

## **TITLE I: GENERAL PROVISIONS**

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## **CHAPTER 10: GENERAL PROVISIONS**

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### **§ 10.01 Title of Code**

The ordinances embraced in this and the following chapters shall constitute and be designated the "Code of Ordinances, City of Overton, Texas", and may be so cited. However, such Code may also be cited as the "Code of Ordinances" of Overton or "Overton Code."

### **§ 10.02 Interpretation**

Unless otherwise expressed or by law or implication required, the same rules of construction, definition, and application shall govern the interpretation of this Code as those governing the interpretation of state law.

### **§ 10.03 Application to Future Ordinances**

All provisions of this chapter shall apply to ordinances hereafter amending or supplementing this Code unless otherwise specifically provided.

### **§ 10.04 Definitions and Rules of Construction**

In the construction of this Code and of all ordinances and resolutions passed by the City Council, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the City Council:

Acts by Assistant - When a statute or ordinance requires an act to be done which, by law, an agent or deputy may do as the principal, such requisition shall be satisfied by the performance of such act by an authorized agent or deputy.

Chapter - Whenever the words "this ordinance", "article", "section", "subsection", "provision", or "paragraph" are used, they shall pertain to the chapter or section of this Code of Ordinances in which they are found unless specifically and clearly in reference to a separate chapter or section.

City - The word "City" shall mean the City of Overton, State of Texas.

City Council - Whenever the words "City Council", "the council", "board of aldermen", or "governing body" are used, they shall mean the City Council of Overton, Texas.

Code - The words "this Code" shall mean the Code of Ordinances of the City of Overton as designated in § 10.01 above.

Computation of Time - Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding, the day on which such notice is given or such act is done shall not be counted and the date on which such proceeding is to occur shall be counted.

County - The words "county," "the county" or "this county" shall mean Rusk/Smith County, Texas.

Gender - Throughout this Code, words used expressing masculine gender shall be construed to include the feminine.

Month - The word "month" shall mean a calendar month, unless otherwise expressed.

Number - Any word importing the singular number shall include the plural and any word importing the plural number shall include the singular.

Official Time - The official time, as established by applicable state and federal law, shall be the official time for the transaction of all municipal business.

Owner - The word "owner," applied to a building or land shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole, or of a part of such building or land.

Person - Whenever the word "person" or its plural form is used in this Code it shall mean any person, firm, corporation, partnership, association of persons, owner, agent, lessee, or receiver.

Public Place - Whenever the word "public place" is used, unless otherwise specifically defined, it shall mean any public road, street, alley, park, building, or other property of the city or any other places to which people commonly resort for the purpose of business, recreation, or amusement.

Reasonable Time - In all cases where an ordinance or provisions of this Code requires an act to be done in a reasonable time or requires reasonable notice to be given, reasonable time or notice shall be deemed to mean the time which is necessary for a prompt performance of such act or the giving of such notice. (Also see "Computation of Time" and "Official Time" in this section.)

State - The words "the state" or "this state" shall be construed to mean the State of Texas.

Street - The term "street" shall include any highway, alley, street, avenue, or public place or square, bridge, viaduct, underpass, overpass, tunnel, or causeway in the city, dedicated or devoted to public use.

V.A.C.S. - Abbreviation for Vernon's Annotated Civil Statutes.

V.T.C.A. - Abbreviation for Vernon's Texas Codes Annotated.

V.T.C.S. - Abbreviation for Vernon's Texas Civil Statutes.

Year - The term "year" shall mean a calendar year, unless otherwise expressed.

### **§ 10.05 Prior Offenses and Contracts Not Affected By Code**

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.

### **§ 10.06 Amendments or Additions to Code**

(a) All ordinances passed subsequent to the adoption of this Code which amend, repeal, or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When subsequent ordinances repeal any chapter, section, or subsection, or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the City Council.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specified reference to the section number of this Code in the following language:

*"That Chapter \_\_\_\_\_, Section \_\_\_\_\_, of the Overton Code of Ordinances is hereby amended to read as follows..."*

The provisions shall then be set out in full as desired.

(c) If a new section is to be added to the Code, the following language shall be used:

*"That Chapter of the Overton Code of Ordinances is hereby amended by adding a new Section \_\_\_\_\_, which said section shall read as follows ..."*

The new section shall then be set out in full as desired.

(d) If a section is to be deleted from the Code, the following language shall be used:

*"That Chapter \_\_\_\_\_, Section \_\_\_\_\_, of the Overton Code of Ordinances is hereby repealed."*

(e) Any subsequent ordinance which fails to amend this Code in the manner provided for above, however, shall not be deemed invalid as a result of such failure to follow the procedure outlined in this section.

### **§ 10.07 Supplementation of Code**

(a) Supplements to this Code of Ordinances shall be prepared and printed whenever authorized by the City Council. A supplement to the Code shall include all substantive, permanent, and general parts of ordinances passed by the City Council during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by omission thereof from reprinted pages.

(b) When preparing a supplement to this Code, the codifier (meaning the person, agency, or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, to facilitate the development of a unified code. The codifier shall not make any change in the meaning or effect of ordinance material included in the supplement.

### **§ 10.8 General Penalty for Violations of Code<sup>1</sup>**

(a) Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such Code or ordinance the doing of an act is required, or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine not exceeding five hundred dollars (\$500.00), except for:

(1) Violations of municipal ordinances that govern fire safety, zoning, public health and sanitation, including dumping of refuse, vegetation and litter violations, in which instances the maximum fine shall be two thousand dollars (\$2,000.00) for each offense and

(2) Violations of traffic laws and ordinances which are punishable as a Class C misdemeanor shall be punished by a fine not to exceed five hundred dollars (\$500.00), with such fine being determined by the Municipal Judge.

No penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state.

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<sup>1</sup> State law reference – V.T.C.A., Local Government Code, § 54.001, authorizes municipalities to adopt penalties for violations of ordinances. Penalties for traffic violations are found in V.A.C.S., Art. 6701d, Secs. 143 and 143A.

(b) Each day any violation of this Code or of any ordinance shall continue shall constitute a separate offense.

### **§ 10.09 Severability**

It is the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph, or section of this Code 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 Code, since the same would have been enacted by the City Council without the incorporation in this Code of any unconstitutional phrase, clause, sentence, paragraph, provision, subsection, or section.

### **§ 10.10 Altering or Tampering With Code**

It shall be an offense for any person to change or amend, by addition or deletion, any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or to tamper with this Code in any manner whatsoever which will cause a law of the city to be misrepresented thereby.

## **CHAPTER 11: PUBLIC HEALTH**

### Section

#### 11.01 Possession, Sale or Ingestion of Certain Substances Banned (Ord. No. 092010)

### **§ 11.01 Possession, Sale or Ingestion of Certain Substances Banned**

- (a) It shall be unlawful for any person to use, possess, purchase, sell, publicly display for sale or attempt to sell, give, or barter any one or more of the following substances within the city limits of the City of Overton, Texas:
1. Salvia divinorium or Salvinorum 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. (6aS, 10aS)-9(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol commonly known as HU-211 or Dexannabinol,
  3. 1-Pentyl-3-(1-naphthoyl) indole commonly known as JWH-018 Spice or K2,
  4. 1-Butyl-3-(1naphthoyl) indole commonly known as JWH-073,
  5. N-benzylpiperazine commonly known as BZP,
  6. 1-(3-[trifluoromethylphenyl]) piperazine commonly known as TFMPP,
  7. Any other synthetic cannabinoid, or,
  8. Any similar substance which when inhaled or otherwise ingested produces intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changes, distorts, or disturbs the auditory, visual, or mental process and the product or substance has no other apparent legitimate purpose for consumers.
- (b) It is not a violation of this Ordinance if a person was acting under the supervision of an authorized law enforcement officer to enforce or ensure compliance with this Ordinance.
- (c) It is unlawful for any person, knowingly, to breathe, inhale, drink, or otherwise ingest any compound, liquid or chemical listed within this Ordinance, or a similar substance for the purpose of inducing a condition of intoxication, stupefaction, giddiness, paralysis, irrational behavior, or in any manner, changing, distorting or disturbing the auditory, visual, or mental process.
- (d) This Ordinance does not apply to any person who commits any act described in this Ordinance pursuant to the direction or prescription of a licensed physician or dentist licensed by the State of Texas to direct or prescribe such act. This Ordinance likewise does not apply to the inhalation of anesthesia for a medical or dental purpose.
- (e) Any person who violates this Ordinance shall be guilty of a misdemeanor and subject to a fine upon conviction in Municipal Court.

## CHAPTER 16. GARBAGE & REFUSE SERVICES

### In General

#### Section

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16.7	License for Private Collection Required; Exception
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#### **§ Sec. 16.1 Definitions**

Dry Refuse or Dry Rubbish. The term "dry refuse" or "dry rubbish" is defined as tin cans, papers, dry trash, pieces of wood, boxes, crates, tree limbs and excelsior or other packing materials, and other like materials and substances.

Garbage. The term "garbage" as used herein is defined and shall mean rubbish, trash, kitchen and household waste, including meat, vegetable and fruit refuse, hedge trimmings, lawn trimmings, merchandise containers, whether of paper, wood or other materials.

#### **§ Sec. 16.2 Garbage Receptacles - Required; Type**

- (a) No persons shall place or throw any garbage or dry refuse of any kind or character upon any street, sidewalk, alley, public way, parking lot or open space in the city, but all such garbage, refuse and rubbish shall be placed in a receptacle as hereinafter described.
- (b) The owners or operators of every type of business and/or occupants of residences or dwelling houses in the city shall deposit daily any accumulation of garbage or refuse in a galvanized iron can or acceptable plastic container with a water-tight cover, and such containers shall have an adequate capacity not exceeding 20 gallons each. Such receptacle shall contain handles and shall be rodent and insect proof and shall be kept covered at all times, except when garbage and refuse are being deposited therein or moved therefrom. Where equipment service containers are furnished by the city, deposits of garbage and trash shall be in such containers.
- (c) It shall be unlawful and an offense for any person, firm or corporation, or the person in charge of any residence, business or commercial establishment, to allow garbage, rubbish or refuse to be piled, placed or to accumulate on any sidewalk or street within the city. All such garbage, rubbish and refuse shall be placed in containers as provided for in this article.

### **§ Sec. 16.3 Placement of Containers**

It shall be the duty of every person to place such garbage containers directly behind the curb line of the street abutting such property or in the absence of a curb, directly behind the ditch line abutting such property. In no event shall such containers be placed in the street or on the sidewalk or in any manner placed where the containers will interfere with vehicular or pedestrian traffic.

### **§ Sec. 16.4 Meddling with Trash Receptacles Prohibited**

It shall be unlawful to meddle with garbage cans, trash or rubbish receptacles or in any way pilfer, search, or scatter contents of such garbage cans or rubbish receptacles in or upon any street or alley within the city limits.

### **§ Sec. 16.5 Containers to be Kept Sanitary and Secure**

All containers shall be kept clean and free from accumulation from any substance remaining attached to the inside of the container which would attract or breed flies, mosquitoes or other insects. The area surrounding garbage containers shall be maintained in a clean and sanitary condition. The contents of all receptacles shall be protected so that the wind cannot scatter the contents over the streets, alleys, or other property within the city. All containers shall be securely closed in such a manner as to prevent the scattering of the contents and to make them inaccessible to insects, rodents, and other animals.

### **§ Sec. 16.6 Unauthorized Private Collections Prohibited**

It shall be unlawful for any person to transport garbage or refuse for hire which has been collected from any premises within the city over any public street within the city. This section shall not apply to any person who at the time of such activity is operating under a valid contract or franchise granted by the city which authorizes said person to use the public street to conduct such activity.

### **§ Sec. 16.7 License for Private Collection Required; Exception**

- (a) No persons shall collect, remove, or dispose of garbage containers or trash receptacles or transport garbage or trash on the streets, alleys, or public thoroughfares of the city except duly authorized agents or employees of the city and persons acting pursuant to a contract with the city for public collection and disposal of garbage, trash, and brush, except as provided in this section. This section shall not apply to the transportation of garbage, trash or brush from outside the city to a disposal site outside the city.

- (b) Upon application and compliance with this section, a license may be obtained to serve the licensee's place of business. A license shall be issued upon application and payment of a \$25.00 license fee to the City office for the collection and transportation of garbage and trash from the licensee's premise or place of business using the licensee's own vehicles, equipment, and personnel. Application for a license shall include the following information:
  - (1) Name and address of applicant;
  - (2) Business name and business address of applicant;
  - (3) Type of business of applicant;
  - (4) Number, size and type of vehicles to be used for carrying garbage and trash; and
  - (5) Proposed disposal site.
- (c) All licensed trucks and containers used for the collection and transportation of garbage and trash shall be clearly marked with the owner's name and telephone number in letters and figures not less than two inches high.
- (d) Garbage and trash shall be removed by the licensee at least once a week.
- (e) Violation of any of the provisions of this chapter shall be sufficient cause for revocation of the license by the city council or its designee.
- (f) Individuals desiring to occasionally remove brush, debris, or trash from their own residence or business may do so if they have regular service from the city's contractor.

**§ Sec. 16.8 Out of the City Services**

The city is not required to furnish garbage services to consumers beyond the corporate limits, or to continue to supply, once begun, such services. The city reserves the right to provide services to such consumers it deems advisable and, too, at any time, wholly or partially, discontinue such services to any consumers located outside the corporate limits.