

ORDINANCE NO. 866-07-02-27

**AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS
AMENDING CHAPTER 92 OF THE CITY OF PFLUGERVILLE, TEXAS
CODE OF ORDINANCES REGARDING PUBLIC NUISANCES;
ESTABLISHING A PENALTY NOT TO EXCEED \$2000.00 FOR ANY
VIOLATIONS OF THE ORDINANCE; AND PROVIDING AN EFFECTIVE
DATE.**

Whereas, the City of Pflugerville, Texas (the "City") has previously adopted an ordinance regarding public nuisances, codified under Chapter 92 of the City's Code of Ordinances (the "Code"); and

Whereas, the City desires to amend the public nuisance ordinance;

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

Section 1. Amendment to Chapter 92.

Chapter 92 of the Code of Ordinances of the City of Pflugerville, Texas, as hereby amended and restated in Exhibit "A" attached hereto, is hereby adopted in its entirety by the City Council of the City of Pflugerville.

Section 2. Severability.

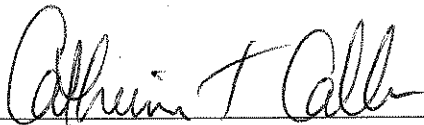
If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

Section 3. Effective Date.

This Ordinance will take effect upon its adoption by the City Council and publication of the caption hereof in accordance with Section 3.15(d) of the City Charter.

PASSED AND APPROVED this 27th day of February, 2007

CITY OF PFLUGERVILLE, TEXAS

By: 
Catherine T. Callen, Mayor

ATTEST:


Karen Thompson, City Secretary

EXHIBIT "A"**CHAPTER 92: HEALTH AND SANITATION**

Section

General Provisions

92.01 Covering of wells, cisterns and holes.

Public Nuisances

92.15 Definitions

92.16 Prohibition

92.17 Filing Complaints; Inspections; Notice to abate; Failure to abate; Abatement by city; Appeal

92.18 Cost of abatement as a lien

92.19 Employees of the city

92.20 Violations

Statutory reference:

Authority to define, declare, and abate nuisances, see TEX. LOC. GOV'T CODE, § 217.002

GENERAL PROVISIONS**§ 92.01 COVERING OF WELLS, CISTERNS AND HOLES.**

(A) It shall be unlawful within the corporate limits of the city for the owner or operator of any well, cistern, or hole having a depth of six feet or greater and a diameter of four inches or greater:

(1) To fail to keep it securely covered at all times when not in actual use with a locked lid capable of sustaining a human weight of at least 250 pounds; or

(2) To maintain an unused or abandoned facility, as above described, unless it has been completely filled from its total depth to the surface or plugged at a depth of not less than six feet from the surface and completely filled from the plug to the surface.

(B) The plugging of any well shall be in accordance with standards promulgated by the Texas Water Well Drillers Board, to the extent applicable.

(C) This section shall be enforced by the Building Official of the city.

PUBLIC NUISANCES

§ 92.15 DEFINITIONS.

For the purpose of this section, the following definitions will apply unless the context clearly indicates or requires a different meaning.

GARBAGE. All vegetable waste resulting from the handling, preparation, cooking, storage or consumption of food, and animal waste.

MOTOR VEHICLE. Any motor driven or propelled vehicle required to be registered under the laws of this state or any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, campers, go-carts, golf carts, snowmobiles, amphibious craft on land, dune buggies, racing vehicles, and motorcycles.

PRIVACY FENCE. A fence constructed of wood or masonry that completely screens the view of objects located on the opposite side of the fence.

PUBLIC NUISANCE.

(A) Any act, thing, occupation, condition or use of property that is of such a nature and continues long enough to:

- (1) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;
- (2) Greatly offend the public morals or decency; or
- (3) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway, navigable body of water or other public way.

(B) Public nuisances include, but are not limited to, the following:

- (1) Decayed, harmfully adulterated or unwholesome food or drink sold or offered for sale to the public;
- (2) Animal carcasses not buried or otherwise disposed of in a sanitary manner within 24 hours after death of the animal;
- (3) Accumulations of Garbage or Refuse in which disease-carrying insects, rodents, or other vermin may breed or may reasonably be expected to breed;
- (4) Stagnant water in which mosquitoes, flies or other insects may breed;
- (5) Containers with Garbage or Refuse that are not covered by solid, tight-fitting lids, that have any uncovered holes or for which at least weekly removal of Garbage and Refuse is not provided;
- (6) Vegetation that:

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- (a) Harbors or aids in harboring rodents, snakes, or vermin;
 - (b) Harbors or hosts disease or insects that may reasonably be expected to injure other forms of life (except insects, such as those commonly called Lady Bugs, used for pest control);
 - (c) Is prohibited by law or ordinance, including noxious weeds;
 - (d) By reason of its location or condition, constitutes an imminent danger to any person or property;
 - (e) Hinders the removal of accumulations of junk, Garbage, Refuse and debris;
 - (f) Is unmanaged and in excess of eight inches in height; except for cultivated flowers, ornamentals, or food plants (vegetation in excess of eight inches, unless predominantly composed of cultivated wild flowers or food plants, and vegetation which interferes with or obstructs the view or passage on any street, alley or other public way will be presumed unmanaged);
- (7) The escape of smoke, soot, cinders, noxious acids, fumes, gases, fly ash or industrial dust within the city limits or within one mile from the city limits in quantities that endanger the health of persons or threaten or cause substantial injury to property, but excluding smoke emanating from residential fireplaces and fireplaces of commercial properties that are burning wood products typically used in such fireplaces;
- (8) The pollution of any public well or cistern, stream, lake canal or body of water by sewage, creamery or industrial wastes or other substances;
- (9) Any use of property, substances or things within the city limits or within one mile of the city limits, emitting or causing any foul, offensive, noisome, nauseous, noxious or disagreeable odors, effluvia or stenches extremely repulsive to the physical senses of ordinary persons which annoy, discomfort, injure or inconvenience the health of any appreciable number of persons within the city;
- (10) Any structure or building that is in a state of dilapidation, deterioration or decayed; of faulty construction; open to intrusion; abandoned; damaged by fire to the extent as not to provide shelter; extremely unsound; in danger of collapse or failure; or endangers the health and safety of the public;
- (11) Unsightly articles that are visible from adjoining property or from public or private thoroughfares including, but not limited to, household appliances not in actual use, auto parts, garden maintenance equipment not in actual use, furniture in disrepair or not in actual use, lumber, plant waste, shrub or tree clippings, metals or bulk materials;
- (12) Any motor vehicle or trailer having service or maintenance work done, including but not limited to, vehicles or trailers supported on stands or blocks, for a period of more than forty eight hours except in enclosed garages or other structures.

(13) Dumpsters, trash containers, or trash container stands located on a public right-of-way, unless owned, leased or under the control of the city; provided that trash containers may be placed on publicly-owned right-of-way adjacent to the pavement on the day the trash in the container is scheduled for removal by a trash hauler;

(14) Other actions, conduct, omissions, conditions or things defined or specified in the city's Code of Ordinances as nuisances or public nuisances.

REAR YARD. That portion of the yard between lines that extend from the outside rear corners of the subject structure on the lot perpendicularly to the back property line.

REFUSE. All putrescible and non-putrescible solid wastes, including rubbish, debris, ashes, street cleanings, dead animals, abandoned or inoperable household appliances, moveable furniture not designed for or modified to withstand the elements and outdoor use, solid wastes and industrial wastes.

TRAILER. A vehicle that is designed or used to carry a load wholly on its own structure and is drawn or designed to be drawn by a motor vehicle, such as, but not limited to, semi-trailers, truck-trailers, boat trailers, or trailer houses.

§ 92.16 PROHIBITION

(A) No person may erect, contrive, cause, continue, maintain or permit to exist any Public Nuisance on any property within the city.

(B) The procedures and remedies set forth in Sections 92.17 and 92.18 may be used in the alternative or in consonance with or in lieu of any other remedy or procedure authorized by law for the removal of violations or nuisances.

§ 92.17 FILING COMPLAINTS; INSPECTIONS; NOTICE TO ABATE; FAILURE TO ABATE; ABATEMENT BY CITY; APPEAL.

(A) All complaints alleging the existence of a Public Nuisance must be filed with the Building Official's office.

(B) The Building Official will promptly inspect the premises or cause them to be inspected and make a written report on the findings of the inspection. Whenever practical, photographs of the premises will be attached to the written report. The Building Official must keep all written reports on file for at least three years.

(C) If the Building Official determines that there is no Public Nuisance that presents a danger to the public health, safety, and welfare, the complainant may present its case to the City of Pflugerville Municipal Court. The complaint must comply with all rules of the court, including payment of filing fees sufficient to cover court costs. The complainant bears the burden of proof in any case before the court.

(D) Upon determining that a Public Nuisance exists on private property and that there is danger to the public health, safety, or welfare, the Building Official will deliver written notice to the owner of the property where the Public Nuisance exists in accordance with Section 342.006 of the Health and Safety Code.

(E) The notice must:

- (1) specifically describe the Public Nuisance;
- (2) direct the owner of the private property where the Public Nuisance exists to abate or remove the Public Nuisance within ten days of service or posting of the notice;
- (3) contain the telephone number and name of the city officer or employee who made the inspection resulting in the notice, and state that telephone inquiries may be made;
- (4) state that, unless the Public Nuisance is abated or removed, the city will cause it to be abated or removed, that the cost thereof will be charged to the owner and that the cost will be a lien on the real property where the Public Nuisance was abated or removed;
- (5) state that the failure of the owner to abate the Public Nuisance as required by the notice will be deemed an implied consent for the city to abate or remove the Public Nuisance and that the implied consent will be deemed to form a contract between the owner and the city; and
- (6) advise that the determination of the existence of a Public Nuisance may be appealed to the Board of Adjustment with the time allowed for abating or removing the Public Nuisance.

(F) If a Public Nuisance is not abated or removed after notice under this section and within the time specified in the notice, the Building Official may cause the abatement or removal of the Public Nuisance. The cost of abatement and removal is a lien on the real property where the Public Nuisance was abated or removed.

(G) The owner of the private property where the Public Nuisance exists who fails to abate or to remove the Public Nuisance required by this section thereby consents, under the terms of this section, to have the city abate or remove the Public Nuisance at the expense of the owner.

(H) The person upon whom a notice to abate a Public Nuisance is served or the property owner, tenant or other affected person may appeal the determination of Public Nuisance in writing to the Board of Adjustment. The written appeal must be made within the time period for abating the Public Nuisance as stated in the notice, and the appeal will be placed on the agenda of the next regular Board of Adjustment meeting that is at least four days after the receipt of the written appeal. The Board of Adjustment may extend the time within which the Public Nuisance must be abated, determine that a Public Nuisance does not or no longer exists, or that the Public Nuisance must be abated within the time period set out in the notice or immediately, if the period set out in the notice has run. If the Public Nuisance was determined to be an emergency and the opportunity for an appeal was not available due to the short period of time extended to abate the Public Nuisance, an appeal may be heard after the abatement of the Public Nuisance by the city. In that event, the Board of Adjustment may determine that the appellant is liable for the costs, or that, upon good cause

shown, that the appellant is not liable for the costs and that a lien should not be filed by the city upon the property.

§ 92.18 COST OF ABATEMENT AS A LIEN.

(A) The Building Official will provide the Finance Director with the total cost of abatement and removal or any Public Nuisance incurred by the city. The Finance Director will cause a bill to be delivered to the same persons and in the same manner as the notice of the Public Nuisance was served. Whenever a bill for the reasonable costs of abatement or removal of a Public Nuisance pursuant to this chapter remains unpaid for 30 days after it has been sent, the Finance Director will file a notice of lien in the Real Property Records of Travis County, Texas. Any notice of lien under this chapter will be filed within 90 days after the cost of abatement or removal of the Public Nuisance has been incurred by the city. The notice must include a sworn statement setting out: (1) a description of the real estate sufficient for identification thereof; (2) the amount of money representing the cost and expense incurred or payable by the city; and (3) the date or dates when the cost and expense was incurred by the city. However, any purchaser whose rights in such real estate have arisen subsequent to removal of the Public Nuisance and before the filing of the notice will not be held liable for the costs of abatement or removal, and the lien of the city will not have priority as to any mortgage, judgment creditor or other lienholder whose rights in and to such real estate arose before to the filing of such notice.

(B) Costs and expenses under this chapter include, but are not limited to, the actual costs and expenses in time of city employees or city authorized contractors and in materials for abatement or removal of the Public Nuisance under this chapter; transportation to and from the property; title searches or certifications; preparation of lien documents, foreclosures and other related expenses, including reasonable attorney's fees and expenses.

(C) A copy of the notice of lien must be mailed by the Finance Director to the owner of the property or to the person or persons in whose name such real estate was last billed for property tax purposes.

(D) The real estate subject to a lien for an unpaid assessment of costs and expenses may be sold, and the proceeds of the sale applied to pay the charges, after deducting costs.

(E) The City Attorney may institute proceedings in the name of the city in any court having jurisdiction over such matters against any property or the owner or occupant of the property for costs and expenses that have remained unpaid 30 days after the notice of lien is filed and a statement of such costs and expenses has been mailed to the property owner or to the person or persons in whose name the property was last billed for property tax purposes. The action authorized by this subsection is in addition to, and without waiver of, any other remedy.

(F) Upon payment of all costs and expenses, plus interest from the date 30 days after the bill was sent, the Finance Director or designee will file a release of the lien in the Real Property Records of Travis County, Texas.

§ 92.19 EMPLOYEES OF THE CITY.

Whenever in this chapter duties are given to the Building Official, such duties may be performed by an employee of the city assigned to such duty by the Building Official.

§ 92.20 VIOLATIONS.

(A) A separate offense is committed on each day that a violation of § 92.16 exists unabated after the deadline for abatement and removal established by § 92.17. Any person violating this provision will be fined not less than \$10.00 nor more than \$2,000.00 per offense unless otherwise limited by applicable laws.

(B) The provisions for remedying violations of this chapter are in addition to other applicable remedies, including an action for an injunction.



Agendizer

February 27, 2007
Item Number: 6A

The third reading of an ordinance amending Chapter 92.15 of the Code of Ordinances of the City of Pflugerville, also known as the Nuisance Ordinance.

Summary: Since the first reading of this ordinance, the provisions regarding the parking of vehicles and trailers in yards have been removed. These provisions will be addressed in the Zoning Ordinance. The provision pertaining to the repair or maintenance of vehicles, trailers, or other means of conveyance for more than 48 hours, except in a garage or enclosed structure, remains in the Ordinance. This same provision prohibits the act of supporting these on blocks or stands. The definition of Motorcycle was combined with the definition of Motor Vehicle under the guidance of the City Attorney. Because of these changes, the Ordinance will require a third reading.

Recommendation: Approve the Ordinance

Action Required by: There is no deadline for action on this agenda item.

Prepared by: Blake Overmyer, Building Official

Fiscal Impact: There is no fiscal impact associated with this agenda item.

Attached Files: (Click to display file.)

Ordinance

Comment version

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