be charged against the owner or person in charge or against the property itself.

6.020 Obnoxious Vegetation - Waiver. Where strict compliance with the requirements of section 6.015 would be impracticable as they apply to a type or height of weeds or grass, to height of tree branches, or to a part of a parcel of property, the city administrator may waive those requirements as they so apply.

6.025 Obnoxious Vegetation - Notice. Between May 1 and June 15 of each year the city administrator shall cause to be published three times in a newspaper of general circulation in the city a copy of section 6.015 as a notice to all owners and persons in charge of property of their duty to keep their property free of obnoxious vegetation. The notice shall state that the city is willing to abate such a nuisance on any particular parcel of property at the request of the owner or person in charge of the property, for a fee sufficient to cover the city's costs of such abatement. The notice shall also state that, even in the absence of such requests, the city intends to abate all such nuisances 10 or more days after the final publication of the notice, and to charge the cost of doing so on any particular parcel of property to the owner thereof, the person in charge thereof, or the property itself.

6.800 Abatement Procedures - Notice.

(1) If the city administrator is satisfied that a nuisance exists, he or she shall cause a notice to be posted on the premises or at the site of the nuisance directing a person responsible to abate the nuisance.

(2) At the time of posting, the city administrator shall cause a copy of the notice to be forwarded by registered or certified mail, postage prepaid, to any person responsible at his or her last known address.

(3) The notice to abate shall contain:

(a) A description of the real property, by street address or otherwise, on which the nuisance exists.

(b) A direction to abate the nuisance within 10 days from the date of the notice.

(c) A description of the nuisance.

(d) A statement that unless the nuisance is removed, the city may abate the nuisance and the cost of abatement shall be charged to the person responsible and/or assessed against the property.

(e) A statement that failure to abate a nuisance may result in a court prosecution.

(f) A statement that the person responsible may protest the order to abate by giving notice to the city administrator within 10 days from the date of the notice.

(4) Upon completion of the posting and mailing, the persons posting and mailing shall execute and file certificates stating the date and place of the mailing and posting respectively.

(5) An error in the name or address of a person responsible shall not make the notice void and in such case the notice shall be sufficient.

6.805 Abatement Procedures - By a Person Responsible.

(1) Within 10 days after the posting and mailing of the notice as provided in section 6.800, a person responsible shall remove the nuisance or show that no nuisance exists.

(2) A person responsible protesting that no nuisance exists shall file with the city administrator a written statement specifying the basis for protesting.

(3) The statement shall be referred to the council as a part of its regular agenda at its next succeeding meeting. At the time set for consideration of the abatement, the person protesting may appear and be heard by the council, and the council shall determine whether or not a nuisance in fact exists, and the determination shall be entered in the official minutes of the council. Council determination shall be required only in those cases where a written statement has been filed as provided.

(4) If the council determines that a nuisance does in fact exist, a person responsible shall, within 10 days after the council's determination, abate the nuisance.

6.810 Abatement Procedures - By the City.

(1) If within the time allowed, the nuisance has not been abated by a person responsible, the council may cause the nuisance to be abated.

(2) The officer charged with abatement of the nuisance shall have the right at reasonable times to enter into or upon property in accordance with law to investigate or cause the removal of a nuisance.

(3) The city administrator shall keep an accurate record of the expense incurred by the city in physically abating the nuisance and shall include therein a reasonable charge for administrative overhead.

6.815 Abatement Procedures - Joint Responsibility.
If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

6.820 Abatement Procedures - Assessment of Costs.

(1) The city administrator, by registered or certified mail, postage prepaid, shall forward to a person responsible a notice stating:

(a) The total cost of abatement including the administrative overhead.

(b) That the cost as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(c) That if the person responsible objects to the cost of the abatement as indicated, he or she may

file a written notice of objection with the city administrator not more than 10 days from the date of the notice.

(2) Upon the expiration of 10 days after the date of the notice, the council, in the regular course of business, shall hear and determine the objections to the costs assessed.

(3) If the costs of the abatement are not paid within 30 days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens; and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated.

(4) The lien shall be enforced in the same manner as liens for street improvements and shall bear interest at the same rate as street improvements. The interest shall commence from date of the entry of the lien in the lien docket.

(5) An error in the name of a person responsible shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

6.825 Abatement Procedures - Separate from Penalty. The requirement to abate a nuisance is not a penalty for violating this Code but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance; however, abatement by a person responsible for a nuisance within 10 days of the date of notice to abate, or if a written protest has been filed, then abatement within 10 days of council's determination that a nuisance exists, will excuse the person responsible from prosecution.

6.830 Abatement Procedures - Summary Abatement. The procedure provided by sections 6.800 to 6.825 is not exclusive but is in addition to procedures provided by other laws and the city administrator may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life, health or property.

6.990 Penalties. Violation of any section of this Chapter is punishable by a fine not to exceed \$200.00.

Section 2. Ordinance No. 234 and all ordinances or resolutions relating to nuisances or procedures for abating nuisances within the City of Drain and in conflict herewith are hereby repealed.

Section 3. This ordinance shall apply to nuisances existing on the date of its enactment.

Section 4. The provisions contained herein affect the public health, safety and welfare and therefore an emergency is hereby declared to exist and this ordinance shall be effective immediately upon its passage by the council and approval of the mayor.

Passed By the Council
this 10 day of August, 1981

Signed by The Mayor
this 10 day of August, 1981

Attest: Robert A. Gray
City Administrator

Attest: * Grant L. Lewis
Mayor