

Chapter 10 - Public Nuisances

DIVISION 1. – GENERALLY

Secs. 10-1—10-25. - Reserved.

DIVISION 2. - INSANITARY, UNSIGHTLY CONDITIONS ON PRIVATE PREMISES

Sec. 10-26. - Prohibited conditions designated—Stagnant water.

It shall be unlawful for the owner of any lot or other premises in the city to allow or permit holes or places where water may accumulate and become stagnant to be or remain on such lot or premises or to allow or permit the accumulation of stagnant water thereon, or to permit the same to remain thereon.

Sec. 10-27. - Accumulation of filth.

It shall be unlawful for the owner of any lot, building, house, establishment or premises in the city to allow or permit any carrion, filth or other impure or unwholesome matter of any kind to accumulate or remain thereon. This includes but is not limited to abandon buildings, automobiles, trailers, or any other property that can be considered structure unsound or unsafe for occupancy.

Sec. 10-28. - Accumulation of rubbish, insanitary matter.

It shall be unlawful for the owner of any lot, or premises in the city to allow or permit rubbish, brush or any other unsightly, objectionable, or insanitary matter of whatever nature to accumulate or remain on such lot or premises.

Sec. 10-29. - Notice to owner to remedy condition—Generally.

Whenever any condition described in this article is found to exist on any premises within the city, the owner of such premises shall be notified by the city, in writing, to correct, remedy or remove the condition within ten (10) days after such notice and it shall be unlawful for any person to fail to comply with such notice.

Sec. 10-30. – Notification of owners not residing at property with violation.

The notice provided for in section 10-29 shall be served personally on the owner to whom it is directed or shall be given by letter addressed to such owner at his last known post office address. In the event personal service cannot be made and the owner's address is unknown, such notice shall be given by publication at least two (2) times within ten (10) consecutive days in a newspaper of general circulation published within the city.

Sec. 10-31. - Correction of condition by city—Generally.

If the owner of any lot or premises upon which a condition described in this article exists fails to correct, remedy or remove such condition within ten (10) days after notice to do so is given in accord with this article, the city may do such work or make such improvements as are necessary to correct, remedy or remove such conditions, or cause the same to be done, and

pay therefor and charge the expenses incurred thereby to the owner of such lot. Such expenses shall be assessed against the lot or real estate upon which the work was done or the improvements made. The doing of such work by the city shall not relieve such person from prosecution for failure to comply with such notice in violation of section 10-129.

Sec. 10-32. - Statement of expenses incurred.

Whenever any work is done, or improvements are made by the city under the provisions of section 10-31, the mayor, city health authority or city official designated by the mayor, on behalf of the city, shall file a statement of the expenses incurred thereby with the county clerk. Such statement shall give the name of the owner, if known, the legal description of the property, the amount of such expenses and the date or dates on which the work was done or the improvements were made.

Sec. 10-33. - Lien for and collection of expenses.

After the statement provided for in section 10-132 is filed, the city shall have a privileged lien on the lot or real estate upon which the work was done or improvement made, to secure the expenses thereof. Such lien shall be second only to tax liens and liens for street improvements, and the amount thereof shall bear interest at the rate of ten (10) percent per annum from the date of payment by the city. For any such expenditures and interest, suit may be instituted, and recovery and foreclosure of the lien may be had in the name of the city and the statement of expenses made in accord with section 10-132, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

Sec. 10-34. - Penalty.

Any person who shall permit or allow the conditions described in this division to exist upon his lot or other premises in the city, or any person who shall, after having been notified in writing to correct, remedy or remove a condition so described within ten (10) days, who shall fail to correct, remedy or remove such condition shall be guilty of a misdemeanor and may be fined as provided in section 1-5 of this Code.

DIVISION 3. - WEEDS, GRASS, BRUSH

Sec. 10-35. - Maximum growth.

- (a) It shall be unlawful for any person, firm, corporation, partnership, association of persons, owner, agent, occupant or anyone having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to suffer or permit grass, weeds or brush that is uncultivated to grow to a greater height than twelve (12) inches on any lot, tract or parcel of land within the corporate limits of the city, five (5) acres in size or less.
- (b) On tracts of land more than five (5) acres, it shall be unlawful to suffer or permit grass, weeds and brush in excess of twelve (12) inches in height to grow uncultivated within five (5) feet adjacent to and along any dedicated public street within the corporate limits of the city or within five (5) feet on either side of any lot that is occupied by a residence or business.

Sec. 10-36. - Notice to property owners.

- (a) All complaints will be addressed on the City of Pine Forest Complaint Form. The city will investigate the complaint within ten (10) days from the filing of the complaint.
- (b) When any violation of this article is found to exist, a notice by certified letter will be addressed to the owner of the property in question; or if the address of the property owner is unknown, then notice may be given by publication one (1) time in a local, daily newspaper of general circulation. The property owner will have ten (10) days to correct the violation or submit an accepted plan of action.
- (c) Annual notice may be given to property owners, as above provided, prior to the grass-growing season.
- (d) Upon the giving of said annual notice, no further notice shall be required pursuant to this article.

Sec. 10-37. - Notice.

The notice of violation shall contain the following:

- (1) You are required to maintain your property to keep grass, brush and weeds at a height of less than twelve (12) inches.
- (2) In the event you fail to do so, the city will enter upon your property and mow or have it mowed at thirty-day intervals during such annual growing season.
- (3) You have ten (10) days from the date of the certified notice to correct the violation or submit a plan of action to remedy the problem.
- (4) Tall weeds are a breeding ground for rats and mice; and are a source of fuel for many fires. Please help us clean up Early.

Sec. 10-38. - Action by city.

In addition to court action, the city may enter upon the property found in violation of this article and mow or have said property mowed at thirty-day intervals during such annual growing season in the event such owner fails to mow same. A violation of this division is subject to the fine and penalty set out in section 1-5.

Sec. 10-39. - Assessment of city's expenses; billing.

Expenses incident to the action taken by the city to correct any condition coming under the provisions of this article, which includes a service charge to cover administrative costs, plus a penalty charge of ten dollars (\$10.00) shall be assessed against the owners of all outstanding interests in the lot or parcel of land involved. An itemized bill of such costs shall be mailed by the city accountant to each such owner if his address is known.

Sec. 10-40. - City's expenses declared a lien; recovery.

If the bill for the city's expenses in correcting any condition coming under the provisions of this article, including the administrative and penalty charges, shall remain unpaid for a period of thirty (30) days after the date of the mailing of such bill, the city accountant shall file a statement of such bill and the reasons therefor with the county clerk. From the date of such filing, the city shall have a lien on the lot or parcel upon which such expenses are incurred

second only to tax liens and liens for street improvements. The amount of such debt shall accumulate interest at the rate of ten (10) percent per annum from the date on which payment was due. For any such debt and interest, suit may be instituted and recovery and foreclosure had in the name of the city. In such suits the aforementioned statement, or certified copy thereof, shall be deemed prima facie evidence of the debt and interest thereon.

Secs. 10-41—10-45. - Reserved.

DIVISION 4. - NOXIOUS ODORS, EXCESSIVE NOISES

Sec. 10-46. - Noxious odors, commercial noises.

The following specified activities are designated as public nuisances whenever they are established within five hundred (500) feet of a residential dwelling:

- (1) Animal cleanup pits where trucks and train cars are cleaned of refuse and manure when they cause the release of noxious or nauseous odors and endanger the health of the citizens.
- (2) The dumping or disposal of any liquid or solid waste materials or chemicals in open areas where the noxious or nauseous odors could endanger the safety or comfort of the citizens.
- (3) Any commercial activity which creates or tends to create noxious or nauseous odors or excessive commercial noises such as continuous and excessively loud hammering, sounding of horns, revving of motors or other excessive noises which might cause unnecessary annoyance or discomfort to the citizens of the city.
- (4) For the purposes of this section, the storing or rendering of rawhides and animal fat shall be a public nuisance.

Sec. 10-47. - Actions to abate.

The city council and the city planning are authorized to use whatever legal means are available to enforce this division, including an action in the court of proper jurisdiction to abate such nuisances.

Sec. 10-48. - Outside broadcast of sounds.

- (a) It is unlawful for any person to use or operate any device for the reproduction or amplification of sound, including music boxes, or other amusement devices after 10:00 p.m. where same is outside the premises, building or structure.
- (b) It is unlawful to broadcast sound after 10:00 p.m. from any business where such sound is disseminated from outside the building or structure.
- (c) It is unlawful to operate loudspeakers from outside buildings or structures without having proper cut-offs operated in such manner as to automatically cut off the sound emanating therefrom after 10:00 p.m.
- (d) It is unlawful for any person to make any loud or excessive sound, either by natural or unnatural means, outside any residence after 10:00 p.m. Loud and excessive sound shall be determined to be any sound audible at a distance of thirty (30) feet or more. No

citation shall be issued in violation of this section upon first contact with the offender and a verbal warning issued. Any subsequent contact within twenty-four (24) hours will result in the citation being issued.

- (e) It is unlawful for any person to fire a firearm within five Hundred (500) feet of a residential dwelling, commercial or industrial property unless the owner of the property has provided specific authorization.
- (f) Fireworks shall be restricted to the 10:00 PM limitation, except during those holidays listed in Section 352.051 of the Texas State Statutes.

Sec. 10-49. - Sound cut-offs.

Each music box, mechanical sound reproduction and amplifying machine shall be equipped with a cut-off set for 10:00 p.m. after which time no sound shall be broadcast from premises which is audible to neighbors or on the public streets.

Sec. 10.49.1 - Engine brake.

The use of any stationary internal combustion engine, air compressor equipment, dynamic braking device, "jake-brake," motor vehicle or other power device, which is not equipped with an adequate muffler in constant operation and properly maintained to prevent any unnecessary noise [is prohibited], and no such muffler or exhaust system shall be modified or used with a cutoff, bypass or similar device.

Sec. 10-50. - Penalty.

Every person convicted of the violation of any part of this division shall be punished by a fine as provided in section 1-5 of this Code.

Secs. 10-51—10-65. - Reserved.

ARTICLE IV. – JUNKYARDS

Sec. 10-66. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Motor vehicle junkyard or business means any business and any place of storage or deposit which displays or in or upon which there are displayed, to view from a public roadway, five (5) or more unregistered motor vehicles, or used parts of motor vehicles or old iron, metal, glass, paper, cordage or other waste or discarded or secondhand material which has been a part or intended to be a part of any motor vehicle, the sum of which parts or material shall be equal in bulk to five (5) or more motor vehicles. A motor vehicle shall be defined as a street legal motorized vehicle as defined in the Texas Transportation Code.

Sec. 10-67. - Approval, license required.

No motor vehicle junkyard or business shall be established, moved or maintained in the city unless a certificate of approval has been procured from the city council and a license obtained from the city secretary.

Sec. 10-68. - Application for certificate of approval.

Application for a certificate of approval shall be made to the city council and shall set forth the name and address of applicant; the trade name under which applicant does or proposes to do business; the location where the business is to be conducted; if applicant is a firm or corporation, its organization and personnel; the size of the territory applicant proposes to allot to such business; that the interests of the municipality require the establishing, operating or maintaining of such a yard or business at the location designated; and any other information as may be required by the city council, upon printed forms to be prepared under its direction and available at the office of the city secretary.

Sec. 10-69. - Investigation by council.

The city council shall make or cause to be made such investigation as it may consider necessary, including any hearings that it may deem desirable, as to any application for such certificate of approval, and shall determine whether or not, in the interests of the safety, health, decency, comfort, convenience, necessary and welfare of the inhabitants of the city a requirement for the operation of such a business exists; whether or not the applicant is fit and proper to conduct such a business, and may investigate the fitness of the stockholders and officers of any corporation making such application in determining whether or not a certificate should be issued, and the city council, in considering such application, shall take into account the nature and development of surrounding property, the proximity of churches, schools, hospitals, public buildings and other places of public gathering, the sufficiency in number of such other yards or businesses in the vicinity, the health, safety and general welfare of the public and the suitability of the applicant to establish and maintain or operate such a yard or business and receive a license therefor.

Sec. 10-70. - Action by council, transfer of approval.

If the city council finds that the convenience, necessity, welfare and comfort of the public require the operation of a motor vehicle junkyard and that the applicant is fit to conduct the business and that the other requirements have been complied with, it shall notify the applicant of its findings. If it finds that the public convenience, necessity, welfare and comfort do not require the operation of such business in the location applied for or that the applicant is not fit to conduct such a business, it shall forthwith refuse such application, and no certificate of approval or license shall be issued to such applicant. Such certificate and license, when issued to an applicant, shall not be transferable without the consent and approval of the city council had after application and hearing as provided upon original application by the person to whom the certificate is issued.

Sec. 10-71. - Issuance of license.

Upon presentation of the certificate of approval within thirty (30) days of its date and satisfactory evidence that all license fees have been paid the city and that such other fees and taxes including ad valorem taxes, as may be required by law, have been fully paid, the city secretary shall issue to applicant a license to operate a motor vehicle junkyard; provided,

however, that any certificate issued shall be effective until cancelled and no additional certificate shall be required for the purpose of obtaining a license so long as the original certificate remains in effect and that applicant strictly complies with all the requirements and provisions of this article. No license for the operation of a motor vehicle junk yard shall be issued unless and until the city council has issued a certificate of approval under the terms and provisions of this article.

Sec. 10-72. - License fee, term.

- (a) In order to defray a part of the expense necessary to provide the surveillance, supervision and inspection of motor vehicle junk yards required under the terms and provisions of this article, there is hereby fixed a license fee which shall be collected from any person operating a motor vehicle junkyard in the city of ten dollars (\$10.00) per annum if the land used or to be used for such yard or business shall be one (1) acre or less and twenty-five dollars (\$25.00) if such land shall be in excess of one (1) acre.
- (b) Upon receipt of such certificate of approval, the payment of the required license fee and observance of regulations required, such license shall be issued by the city secretary for a period of one (1) year. The license provided for may be renewed from year to year upon payment of the same fees as required for the original license.

Sec. 10-73. - Fence required.

Each motor vehicle junkyard in the city shall be completely surrounded by a fence or structure at least eight (8) feet in height and of material which obscures the outside view. The fence is to be kept in good repair at all times.

Sec. 10-74. - Parking of inoperative vehicles.

No motor vehicle that is unable to operate under its own power or which has been wrecked or damaged shall be parked or stored for more than twelve (12) hours on any street, road, highway, alley or highway right-of-way adjoining or adjacent to any motor vehicle junkyard.

Sec. 10-75. - Display of vehicles for sale.

No motor vehicle or vehicle of any type shall be parked or stored for purposes of display or sale on any street, road, highway, alley or highway right-of-way at any time of day or night in the city limits.

Sec. 10-76. - Penalty.

Any person violating any of the provisions of this article shall upon conviction thereof, be fined as provided in section 1-5 of this Code.

Secs. 10-77—10-90. - Reserved.

ARTICLE V. - PROHIBITED SUBSTANCES

Sec. 10-91. - Definitions.

Restricted smoking material shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- (1) *Salvia divinorum* or salvinorin A; all parts of the plant presently classified botanically as *salvia divinorum*, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
- (2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) phenol (also known as CP47,497) and homologues;
- (3) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-210 or Dexanabinol);
- (4) 1-pentyl-3-(1-naphthoyl) indole (also known as JWH-018);
- (5) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or
- (6) 1-pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081).

Products containing some or all of the above substances are currently being marketed under the following commercial names: "K-2", "K-2 SUMMIT", "K-2 SEX", "GENIE", "DASCENTS", "ZOHAI", "SAGE", "SPICE", "KO KNOCK-OUT 2", "SPICE GOLD", "SPICE DIAMOND", "YUCATAN FIRE", "SOLAR FLARE", "PEP SPICE", "FIRE N' ICE", RED DRAGON, AND "SALVIA DIVINORUM".

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this article, regardless of whether they are marketed under alternative names.

Restricted smoking material paraphernalia shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include:

- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- (2) A water pipe;
- (3) A carburetion tube or device;
- (4) A smoking or carburetion mask;
- (5) A chamber pipe;
- (6) A carburetor pipe;
- (7) An electric pipe;
- (8) An air-driven pipe;
- (9) A chillum;
- (10) A bong; or
- (11) An ice pipe or chiller.

Sec. 10-92. - Restricted smoking materials—Purpose.

The purpose of this article is to prohibit the sale or delivery of restricted smoking materials as defined within the city limits of the City of Early, Texas, and to prohibit the possession of restricted smoking materials within the city limits of the City of Early. Any form of delivery to include a simple gift constitutes a violation of this article.

Sec. 10-93. - Sale, delivery, offer, or gift.

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to any person.

Sec. 10-94. - Use or possession of restricted smoking material.

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the City of Pine Forest.

Sec. 10-95. - Use or possession of restricted smoking paraphernalia.

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material. It is a violation of this article, if a person is found in possession of restricted smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of restricted smoking material are present on the restricted smoking paraphernalia.

Sec. 10-96. - Defenses to prosecution.

- (a) It shall be a defense to prosecution for a violation of this article if the use of the restricted smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.
- (b) It shall be a defense to prosecution under the terms of this article if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.

Sec. 10-97. - Offenses and penalties.

- (a) Any person who violates any provision of this article shall be guilty of a misdemeanor infraction, punishable by a fine not to exceed five hundred dollars (\$500.00).
- (b) Every act in violation of this article shall constitute a separate offense.
- (c) Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this article.