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ORDINANCE NO. 1604.09

AN ORDINANCE DEFINING AND REGULATING NUISANCES, TO-WIT: TO PROHIBIT THE CREATION AND MAINTENANCE OF NUISANCES; TO REQUIRE THE ABATEMENT OF NUISANCES; TO PROVIDE FOR THE ABATEMENT OF NUISANCES BY THE CITY; TO ALLOW FOR EXEMPTIONS; TO PROVIDE FOR NOTICE OF AND HEARING ON NUISANCE VIOLATIONS; TO DECLARE A VIOLATION AS A MISDEMEANOR OFFENSE; AND TO PROVIDE FOR A MAXIMUM PENALTY OF \$2,000.00 PER OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of San Elizario (“City Council”) seeks to promote the health, safety and general welfare of the community by preventing death, injury, property damage and urban blight within the City limits; and

WHEREAS, the City Council finds that the existence of weeds, rubbish, brush, filth, carrion, stagnant water and other unsightly, unsanitary and unwholesome matter will lower the quality of life for citizens of the City by decreasing the aesthetics of the City, will harbor rodents, will increase illegal dumping and littering, will increase fire hazards, and will increase crime by decreasing visibility and access; and

WHEREAS, the City Council finds that the existence of other unsanitary, unsafe and dangerous conditions poses a menace to the health, safety and welfare of its citizens; and

WHEREAS, pursuant to Texas Local Government Code Chapter 217, the City has the statutory authority to define and abate nuisances and impose fines; and

WHEREAS, pursuant to the Texas Health and Safety Code, including but not limited to Chapter 342, the City Council is authorized by law to regulate public health and sanitation within the City in the areas of stagnant water, filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions; and

WHEREAS, pursuant to Texas Local Government Code Section 51, the City Council is authorized by law to adopt an ordinance, not inconsistent with state law, that is for

the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, the City Council finds that it is necessary and proper for the good government, peace or order of the City and for proper public health and sanitation in the City to adopt an ordinance on public health and sanitation that regulates stagnant filth, carrion, weeds, dangerous weeds, and other unhealthy, unsanitary and unwholesome conditions in the City.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of San Elizario:

ARTICLE I. FINDINGS OF FACT

The foregoing recitals are adopted as facts and incorporated fully herein.

ARTICLE II. ENACTMENT

The City Council hereby adopts the “*Health and Sanitation Code, Article I. Property Maintenance*”, also to be known as the “*Property Nuisance Ordinance*”, attached hereto as “Attachment A” and incorporated fully herein in this Ordinance for all intents and purposes.

ARTICLE III. REPEALER AND SEVERABILITY

REPEALER: All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

SEVERABILITY: Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

ARTICLE IV. EFFECTIVE DATE

This Ordinance shall be effective immediately upon publication and passage.

PASSED AND APPROVED this, the 11th day of August 2015, by a vote of 5 (ayes) to 0 (nays) to 0 (abstentions) of the City Council of San Elizario, Texas.

CITY OF SAN ELIZARIO, TEXAS



Maya Sanchez, Mayor

ATTACHMENT A

**HEALTH AND SANITATION CODE
ARTICLE I. PROPERTY MAINTENANCE**

also known as

“PROPERTY NUISANCE ORDINANCE”

Section I General Provisions

1.1 Popular Name. This Article may be referred to as the City of San Elizario “Property Nuisance Ordinance.”

1.2 Purpose. This Article is adopted to promote the public health, safety, morals and general welfare within the City through reasonable regulation of nuisances. The purpose of this Article is to protect the citizenry, maintain property values, prevent pest and vermin, protect air quality and preserve the water resources of the City.

1.3 Nuisance Declared; Compliance Required

1.3.1 Unless specifically stated otherwise, any condition, act or offense defined in this Article is hereby declared a nuisance if it exists within the corporate limits of the City.

1.3.2 Upon a finding of a nuisance by the City, it shall be the duty of any person to take any and all corrective or remediation action necessary to abate the nuisance.

1.3.3 Failure to abate and remove a nuisance shall subject the offender responsible for the nuisance to fines and penalties as contained in this Article.

1.3.4 The City may abate in any manner it considers expedient any nuisance that may injure or affect the public health or comfort in accordance with this Article.

1.4 Scope of Jurisdiction. The provisions of this Article shall apply within the incorporated municipal boundary of the City.

1.5 Definitions

1.5.1 General. Words and phrases used in this Article shall have the meanings set forth in this section. Words and phrases that are not defined in this Article but are defined in other Articles of the City shall be given the meanings set forth in those Articles. Other words and phrases shall be given their common, ordinary meanings unless the context clearly states otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Article.

1.5.2 Specific.

Animal carcass. The carcass of an animal exposed so that noxious or disagreeable odors may escape therefrom and contaminate the air.

Brush. Mesquite trees, geasewood, cacti, or any other tree or shrubbery occurring naturally in the area that has a central trunk with a girth of less than ten inches (10") at its base. The term expressly excludes ornamental or shade trees that were planted.

Brush trimmings. Tree and shrub trimmings, which are not susceptible to placement in regulation containers.

City. The City of San Elizario, Texas.

City limits. The incorporated municipal boundary of the City.

Code enforcement officer. The code enforcement officer of the City or officer's designee. The term may also include a licensed peace officer employed by the City.

Debris. Dirt, concrete, rocks, bricks, scrap wood, other waste or building materials.

Garbage. Waste capable of decay from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial byproduct.

Lot. Real property as defined in City's building code and in the City's zoning regulations plus any additional real property located between the property line and curb or the property line and one-half the width of an adjoining alley.

Nuisance. An act or condition which is injurious to the health or morals, or indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

Offal. Waste meat products or parts of a butchered animal rejected as unfit for use.

Owner. The fact that a person is a present occupant of the premises shall be prima facie evidence that the person has supervision and control of said property. If the premises are unoccupied, the fact that the current person is listed by the current tax roll as the owner shall be prima facie evidence that the person is the owner and has supervision and control of said lot.

Person. Any human individual, association, corporation, institution, or governmental entity occupying, owning, leasing, renting, or residing upon a lot that is subject to this Article.

Refuse. Garbage, rubbish, paper, and other waste both capable and not capable of decay, including vegetable matter and fish and animal carcasses.

Rubbish. Waste not capable of decay from a public or private establishment.

Sanitary. A condition of good order and cleanliness that precludes the probability of disease transmission.

Trash. Animal carcasses, brush, garbage, debris, junk, offal, refuse, rubbish, and, as herein defined, including any household trash, yard trash (grass clippings, leaves, etc.) or construction trash.

Undeveloped lot, tract, or parcel of land. Land that has not been cleared either fully or partially, and is in an undisturbed, natural condition for the City's area of the state.

Weeds. All rank and uncultivated vegetable growth or matter that may create an unsanitary condition or become a harborage for rodents, vermin, or other disease carrying pests, regardless of the heights of the weeds.

Section 2 Weeds and Vegetation

2.1 Any weeds, grass, plants permitted to grow on the premises within the City above twelve (12) inches shall be deemed a nuisance and dangerous to the health of the public and a fire hazard.

2.2 It shall be unlawful for any person to allow any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, to allow uncultivated grass, weeds, or brush to grow to a height greater than twelve (12) inches on any lot, tract, or parcel of land, or portion thereof.

2.3 It shall be unlawful for any person to allow any lot, tract, parcel of land, or portion thereof, occupied or unoccupied, improved or unimproved, to permit grass, weeds, or any plant to grow in, upon or across the sidewalk or street adjacent to the lot or property in the area. Cultivated vegetation may be adjacent to the sidewalk when not in violation of other City Articles. Weeds and vegetation may not be allowed to grow along sidewalks or streets in a manner that obstructs the lines of sight for motorists or pedestrians or that hinders municipal use of the public rights-of-way.

2.4 Authority to Abate Dangerous Weeds

2.4.1 The City may abate, without notice, weeds that:

- (a) have grown higher than 48 inches; and
- (b) are immediate danger to the health, life, or safety of any person.

2.4.2 The City shall give notice to the property owner in accordance this Article not later than the 10th day after the date the City abates weeds under this section.

2.4.3 Hearing on the Abatement of Weeds.

- (a) The City shall conduct an administrative hearing on the abatement of weeds if, not later than the 30th day after the date of the notice of the violation and/or abatement of weeds, the owner files a written request for a hearing with the City.
- (b) The City shall conduct the administrative hearing not later than the 20th day after the date a request for hearing is filed.
- (c) Upon hearing and a determination of a violation, the City may assess expenses and create liens as permitted under this Article.

2.5 Affirmative Defenses.

The following shall be affirmative defenses to any charge of permitting grass, weeds or brush to grow in violation of this section:

- (a) The grass, weeds, or brush is/are located on land that is actively being used as a pasture for grazing livestock.
- (b) The grass, weeds, or brush is/are located on land that is being used as a garden or is currently being cultivated for agricultural purposes.
- (c) The grass, weeds or brush is/are located on public property owned by the state, or any of its subdivisions, and such governmental entity has determined that it is in the public interest that such property should remain in its natural, undisturbed condition and the vegetation on such property is in its native biome and the condition of such property does not present a danger or hazard to adjacent properties.
- (d) The code enforcement officer has determined that there is just cause to permit grass, weeds, or brush to grow to a height greater than twelve inches (12") on a lot, tract, or parcel of land. Just cause shall exist if one or more of the following factors apply to the lot, tract or parcel of land in question:
 - (1) The topography of the land makes compliance with the subsection (a) of this section impractical.
 - (2) The density of the brush makes compliance with subsection (a) of this section impractical or impossible.
 - (3) Some act of the City makes compliance with subsection (a) of this section impractical or impossible; and the land does not otherwise present a danger or hazard to adjacent properties.

Section 3 Depositing or Dumping

3.1 It shall be unlawful for any person to dump, place, deposit, or throw, or otherwise dispose of any trash of any kind on public or private property. A violation of this section shall constitute a trespass on said property when committed against or upon any public property or property owned or occupied by another person. Violations of this section shall include but are not limited to the following:

- (a) vegetation and trimmings: the throwing, placing, dumping, or depositing of any lawn trimmings, hedge trimmings, or other cuttings or trimmings of weeds, flowers, or other vegetation on or in any gutter, street, sidewalk, parkway, driveway, curb, alley, or any other public property of the City, or in or on any lot, vacant or occupied, driveway or other private property.
- (b) trash: the throwing, placing, dumping or depositing of any garbage or refuse of any kind on or in any gutter, street, sidewalk, parkway, driveway, curb, alley, or any other public property of the City, or on any private lot, vacant or occupied, other private property.
- (c) unsanitary matter: the throwing, placing, dumping, or depositing of any animal, vegetable or mineral matter or any composition or residue thereof, which is in an unsanitary condition or injurious to public health on or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the City, or on or in any lot vacant or occupied, driveway or other private property.

3.2 It shall be unlawful for any person owning any vacant lot within the City to permit such lot to become a rendezvous for tramps, a shelter or dumping ground for garbage or debris, unhealthy, unsightly and unclean, to fail to clear off such premises and make same healthy and clean within ten days after being notified by a City official or employee.

3.3 Trash that has been properly disposed of in accordance with the garbage collection provisions of this code shall be exempt from this section.

Section 4 Junk and Unsightly Matter

4.1 An accumulation or growth of refuse or rubbish on properties is deemed to be deleterious to the public health, comfort and welfare, and is declared to be a public nuisance, the prompt abatement of which is a public necessity. It shall be unlawful for any person to permit any trash to accumulate upon any such lot, tract, or parcel of land.

Section 5 Unsanitary Conditions on Property

5.1 The existence of an unsanitary condition is deemed to be deleterious to the public health, comfort and welfare, and is declared to be a public nuisance, the prompt abatement of which is a

public necessity. It shall be unlawful for any person to permit any of the following unsanitary conditions to exist on, or emanate from, any such lot, tract, or parcel of land:

- (a) stagnant water or any collection of water that may allow the breeding of insects, exposed animal carcasses, or any other open drain, sewer, or cesspool;
- (b) any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires or other waste of any kind that is stored, deposited or disposed in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water or the breeding of insects or rodents;
- (c) any waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, sewage, used tires or other waste of any kind that is accumulating in, being discharged into or flowing into or onto any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the City, or in or on any lot, vacant or occupied, driveway or other private property; or
- (d) any garbage or waste receptacle or container that is in an unsanitary condition.

Section 6 Animal Carcasses

6.1 An exposed animal carcass is deemed to be a nuisance and a danger to the public health, safety and welfare. No person shall place or deposit the exposed carcass of any animal on any street, alley, highway or public place or on private property.

6.2 No person shall allow or permit any animal that has died, which at the time of death was owned or controlled or kept by such person, to be in or upon any street, alley, lot or other place in the City; such person shall cause the carcass to be disposed of in a sanitary manner.

6.3 Notwithstanding any other remedy or remedies available to the City under this section or any other Article or statute, the code enforcement officer, or any other City employee or their designee may enter upon any premises, whether public or private, where an animal carcass is located to retrieve it and dispose of it in compliance with this section if:

- (a) the carcass has reached a stage of decomposition or the environmental conditions are such that noxious odors are emanating from the carcass, or insects, vermin or any other animals have been drawn to the site; or
- (b) the exposed animal carcass is not disposed of in compliance with subsection (b) hereof within 24 hours of the animal's death.

6.4 Any expenses incurred by the City for such removal shall be deducted from the commercial value derived from the carcass, if any, or assessed against the owner of the animal along with any penalty or penalties for violation of this section.

Section 7 Specific Nuisance Declared

7.1 The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property any of the following items, conditions or actions, are hereby declared to be and constitute a nuisance, the prompt abatement of which is a public necessity:

- (a) any building, other structure or improvements thereto which is in such a dilapidated condition that it is unfit for human habitation; or kept in such an unsanitary condition or where the structural elements, electrical wiring or apparatus, plumbing and fixtures, illumination, or any required fire warning devices, sprinklers or other fire suppression devices have become so damaged, fallen into such disrepair or are no longer in compliance with the City's technical codes that it is a menace to the health, safety or welfare of people residing in the building or structure or in the vicinity thereof or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located;
- (b) any building or other structure which is overcrowded or, is not provided with adequate means of ingress or egress;
- (c) any building or other structure that is missing windows, doors or other coverings, or which has windows, doors or other coverings in such a dilapidated condition that access into the structure can be readily made by uninvited persons or animals;
- (d) all nauseous, foul or offensive odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches;
- (e) the carcasses of animals, fish or fowl not disposed of within a reasonable time after death or before the carcass begins decaying or is putrid, or other filth or carrion in a building or located on the ground;
- (f) the pollution of any public well or cistern, stream, lake, canal or body of water by sewage, dead animals, creamery, industrial wastes or other substances;
- (g) dense smoke, or noxious fumes, gas, soot or cinders;
- (h) graffiti, consisting of any markings, including but not be limited to, any inscription slogan, drawing, painting, symbol, logo, name, character, or figure, that is made on tangible property next to or visible from any public property or right-of-way in the City in any manner to include but not be limited to the use of any pen, marker, stick, brush, paint, spray paint or other liquid solution in aerosol containers, or by use of any other object capable of being used in the marking or defacing of property;
- (i) the keeping or allowing to be kept in any pen, place, or premises of any animals, in such manner as to be offensive or any annoyance to any person whomsoever;
- (j) all cellars, vaults, drains, pools, privies, sewers, yards, grounds or premises which

have for any cause become foul, nauseous or not provided with adequate means of ingress or egress or not sufficiently supported, ventilated, drained, or cleaned;

(k) the act of burning hair, leather, rubber, rags or any other substance of any kind which causes or produces an offensive smell, smoke or odor capable of annoying persons living in the vicinity or persons passing along the streets, alleys, or public thoroughfares;

(l) the act of defecating or urinating upon the streets, alleys, or public grounds, including construction sites or in any place that may be seen from a private residence, or by persons passing along the streets, alleys, or public thoroughfares;

(m) the disposal or accumulation of any vile, decaying or putrescent substance or other offensive material dangerous to public health, in or upon any lot, street, or highway; or the escape of any gases or odors to such an extent that the same or any of them shall by reason of such offensive odors become a source of discomfort to persons living or passing in the vicinity.

7.2 It shall be unlawful for any person to permit any of the specific nuisances described in this section to exist on, or emanate from, any such lot, tract, or parcel of land:

Section 8 Inspection of Premises – Right of Entry

8.1 A code enforcement officer may enter premises at all reasonable times whenever it is necessary to make an inspection to enforce any of the provisions of this Article, to inspect permits and records required by the City, to collect air, water, waste, or wastewater samples, or whenever probable cause exists to believe that a violation of this Article or other environmental laws exists on such premises.

8.2 The code enforcement officer shall first present his credentials and demand entry if the premises are occupied. If the premises are unoccupied, the officer shall first make a reasonable attempt to locate the owner or person in control of the premises and demand entry.

8.3 Where premises have security measures in force which require proper identification and clearance before entry into its premises, the person in control of the premises shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the code enforcement officer will be permitted to enter without delay for the purposes of performing specific responsibilities.

8.4 If entry is denied or if a person in control cannot be located, the code enforcement officer shall have every recourse provided by law to secure entry. Such recourse shall include the right to obtain a search warrant under the guidelines of the Texas Code of Criminal Procedure.

Section 9 Notice and Hearing

9.1 In the event a person violates any provision of this Article, notice of such violation shall be given prior to exercising the authority granted in this Article.

9.2 Such notice shall be given:

- (a) personally to the owner in writing;
- (b) by letter addressed to the owner at the owner's address as recorded in the appraisal district's records; or
- (c) if personal service cannot be obtained, notice may be given by:
 - (1) publication at least once;
 - (2) posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (3) posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

9.3 If a municipality mails a notice to a property owner in accordance with this subsection and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered as delivered.

9.4 Contents of notice. The notice of violation shall contain the following:

- (a) name of the property owner, if known, of the premises; and
- (b) address or legal description of the premises; and
- (c) the nuisance violation existing on the lot, tract or parcel of land; and
- (d) a statement that:
 - (1) the property owner has seven (7) days from the date of notice to correct the violation; and
 - (2) that if the property owner fails to remedy the violation, the City may enter the premises and remedy the same; and
 - (3) that the City is entitled to attach a lien to the property to secure payment for services rendered; and

(4) that violation of this Article may result in civil and criminal penalties against the property owner; and

(e) in the event of abatement performed by the City for dangerous weeds, a statement that the City abated the weeds and that the City may assess expenses for the abatement; and

(f) in the event of abatement performed by the City for dangerous weeds, a statement that the recipient is entitled to an administrative hearing.

Section 10 Abatement, Expenses, and Lien

10.1 Abatement. If the owner of any lot, tract, and parcel of land or portion thereof does not comply with the provisions of this Article within seven (7) days of receipt of notice of violation, the City may:

(a) enter upon such premises and do such work as necessary for compliance with this Article; and

(b) pay for the work or improvements made and charge the expenses to the owner of the property.

10.2 Assessment of Expenses and Lien.

10.2.1 The City may assess expenses incurred by the City in exercising the authority granted in this section.

10.2.2 Overhead Charge. Whenever a nuisance is abated by the City under this Article, the City shall keep an accurate account of all expenses incurred, including an overhead charge of twenty-five percent (25%) for administration and a penalty of \$200.00 for each nuisance abated, and assess the overhead as an expense.

10.2.3 The City attorney, or an assigned representative, may file a statement with the county clerk of such expenses including administrative, filing and publication costs incurred in abating the unsanitary condition on said premises. The lien statement must state the name of the owner, if known, and a legal description of the property. The City shall have a privileged lien on such lot, tract, or parcel of land, second only to tax liens and liens for street improvements, for the expenses incurred, together with interest at the rate of ten percent (10%) per year on the amount due from the date the City paid or incurred such expenses. For any such expenditures and interests, suit may be instituted and recovery and foreclosure had in the name of the City, and the statement of expenses, or a certified copy thereof shall be prima facie proof of the amount expended in any such work performed by the City.

10.2.4 The code enforcement officer shall execute and file a release of lien for the subject property with the county clerk within a reasonable time after payment of the amount due on the property including interest through the date of payment.

Section 11 Enforcement

11.1 Civil and Criminal Penalties. Any person violating any provisions of this Article is subject to suit for injunctive relief as well as prosecution for criminal violations.

11.2 Criminal Prosecution.

11.2.1 A violation of any provision of this Article is a misdemeanor offense.

11.2.2 Any person violating any provision of this Article shall, upon conviction, be fined a sum not exceeding two thousand dollars (\$2,000.00) per occurrence. Each day that a provision of this Article is violated shall constitute a distinct and separate offense.

11.3 Civil remedies. Nothing in this Article shall be construed as a waiver of the City's right to bring a civil action to enforce the provisions of this Article and to seek remedies as allowed by law, including but not limited to the following:

- (a) injunctive relief to prevent specific conduct that violates this Article or to require specific conduct that is necessary for compliance with this Article;
- (b) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is shown that the defendant was actually notified of the provisions of this Article and after receiving notice committed acts in violation of this Article or failed to take action necessary for compliance with this Article; and
- (c) other available relief.

11.4 The remedies in this Article are cumulative and in addition to every other remedy allowed by this Article or state law and not to the exclusion of all other remedies, methods, or proceedings provided by law for enforcement of this Article.