

## ORDINANCE NO. 2022-6-21-B

### AN ORDINANCE OF THE CITY OF ASPERMONT, TEXAS ESTABLISHING REGULATIONS PROHIBITING CERTAIN UNSANITARY CONDITIONS; PROVIDING AN ABATEMENT PROCESS; PROVIDING A PENALTY; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS**, the City of Aspermont (the "City") is a Type A general-law city operating pursuant to the laws of the State of Texas;

**WHEREAS**, pursuant to Section 51.012 of the Texas Local Government Code, the City "may adopt an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order" of the City;

**WHEREAS**, Chapter 342, Subchapter A of the Texas Health and Safety Code allows for cities to regulate, prohibit, and abate stagnant water, filth, weeds, accumulation of refuse, storage of rubbish, and unsanitary conditions which attract or harbor pests;

**WHEREAS**, the City Council of the City of Aspermont wishes to adopt an ordinance regulating and prohibiting, and providing for abatement of, these unsanitary conditions, as such an ordinance is necessary to ensure the health and safety of, and is in the best interest of, the citizens of the City.

### NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASPERMONT, TEXAS:

**Section 1. Nuisances.** The following provisions are hereby adopted to govern conditions on real property within the City of Aspermont.

#### A. **Definitions.**

*Code Official* shall mean any person designated by the City Council to enforce violations of this Ordinance.

*Prohibited Condition* shall mean a condition of real property described by Section 1.2.

**B. **Prohibited Conditions.**** It shall be unlawful for an owner or occupant of any land, tract, or lot, or portion thereof to allow any of the following conditions to occur on said property:

- (1) Weeds, grass, and undergrowth over ten (10) inches tall;
- (2) The storing or accumulation of household trash and garbage unless the refuse is entirely contained in a closed receptacle;
- (3) The storing or accumulation of rubbish, including newspapers, refrigerators, stoves, furniture, tires, cans, used building materials and supplies, or discarded household fixtures or appliances unless completely enclosed in a building or is not visible from a public street; or

(4) Maintaining the property in a manner that creates an nnsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or other disease-carrying pests.

**C. Notice.**

(1) Should any owner of property violate Section B, the Code Official may provide the owner with notice that the property contains a Prohibited Condition.

(2) The notice shall inform the owner of the nature of the Prohibited Condition and give the owner seven (7) days from the date the notice is mailed to correct the violation. The notice shall also contain the statement, described in Section E(1), warning of additional violations within one (1) year of the notice.

(3) The notice shall be given:

- (a) personally to the owner in writing;
- (b) by letter addressed to the owner at the owner's address as recorded in the Stonewall County Appraisal District; or
- (c) if personal service cannot be obtained:
  - (i) by publication at least once;
  - (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.

(4) If a notice mailed under this Section C is returned by the United States Postal Service as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered as delivered.

**D. Abatement by City.** If the City sent a notice under Section C and the owner does not correct the Prohibited Condition(s) within the time period stated in the notice, the City may do the work or make the improvements required and pay for the work done or improvements made and charge the expenses to the owner pursuant to Section G.

**E. Additional Violations in One Year.**

(1) The notice sent under Section C shall also inform the owner that if the owner allows a Prohibited Condition of the same kind or nature to occur on the property on or before the first anniversary of the date of the notice, the City without further notice may correct the new Prohibited Condition at the owner's expense and assess the expense as a lien against the property.

(2) If the City provided notice under Section E(1) and another similar Prohibited Condition occurs on the property, then the City may abate the Prohibited Condition(s) pursuant to Section D and charge the costs to the owner pursuant to Section G.

**F. Limited Authority to Abate without Prior Notice.**

(1) The City may abate, without notice, weeds that have grown higher than 48 inches and that are an immediate danger to the health, life, or safety of any person.

(2) Not later than the 10<sup>th</sup> day after the date the City abates weeds under Section F(1), the City shall provide notice to the property owner in the manner required by Section C(3). The notice shall contain:

- (a) an identification, which is not required to be a legal description, of the property;
- (b) a description of the dangerous situation that existed on the property;
- (c) a statement that the City abated the weeds; and
- (d) an explanation that the owner may request an administrative hearing about the City's abatement of the weeds, if the owner files a written request for a hearing within 30 days of the City's abatement of the weeds.

(3) If the owner requests a hearing, the City Council shall conduct the hearing not later than the 20<sup>th</sup> 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 of the weeds. The City Council shall decide whether or not to require the owner to pay the City for the abatement.

#### **G. Assessment of Expenses; Lien.**

(a) If the City abates a condition on property pursuant to Section D, Section E(2), or Section F, it shall send to the owner a statement of expenses. If the owner does not pay the City for the total amount due on the statement of expenses within ten (10) days, the City shall file a lien against the property.

(b) To perfect its lien, the Mayor shall file a statement of expenses with the Stonewall County Clerk. The lien statement must 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 Stonewall County Clerk.

(c) The lien is security for expenditures made and interest accruing at the rate of ten (10) percent on the amount due from the date of payment by the City.

(d) The lien is inferior only to tax liens and liens for street improvements. The City Council may foreclose the lien in a proceeding relating to the property brought under Subchapter E, Chapter 33, Texas Tax Code.

#### **H. Penalty.**

(a) It is a criminal offense for any person, corporation, partnership, company, or other entity to violate the provisions of this Ordinance by permitting or maintaining a prohibited condition on any property within the City. Upon conviction, such violation shall be punished by a fine of up to \$2,000.00. Each day the violation continues shall constitute a separate offense.


(b) Criminal prosecution under this Section H may be brought against the owner and/or occupant of property with the Prohibited Condition(s) and may be brought in addition to, or in lieu of, abatement proceedings.

(c) The notice described by Section 1.3 is not required to be given to an owner or occupant before criminal charges are filed.

**Section 2. Severability.** Should any section or part of this Ordinance be held unconstitutional, illegal, or invalid, or the application to any person or circumstances for any reasons thereof ineffective or inapplicable, such unconstitutionality, illegality, or ineffectiveness or such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect and to this end the provisions of this ordinance are declared to be severable.

**Section 3. Effective Date.** This Ordinance shall take effect and be in full force and effect from and after the date of its passage and publication of the Ordinance for at least ten (10) days in a daily newspaper or two (2) issues of a weekly paper published within the City.

**PASSED, APPROVED, AND ADOPTED** on this the 21<sup>st</sup> day of June 2022.

  
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Steve Ellis, Mayor

ATTEST:

  
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Tammy Gibson, City Secretary