

ORDINANCE #2012-05

ACCUMULATION OF TRASH, RUBBISH, AND DEBRIS TO BE A PUBLIC NUISANCE, DECLARING GRAFFITI TO BE A PUBLIC NUISANCE, ESTABLISHING RIGHT OF ENTRY, PROVIDING FOR NOTIFICATION PROCEDURE, PROVIDING FOR ABATEMENT PROCEDURE, PROVIDING FOR PENALTY FOR VIOLATION, PROVIDING FOR SAVING AND REPEAL CLAUSE, PROVIDING FOR AN EFFECTIVE DATE.

ARTICLE I. SHORT TITLE

This Ordinance may be cited the "Rubbish, Weedy Lot and Graffiti" Ordinance of the City of Mercedes, Texas.

ARTICLE II. DEFINITIONS

Unless otherwise noted in this Ordinance, the following terms shall have the following respective meanings unless a clearly different meaning shall be apparent from the context:

1. City - shall mean the City of Mercedes, Texas.
2. Day - shall mean a working day exclusive of Saturdays, Sundays and holidays.
3. Owner - shall mean the person, corporation, partnership or other legal entity having legal control of the lot or parcel of real estate.
4. Public Nuisance - shall mean any person doing an unlawful act or omitting to perform a duty or permitting any condition to exist which:
 - a.) Injures or endangers the comfort, repose, health or safety of others; or
 - b.) Offends decency; or
 - c.) Is offensive to the senses; or
 - d.) Unlawfully interferes with the comfortable enjoyment of life and property; or tends to depreciate the value of the property of others.

ARTICLE III. DECLARATION OF A PUBLIC NUISANCE

The maintaining, using, placing, depositing, leaving, or permitting to be, exist, or remain on any public or private property of any of the following conditions or actions are hereby declared to be and constitute a public nuisance; provided, however, this enumeration shall not be deemed or construed to be exclusive, limiting or restrictive.

1. Weeds, grass, brush and/or other rank vegetation measuring higher than 12"

from the ground; or

2. Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber, or other things; or
3. Any condition which provides harborage for rats, mice, snakes and other vermin; or
4. Any accumulation of stagnant water permitted or maintained on any lot or parcel of real estate; or
5. Discarded or abandoned refrigerators, ice boxes or similar containers with doors; or
6. Drawings or words that are scratched, painted, or sprayed on walls or other surfaces in public places or on private property; or
7. Any condition that is allowed to exist which interferes with the comfortable enjoyment of life or property.
8. Accumulation of carrion of the dead and putrefying flesh of any animal, fowl or fish.

ARTICLE IV. RIGHT OF ENTRY

The City Inspector, Code Enforcement Officer or any designated City employee shall have the right to enter on private property in order to investigate a possible violation of this Ordinance or to enforce this Ordinance.

ARTICLE V. NOTIFICATION PROCEDURE

1. The City Inspector, Code Enforcement Officer or any designated City employee has authority to implement this Ordinance.
2. The City Inspector, Code Enforcement Officer or designated City employee shall notify the owner, tenant or person suspected of maintaining or creating the public nuisance.
3. A written notice, either letter or card, shall be either hand-delivered or mailed to the owner via certified mail return receipt requested to the last known mailing address; The City may rely on the real property ownership records of the county appraisal district in determining the ownership of any property on which a violation exists. The notice will inform the owner that if another violation of the same kind or nature occurs on or before the first anniversary day from the date of such notice, the City may without further notice correct or abate the violation at the owner's expense and assess the expense against the owner as herein provided.

4. If the City is unable to hand-deliver or mail the notice, the City may:
 - a. publish a notice in a newspaper of general circulation for two (2) consecutive weeks (once a week);
 - b. post the notice on or near the front door of each building on the property to which the violation relates; or
 - c. post 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. The notice shall indicate the location of the nuisance, description of the nuisance, means of rectification/abatement, time allowed to rectify the nuisance, penalty for non-compliance.
6. The owner shall be provided with ten (10) days to rectify or abate the public nuisance unless it creates an imminent health or safety hazard in which condition abatement period may be shortened to three (3) days.

ARTICLE VI. EASEMENTS AND RIGHT-OF-WAYS

It shall be the responsibility of the owner, tenant or occupant to maintain their lot or parcel of property free of any unsightly matter constituting a public nuisance. Such lots or parcels of real estate, in addition to the grounds within their respective boundaries, shall be held to include all property up to the center line of existing easements, alleys and sidewalks.

ARTICLE VII. ABATEMENT BY CITY

In the event the owner of any lot or parcel of real estate fails to comply with the provisions of this Ordinance, after notification as provided herein, the City may do such work as necessary to correct, remedy, or remove the nuisance or cause the same to be done. The City Manager may employ City personnel, equipment and facilities for the purpose of abating the nuisance or may contract with a private entity for the same purposes. The doing of such work by the City shall not relieve the owner, occupant or tenant from prosecution for failure to comply with the notice of violation.

Graffiti Abatement Procedures

1. The city may remove any graffiti the city determines to be in violation of this ordinance upon receiving written consent and a waiver of liability from the owner of the property. The city may prepare and distribute forms for this purpose.
2. The owner may, if the owner desires, give advance consent to the city to remove

graffiti from the property in the future without the need for city to obtain the owner's consent prior to each removal. Such prior authorization shall be in writing to the city and shall be signed by the owner. The prior authorization may be revoked by the owner at any time by notifying the city in writing.

3. Whenever the city is authorized by this ordinance to remove graffiti and uses public funds for the removal and/or for the repainting of the property from which the graffiti is removed, the city shall not authorize or undertake to provide for the painting or repair of any more extensive area than that where the graffiti is located except in the following circumstances:
 - a. The city determines in a written notice to the owner that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community; or
 - b. The owner agrees to pay for the costs of repainting or repairing the more extensive area.
4. Where the property defaced by graffiti is owned by a public entity other than the city, the city shall cause removal of the graffiti only after securing the consent of an authorized representative of the public entity that has jurisdiction over the structure.

ARTICLE VIII. EXPENSES DUE TO ABATEMENT

If the City abates the public nuisance, the City shall be entitled to recover all reasonable expenses incurred in connection with the abatement of the nuisance. A Fifty (\$50.00) dollar administrative fee shall be assessed to the owner of the property. The City shall either hand-deliver or mail a statement via certified mail notifying the owner of expenses incurred. The owner shall have thirty (30) days from receipt of the notice to reimburse the City.

In the case of graffiti, when the owner consents to have the graffiti removed and/or repainted in a timely manner and if volunteer work is available, the City Manager or his designee may waive the \$50 administrative fee.

ARTICLE IX. SUMMARY ABATEMENT

In addition to the remedies prescribed by this Ordinance, if it shall be brought to the attention of the City Commission and shall by the Commission be determined that any such nuisance or nuisances, are likely to have an immediate adverse effect upon the public health, comfort or safety, then and in that event the City Commission may, be appropriate resolution or motion, order such nuisance or nuisances summarily abated by the City in a reasonable prudent manner.

ARTICLE X. LIEN

If the owner fails to reimburse the City for related expenses, including the administrative fee, the City Inspector, Code Enforcement Officer or designated employee shall file a lien against the real property to secure payment thereof. Such lien shall be second only to tax liens and liens for street improvements, and in accordance with Texas Health and Safety code, Vernon's Texas Statutes Annotated, Section 342.001 through 342.007 as amended. For such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the City. The statement of expenses shall be considered prima facie proof of the amount expended to abate the nuisance.

ARTICLE XI. RELEASE OF LIEN

Upon payment of the full charges, penalties and interest assessed against such property, the City shall execute for and on behalf of the City, a written release to the lien mentioned in Article IX of this Ordinance. Such written release shall be on a form prepared by the legal department. A fee of Fifty (\$50.00) Dollars shall be charged for furnishings said release.

ARTICLE XII. LIABILITY DISCLAIMER

The City shall be held harmless from any and all liability from any claims resulting from the abatement or the failure to abate a public nuisance on any property, including, but not limited to, destruction of plants, shrubs, flowers, brush and small trees of any nature. The City has no duty nor does this Ordinance impose any duty to the City Inspector, Code Enforcement Officer or other City employee to abate any nuisance existing on any private property. The provision of this Ordinance neither change nor modify the responsibility of the owner, occupant, or tenant of any premises in the City to keep the premises in a reasonably safe condition so as not to cause injury to any third party either on the property or adjacent to the property as provided for in state law. The adoption of this Ordinance does not, in any manner, change the responsibility under law nor does it create a cause of action for liability not heretofore existing under the laws of the state. A decision of the City to abate a nuisance or not to abate a nuisance is solely discretionary and any decision to abate a nuisance shall not create any liability on the City, City Commission, its employees, agents or representatives.

ARTICLE XIII. PENALTY

Any person who shall violate any provision of this Ordinance shall be guilty of a Class C misdemeanor and upon conviction thereof shall be fined up to a maximum of five hundred (\$ 500.00) dollars per day and each and every day's violation shall constitute a separate and distinct offense. In case the owner, occupant or tenant of any lot or parcel of real estate shall be a corporation, and violates any provision of this Ordinance, the president, vice-president, secretary, treasurer of such corporation, or any manager, agent, or employee of such corporation shall be severally liable for the penalties herein provided. Further, the City is authorized to cut off the water supply to said property upon failure to pay said fine.

ARTICLE XIV. SAVINGS AND REPEAL CLAUSE

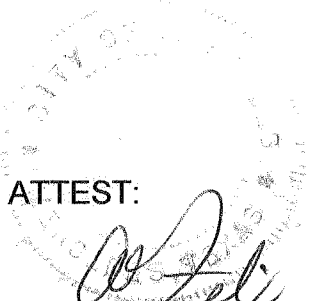
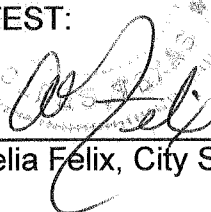
If any provision, exception, section, subsection, paragraph, sentence, clause, or phrase of this Ordinance or the application of the same to any persons or set of circumstances shall for any reason be held unconstitutional, void, or invalid, such invalidity shall not affect the remaining provisions of this Ordinance or their application to other persons or sets of circumstances, and, to this end, all provisions of this Ordinance are declared to be severable, and, all ordinances or parts thereof in conflict, herewith are hereby repealed to the extent of the conflict.

ARTICLE XV. EFFECTIVE DATE

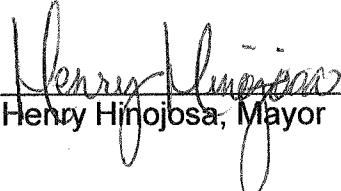
This Ordinance shall become and be effective in accordance with the laws of the State of Texas and of the City Charter of the City of Mercedes, Texas.

PASSED, APPROVED AND ADOPTED, ON FIRST READING THIS THE 3rd DAY OF APRIL, 2012.


PASSED, APPROVED AND ADOPTED ON SECOND READING THIS THE 17TH DAY OF APRIL, 2012.


ATTEST:


Arcelia Félix, City Secretary



Henry Hinojosa, Mayor

APPROVED AS TO FORM:


Juan Molina, City Attorney