

## **TITLE VII: GENERAL REGULATIONS**

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## CHAPTER 70: ANIMAL CONTROL

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#### **Animals Running At Large<sup>1</sup>**

### **§ 70.01 Definitions**

When used in this chapter the following words and terms shall be interpreted as follows, unless the context indicates a different meaning:

Animal means any warm blooded vertebrate creature, domestic or wild, excluding the human species.

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<sup>1</sup> **State law reference** - Authority of city to prohibit or regulate animals running at large, V.T.C.A., Local Government Code, § 215.026(b).

Astray or Stray means any animal running free or otherwise without physical or other restraint whether on or off the premises of its owner.

Dog means a domesticated member of the family canidae but shall not include a wolf, jackal, fox, or other wild animal of this family.

Owner means any person, corporation, partnership, trust, or association, or other entity owning, keeping, or harboring an animal or who has possession or control or has the responsibility to control an animal.

Person means any person, corporation, partnership, trust, association, or other legal entity.

Restraint. Except as otherwise provided, an animal shall be deemed to be restrained when it is:

### **General Regulations**

- (1) Confined on the premises of the owner within a fence or enclosure; or
- (2) Fastened or picketed by a lead, rope, or chain so as to keep the animal on the premises of the owner; or
- (3) Under the control of a person by means of a harness, leash, chain, or similar device attended by a person of sufficient strength when the animal is on a public street, right-of-way, or any property other than that owned by the owner such that the animal shall be prevented from running at large; or
- (4) On or within a vehicle being driven or parked if the owner is present to control the animal from jumping or falling out; or
- (5) At heel beside or otherwise controlled by a person competent to restrain the animal by command. Such person shall have the aforementioned control of the animal at any time that said animal is upon the personal property of the owner or person authorized to control the animal.

Wild animal means any species of animal that commonly exists in a natural, unconfined state and is usually not domesticated.

### **§ 70.02 Animals Running Astray Declared a Nuisance**

All dogs, livestock, fowl, or dangerous wild animals running astray within the City limits of the City of Overton or within five thousand (5,000) feet thereof are hereby declared a public nuisance.

### **§ 70.03 Animals Running Astray Prohibited**

It is unlawful for any person, without regard to mental state, to suffer or permit any animal to run astray within the City limits or within five thousand (5,000) feet thereof.

### **§ 70.04 Penalty for Violation**

Any owner of an animal whose actions are in violation of this chapter shall be fined by the municipal court and shall be deemed guilty of a Class C misdemeanor and punished by a fine not to exceed five hundred dollars (\$500.00) for each subsequent offense.

*(Ordinance adopting Revised Code of Ordinances, passed March 13, 2001)*

## **Dogs<sup>2</sup>**

### **§ 70.10 Barking Dogs**

No person shall willfully or knowingly keep or permit any dog on his premises or in or about his premises that barks or howls repeatedly in such a manner as to disturb the peace and quiet of the neighborhood or the occupants of adjacent premises. A person shall be deemed to have willfully and knowingly violated the terms of this section if such person shall have been notified by the animal control officer or any law enforcement officer of any such disturbance and shall have refused, for a period of twenty four (24) hours, to correct such disturbance and prevent its reoccurrence.

### **§ 70.11 Maximum Number**

(A) No person shall keep more than three (3) dogs over the age of six (6) months at one location. Keeping of more than three (3) dogs at one location shall be considered as maintaining a kennel and all regulations relating to maintaining a kennel shall be relevant.

*(Ordinance adopting Revised Code of Ordinances, passed March 13, 2001)*

(B) A kennel may only be operated in a commercially owned area.

## **Rabies Control<sup>3</sup>**

### **§ 70.20 Reporting Of Suspected Rabies**

Any person having knowledge of the existence of any animal known to have been, or suspected of being, exposed to rabies or having knowledge of an animal bite or scratch to an individual that

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<sup>2</sup> **State law references** - Authority to regulate the registration and restraint of dogs is found in V.T.C.A., Health & Safety Code, Chapter 822, Subchapters A and B; authority to regulate keeping of vicious dogs is found in V.T.C.A., Penal Code, § 42.12; authority to destroy vicious dogs is found in Vernon's Ann.C.C.P., Art. 18.182.

<sup>3</sup> **State law reference** - Authority of City to adopt standards for the prevention of rabies, V.T.C.A., Health & Safety Code, Chapter 826.

the person could reasonably foresee as capable of transmitting rabies must immediately report such knowledge or incident to the animal control officer, City health authority or any police officer, and in no case longer than twenty-four (24) hours from the time of the incident.

### **§ 70.21 Authority to Quarantine**

The animal control officer, any police officer, or the City health authority shall have the authority to order the quarantine of animals responsible for bite incidents or suspected of having any zoonotic disease considered to be a hazard to human population or other animals.

### **§ 70.22 Animals Subject To Quarantine for Biting**

(a) When a dog or cat which has bitten or scratched a human or attacks another animal has been identified, the owner shall be required to produce the animal for ten (10) days confinement to determine whether such dog or cat has been exposed to rabies. Any unclaimed animal may be destroyed for rabies diagnosis prior to the end of this observation period. The dog or cat may be released from quarantine if a veterinarian determines that the animal does not show the clinical signs of rabies, provided the owner has paid all reasonable costs associated with the quarantining. Refusal to produce such animal is a misdemeanor and each day of such refusal constitutes a separate and individual violation. Quarantine must be at an approved vet at owner's expense. Written notification must be received by the vet.

(b) No animal which has a high probability of transmitting rabies, including skunks, bats, foxes and raccoons, will be placed in quarantine for observation. All such animals involved in biting incidents will be humanely killed in such a manner that the brain is not mutilated. The brain shall be submitted to a laboratory certified by the Texas Department of Health for rabies diagnosis.

(c) The City health authority may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to the face, head, or neck of a person to be humanely killed and the brain tested for rabies.

### **§ 70.23 Disposition of Animals Exposed To Rabies**

(a) Domestic animals

Vaccinated animals which have been bitten or otherwise significantly exposed to a rabid animal should be humanely destroyed or if sufficient justification for preserving the animal exists, the exposed vaccinated animal should be immediately given a booster rabies vaccination and placed in strict isolation for forty-five (45) days. Unvaccinated animals shall be immediately given a rabies vaccination and placed in strict isolation for ninety (90) days and given booster vaccinations during the third and eighth weeks of isolation. If the unvaccinated animal is under three (3) months of age at the time of the second vaccination, an additional booster should be given when the animal reaches three (3) months of age.

If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, it may be released to the owner prior to or upon expiration of the quarantine period, provided the owner has paid all of the reasonable costs of such quarantine and any veterinarian bills. However, if the quarantined animal shows the clinical sign of the disease *of* rabies, the animal shall be humanely destroyed and its head or brain submitted to the nearest laboratory certified by the Texas Department of Health for rabies diagnosis.

(b) Wild or exotic animals

No wild or exotic animal will be placed in quarantine. All wild or exotic animals will be humanely destroyed in such a manner that the brain is not mutilated. The brain will then be submitted to a laboratory certified for rabies diagnosis in order to be tested.

(c) Quarantining facilities

Any animal to be placed in quarantine must be placed in an animal control facility approved by the Texas Department of Health as directed by the animal was not a stray at the time of the bite incident.

If the biting animal cannot be maintained in secure quarantine, it shall be humanely destroyed and the brain submitted to a laboratory certified by the Texas Department of Health for rabies diagnosis.

## **Livestock, Swine, and Fowl**

### **§ 70.30 Minimum Lot Size**

(A) No horse, cow, goat, sheep, or other livestock, except horses, may be kept on a tract of less than two (2) acres in size. The ratio of animals to acreage shall be no greater than one (1) animal to each two (2) acres over the two (2) acre minimum.

(b) This provision shall not apply to a student harboring such animals for a school sponsored event, or club such as 4-H. In this event, the animals may be harbored for a period not to exceed six (6) months. After six (6) months, a permit must be obtained from the City.

### **§ 70.31 Maintenance of Premises**

All barns, sheds, and enclosures in which livestock is kept shall be maintained in a sanitary manner.

### **§ 70.32 Location of Buildings**

No barn, shed, or building in which livestock are kept shall be located within one hundred (100) feet of a residential structure.

**§ 70.33 Keeping Swine Prohibited**

It shall be unlawful for any person, firm, corporation, or entity to keep any swine within the City limits.

**§ 70.34 Keeping Fowl Prohibited<sup>4</sup>**

It shall be unlawful for any person, firm, corporation, or entity to keep any fowl within one hundred feet (100') distance from any residence.

*(Ordinance adopting Revised Code of Ordinances, passed March 13, 2001)*

**Wild and Exotic Animals and Poisonous Reptiles**

**§ 70.40 Keeping Wild and Exotic Animals and Poisonous Reptiles Prohibited**

It shall be unlawful to harbor, keep, or maintain any wild or exotic animals or poisonous reptiles within the City.

**§ 70.41**

Any animal referenced within this chapter that is picked up by the City shall subject the owner to a fine not to exceed \$10.00/day for up to three (3) days. This fine must be paid before the animal is released.

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<sup>4</sup> **State law reference** -- Authority of City to prohibit swine, V.T.C.A., Local Government Code, § 215.026(b).

## CHAPTER 71: FAIR HOUSING

### Section

- 71.01 Definitions
- 71.02 Interpretation and effect
- 71.03 Discrimination in the sale of housing
- 71.04 Discrimination in the financing of housing
- 71.05 Discrimination in the provision of brokerage services
- 71.06 Exemptions and exclusions
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- 71.10 Cumulative legal effect
- 71.11 Unlawful intimidation
- 71.12 Cooperation with the Secretary of Housing and Urban Development
- 71.13 Education and public information
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### **§ 71.01 Definitions**

For the purpose of this section, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words so used in the present tense include the future; words in the masculine gender include the feminine; words in the plural number include the singular, and words in the singular number include the plural.

- (a) "Discriminatory housing practice" means an act that is unlawful under Sections 3, 4, or 5 of this chapter.
- (b) "Age" means the calendar age of an individual eighteen (18) years of age or over.
- (c) "Creed" means any set of principles, rules, opinions and precepts formally expressed and seriously adhered to or maintained by a person.
- (d) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed and intended for occupancy as, a residence by one or more families or any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.
- (e) "Family" includes a single individual or a group of individuals living together under one common roof.
- (f) "Major life activities" means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(g) "Marital status" means an individual's status as a single, married, divorced, widowed or separated person.

(h) "Parenthood" means a person's status as a parent or legal guardian of a child or children under the age of eighteen (18).

(i) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, fiduciaries, and any other organization or entity of whatever character.

j) "Physical or mental disability" means any physical or mental impairment which substantially limits one or more major life activities. "Physical or mental impairment" shall include:

(1) Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculo-skeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or,

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(k) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(l) "Senior adult" means a person fifty-five (55) years of age or older.

## **§ 71.02 Interpretation And Effect**

This chapter shall in no way be interpreted as creating a judicial right or remedy which is the same or substantially equivalent to the remedies provided under Title VIII of the Civil Rights Act of 1968, as amended, or the Federal Equal Credit Opportunity Act (15 U.S.C. 1691). All aggrieved parties shall retain the rights granted to them by Title VIII of the Civil Rights Act of 1968, as amended, and the Federal Equal Credit Opportunity Act. In construing this chapter, it is the intent of the City Council that the courts shall be guided by Federal Court interpretations of Title VIII of the Civil Rights Act of 1968, as amended, and the Federal Equal Credit Opportunity Act, where appropriate.

## **§ 71.03 Discrimination in the Sale of Housing**

Except as exempted by § 71.06, it shall be unlawful for any person to:

(a) Refuse to sell or rent, after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of

race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age.

(b) Discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age.

(c) Make, print, publish, or cause to be made, printed or published any notice, statement or advertisement regarding the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age, or any intention to make any such preference, limitation or discrimination;

(d) Represent to any person because of race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available;

(e) For profit or with the hope or expectation of profit, induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age; and,

(f) For profit or with the hope or expectations of profit to influence or attempt to influence, by any words, acts, or failure to act, any seller, purchaser, landlord or tenant of a dwelling so as to promote the maintenance of racially segregated housing or so as to retard, obstruct, or discourage racially integrated housing.

#### **§ 71.04 Discrimination in the Financing of Housing**

It shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part of the making of commercial or residential real estate loans, to deny a loan or other financial assistance to a person applying therefore for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or to discriminate against any such person in the fixing of the amount, interest rate, brokerage points, duration, or other terms or conditions of such loan or their financial assistance, because of:

(a) The race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age of such person or of any person associated with him in connection with such loan or other financial assistance; or,

(b) The race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age of the present or prospective owner, lessees, tenants, or occupants of

the dwelling or dwellings for which such a loan or other financial assistance is to be made or given.

### **§ 71.05 Discrimination in the Provision of Brokerage Services**

It shall be unlawful for any person to deny access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate in the terms or conditions of such access, membership or participation, on account of race, color, creed, sex, religion or national origin, physical or mental disability, marital status, parenthood or age.

### **§ 71.06 Exemptions and Exclusions**

(a) There shall be exempted from the application of Section 3 hereof all transactions involving:

(1) The rental of units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner actually maintains and occupies one of such units as his residence.

(2) The rental of a single room in a dwelling containing living quarters occupied or intended to be occupied by no more than one family if the person offering such room for rental actually maintains and occupies the remainder of such dwelling as his residence and not more than four such rooms are offered.

(3) The sale or rental of any single house by a private individual who owns such house provided that:

(i) The sale or rental is made without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings or of any employee or agent of any such broker, agent, salesman, or person; and

(ii) The sale is made without the publication, posting or mailing of any advertisement or written notice in violation of this chapter (this shall not prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title); and

(iii) The owner does not own more than three single family houses at the time of the sale; and,

(iv) The owner does not own any interest in, nor is there owned or reserved on his behalf, under any express or voluntary agreement, title to or any right to all or any portion of the proceeds from the sale or rental or more than three such single family houses at any one time.

(v) If the owner does not reside in the house at the time of sale or was not the most recent resident of such house prior to the sale, the exemption granted by this subsection shall apply only with respect to one such sale within any twenty-four month period.

(b) Nothing in this chapter shall prohibit a religious organization, association, or society or any non-profit institution or organization operated, supervised, or controlled by or in conjunction with a religious association, or society from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, national origin, sex, mental or physical disability, marital status, parenthood or age.

(c) Nothing in this chapter shall prohibit a bona fide private club, not in fact open to the public, which as an incident to its primary purpose provides lodging which it owns or operates for other than a commercial purpose from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(d) Nothing in this chapter shall bar any person from owning and operating a housing accommodation in which a room or rooms are leased, subleased or rented only to persons of the same sex, when such housing accommodation contains common lavatory, kitchen or similar facilities available for the use of all persons occupying such housing accommodation.

(e) Nothing in this chapter shall prohibit the sale, rental, lease or occupancy of any dwelling designed and operated exclusively for senior adults and their spouses, unless the sale, rental, lease or occupancy is further restricted on account of race, color, creed, religion, sex, national origin, physical or mental handicap and marital status.

(f) Nothing in this chapter shall bar a person who owns, operates or controls rental dwellings, whether located on the same property or on one or more contiguous parcels of property, from reserving any grouping of dwellings for the rental or lease to tenants with a minor child or children; provided however, in the event that said reserved area is completely leased or rented, the person owning, operating or controlling said rental dwelling may not refuse to rent or lease any other available dwelling to the prospective tenant on the basis of the tenant's status as parent or any other of the protected classifications set forth in this chapter.

#### **§ 71.07 Fair Housing Administrator**

The Mayor shall appoint and the City Council shall confirm a Fair Housing Administrator (hereinafter referred to as "Administrator"), who shall have the responsibility for implementing this chapter. The Administrator may delegate his-authority to investigate and conciliate complaints to other City employees under his direction.

## **§ 71.08 Complaints**

(a) Only the person who claims to have been injured by a discriminatory housing practice who believes he will be irrevocably injured by a discriminatory housing practice that has occurred or is occurring (hereinafter referred to as "person aggrieved") may file a complaint with the Administrator. Such complaints shall be in writing and shall identify the person alleged to have committed or alleged to be committing a discriminatory housing practice and shall state the facts upon which the allegations of a discriminatory housing practice are based. The Administrator shall prepare complaint forms and furnish them without charge to any person, upon request.

(b) A copy of all complaints filed with the City shall also be forwarded to the Fair Housing and Equal Opportunity Division of the Region VI Office of the Department of Housing and Urban Development.

(c) The Administrator shall provide for free administrative counseling to those complainants who wish to file a private suit for relief in the local, state, or federal court.

(d) If at any time the Administrator shall receive or discover credible evidence and shall have probable cause to believe that any person or persons have committed or are committing a discriminatory housing practice as to which no complaint has been filed, the Administrator may prepare and file a complaint upon his own motion and in his own name and such complaint shall thereafter be treated in the same manner as a complaint filed by a person aggrieved.

(e) The Administrator shall receive and accept notification and referral complaints from the U.S. Attorney General and the Secretary of Housing and Urban Development pursuant to the provisions of Title VIII, Fair Housing Act of 1968, Public Law 90-284, and shall treat such complaints hereunder in the same manner as complaints filed pursuant to Paragraph A of this Section.

(f) All complaints shall be filed within sixty (60) days following the occurrence of an alleged discriminatory housing practice. Upon the filing or referral of any complaint, the Administrator shall provide notice of the complaint by furnishing a copy of such complaint to the persons named therein who allegedly committed or were threatening to commit an alleged discriminatory housing practice. The accused may file an answer to the complaint within fifteen (15) days of receipt of the written complaint.

(g) All complaints and answers shall be subscribed and sworn to before an officer authorized to administer oaths.

## **§ 71.09 Investigation**

(a) Upon the filing or referral of a complaint as herein provided, the Administrator shall cause to be made a prompt and full investigation of the matter stated in the complaint.

(b) If the Administrator determines that there is not probable cause to believe that a particular alleged discriminatory housing practice has been committed, the Administrator shall take no further action with respect to that alleged offense.

(c) During or after the investigation, but subsequent to the mailing of the notice of complaints, the Administrator shall, if it appears that a discriminatory housing practice has occurred or is threatening to occur, attempt by informal endeavors to effect conciliation, including voluntary discontinuance of the discriminatory housing practice and adequate assurance of future voluntary compliance with the provisions of this chapter. Nothing said or done in the course of such informal endeavors may be made public by the Administrator, by the complainant or by any other party to the proceedings without the written consent of all persons concerned.

(d) Upon completion of the investigation and informal endeavors at conciliation by the Administrator, but within thirty (30) days of the filing of the complaint with the Administrator, if the efforts of the Administrator to secure voluntary compliance have been unsuccessful, and if the Administrator has made a determination that a discriminatory housing practice has in fact occurred, the Administrator shall recommend to the City Attorney that such violations be prosecuted in the Municipal Court. With such recommendations, the Administrator shall refer his entire file to the City Attorney. The City Attorney shall, within thirty (30) days after such referral, make a determination as to whether to proceed with prosecution of such complaint in Municipal Court. If the City Attorney determines to prosecute, he shall institute a complaint and prosecute same to conclusion within thirty (30) days after such determination or as soon thereafter as practicable.

#### **§ 71.10 Cumulative Legal Effect**

This chapter is cumulative in its legal effect and is not in lieu of any and all other legal remedies that the person aggrieved may pursue.

#### **§ 71.11 Unlawful Intimidation**

It shall be unlawful for any person to harass, threaten, harm, damage or otherwise penalize any individual, group or business because he or they have complied with the provisions of this chapter, because he or they have exercised his or their rights under this chapter, or enjoyed the benefits of this chapter, or because he or they have made a charge, testified or assisted in any investigation, or in any proceeding hereunder or have made any report to the Administrator.

#### **§ 71.12 Cooperation with the Secretary Of Housing And Urban Development**

The Administrator and the City Attorney are authorized to cooperate with the Secretary of Housing and Urban Development and the U.S. Attorney General pursuant to the provisions of Title VII, Fair Housing Act of 1968, Public Law 90-284, and may render such service to the Secretary as they shall deem appropriate to further the policies of this chapter.

### **§ 71.13 Education And Public Information**

In order to further the objectives of this chapter, the Administrator may conduct educational and public information programs.

### **§ 71.14 Penalty**

Any person, firm, or corporation violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction, shall be fined a sum not to exceed Two Hundred Dollars (\$200.00) for each violation. Each day a violation continues after passage of seventy-five (75) days from date of the filing of the initial complaint with the Administrator shall constitute a separate and distinct offense.

Any person, firm, or corporation violating any provision of this chapter may be enjoined by order of a court of competent jurisdiction, and this remedy is in addition to any other penalty provision.

## CHAPTER 72: FIRE PREVENTION

### Section

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## **Fire Prevention Code<sup>5</sup>**

### **§ 72.20 Adoption of Fire Prevention Code**

There is hereby adopted for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion that certain code known as the Fire Prevention Code, recommended by the American Insurance Association, being particularly the 1970 edition thereof, save and except such portions as are hereinafter deleted, modified or amended. A copy of such code is on file in the office of the Mayor and the fire marshal and the same is hereby adopted and incorporated as fully as if set out at length herein. The provisions of the Fire Prevention Code shall be controlling and apply to the repair, equipment, use and occupancy, and maintenance of every existing building or structure within the City.

### **§ 72.21 Code Enforcement**

The code hereby adopted shall be enforced by the Fire Marshall. The Fire Marshall shall be a certified peace officer.

### **§ 72.22 Definitions**

Whenever the word "applicable governing body" is used in the code hereby adopted, it shall be held to mean the City of Overton.

### **§ 72.23 Conflicts With Code**

Whenever the Fire Prevention Code conflicts with any other provision of this Code of Ordinances or any other City ordinance, state or federal law, such code provision, ordinance, or state or federal law shall be controlling.

### **§ 72.24 Modifications To Code**

The Fire Marshal shall have power to modify any of the provisions of the Fire Prevention Code hereby adopted upon application in writing by the owner or lessee, or his duly authorized agent, when there are practical difficulties to carrying out the strict letter of the code, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done. The particulars of such modification when granted or allowed and the decision of the Fire Marshal thereon shall be submitted to the City Secretary and a signed copy shall be furnished the applicant.

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<sup>5</sup> **State law reference** -- Authority to enforce ordinances to protect health, life and property, V.T.C.A., Local Government Code, § 54.001. Authority to regulate for the purpose of fire prevention and protection of persons and property from fires, V.T.C.A., Local Government Code, Chapter 342, Subchapter A. Authority of city to establish fire regulations, V.T.C.A., Local Government Code, §§ 342.002 - 342.003.

### **§ 72.25 Appeals**

Whenever the Fire Marshal shall disapprove an application or refuse to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Marshal to the City Manager then the City Council within ten (10) days from the date the permit is refused or a decision is made regarding the applicability of the provisions of such code.

### **§ 72.26 Delaying Firemen**

It shall be unlawful for any person to willfully delay or prevent any fireman from attending any fire or in any manner hinder any fireman.

### **§ 72.27 Fire Lanes**

It shall be the duty of the Fire Marshall to establish fire lanes during any fire when in his judgment it becomes necessary or advisable, and to prohibit anyone from going within such fire lanes except as authorized by some member of the fire or police department, and when such fire lanes are established it shall be the duty of all other persons to remain on the outside thereof.

### **§ 72.28 Obstructing Fire Station**

It shall be unlawful for anyone to obstruct in any manner the access way to and from any fire station.

### **§ 72.29 Smoking In Places Of Public Assemblage**

It shall be unlawful for any person to smoke in any theater, church, meeting room, auditorium, tent, or other place of public assemblage with a capacity of twenty five (25) or more persons.

### **§ 72.30 Destruction Of Buildings**

The Fire Department may, in the course of attempting to extinguish a fire, may destroy buildings deemed hazardous by the Fire Marshall and/or the fire inspector. Such destruction and the payment of damages, if any is to be made, shall be done in accordance with the provisions of V.T.C.A., Local Government Code, § 342.005.

### **§ 72.31 Liability of Firemen for Property Damage**

No volunteer fireman or volunteer fire department in this state shall be liable to any person for any damage done to his property resulting from the volunteer fireman's or volunteer fire departments reasonable and necessary action in fighting or extinguishing any fire on the property.

## **§ 72.32 Penalties for Violations**

Any person who shall violate any of the provisions of the code hereby adopted or fail to comply therewith, or who shall violate or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken, or who shall fail to comply with such an order as affirmed or modified by the City Council or by a court of competent jurisdiction within the time fixed herein shall severally for each and every such violation and noncompliance, respectively, be guilty of a misdemeanor.

## **Fireworks<sup>6</sup>**

### **§ 72.40 Selling or Shooting Fireworks Prohibited**

It shall be unlawful for any person, firm, or corporation to manufacture, sell, use, store, or explode any fireworks within the City of Overton, Texas, except as provided in § 73.43.

### **§ 72.41 Fireworks Defined**

The term "fireworks" shall mean any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation. "Fireworks- include firecrackers, sky-rockets, Roman candies, sparklers or other similar devices.'Fireworks' shall not include auto flares or paper caps/ and/ toy guns (provided such caps contain twenty-five hundredths of a grain of *explosive*).

### **§ 72.42 Public Displays; Indemnity Bond; Storage Requirements**

(a) Fireworks as provided in this chapter may be used, shot, ignited and displayed in open lots or as a part of the conduct of a play, circus or similar entertainment by public authorities or by private persons or organizations that have been granted a permit for such display by the City Manager. Applications for permits shall be made in writing at least 30 days in advance of the date of the display. Each application for such a permit shall be referred to the City Fire Marshal who shall inspect said location. If the Fire Marshal shall report that the location is unobjectionable relative to fire hazards and safety, he may issue said permit upon the receipt of a permit fee as provided for in the Schedule of Fees found in Appendix A of this Code. Such permit may be granted for a period not to exceed six (6) days, and shall specify the name and address of the applicant or applicants, or the principal officers thereof if a corporation or association; the location where said fireworks are to be used; the exact time when such fireworks are to be used and the nature of the occasion; and a list of the fireworks to be used. A copy of

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<sup>6</sup> **State law reference** -- Authority of city to prohibit or regulate fireworks, V.T.C.A., Local Government Code, § 342.003(a)(8) and § 217.003(c).

each permit shall be filed in the office of the City Secretary. No permit granted hereunder shall be transferable.

(b) The Mayor shall require an indemnity bond in the sum of five thousand dollars (\$5,000.00) with good and sufficient sureties for payment of all claims that may arise by reason of injuries to persons or property from the handling, use or discharge of fireworks under such permit. Such bond will be taken in the name of the City and any person injured may bring an action on said bond in his own name to recover any damage sustained to person or property.

(c) Fireworks to be used under such a permit shall not be stored, kept, or discharged within three hundred feet (300') of any gasoline pump, gasoline filling station or gasoline bulk station, or any structures other than motor vehicles in which gasoline or other volatile liquids are kept in quantities in excess of one (1) gallon.

### **§ 72.43 Exemptions**

(a) This chapter shall not apply to articles used by railroads or transportation companies nor to high explosives used for blasting or similar purposes when used solely for the necessary conduct of construction, transportation, manufacturing or industry, nor to the conduct of the affairs of the army, navy, or militia.

(b) The Overton Volunteer Fire Department is exempt from the requirements relating to fireworks.

### **§ 72.44 Enforcement**

The City shall seize, take, remove, or cause to be removed at the expense of the owner all fireworks in the possession of a person in violation of this chapter. (*Ordinance adopting Revised Code of Ordinances, passed March 13, 2001*)

## **Arson**

### **§ 72.50 Arson Reward**

The City will pay out of the general fund of the City the sum of two hundred and fifty dollars (\$250.00) as a reward to any person or persons giving information or otherwise causing the arrest and conviction of any person or persons found guilty of committing the crime of arson within the City limits.

## **Outdoor Burning**

### **§ 72.60 Burning Regulations**

- (1) Wood, branches, brush, and similar yard waste are suitable for outdoor burning. Outdoor burning of other materials, including household items, shall be a violation of this chapter.
- (2) The location of the burning shall be appropriate to insure the safety of persons and property and adequate care for fire safety shall be demonstrated.
- (3) A burning permit must be received from the City.
- (4) No fire should be left unattended after dark.
- (5) A person found to be in violation of this chapter shall receive a warning for the first violation and a fine not to exceed \$250.00 for each additional violation.

## **Flammable Liquids<sup>7</sup>**

### **§ 72.70 Flammable Liquids Defined**

For the purposes of this chapter, the term "flammable liquid" shall have the meaning ascribed to it in section (202) of the Standard Fire Prevention Code.

### **§ 72.71 Sale of Flammable Liquid in Quantities of Five Gallons Or Less Regulated**

- (a) It shall be unlawful for any person to sell or dispose of any flammable liquid in a container of five (5) gallons or less in capacity, unless such container meets the requirements of this section.
- (b) It shall be unlawful for any owner, occupant, or tenant of any building or structure of any kind, where people are housed as a home, apartment, boarding house, or any other type of occupancy of any kind or character, whether they be housed or employed therein, to keep any flammable liquid in, upon, or about such premises in quantities of five (5) gallons or under, unless such flammable liquid is kept in a container meeting the requirements of this section.
- (c) The container required by this section shall be an air-tight container of five (5) gallons capacity or under, constructed of metal or the equivalent thereof, other than glass or materials that are breakable, properly equipped and fitted with a metal lid or the equivalent thereof, in such a manner and to the extent that the container will be air-tight and will not leak, break or erupt, if dropped or turned over, and the contents will not ignite when exposed to open flame or ignition, and so that neither the liquid nor the vapor will escape from it at ordinary temperatures. Such

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<sup>7</sup> **State law reference** -- Municipal authority to regulate flammable liquids is found in V.T.C.A., Health & Safety, § 753.006.

container shall be so designed and cared for that persons who are unaware of the danger of flammable liquids will not have easy access to the contents of the container and will not be exposed to the danger of the liquid or its vapor.

**§ 72.72 Flammable Liquids Used As Motor Fuel**

It shall be unlawful for any person within the corporate limits of the City to dispense from any mobile service unit, vehicle tank truck, or other mobile device any flammable liquid used as motor fuel, as an act of retail sale, into the fuel tank of any motor vehicle parked on any off-street parking facility or into the fuel tank of any motor vehicle parked on any public street.

## CHAPTER 73: HEALTH AND SANITATION

### Section

#### **Weeds**

- 73.01 Growth limitations
- 73.02 Certain areas to be kept free and clear
- 73.03 Duty to cut and remove
- 73.04 Notice to cut and remove
- 73.05 Cutting and removal by city
- 73.06 Penalty for violation

#### **Weeds**

### **§ 73.01 Growth Limitations**

It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, or an individual exercising custody and control within the City to permit weeds, Johnson grass, brush or any objectionable or unsightly matter to grow to a greater height than twelve (12) inches upon any such real property within one hundred fifty (150) feet of any property line which abuts street right-of-ways, alleys, utility easements, subdivided additions, developed property or any buildings or other structures.

### **§ 73.02 Certain Areas to Be Kept Free and Clear**

It shall be the duty of any person to keep the area from the line of his property to the curb line next adjacent to it, if there be a curb line, and if not, then within ten (10) feet outside that property line, free and clear of the matter referred to in § 73.01. All vegetation not regularly cultivated and which exceeds twelve (12) inches in height shall be presumed to be objectionable and unsightly, except that regularly cultivated crops shall not be allowed to grow within the right-of-way of any public street or easement but shall be kept mowed.

### **§ 73.03 Duty to Cut and Remove**

It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, to cut and remove all such weeds, brush and other objectionable or unsightly matter as often as may be necessary; provided that the removing and cutting same at least once in every thirty (30) days shall be deemed a compliance with this article and to use every precaution to prevent the same growing on such premises so as to become a nuisance.

### **§ 73.04 Notice to Cut and Remove**

In the event that any person owning, claiming, occupying or having supervision or control of any real property occupied or unoccupied within the City, fails to comply with the provisions of § 93.02 and § 93.03, it shall be the duty of the Mayor to give ten (10) days' notice in writing to such person violating the terms of this article, or by letter addressed to such person, at its post

office address or by publication two (2) times within ten (10) consecutive days in the City's official newspaper.

### **§ 73.05 Cutting And Removal by City**

If any person fails or refuses to comply with the provisions of § 73.02 and § 73.03 within ten (10) days after date of notification in writing or by letter or date of second publication of notice in the City's official newspaper, the City may go upon such property and do or cause to be done the work necessary to obtain compliance with this chapter.

The expense incurred in correcting the condition of such property, and the cost of publishing notice in the newspaper shall be paid by the City and charged to the owner of such property. In the event the owner fails or refuses to pay such expense within thirty (30) days after the first day of the month following the one in which the work was done, the City shall file with the county clerk a statement of the expenses incurred in correcting the condition on the property. When such statement is filed, the City shall have a privileged lien on such property, second only to tax liens and liens for street improvements, to secure the payment of the amount so expended. Such amount shall bear interest at the rate of ten percent (10%) per annum from the date the City incurs the expense. For any such expenditures and interest, suit may be instituted and recovery and foreclosure had by the City. The statement of expense filed with the county clerk or a certified copy thereof shall be prima facie proof of the amount expended in such work as improvement or correction of the property, all as more particularly specified in Art. 4436, Vernon's Annotated Texas Civil Statutes, which is hereby adopted.

### **§ 73.06 Penalty for Violation**

Any person violating any of the provisions of this article shall be subject to a fine, as prescribed in § 10.10 of this Code, upon conviction in the municipal court, and each and every day that the premises shall remain in a condition in violation of the terms of this chapter shall constitute a separate offense. This section shall be in addition to and cumulative of the provisions for the abatement of the said nuisance and charging the cost of same against the owner of the premises by the City.

## CHAPTER 74: NUISANCES

### Section

#### **Nuisances Generally**

- 74.01 Certain acts constituting nuisances
- 74.02 Notice to abate; abatement by City upon property owner's refusal

#### **Unsanitary Conditions on Private Property**

- 74.10 Prohibited conditions designated - stagnant water
- 74.11 Accumulations of downed timber, trash, etc.
- 74.12 Abandoned iceboxes or refrigerators
- 74.13 Impoundment and diversion of water; duty to drain
- 74.14 Notice to owner to remove or remedy condition
- 74.15 Removal or correction by City
- 74.16 Statement of expenses incurred; lien for and collection of expenses

#### **Noise**

- 74.20 Making of noise detrimental to life or health prohibited
- 74.21 Noise interfering with enjoyment of property or public peace and comfort
- 74.22 Unreasonably loud, disturbing, and unnecessary noises
- 74.23 Acts creating unlawful noises
- 74.24 Use of bell, siren, compression, or exhaust whistle on vehicles

#### **Nuisances Generally**

### **§ 74.01 Certain Acts Constituting Nuisances**

The following shall constitute nuisances when allowed, maintained or suffered to exist within the City. The person guilty of causing or permitting a nuisance to exist shall be fined as provided in this Code.

- (a) Whatever is dangerous to human life or health; whatever renders the ground, the water, the air or any food or drink unwholesome and a hazard to human life and health.
- (b) Any building, erection or cellar or any part of such building or erection or cellar which is overcrowded, or not provided with adequate means of ingress or egress or is not sufficiently supported, ventilated, sewerred, drained, cleaned or lighted.
- (c) All cellars, vaults, drains, pools, privies, sewers, yards, ground or premises which have for any cause become foul, nauseous or offensive or injurious to the health, or unpleasant to adjacent residences or to persons passing such premises.
- (d) All carcasses, all decaying flesh, fish, fowls, fruit or vegetables, all deposits of manure, all flesh of any kind or description whatever, all other unwholesome substances when thrown upon or conducted into or upon any street, alley, public ground or enclosure in such manner as to

render such substances unwholesome and offensive or liable to become unwholesome or offensive.

(e) All privies that are offensive from use; all markets, cellars, laundries, stores or other buildings or places which are not kept clean and free from filthy and unwholesome substances and odors; all deposits or substances that are offensive or liable to engender disease.

(f) Every trade, business or occupation injurious to the health or comfort of persons who reside in the vicinity, and any can or receptacle containing water or slops suffered to become stagnant or offensive or unwholesome from any cause.

(g) The act of depositing fifth or any foul, offensive, nauseous or injurious substance upon any sidewalk, street, alley, public thoroughfare or other public place.

(h) The act of sweeping or depositing any trash, paper or rubbish into any street, alley, public thoroughfare or other public place and allowing the same to remain in such place longer than twenty-four (24) hours.

(i) The act of burning any hair, leather, rags or any other substance of any kind which may cause or produce an offensive smell, smoke or odor capable of annoying persons living in the vicinity.

j) The act of defecating or urinating upon the streets, alleys or public grounds, or in any place that may be seen from a private residence or by persons passing along the streets, alleys or public thoroughfares.

(k) The act of keeping, raising, possession or having in or about the premises, except within enclosures, any pigeons with intent to keep, raises or breeds same.

(l) The act by any person of permitting or allowing any weeds, filth or rubbish of any kind to remain on any sidewalk in front of or at the side of any premises owned by such persons, or in the street, to the middle thereof, in front or at the side of any premises owned or controlled by such person, or upon any alley, that may be at the rear or side of any lots owned or controlled by such persons.

(m) The act of hauling, carrying or transporting any meat or slaughtered or dead animals or fish for commercial use through the streets of the City without having the same entirely covered, screened and protected from dust and public view.

(n) The act of scattering any advertisements, circulars, handbills, printed or written announcements or paper of like character upon the streets, sidewalks, alleys or within the public buildings or grounds within the City.

(o) The act of the owner or possessor of any animal which may die in failing to have the carcass of the same properly disposed of by burial or cremation within twelve hours after death of the animal.

(p) The act of throwing from any opening in, or carrying from, any dwelling or place of abode, any night soil, feces, urine or filthy or unclean water into or upon any alley, street or sidewalk or into or upon any adjacent property not owned by the principal.

(q) The act of conducting or causing to be conducted into any alley or gutter of wastewater from any sink or tank or any source of water supply which may produce any pool of stagnant water in the alley or gutter.

(r) The act of dumping upon and removing from any sidewalk, street or alley any coal or like material in a dry state, in such manner that annoying or offensive dust is generated from such material, or the act of leaving coal dust or like material upon any sidewalk, street or alley at or near the place where such coal or material was deposited or from which it was removed.

(s) Any article or substance placed upon any street, sidewalk, alley, gutter, and drain or public ground except such articles as are permitted by this Code or other ordinances of this City, in such manner as to obstruct such passageway.

(t) The act of throwing any glass, tin, queen's ware, crockery, or other rubbish into or upon the sidewalks, streets, alleys, public thoroughfares, common drains or gutter.

(u) The act of keeping, feeding, raising or breeding of hogs.

(v) The act of allowing any privy to become dilapidated or out of repair so that any person within, or the contents thereof may be exposed to view; the act of constructing or keeping on the premises any privy, the contents whereof are exposed to view, or can be seen from the street or public places; the act of discharging or causing to be discharged into any street alley, public thoroughfare or other public places or upon premises belonging to any other person the contents of such privy.

(w) Any nauseous, foul or putrid liquids or substances likely to be nauseous, foul, offensive or putrid, discharged, placed, thrown or conducted into or upon any street, alley, public ground or common.

(x) The act of wrongfully casting, throwing or depositing any filth, substance or thing into any private or public well or cistern.

(y) The act of erecting or maintaining buildings or structures with roofs or eaves projecting beyond the property line or shedding water upon any property other than that belonging to the owner of such erection or building.

## **§ 74.02 Notice to Abate; Abatement by City upon Property Owners Refusal**

In the event a property owner shall fail or refuse to comply with any of the provisions of this chapter within ten (10) days after notice to do so, the City may do such work or cause the same to be done and nuisance to be abated and pay therefor, and charge the expenses in doing or having such work done, or improvement made, to the owners of the property, whereupon such charge shall be a personal liability of such owner to the City. Such notice may be in writing served upon such owner in person by an officer or employee of the City, or may be by letter addressed to such owner at his post office address, or if personal service may not be had as aforesaid, or the owner's address is not known, the notice may be given by publishing a brief summary of the order as many as two (2) times within ten (10) consecutive days in some newspaper of general circulation in the City addressed, "Sanitary Improvements" "TO WHOM IT MAY CONCERN", and such publication shall be deemed sufficient notice.

## **Unsanitary Conditions on Private Property**

### **§ 74.10 Prohibited Conditions Designated - Stagnant Water**

(a) It shall be unlawful for any person, who shall own or occupy any lot in the City, or who is exercising custody and control of such a lot to permit or allow holes or places on such lot where water may accumulate and become stagnant or to permit same to remain thereon.

(b) It shall be unlawful for any person, who shall own or occupy any lot in the City, to permit or allow the accumulation of stagnant water thereon, or to permit the same to remain thereon.

### **§ 74.11 Accumulations of Downed Timber, Trash, Etc.**

It shall be unlawful for any person, who shall own or occupy, or who is exercising custody and control of any house, building, establishment, lot or yard in the City, to permit or allow any downed timber or brush, tin cans, old clothes, sacks, or any trash or rubbish, carrion, filth or other impure or unwholesome matter to accumulate or remain thereon.

### **§ 74.12 Abandoned Iceboxes or Refrigerators**

It shall be unlawful for any person to place, or permit to remain outside of any dwelling, building or other structure, or within any garage, barn, outbuilding, warehouse, storage room or any unoccupied or abandoned dwelling, building, porch, yard, lot or any other portion of any premises under such circumstances as would be accessible to children or where children at play may come upon such icebox or refrigerator and be attracted to it, unless the door has been removed from such icebox or refrigerator or unless the latch or lock holding each door shut is dismantled or removed so that the door may be open from within by simply pushing on it. Jamming or obstructing the lock or latch will not be in compliance herewith, but the same must be removed or dismantled so that accidental latching or locking is impossible.

The abandonment or dangerous exposure of any icebox or refrigerator with its door or doors in normal latching or locking condition is hereby declared to be a public nuisance and a serious menace to life because of the danger of children entering such an icebox or refrigerator and becoming locked therein and suffocating.

The duties of this section are imposed alike on the owner of the icebox or refrigerator and the owner or occupant of the premises where the icebox or refrigerator is located.

### **§ 74.13 Impoundment And Diversion of Water; Duty to Drain**

(a) It shall be unlawful for any person to construct, maintain, possess or permit the use of any embankment, dump, building or other obstruction or impediment within the City, which causes either directly or indirectly a diversion of any surface water, or water in creeks, streams and drains, from their natural course or the impounding of any water on any of the streets, alleys or other thoroughfares of the City, or on any privately owned property. Such construction, maintenance, possession or use of such embankment, building, structure, or other such impediment, is hereby declared to be a nuisance per se, subject to redress and abatement by any person, including the City, either in law or in equity, for any damage caused thereby or for the abatement of same as such nuisance.

(b) It shall be the duty of all persons owning or using property of any kind or character within the City to construct, provide and maintain adequate cut-outs, sluices, drain-boxes and storm sewers through, over and under their property when necessary to insure, and in such manner as to permit, the natural passage, drainage and flow of all surface waters and the water flowing through and in creeks, branches, streams and drains, and prevent the impounding of surface waters on the said streets, alleys and other thoroughfares of said City, and on privately owned property within the City, and to alter, change and repair such facilities as and when new and changed conditions may arise, in such manner as at all times to insure such results. Failure to do so shall constitute negligence per se in any suit by any property owner of the City filed either in law or in equity for damages or for the abatement of such condition.

### **§ 74.14 Notice to Owner to Remove or Remedy Condition**

Whenever any condition described in this article is found to exist upon any lot or premises in the City, the City Manager shall notify the owner of such lot or premises to remove or remedy the condition within ten (10) days after the date of such notice. Such notice shall be in writing and served on the owner in person or mailed to him at his latest known address. In the event that personal service cannot be had and the owner's address is not known, such notice shall be given by publication in a newspaper of general circulation in the City, at least twice within ten (10) consecutive days.

### **§ 74.15 Removal Or Correction by City**

In the event the owner of any lot or premises fails to remove or remedy any condition described in §§ 74.10 - 74.13 within ten (10) days after notice has been given as provided in § 74.14, the

City may do whatever is necessary to remove or remedy the condition, or cause the same to be done, and charge the expenses incurred thereby to the owner of such lot or premises and such expenses shall be assessed against the real estate upon which the work was done. The doing of such work and the charging and assessing of the expenses thereof against the owner shall not relieve the owner or occupant of any such prosecution for violation of this article.

**§ 74.16 Statement of Expenses Incurred; Lien for and Collection of Expenses**

The City Manager shall file a statement of expenses incurred under § 74.15 giving the amount of such expenses, and the date on which the work was done or improvements made, with the county clerk, and the City shall have a privileged lien on such lot or real estate upon which the work was done or improvements made to secure the expenditures so made in accordance with Article 4436, Revised Civil Statutes of Texas, or appropriate statute related thereto, which lien shall be second only to tax liens and liens for street improvements. The amount of such expense shall bear ten percent (10%) interest from the date such statement is filed. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of such lien may be had in the name of the City, and the statement of expenses so made, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

**Noise**

**§ 74.20 Making Of Noise Detrimental To Life or Health Prohibited**

It shall be unlawful for any person to make, or cause to be made, noise of such character, intensity and duration as to be detrimental to life or health of an individual in the City.

**§ 74.21 Noise Interfering With Enjoyment of Property or Public Peace and Comfort**

It shall be unlawful for any person to make or cause to be made any unreasonably loud, disturbing and unnecessary noise in the City which is offensive to the ordinary sensibilities of the inhabitants of the City, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

**§ 74.22 Unreasonably Loud, Disturbing, and Unnecessary Noises**

It shall be unlawful for any person to make or cause to be made any unreasonably loud, disturbing and unnecessary noise in the City. In this connection, bells and music boxes used on vehicles of ice cream vendors and similar vendors to attract children as patrons are exempt from the operation of this chapter; except that when used the bells and music boxes are not operated so loudly as to be offensive to the ordinary sensibilities of the inhabitants of the City and interfere with public peace and comfort or make the enjoyment of life or property uncomfortable.

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## § 74.23 Acts Creating Unlawful Noises

The following acts, among others, are declared to create loud, disturbing and unnecessary noises, in violation of this chapter, but such enumeration shall not be deemed to be exclusive:

(a) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle, while in motion, except as a danger signal, as may be required by state law, if another vehicle is backing, starting or turning in such a way as likely to cause a collision.

(b) The playing of any radio, CD, cassette, or musical instrument in such a manner, or with such volume as to disturb the peace, quiet, comfort or repose of persons within 100 feet.

(c) The keeping of any animal or fowl which emits or makes an unreasonably loud, disturbing and unnecessary noise.

(d) The use of any automobile, motorcycle or other vehicle so out of repair, or so loaded, which emits or creates loud or unnecessary grating, grinding or ruffling noise.

(e) The blowing of any steam whistle attached to any stationary boiler, except to give notice of time to begin or stop work, or as a warning of danger.

(f) The discharge into the open air of the exhaust from any stationary steam engine or stationary internal combustion engine, except through a muffler or other device which will effectively and efficiently prevent but or unusual noises, annoying smoke and the escape of gas or steam.

(g) The discharge into the open air of the exhaust from any motor vehicle except through a muffler, or other device, which will effectively and efficiently prevent loud and unusual noises and annoying smoke.

(h) The erection, including excavation, demolition, alteration or repair of any building in a residential district, other than between the hours of 7:00 A.M. and 6:00 P.M. on week days, except in the case of urgent necessity in the interest of public safety, for which a permit shall be obtained from the City secretary.

(i) The creating of any unreasonably loud, disturbing and unnecessary noise on any street adjacent to any school, or court, which is in session, or adjacent to any hospital; provided, that conspicuous signs are located in such streets indicating that schools, hospitals and courts are adjacent thereto.

(j) The creation of unreasonable, loud, disturbing and unnecessary noise on any street. adjacent to any school, or court, which is in session, or adjacent to loading and unloading of any vehicle, or the opening and destruction of bales, boxes, crates and containers, or the sounding of any bell or gong attached to any building located on the premises which disturbs the quiet or repose of persons occupying adjoining property or those occupying property across any street or alley and within two hundred feet radius.

(k) The shouting and crying of peddlers, hawkers and vendors which disturbs the quiet and peace of the neighborhood.

(l) The use of any drum, loudspeaker or other instrument or device for the purpose of attracting attention by the creation of noise to any performance, show, sale or display of merchandise as to attract customers to any place of business.

(m) The use of mechanical loudspeaker or amplifiers on trucks or other moving vehicles for the purpose of advertising any show, sale or display of merchandise, or any other purpose.

#### **§ 74.24 Use of Bell, Siren, Compression, or Exhaust Whistle on Vehicles**

It shall be unlawful for any vehicle to be equipped with, or for any person to use upon a vehicle, any bell, siren, compression or exhaust whistle; except, that vehicles operated in the performance of duty by law enforcement officers, fire departments and ambulances may attach and use a bell, siren, compression or exhaust whistle.

## CHAPTER 75: JUNKED AND ABANDONED PROPERTY

### Section

75.01 Definitions

#### **Junked Vehicles**

75.10 Presence of junked vehicles deemed public nuisance; exception

75.11 Abatement order, private property

75.12 Abatement order, public property

75.13 Public hearing

75.14 Filing complaint

75.15 Trial

75.16 Removal of junked vehicle with permission

75.17 Removal from unoccupied premises

75.18 Notice to SDHPT required

#### **Abandoned Motor Vehicles and Other Property**

75.20 Declaration of nuisance; duty to impound

75.21 Lien on impounded property

75.22 Redemption

75.23 Sale of property

75.24 Records; fees

#### **General Provisions**

75.30 State law applicable

75.31 Penalty

75.32 Relationship to other regulations

### **§ 75.01 Definitions**

Whenever the following terms are used in this chapter they shall have the meaning respectively ascribed to them as follows:

Abandoned Motor Vehicle means any motor vehicle which:

(1) is inoperable and more than eight (8) years old and left unattended on public property for more than forty-eight (48) hours; or

(2) Has remained illegally on public property for a period of more than forty eight (48) hours; or

(3) Has remained on private property without the consent of the owner or person in control of the property for more than forty-eight (48) hours; or

(4) Is left unattended on a right-of-way of any designated county, state, federal highway, or any street, alley, or public right-of-way within the City for more than forty eight (48) hours.

**Antique Auto** means a passenger car or truck that was manufactured in 1925 or before or a passenger car or truck that is at least thirty-five (35) years old.

**Collector** means the owner of one or more antique or special interest vehicles, who collects, purchases, acquires, trades, or disposes of special interest or antique vehicles or parts of them for personal use in order to restore, preserve, and maintain an antique or special interest vehicle for historic interest.

**Demolisher** means any person whose business is to convert a motor vehicle into processed scrap or scrap metal, or otherwise to wreck or dismantle motor vehicles.

**Garagekeeper** means an owner or operator of a parking place or establishment, motor vehicle storage facility, or establishment for the servicing, repair, or maintenance of a motor vehicle.

**In Ordinary Public View** means that the vehicle or part thereof or the tarp or cover thereon is visible from any public right-of-way, or adjacent land, or the first floor level of a building thereon which is owned or occupied by a person other than the owner or occupant of the property on which the junked vehicle or part thereof is located or parked.

**Junked Vehicle** means any motor vehicle as defined in Section 1 of Article 670ld-11, Vernon's Texas Civil Statutes, as amended, which:

(1) is inoperative; and

(2) Does not have lawfully affixed to it either an unexpired license plate or a valid motor vehicle safety inspection certificate; and is wrecked, dismantled, partially dismantled, or discarded, or that remains inoperative for a continuous period of more than forty five (45) days. Evidence that a vehicle in public view has not been driven under its own power for a period of forty five (45) days or more shall constitute prima facie evidence that said vehicle was inoperative for the same period.

**Motor Vehicle** means a motor vehicle subject to registration under the Certificate of Title Act (V.T.C.S., Art. 66871), except that for purposes of Sections 5.02, 5.03, and 5.04 of this Act, "motor vehicle" includes a motorboat, outboard motor, or vessel subject to registration under V.T.C.A., Parks and Wildlife Code, Chapter 31.

**Person** means any individual, firm, partnership, association, corporation, company, or organization of any kind.

**Special Interest Vehicle** means a motor vehicle of any age that has not been altered or modified from original manufacturer's specifications and, because of its historic interest, is being preserved by hobbyists.

**Storage Facility** means a garage, parking lot, or any type of facility or establishment for the servicing, repairing, storing, or parking of motor vehicles.

*(Ord. No. 90-06, Sec. 1, passed 6-28-90, as amended by Ordinance adopting Revised Code of Ordinances, passed January 9, 2001)*

## **Junked Vehicles<sup>8</sup>**

### **§ 75.10 Presence of Junked Vehicles Doomed Public Nuisance; Exception**

The location or presence of any junked motor vehicle or vehicles on any private or public property, occupied or unoccupied, improved or unimproved, within the City shall be deemed a public nuisance. It shall be unlawful for any person to cause or maintain such public nuisance by wrecking, dismantling, partially dismantling, rendering inoperable, abandoning, or discarding any motor vehicle on the real property of another or to suffer, permit, or allow the same to be placed, located, maintained, or exist upon his own real property. This section shall not apply to:

- (1) A vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property;
- (2) A vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard;
- (3) A vehicle in an appropriate storage place or depository maintained in a location officially designated and in a manner approved by the City;
- (4) A motor vehicle in operable conditions specifically constructed for racing or operation on privately owned drag strips or race strips;
- (5) An unlicensed, inoperable antique or special interest vehicle stored on property, provided that the vehicle and outdoor storage area are maintained so that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, rapidly growing trees, shrubbery, or other appropriate means; or
- (6) A motor vehicle stored as the property of a member of the armed forces of the United States while on active duty assignment.

### **§ 75.11 Abatement Order, Private Property**

(a) Whenever such public nuisance as described in § 95.10 exists on private property within the City, the Chief of Police or other designated official enforcing this chapter shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same. Such order shall:

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<sup>8</sup> **State law reference** -- Authority of City to adopt procedures for the abatement and removal of junked vehicles, V.A.C.S., Art. 4477-9a, Sec. 5.01 - Sec. 5.11.

- (1) Be in writing;
  - (2) specify the public nuisance and its location;
  - (3) Specify the corrective measure required;
  - (4) Provide for compliance within ten (10) days from service thereof; and
  - (5) Inform the owner or occupant of his right to a hearing before the City Council if notice of a demand for hearing is given in writing within ten (10) days of the issuance of the order.
- (b) Such order shall be served upon the owner or occupant of the premises wherein the nuisance is located, by sending said order by certified United States mail with a five-day return receipt requested to:
- (1) The address of the premises, and
  - (2) The address listed on the certificate of title of the offending vehicle, and
  - (3) The address of any lien holder.
- (c) If the owner or the occupant of the premises fails and refuses to comply with the notice stating the order of the Chief of Police or his duly authorized agent within ten (10) days after service thereof, the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.
- (d) If the notice is returned undelivered by the United States Postal Service, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.
- (e) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such a manner as the City Council may provide.
- (f) The owner or occupant of said premises may, within said ten (10) day period after service of notice to abate the nuisance, request of the Chief of Police, either in person or writing and without the requirement of bond, that a date and time be set when he may appear before the municipal judge for a hearing to determine whether he is in violation of this chapter.
- (g) If a request is made under the provisions of subsection (I) above, no action to remove said vehicle shall be taken pending the hearing.
- (h) Any such vehicle, after ten (10) days of being in the possession of the City, shall begin to invoke a fine of \$200/day if the owner has not contacted the City and made plans to remove the vehicle.

## **§ 75.12 Abatement Order, Public Property**

(a) Whenever such public nuisance as described in § 75.10 exists on public property within the City, the Chief of Police or other designated official enforcing this chapter shall order the owner of the premises, or the occupant of the premises if in possession thereof, to abate or remove the same, Such order shall:

(1) Be in writing;

(2) specify the public nuisance and its location;

(3) Specify the corrective measure required;

(4) Provide for compliance within ten (10) days from service thereof; and

(5) Inform the owner or occupant of his right to a hearing before the City Council if notice of a demand for hearing is given in writing within ten (10) days of the issuance of the order.

(b) Such order shall be served upon the owner of the vehicle and any lien holder of record thereof by sending said order by certified United States mail with a five day return receipt requested to the address listed on the certificate of title of the offending vehicle, and the address of any lien holder.

(c) If the owner of the offending vehicle fails and refuses to comply with the notice stating the order of the Chief of Police or his duly authorized agent within ten (10) days after service thereof, the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.

(d) If the notice is returned undelivered by the United States Postal Service, official action to abate said nuisance shall be continued to a date not less than ten (10) days from the date of such return.

(e) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such a manner as the City Council may provide.

(f) The owner of said vehicle may, within said ten (10) day period after service of notice to abate the nuisance, request of the Chief of Police, either in person or writing and without the requirement of bond, that a date and time be set when he may appear before the municipal judge for a hearing to determine whether he is in violation of this chapter.

(g) If a request is made under the provisions of subsection (f) above, no action to remove said vehicle shall be taken pending the hearing.

(h) Nothing in this section shall affect laws that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic.

### **§ 75.13 Public Hearing**

(a) Upon receipt of a request for a hearing made pursuant to § 75.11(f) and § 75.12(f), the Chief of Police or his duly authorized agent shall set a date and time for such hearing before the municipal judge. The Chief of Police or his duly authorized agent shall notify the owner of the vehicle or the owner or occupant of the premises, as the case may be, in writing as to the date and time of such hearing.

(b) The municipal judge shall hear any case brought before it and as set out herein determine whether the subject vehicle is a junked vehicle under the provisions of this chapter. The judge may summon any witnesses or solicit any information it deems necessary in determining the status of the vehicle.

(c) If the judge determines that the subject vehicle is junked, under the provisions of this chapter, the owner of said vehicle or the owner or occupant of the premises, as the case may be, shall be ordered to remove or cause to be removed said vehicle from either public or private property within an amount of time determined by the judge. Any resolution or order requiring the removal of a vehicle or part thereof shall include a description of the vehicle, the correct vehicle identification number, and license number of the vehicle, if available.

### **§ 75.14 Filing Complaint**

If the order of the municipal judge is not complied with, the City Attorney shall forthwith cause to be prepared, filed, and served on the defendant a written complaint charging that the owner of the vehicle or the owner or occupant of the premises, as the case may be, has violated the provisions of this chapter.

### **§ 75.15 Trial**

(a) The judge of the municipal court shall hear any case brought before said court and shall determine whether the defendant is in violation of this chapter. Upon finding that the defendant is in violation of this chapter, said defendant shall be found guilty of a misdemeanor and subject to a fine as provided in §10.10 of this Code. Each day that the nuisance continues shall be considered a separate occurrence.

(b) The judge of said court shall further order such offense removed and said nuisance abated within ten (10) days, same being a reasonable time.

(c) If the defendant shall fail and refuse to abate and remove said nuisance within ten (10) days, the judge of said court may issue an order directing the Chief of Police or his duly authorized agent to have the same removed and the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises.

(d) The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

#### **§ 75.16 Removal of Junked Vehicle with Permission**

The owner of the vehicle or the owner or occupant of the premises, as the case may be, if after receipt of ten (10) day's notice from the Chief of Police or his duly authorized agent to abate the nuisance as herein provided, may give his written permission to the Chief of Police or his duly authorized agent for removal of the junked motor vehicle and the giving of such permission shall be considered in compliance with the terms and provisions of this chapter. Once a vehicle has been removed, it shall not be reconstructed or made operable.

#### **§ 75.17 Removal from Unoccupied Premises**

If a junked vehicle as defined in § 75.01 is located on premises that are unoccupied and the owner of the premises is notified to remove same but cannot be found, then upon a showing of such facts to the judge of the municipal court, the court may issue an order directing the Chief of Police or his duly authorized agent to have the same removed, and the Chief of Police or his duly authorized agent shall take possession of said junked motor vehicle and remove it from the premises. The Chief of Police or his duly authorized agent shall thereafter dispose of said junked motor vehicle in such manner as the City Council may provide.

#### **§ 75.18 Notice to SDHPT Required**

When a junked motor vehicle is removed from any premises by the Chief of Police or his duly authorized agent, notice shall be given to the Texas Department of Highways and Public Transportation within five (5) days after the date of removal of the junked vehicle or part thereof and identifying the junked vehicle or part thereof, and requesting that said department cancel the certificate of title to such vehicle pursuant to V.A.C.S., Art. 6687-9, as amended.

### **Abandoned Motor Vehicles and Other Property**

#### **§ 75.20 Declaration of Nuisance; Duty to Impound**

An abandoned motor vehicle or any property other than a junked motor vehicle, as defined in § 75.01, placed, left standing, parked, erected, or lying in violation of any ordinance or code of the City or left unattended for more than forty-eight (48) continuous hours in or on any public street, alley, sidewalk, park, or other public place of the City is declared to be a nuisance. Any such property when so found shall be removed summarily by any officer of the City and taken to the City pound and shall be kept there until redeemed or sold as herein provided.

### **§ 75.21 Lien on Impounded Property**

The City shall have a lien on such impounded personal property for all costs incurred in impounding, storing, and advertising such property and such lien shall be prior and superior to all other liens of every kind, save and except liens for ad valorem taxes. The City may retain possession thereof until all costs are paid and may sell the same as herein provided.

### **§ 75.22 Redemption**

The owner or any person legally entitled to possession of such impounded personal property may redeem the same as follows:

(1) Before sale: By paying to the Chief of Police and any actual expenses incurred by the City in keeping the property, as determined by the Chief of Police.

(2) After sale: By paying to the buyer at the auction sale double the amount paid by him for such personal property and any reasonable expenses incurred by him for keeping same, provided that the property must be redeemed from the auction buyer within thirty (30) days after the date of auction sale, excluding the date of sale. If not redeemed within thirty (30) days after the date of auction sale, title to said property shall become absolute in the auction buyer.

### **§ 75.23 Sale of Property**

(a) When any personal property, other than a motor vehicle, is not redeemed within sixty (60) days after being impounded, and when any motor vehicle, other than a junked motor vehicle, is not redeemed after compliance by the Chief of Police with the provisions of this chapter, the Chief of Police shall sell the same at public auction or sealed bids to satisfy the lien of the City.

(b) Procedures for sale of property other than motor vehicles

(1) Before selling such personal property, other than motor vehicles, the Chief of Police shall post two (2) notices thereof, one at the United States Post Office, Overton, Texas, and one at the entrance to the City Hall, and shall cause a copy thereof to be published in a newspaper published and/or widely distributed in the City once a week for two (2) consecutive weeks, the date of the first publication to be at least fourteen (14) days prior to the day of the auction sale.

(2) The notice of sale shall describe the impounded property, state that the same is unredeemed, state that the same shall be sold at public auction, designate the place of sale, and state a time and date of sale which shall not be less than fourteen (14) days from the date of posting such notices as herein required.

(c) Procedures for sale of motor vehicles

(1) When any motor vehicle has not been redeemed within thirty (30) days from the date of its impounding, it shall be the duty of the Chief of Police to submit to the Texas Department of

Transportation (TxDOT), and similar agency of the proper state when the vehicle is registered in another state, all information that said department supply to him all information the records of the department contained on said vehicle.

(2) Immediately upon receipt of such information from said department, the Chief of Police shall notify the owner and lienholders as shown by the records of said department by registered mail with return receipt requested that said vehicle has been impounded and of the provisions of this division in regard to redemption and sale of impounded property.

(3) In the event a motor vehicle has not been redeemed within fifteen (15) days from receipt of the return receipt or notice of nondelivery of said registered mail, the Chief of Police shall prepare a notice of sale of such vehicle, in the manner described in subsection (b)(2) above, shall send a copy of said notice to owner and lienholders, as shown by the records and advertise said notices in the manner required in subsection (b)(1) above. Notice by registered mail to the address shown on the records of said TxDOT shall constitute notice of the pending sale to such owner and lienholders.

(4) When the Chief of Police is unable to ascertain the names of the owner and lienholders, and the motor vehicle has not been redeemed with forty-five (45) days from its impounding, no notice of sale other than posting and advertising as herein prescribed shall be required.

(d) When any impounded property, including motor vehicles, is not redeemed by the date and time designated in the notice of sale, the Chief of Police shall sell such property at public auction, and, as City auctioneer, shall execute bill of sale of said property to the purchaser thereof. He shall not execute or deliver any but a conditional bill of sale unless and until the title of said buyer has become absolute by an expiration of thirty (30) days in time, exclusive of the date of sale, without being redeemed by the owner of the impounded property.

(e) After deducting the impounding fee and all other actual expenses incurred by the City in impounding, storing, and selling of said property, as determined by the Chief of Police, not to exceed a reasonable amount for each impounded article, he shall pay the balance of the proceeds of such sale, if any, to the owner of the property.

(f) If the owner fails to call for such proceeds, they shall be paid into the City general fund. Within six (6) months after such auction sale, the owner may apply in writing to the Chief of Police and upon satisfactory proof of ownership, shall be entitled to receive the amount of the proceeds delivered to the City general fund.

(g) Impounded property which is offered for sale at public auction in accordance with the procedures herein prescribed and upon which no person bids shall thereafter be sold or otherwise disposed of as junk. Money received for junk property shall be disposed of in the same manner as proceeds from an auction under this section.

### **§ 75.24 Records; Fees**

The Chief of Police shall keep a record book which shall contain a description of all property impounded, the date and time of such impounding, the date notices of sale were posted and advertised and mailed to owners and lienholders, the return of receipts of registered notices, the date of the sale at auction, the amount realized for each article at such sale, the name and address of the owner and lienholders, if known, the name and address of the auction buyer, and any such other information as he may deem necessary.

(b) The fees shall be charged as specified in the Schedule of Fees (Appendix A of this Code) and shall be set by the City Council and paid into the City general fund.

### **General Provisions**

#### **§ 75.30 State Law Applicable**

V.A.C.S., Article 4477-9a, Article 5, is adopted by reference and the provisions of said article shall control and take precedence over any conflicting provisions of this chapter.

#### **§ 75.31 Penalty**

If any person is found guilty after a trial held according to the terms of this chapter and shall fail and refuse within ten (10) days to remove and abate said nuisance as ordered by the court, he shall be guilty of a misdemeanor and fined according to the provisions of Appendix B – Schedule of Fines of this Code. Each day of continuing violation shall be considered a separate offense.

#### **§ 75.32 Relationship to Other Regulations**

Nothing in this chapter is intended to relieve any person of any condition, restriction, or requirement imposed by any other law, ordinance, or code of the City. Where any other ordinance, law, or code is in conflict with the provisions of this chapter, this chapter shall govern.

## CHAPTER 76: PARKS AND RECREATION

### Section

- 76.01 Safety of patrons generally
- 76.02 Injuries to trees, shrubs, fences, etc.
- 76.03 Abusive or obscene language or act
- 76.04 Dogs at large
- 76.05 Driving and parking of vehicles
- 76.06 Sale of merchandise
- 76.07 Possession of alcoholic beverages in parks
- 76.08 Noises interfering with enjoyment of public park areas
- 76.09 Parks not to be used for profit

### **Parks and Recreation Board**

- 76.20 Procedures
- 76.21 Dual office holding prohibited
- 76.22 Duties

### **§ 76.01 Safety of Patrons Generally**

It shall be unlawful for any individual or group of individuals to participate in any activity on any public park area when such activity will create a danger to the public or may be considered a public nuisance. The City Council may designate particular locations within park areas for specific activities and, when deemed necessary, it may limit the conduct of such activities by the issuance of special permits upon application, which permits will set out the particular conditions under which such activity is permitted.

### **§ 76.02 Injury to Trees, Shrubs, Fences, Etc.**

It shall be unlawful for any person to cut, break, deface or in any way injure the trees, shrubs, plants, grass, turf, fountains, seats, fences, structures, improvements, ornaments, monuments, or property within or upon any of the public parks.

### **§ 76.03 Abusive or Obscene Language Or Act**

No person shall use or speak any threatening, abusive, insulting, or indecent language in any of the public parks, and no person shall commit in any such parks any obscene, lewd or indecent act or create any nuisance.

### **§ 76.04 Dogs At Large**

It shall be unlawful for any owner, keeper, or person having the custody or control of any dog to cause or permit such animal to go into or upon the grounds of any public park within the City, unless such dog is led by some person and retained in custody by having such animal securely fastened by means of a chain, rope, or strap.

### **§ 76.05 Driving and Parking of Vehicles**

(a) A person commits an offense if in any park or recreational area he knowingly:

- (1) drives a motor vehicle;
- (2) Stops, stands, or parks a motor vehicle;
- (3) Parks a motor vehicle so as to obstruct entrance to or exit from a roadway, parking area, or trail established for public motor vehicle use; or
- (4) Fails to park the entire motor vehicle within the limit lines of a designated parking stall, where such lines have been provided.

(b) It is a defense to prosecution under subsection (a) that the driving, stopping, standing, or parking:

- (1) was along a roadway, trail, or parking area established for public motor vehicle use;
- (2) Was due to temporary mechanical failure of the vehicle;
- (3) Was ordered by a police or park officer or a person charged with supervision of a park or recreation area within the City; or
- (4) Was performed by an employee of the City while in the course of his official duties.

### **§ 76.06 Sale of Merchandise**

It shall be unlawful for any person to sell or offer for sale any food, drinks, confections, merchandise, or services in public park or recreation areas unless such person has a written agreement with the City or a permit issued from the office of the City Secretary permitting the sale of such items. Application for such agreement or permit shall be made to the office of the City Secretary.

### **§ 76.07 Possession of Alcoholic Beverages in Parks**

A person commits an offense if he consumes or possesses an alcoholic beverage while in a public park or while on a public street, sidewalk, building or parking area controlled and generated by the City adjacent to a public park.

### **§ 76.08 Noises Interfering with Enjoyment of Public Park Areas**

(a) A person commits an offense if he knowingly makes or causes to be made any loud and raucous noise in any public park and recreation area in the City.

(b) It is a defense to prosecution under subsection (a) that the person:

(1) Is a City employee acting within the scope of his official duties; or

(2) First obtained the written permission of the City Council authorizing a special event.

(c) The following enumerated acts are presumed to create loud and raucous noises for purposes of this section:

(1) The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle, except as a danger signal, as required by state law.

(2) The use of any mechanical loudspeaker or sound amplifier for the purpose of attracting the attention of other persons by the creation of noise.

(3) The playing of any radio, television, tape machine, musical instrument, or other machine, or device for the production or reproduction of sound at such a volume that the sound produced is audible at a distance in excess of one hundred fifty (150) feet.

(4) The operation of any automobile, motorcycle, bus, or other vehicle or mechanical device in such a manner so as to produce a sound that is audible at a distance in excess of one hundred fifty (150) feet.

### **§ 76.09 Parks not to be used for profit**

(a) No agent, servant, or employee of the City having supervision or jurisdiction over any of the various City owned parks may rent or allow the use of any of said parks to any person for the purpose of engaging in an enterprise for a profit.

(b) This section shall not apply to local civic, religious, and charitable organizations. Said organizations shall make application to the City Secretary for the use of any such park, setting forth in said application the name of the organization and its officers, the purpose for which said park is desired to be used, the length of time and a detailed statement showing the use of the revenue derived from the use of said park. Local civic, religious, and charitable organizations shall be deemed to mean such organizations functioning under the head of a state of local citizens as officers. The Mayor is given the authority to require a full showing, by documentary evidence in the application, that any such organization is local in nature and comes under the above classification as said organizations are generally regarded.

## **Parks and Recreation Board**

### **§ 76.20 Procedures**

The Board shall select from among its members a chairman and vice-chairman and may adopt, subject to the approval of the City Council, such rules and regulations for the government of its proceedings as it may deem proper.

### **§ 76.21 Dual Office Holding Prohibited**

No member of the Parks and Recreation Board shall hold any other office or position with the City.

### **§ 76.22 Duties**

It shall be the duty of the Parks and Recreation Board to:

(1) Recommend policies and procedures for the proper administration of the parks and recreation program of the City subject to the approval of the City Council;

(2) Encourage and facilitate the establishment and maintenance of parks, playgrounds, play fields, centers, swimming pools, and other park and recreational facilities of the properties owned and controlled by the City or on private or public properties with the consent of the owners and managers thereof,

(3) Encourage the establishment of a supervised recreation program for all ages, on properties owned and controlled by the City or on private or public properties with the consent of the owners and managers thereof,

(4) Recommend acquisition by the City of such land and buildings as are deemed necessary for a parks and recreation program and subject to location approval by the Planning and Zoning Commission;

(5) Study and submit recommendations for improvement and expansion of the parks and recreation facilities and programs of the City;

(6) Cooperate with all agencies, groups, and clubs concerned with recreation in the City; and

(7) Make such studies concerning parks and recreation as may be requested by the City Council.

The Parks and Recreation Board shall have such additional duties as may be conferred on such board by ordinance.

## CHAPTER 77: STREET NAMES, NUMBERING, AND SIGNAGE

### Section

#### 77.01 House numbering required

#### **§ 77.01 House Numbering Required**

(a) It shall be the duty of the owner, agent of the owner, or occupant of any house situated in the corporate limits of the City to place or cause to be placed thereon, in some conspicuous place on such house, an official street number so that such number may be plainly seen and observed from the street.

(b) All houses shall be considered officially numbered when numbered in strict accordance and compliance with the terms of this section and in accordance with the plat delineating and prescribing the method of numbering houses heretofore adopted and on file and of record in the office of the City Secretary.

(c) It shall be the duty of the owner of any house to have placed a metal number thereon, but in case the owner is a nonresident of the City, it shall be the duty of the agent of the owner or the occupant of such house, when such agent or occupant is notified by the chief of police, to place such official number on the house. Such agent or occupant so notified shall be allowed five (5) days from the date of the receipt of the notice to place such official number on the house.

(d) The official number herein referred to shall be at least four (4) inches high and composed of metal that will not tarnish or corrode. Nothing herein shall prohibit any number from being painted by any person when such character of material used will be equal in strength, durability and service to the metal numbers herein provided for.

(e) "House" as used above shall include all buildings used for residential purposes and/or are capable of such use and all buildings used for commercial and/or industrial purposes and/or are capable of such use. The City Council shall make the final determination as to applicability of the definition to a particular structure.

## CHAPTER 78: HEALTH AND SAFETY

### Section

- 78.00 Non-Smoking Ordinance
- 78.01 Definitions
- 78.02 Smoking Prohibited in Certain Areas
- 78.03 Owner Not Responsible
- 78.04 Penalties
- 78.05 Ordinance Cumulative
- 78.06 Severability
- 78.07 Certain Substances Banned (K-2 Substances Banned)

### **§ 78.00 Non-Smoking Ordinance**

An ordinance designating certain areas as nonsmoking areas; prohibiting smoking in certain areas; providing an exemption; providing that this ordinance is cumulative of all ordinances; providing a severability clause; providing a savings clause; finding and determining that the meetings at which this ordinance is passed are open to the general public; providing for a general distribution; providing for publication in the official newspaper; and providing an effective date.

Smoking is the single largest preventable cause of premature death and disability in the United States. Every year 350,000 Americans die prematurely from diseases caused by cigarette smoking, such as lung cancer, emphysema, and coronary disease. Nicotine addiction is "the most widespread example of drug dependency in our country", according to the U.S. Public Health Service. Smoking accounts for 85-90% of emphysema mortality in America. Lung cancer, already the number one cause of cancer in American men, has surpassed breast cancer as the leading cancer killer of American women. The United States Environmental Protection Agency has concluded that passive smoking poses a public health risk greater than hazardous air pollutants from all industrial emissions combined. Rusk County has one of the highest lung cancer death rates in the nation. City Council of the City of Overton recognizes the increasing evidence that smoke creates a danger to the health of its citizens and is a cause of annoyance and discomfort to those who are confined to spaces where smoke is present. It is the right of citizens to be able to choose for themselves whether or not to smoke, either actively or passively. It is desirable to authorize employers to designate non-smoking areas in certain workplaces. In order to protect the health and welfare of its citizenry as well as protect the rights of smokers and non-smokers, it is necessary for the City of Overton to restrict smoking in public places except in areas designated as smoking areas. The citizens of Overton have demonstrated a desire to voluntarily comply with City ordinances which protect public health and welfare.

### **§ 78.01 Definitions.**

- (a) "Administrative Area" means the area of a business establishment not generally accessible to the public, including, but not limited to, individual offices, stockrooms, employee lounges or meeting rooms.
- (b) "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress, but does not include areas commonly described as public lobbies.

- (c) "Hospital" means any institution that provides medical, surgical and overnight facilities for patients.
- (d) "Movie Theatre" means any establishment engaged in the business of exhibiting motion pictures to the public.
- (e) "Public Service Area" means any areas to which the general public routinely has access for municipal services or which is designated a public service area in a written policy.
- (f) "Public Place" means any enclosed indoor areas that may be used by the general public and includes, but is not limited to, stores, offices and other commercial establishments, restaurants, theaters, movie theaters, public and private schools and institutions of higher education and hospitals and health care facilities.
- (g) "Smokes" or "smoking" includes:
  - (1) carrying or holding a lighted pipe, cigar, or cigarette of any kind or any other lighted smoking equipment or device;
  - (2) lighting a pipe, cigar, or cigarette of any kind or any other smoking equipment or device;
  - (3) or emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind or any other smoking equipment or device.
- (h) "Public Meeting" means a meeting required to be open to the public under Article 6252-17, Vernon 's Texas Civil Statutes.
- (i) "Smoking Area" means an area or portion of a public place, hospital, nursing home, health care center or school designated and clearly marked for smoking.

## **§ 78.02 Smoking Prohibited in Certain Areas.**

- (a) A person commits an offense if he smokes or possesses a burning tobacco, weed or other plant product or any lighted or burning pipe, cigar, cigarette of any kind, or smoking equipment or device in a public meeting or in any of the following indoor enclosed areas:
  - (1) an elevator used or which may be used by the public;
  - (2) any conference room, meeting room or public service area of any facility owned, operated or managed by the City, except those conference rooms, meeting rooms, administrative areas or office areas which are not generally open to the public;
  - (3) an area within an enclosed public place marked with a "No Smoking" sign in accordance with subsection "C" hereof by the owner or person in control thereof;
- (b) Smoking shall be allowed and smoking signs are not required to be posted by the person in charge when smoking is permitted herein.
- (c) The owner or person in control of an establishment or area designated in subsection "A" of this section shall post a sign, conspicuous to ordinary public view, at or near each public entrance. The sign shall contain the words "No Smoking except in Designated Areas, City of Overton Ordinance," or have the universal symbol for no smoking or other language that clearly prohibits smoking.

(d) Owners, operators or persons in control of public places are not required, but may elect to be covered under this ordinance by giving written notice to the city inspector, by designating the area or areas to be marked "No Smoking" and by posting signs in accordance with subsection "C" hereof. It is not required that any area of public places be designated as "Smoking Areas."

(e) It is a defense to the prosecution under this section:

- (1) that the person was smoking in a situation in which a person is present at an event in which an entire room or hall is used for a social function sponsored by a private entity or individual and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of the place; or,
- (2) that the person was smoking as a participant in an authorized theatrical performance.

### **§ 78.03 Owner Not Responsible**

This ordinance does not require the owner, operator, manager or employee of an establishment to report a violation or to take any action against any individual violating these prohibitions.

### **§ 78.04 Penalties**

Any person, firm, corporation, agent or employer thereof who violates any of the provisions of this Chapter shall be fined an amount not less than TWENTY-FIVE DOLLARS (\$25.00) nor more than TWO HUNDRED DOLLARS (\$200.00); provided, however, in the event a defendant has previously been convicted under this section, said defendant shall be fined an amount not less than FIFTY DOLLARS (\$50.00) nor more than FIVE HUNDRED DOLLARS (\$500.00) for a second conviction hereunder, and shall be fined an amount not less than ONE HUNDRED DOLLARS (\$100.00) nor more than ONE THOUSAND DOLLARS (\$1,000.00) for a third conviction hereunder and for each conviction thereafter . Each day that a violation is permitted to exist shall constitute a separate offense.

### **§ 78.05 Ordinance Cumulative .**

This Ordinance shall be cumulative of all provisions of Ordinances and of the Code of the City of Overton, Texas, as amended, except where provisions of this Ordinance are in direct conflict with the provisions of such Ordinances and such Code, in which event conflicting provisions of such Ordinances and such Code are hereby repealed.

### **78.06 Severability.**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, section or article of this Ordinance shall be declared unconstitutional and invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality and invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections and articles of this Ordinance, since the same would have been enacted by the City Council without incorporation in this Ordinance of any such

unconstitutional phrase, clause, sentence, paragraph or section.

**§ 78.07 Certain Substances Banned (K-2 Substances Banned)**

- (a) Possession, Sale or Ingestion of Certain Substances :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, (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,1-Pentyl-3-(1-naphthoyl) indole commonly known as JWH-018 Spice or K2,1-Butyl-3-(1naphthoyl) indole commonly known as JWH-073, N-benzylpiperazine commonly known as BZP,1-(3-[trifluoromethylphenyl]) piperazine commonly known as TFMPP, Any other synthetic cannabinoid, or, 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.

*(ORDINANCE NO. 092010)*