

Chapter 46

NUISANCES*

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***State law references**—Authority of home rule city to define and declare nuisances, Tex. Local Government Code § 217.042; persons not to permit abandoned property to become public health nuisance, Tex. Health and Safety Code § 341.013; municipality authority to require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other environmental nuisances, Tex. Health and Safety Code § 342.001 et seq.; abatement of junked vehicle declared to be a public nuisance, Tex. Transportation Code § 683.071 et seq.; regulation of fireworks, Tex. Occupations Code § 2154.001 et seq.

ARTICLE I. IN GENERAL

Sec. 46-1. Definitions.

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

Code enforcement officer means the city official or employee designated by the city manager as responsible for the administration and enforcement of the provisions of this chapter.

Sec. 46-2. Penalties for violation.

(a) Violations of the provisions under this chapter are hereby deemed violations of ordinances, rules, or police regulations that govern fire safety, zoning, and public health and sanitation.

(b) Persons who shall violate any provision under this chapter, or shall fail to comply with any of the requirements thereof, or who shall fail to comply with the directive of the city official charged with the responsibility of enforcing the provisions of this chapter, or of a permit or certificate used under provisions of this Code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to the general penalties imposed for violations of ordinances, rules, or police regulations that govern fire safety, zoning, and public health and sanitation as described under section 1-13(b). Each day that such a violation is permitted to exist shall constitute a separate offense.

(Ord. No. 12, § 5, 4-16-1969; Ord. No. 797, § 1(e), 3-13-2007)

State law reference—Enhanced penalty for violation ordinances governing fire safety, zoning, or public health and sanitation, Tex. Local Government Code § 54.001(b).

Secs. 46-3—46-22. Reserved.

ARTICLE II. NOISE

Sec. 46-23. Prohibitions.

(a) *Character, intensity and duration detrimental to health or life.* 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 the life or health of any individual in the city.

(b) *Unreasonable, loud, disturbing and unnecessary.* It shall be unlawful for any person to make, continue, or cause to be made any excessive, unreasonable, loud, disturbing and unnecessary or unusually loud noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace, and safety of others in the city. This encompasses any noise that 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.

(c) *Enumeration.* The following acts, among others, are declared to be nuisances and shall be deemed to be a violation of this article, but said enumerations shall not be deemed to be exclusive, to-wit:

- (1) The sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle while not in motion, except as a danger signal, as may be required by state law, if another vehicle is approaching apparently out of control or if another vehicle is backing, starting or turning in such a way as likely to cause a collision.
- (2) 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 required by state law.
- (3) The playing of any radio, phonograph, television set or musical instrument in such a manner, or with such volume as to disturb the peace, quiet, comfort or repose of persons in any dwelling, apartment, hotel or other type of residential structure.
- (4) The use of any automobile, motorcycle, bus or vehicle so out of repair or so loaded as to emit or create loud or unnecessary grating, grinding or rattling noise.
- (5) The construction, erection, including excavation, demolition, alteration, repair or related work for any building, structure, or site location in a residential zoning district or nonresidential zoning district abutting a residential zoning district, excluding any inside work done in an enclosed building or structure in nonresidential zoning districts, other than between the hours of 7:00 a.m. and

9:00 p.m. during the weekdays of Monday through Saturday and between the hours of 9:00 a.m. to 7:00 p.m. on Sunday, except in the cause of urgent necessity in the interest of public safety, for which a permit shall be obtained from the chief building official or his designee. The hours set forth will encompass schools and public locations in general; however, there may be more restrictive hours imposed by the city as deemed appropriate.

- (6) The delivery, unloading, or depositing of concrete, lumber, dirt, base, or any construction materials for any site location, building or structure in a residential zoning district or nonresidential zoning district abutting a residential zoning district, other than between the hours of 7:00 a.m. and 9:00 p.m. during the weekdays of Monday through Saturday and between the hours of 9:00 a.m. and 7:00 p.m. on Sunday, except in the case of urgent necessity in the interest of public safety, for which a permit shall be obtained from the chief building official or his designee. The hours set forth will encompass schools and public locations in general; however, there may be more restrictive hours imposed by the city as deemed appropriate.
- (7) The use or operation of any mechanical or electrical device, machine, apparatus, or instrument that will intensify, amplify or reproduce the voice or any other sound whereby the sound is plainly audible to adjacent private property or for 50 feet onto public property or any public road right-of-way.
- (8) 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, display of merchandise or to attract customers to any place of business.
- (9) The creation of unreasonably loud, disturbing and unnecessary noises in connection with the loading or unloading of any vehicle, the opening and destruction of bales, boxes, crates and containers or the sounding of any bell or gong attached to any building located on any premises that disturbs the quiet or

repose of persons occupying adjoining property or those occupying property across a public road right-of-way, alley or other public right-of-way, and within a 200-foot radius.

(Ord. No. 673, § 3(3), 4-26-2005)

Sec. 46-24. Exemptions.

The following activities are exempt from this article:

- (1) Sound caused by emergency or public service work, including police, fire and public utility operations, when the sound is associated with the performance of lawful duties to protect the health, safety or welfare of the community.
- (2) Amplifiers used on vehicles to attract patrons that are operated by ice cream and snow-cone vendors that produce jingles or music from 8:00 a.m. to 8:00 p.m. However, such amplified jingles or music shall not be done in a loud manner so as to be offensive to the ordinary sensibilities or a reasonable and prudent person.
- (3) The use and operation of an amplified, mechanical bell system in connection with the use and occupancy of a church structure, school structure, educational structure, or governmental structure. However, such systems shall not be used or operated in a manner so as to be offensive to the ordinary sensibilities of a reasonable and prudent person.
- (4) Sound caused by agricultural work when the sound is associated with the care, maintenance and harvest of crops and livestock.
- (5) Individuals possessing an authorized permit from the city, such as a special event or parade permit, shall be allowed to engage in activity authorized by the permit. Under no circumstances should the amplification of sound be in a manner that is offensive to the ordinary sensibilities of a reasonable and prudent person or in such a manner as to interfere with the public peace and comfort.

(Ord. No. 673, § 3(4), 4-26-2005)

Secs. 46-25—46-53. Reserved.

ARTICLE III. WEEDS AND YARDS

Sec. 46-54. Stagnant water.

It shall be unlawful for any person to permit or allow the accumulation of stagnant water on any lot owned or occupied by him within the city or to permit stagnant water to remain thereon.
(Ord. No. 387, § 1, 11-25-1986)

Sec. 46-55. Accumulation of garbage, trash, refuse.

It shall be unlawful for any person to cause or permit to be or remain in or upon any premises under his control any garbage, trash, rubbish, or other refuse, or animal excretion, or animal, vegetable or mineral matter, or any composition or residue thereof, which is in an unsanitary condition or injurious to public health.
(Ord. No. 387, § 2, 11-25-1986)

Sec. 46-56. Offensive, foul or noxious weed or vegetation growth.

It shall be unlawful for any owner, tenant, lessee, agent or occupant of any lot or premises to permit any weeds, grass or other vegetation to grow or remain upon any premises, so as to become offensive or emit foul or noxious odor, or to become a breeding place for flies or insects or to become in any way unsanitary or injurious to the public health.
(Ord. No. 387, § 3, 11-25-1986)

Sec. 46-57. Notice to remove or remedy.

Whenever any condition described in sections 46-54 through 46-56 is found to exist upon any lot or premises in the city, the city shall notify the owner, tenant, lessee, agent, or occupant of such lot or premises to remove or remedy the conditions within ten days after the date of such notice. Such notice shall be in writing and shall be served on the owner, tenant, lessee, agent, or occupant in person or mailed to him at the latest known address. In the event personal service cannot be made and an address is not known, such notice shall be published at least one time in a newspaper that has general circulation within the city. Further, in the event no response, removal or remedy of any condition existing in sections 46-54 through 46-56 and said ten-day notice goes unanswered, the city shall issue or cause to be

issued a citation requiring appearance of said owner, tenant, lessee, agent or occupant of premises before the municipal court of the city.
(Ord. No. 387, § 4, 11-25-1986)

Sec. 46-58. Removal, correction by the city.

In the event the owner, tenant, lessee, agent or occupant of any lot or premises cannot be located and/or notified, the city may elect to provide service, in-house or contracted, to remove or remedy the condition and charge the expense incurred thereby to the owner, tenant, lessee, agent or occupant of the premises. If the owner, tenant, lessee, agent or occupant cannot be located, then the expense shall be assessed against the real estate upon which the work was done. A statement of the expense incurred will be certified by the city secretary and sent to the violator of this section. The owner, tenant, lessee, agent or occupant will be given a period of 15 days for total reimbursement to the city. At the end of the 15-day period, the amount of such expenses, if unpaid, shall bear maximum per annum interest as allowed by law from the date of certification by the city manager.
(Ord. No. 387, § 5, 11-25-1986)

Sec. 46-59. Imposition of conditions; clearance of lien.

In the event no collection can be made by the city for the expenses incurred by removing or remedying any of the conditions described in sections 46-54 through 46-56, and before and after a lien is filed against such property, the city shall have the right to impose the following conditions on such property, until such lien is cleared:

- (1) If the property is an empty lot, no building permit of any type will be issued by the city.
- (2) If the property is a lot with building improvements, no remodeling or modification or improvement permit will be issued by the city, and no water, sewer, or garbage service will be provided.
- (3) A sum for administrative costs will be levied against the violator, and an additional charge will be added for filing of a lien against the property, if a lien is filed. In addition, any other administrative costs incurred by the city in administering the conditions of this

article will be duly charged to the violator as well. The administrative costs and charges referred to in this section shall be established by ordinance or resolution of the city council, and made available for public examination in the office of the city secretary.

(Ord. No. 387, § 6, 11-25-1986)

Sec. 46-60. Statement of expenses; liens; suit to recover expenses.

The city manager shall file, with the county clerk, a statement of expenses incurred under section 46-58, giving the amount of such expenses and the date on which the work was done or improvements made, the amount to include aforementioned administrative and lien filing fees, 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, which lien shall be second only to tax liens and liens for street improvements. For any expenditure and interest, suit may be instituted and recovery and forfeiture 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.

(Ord. No. 387, § 7, 11-25-1986)

Sec. 46-61. Cumulative effect of penalties.

Any person in violation of this article, as stated in section 46-60 and having paid a fine assessed for such violation, shall not be relieved of the expense incurred by the city for removing or remedying the conditions prescribed in of this article.

(Ord. No. 387, § 8, 11-25-1986)

Sec. 46-62. Penalty for failure to maintain.

Property owners failing to maintain their lawns, lots, and easements will be subject to an additional penalty per day for each day said condition of lack of maintenance exists as a violation of this article. The additional penalty shall be according to the maximum amount of the penalties described in this chapter.

(Ord. No. 387, § 9, 11-25-1986)

Sec. 46-63. Application of provisions.

The provisions of this article will apply to all property other than land that is undeveloped or used for agricultural purposes.

(Ord. No. 387, § 10, 11-25-1986)

Secs. 46-64—46-84. Reserved.

ARTICLE IV. FIREWORKS

Sec. 46-85. Definitions.

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

Fireworks means any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation.

(Ord. No. 12, § 1, 4-16-1969; Ord. No. 797, § 1(a), 3-13-2007)

Sec. 46-86. Public nuisance and prohibition.

The possession, use, manufacture, sale, offer for sale, giveaway, or discharge of fireworks within the city limits, or within 5,000 feet of the city limits is hereby declared to be a common and public nuisance and it shall be unlawful for any person to possess, use, manufacture, sell, offer for sale, give away, or discharge fireworks within the city limits, or within 5,000 feet of the city limits.

(Ord. No. 12, §§ 2, 4, 4-16-1969; Ord. No. 797, § 1(b), 3-13-2007)

Sec. 46-87. Exceptions.

This article does not apply to:

- (1) Toy pistols, toy canes, toy guns, or other devices that use paper or plastic caps;
- (2) Model rockets and model rocket motors, designed, sold, and used for the purpose of propelling recoverable aero models;
- (3) The sale and use, in emergency situations, of pyrotechnic signaling devices or distress signals for aviation, or highway use;
- (4) The use of fuse and railway torpedoes by railroads;

- (5) The sale of blank cartridges for use in radio, television, film, or theater productions for signal or ceremonial purposes in athletic events, or for industrial purposes; or
 - (6) The use of any pyrotechnic device by military organizations.
- (Ord. No. 12, § 3, 4-16-1969; Ord. No. 797, § 1(c), 3-13-2007)

Sec. 46-88. Public displays exempted.

The provisions of section 54-126 shall not apply to a public display of fireworks made under the terms and conditions of this section, and such display shall be permitted upon compliance with the provisions of the city's adopted fire prevention code and of this section, as follows:

- (1) Any adult person or any firm, copartnership, corporation or association planning to make a public display of fireworks shall first make written application for a permit to the fire marshal at least 14 days in advance of the date of the proposed display.
- (2) It shall be the duty of the fire marshal to make an investigation as to whether the display as proposed by the applicant for a permit under this article shall be of such a character that it may be hazardous to property or dangerous to any person; and he shall, in the exercise of reasonable discretion, grant or deny the application, subject to the conditions prescribed in this section. If the application is approved, a permit shall be issued for the public display by the fire marshal. Such permit shall be for a period of time designated on the permit, but shall not exceed 14 days, and the permit shall not be transferable. If the application is denied by the fire marshal, he shall notify the applicant of the denial in writing.
- (3) The applicant for a display permit under this section shall, at the time of making application, furnish proof of compensation insurance for employees as provided by the laws of the state; and shall file with the fire marshal a certificate of insurance evidencing the carrying of public liability insurance in an amount not less than \$300,000.00, issued by an insurance carrier authorized to trans-

act business in the state, for the benefit of the person named therein as insured, as evidence of ability to respond in damages in at least the amount of \$300,000.00, such policy to be approved by the fire marshal. In lieu of insurance, the applicant may file with the fire marshal a bond in the amount of \$300,000.00, issued by an authorized surety company approved by the fire marshal, conditioned upon the applicant's payment of all damages to persons or property which shall or may result from or be caused by such public display of fireworks or any negligence on the part of the applicant or his agents, servants, employees, or subcontractors in the presentation of the public display.

- (4) The range of aerial displays shall not be more than 200 feet, and the fireworks shall be discharged vertically from tubes approved by the fire marshal.
- (5) The limit of a display authorized by this section shall be not more than 45 minutes per performance, and there shall not be more than two performances in each 24 hours.
- (6) No public display of fireworks shall be of such a character and so located, discharged, or fired as to be hazardous or dangerous to persons or property, and this determination shall be within the sound discretion of the fire marshal.
- (7) The persons handling the display of fireworks under this section shall be competent, adult persons and experienced pyrotechnic operators approved by the fire marshal. No person not approved by the fire marshal shall handle fireworks at the public display. The names of the experienced pyrotechnic operators shall be designated on the permit issued.
- (8) For each public display of fireworks under this section, the fire marshal may require that not less than two firefighters of the city be in attendance during the display. The expense of such firefighters at the display shall be borne by the applicant for the permit and shall be paid in advance at the time of the application for the permit.

- (9) The material to be used for a public display authorized by this section shall not be stored within the city limits, but shall be brought in on the day of the public display and then shall be taken immediately to the place of display for further handling and storage.

(Ord. No. 797, § 1(d), 3-13-2007)

Sec. 46-89. City attorney authority.

Notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the city, the fire marshal, or both for such injunctive relief as may be necessary to prevent a violation of this article. It shall not be necessary to obtain injunctive relief as a prerequisite to seizure of fireworks.

(Ord. No. 797, § 1(d), 3-13-2007)

Chapters 47—49

RESERVED