ORDINANCE No. 12-2011-A

"Nuisances"

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARION, TEXAS REPEALING ORDINANCE NO. 5-94 OF THE CODE OR ORDINANCES, CAPTIONED "ORDINANCE REGULATING GRASS, WEEDS AND PLANTS"; REPEALING ORDINANCE NOS. 3-79, 2-85, 2-92 AND 13-2005 REGARDING JUNKED VEHICLES; ADOPTING A NEW ORDINANCE CAPTIONED, "NUISANCES"; CLARIFYING THE MEANING OF THE TERM "WEEDS"; REQUIRING A PERMIT FOR PLANTING CROPS OR HAY IN THE CITY; AND UPDATING NOTICE REQUIREMENTS TO COMPLY WITH CURRENT STATE LAW; PROVIDING FOR AN UPDATED JUNKED VEHICLE ORDINANCE; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR PENALTY; PROVIDING FOR PUBLICATION AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council has determined that the City's nuisance ordinances require updating and clarification in order to ensure proper regulation of nuisances within the City and to protect neighborhoods from blight; and

WHEREAS, the City Council has determined that the Texas Health and Safety Code has expanded the notice requirements for such nuisances and the City's weed ordinance should be repealed and a new nuisance ordinance adopted to reflect the state requirements; and

WHEREAS, the City Council has determined that the City's nuisance ordinance should clarify the term "Weeds"; and

WHEREAS, the City Council has determined that further regulation of crop and hay planting is necessary to control conditions such as fire hazards and vermin/rodent infestations; and

WHEREAS, the City Council has determined that junked vehicles as defined herein are a public nuisance because they are detrimental to the safety and welfare of the public, tend to reduce the value of private property, invite vandalism, create fire hazards, provide an attractive nuisance creating a hazard to the health and safety of minors, and produce urban blight adverse to the maintenance and continuing development of the City; and

WHEREAS, the City Council has determined that the adoption of a new nuisance ordinance is necessary for the health, safety, and welfare of citizens in the community.

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

I. The matters and facts set forth in the preamble are hereby found to be true.

II. Ordinance Nos. 5-94, 3-79, 2-85, 2-92 and 13-2005 are hereby repealed in their entirety and a new nuisance ordinance is hereby adopted as follows:

NUISANCES

Article I: Weeds and Graffiti

Section 1 – Definitions.

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

Graffito or graffiti means any marking, including but not limited to any inscription, slogan, drawing, painting, symbol, logo, name, character or figure, that is made in any manner on public or private tangible property visible to the public from public rights-of-way or areas generally trafficked by the public. This does not include any of the foregoing being needed for lawful advertising purposes or that is placed on any property in compliance with any applicable city ordinance, state or federal law.

Weed means, among other things, a plant considered a weed in the common usage of the term; a plant that grows in an unsightly or profuse manner where unwanted; a plant of no utility among garden plants, crops, turf grasses and the like, and that competes with wanted plants for nutrients and/or light and/or adds no value to the property including any grass, that because of its height is objectionable, unsightly or unsanitary, but excluding:

(1) Shrubs, bushes and trees;

(2) Cultivated flowers; and

(3) Cultivated crops.

Section 2 – Prohibited.

(a) It shall be unlawful for the owner and/or occupant of any lot, tract, building, house, establishment or premises in the city to allow or permit carrion, filth, rubbish, brush, or any other unsightly, impure or unwholesome matter of any kind, or graffito or graffiti, to remain or accumulate thereon.

(1) The procedures for removal of graffiti on private premises shall be in compliance with V.T.C.A., Local Government Code § 250.006, graffiti removal, as amended from time to time.

(2) The city council hereby authorizes the adoption of resolutions establishing fees, which may be amended from time to time, to recover expenses associated with the removal of graffiti from private properties in accordance with V.T.C.A., Local Government Code, Ch. 250.

(b) It shall be unlawful for the owner and/or occupant of any lot or other premises in the city to allow or permit holes or places where water may accumulate and become stagnant to be or remain on such lot or premises or to allow or permit the accumulation of stagnant water thereon, or to permit the same to remain thereon.

(c) Except as otherwise provided herein, it shall be unlawful for the owner and/or occupant of any real property in the city to allow weeds and/or grasses that are eight (8) inches or more in height, as measured vertically from the natural surface from which the grass and/or weeds grow, to accumulate or remain on such real property or any portion thereof.

(1) Owners and/or occupants of real property zoned other than agriculture-open (AO) must obtain a city agricultural permit to use or lease out their property for agricultural crops and/or hay purposes. If the permit is approved by the city building official or designee, then 15 feet of the ground surface growth along all outer perimeter private property lines adjacent to properties not being used for agriculture and/or hay purposes must be kept mowed at a six (6) -inch height or less, or kept disc plowed at all times to act as a firebreak. Failure to maintain the firebreak area creates a nuisance under this section and may void the permit. The city may pursue all legal remedies available, both civil and criminal, to remedy the failure to maintain the firebreak area. Storage of any hay bales must be in compliance with the current fire code and all local and state laws. A city agricultural permit is not required for: (i) real property zoned AO; however, all such AO zoned real property shall have a firebreak as described herein along any common property line where any adjacent property has any structures or wooden fences within 75 feet of said any common property lines; and (ii) domestic, but not commercial, gardens for the raising of vegetables, common domestic plants and flowers.

(2) After wildflowers have cast their seeds, but in no case later than August 1 of the calendar year, such wildflowers will be considered weeds and subject to the provisions of this section concerning weeds. The firebreak, as described in subsection (c)(1) herein, is required on real property where wildflowers are planted and/or grow naturally and reach heights of eight (8) inches or more, where the real property owner and/or occupants have received written notice from the city requiring a fire break.

(d) It shall be unlawful in residentially zoned districts to arrange, operate or maintain any yard lighting so that it illuminates portions of other properties, causing problems from glare or of a general nuisance nature. The intent of this subsection is that any lighting used to illuminate any yard, building, or structure in a residentially zoned district be so arranged as to reflect the light away from adjoining properties, thus maximizing the illumination of any yard lighting onto the property where it originates and minimizing the illumination that pervades other properties.

(e) It shall be unlawful for the owner and/or occupant of any lot or premises in the city to allow or permit a junked vehicle as defined in V.T.C.A., Transportation Code § 683.071, as now enacted or hereafter amended, to remain on such lot or premises. A judicial determination of such status is not required for said owner and/or occupant to be in violation of this provision.

Section 3 – Notice to owner and/or occupant to remedy or remove.

(a) Whenever any condition described in subsections 2(a)-(c) is found to exist on any premises within the city, the owner and/or occupant of such premises shall be notified by the city, in writing, to correct, remedy, or remove the condition within ten (10) days after such notice, and it shall be unlawful for any person to fail to comply with such notice.

(b) Whenever any condition described in subsection 2(d) is found to exist on any premises in residentially zoned districts, the owner and/or occupant of such premises shall be notified by the city, in writing, to correct or remedy the condition by redirecting, altering, shielding, reducing the wattage, or removing the lighting within fifteen (15) days after such notice, and it shall be unlawful for any person to fail to comply with such notice.

(c) Notice to the owner and/or occupant of the premises shall comply with V.T.C.A., Health and Safety Code § 342.006, as amended from time to time.

(d) Notice to the owner of the premises shall include the following statement: "According to the real property records of Guadalupe County, you own the real property described in this notice. If you no longer own the property, you must execute an affidavit stating that you no longer own the property and stating the name and last known address of the person who acquired the property from you. The affidavit must be delivered in person or by certified mail, return receipt requested, to this office not later than the 20th day after the date you receive this notice. If you do not send the affidavit, it will be presumed that you own the property described in this notice, even if you do not."

State law reference – Notice to remove offensive conditions, V.T.C.A., Health and Safety Code § 342.006 and V.T.C.A., Local Government Code § 54.005.

Section 4 – Authority of city to abate offensive conditions.

In the event the owner and/or occupant of any lot or premises, upon which a condition described in this division exists, fails to correct, remedy, or remove such condition as described in Section 3 after notice to do so is given in accordance with this ordinance, the city may do such work or make such improvements as are necessary to correct, remedy, or remove such condition, or cause the same to be done, and pay therefore and charge the expenses incurred thereby to the owner of such lot. Such expenses shall be assessed against the lot or real estate upon which the work was done or the improvements made, or shall be billed directly to the owner and/or occupant at the discretion of the appropriate city official. The doing of such work by the city shall not relieve such person from prosecution for failure to comply with such notice in violation of Section 3.

State law reference – Authority of city to correct or remove offensive conditions, V.T.C.A., Health and Safety Code § 342.006.

Section 5 – Statement of expenses of abatement by city.

Whenever any work is done or improvements are made by the city under the provisions of Section 4, the mayor or municipal official designated by the mayor, on behalf of the city, shall file a statement of the expenses incurred thereby with the county clerk. Such statement shall give the amount of such expenses and the date or dates on which the work was done or the improvements were made.

State law reference – Similar provisions, V.T.C.A., Health and Safety Code § 342.007.

Section 6 – Lien for, collection of expenses of abatement.

After the statement provided for in Section 5 is filed, the city shall have a privileged lien on the lot or real estate upon which the work was done or improvements made, to secure the expenses thereof. Such lien shall be second only to tax liens and liens for street improvements, and the amount thereof shall bear interest at the rate of ten percent (10%) per annum from the date the statement was filed. For any such expenditures and interest, suit may be instituted and recovery and foreclosure of the lien may be had in the name of the city, and the statement of expenses made in accordance with Section 5, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or improvements.

State law reference – Similar provisions, V.T.C.A., Health and Safety Code § 342.007.

Section 7 – Additional authority to abate without notice.

(a) The city may abate, without notice, weeds that have grown higher than forty-eight (48) inches and that are an immediate danger to the health, life, or safety of any person.

(b) Not later than the 10th day after the date that the city abates weeds under this section, the city shall give notice to the property owner in the manner required by Section 3. The notice shall contain:

(1) An identification, which is not required to be a legal description, of the property;

(2) A description of the violations of the ordinance that occurred on the property;

(3) A statement that the city abated the weeds; and

(4) An explanation of the property owner's right to request an administrative hearing about the city's abatement of weeds.

(c) The city shall conduct an administrative hearing on the abatement of the weeds under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the city a written request for a hearing. The administrative hearing shall be conducted not later than the 20th day after the date of the request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.

(d) The city may assess expenses and create liens under this section as it assesses expenses and creates liens under Section 6. A lien created under this section is subject to the same conditions as a lien created under Section 6.

State law reference – Similar provisions, V.T.C.A., Health and Safety Code § 342.008.

Section 8 – Penalties.

A violation of Section 2 is subject to a fine or penalty not to exceed $500, except that when a fire safety, zoning, or public health and safety ordinance is violated, the fine or penalty for such violation shall not exceed $2,000. Provided, however, that no penalty shall be greater than the penalty provided for the same or similar offense under the laws of the state. Each day that any violation of this ordinance shall continue shall constitute a separate offense.

State law reference – Similar provisions, V.T.C.A., Local Government Code § 54.001.

Section 9 – Remedies non-exclusive.

The provisions of Subsection 2(e) and Section 7 are not exclusive. Furthermore, the city shall have all other rights with regard to junked vehicles, to include (but not limited to) abatement, pursuant to state law and city ordinance.

Article II: Junked Vehicles

Section 1 -- Definitions.

Abatement Authority: a full-time salaried employee of the city designated by the city council or the city administrator, with all the authority granted under Texas Transportation Code, Section 683.074.

Antique vehicle: has the same meaning as that given to it in Texas Transportation Code, Section 683.077, as now enacted and hereafter amended.

Appropriate court: the Municipal Court of the City of Marion. Also: the Court.

Junked vehicle: a self-propelled vehicle that does not have lawfully attached to it an unexpired license plate, or a valid motor vehicle inspection certificate, and is:

(a) wrecked, dismantled or partially dismantled, or discarded; or

(b) inoperable and has remained inoperable for more than:

(i) 72 consecutive hours, if the vehicle is on public property, or

(ii) 30 consecutive days, if the vehicle is on private property.

Motor vehicle: any motor vehicle subject to registration pursuant to the Texas Certificate of Title Act.

Motor Vehicle Collector: has the same meaning as given in Texas Transportation Code, Section 683.077 as now enacted and hereafter amended.

Official designated to conduct hearings: the municipal judge, or another person designated in writing by the city council.

Special interest vehicle: has the same meaning as given in Texas Transportation Code, Section 683.077 as now enacted and hereafter amended.

Section 2 -- Authority; junked vehicle declared public nuisance; exceptions.

(a) This Article is adopted pursuant to the authority provided by the Texas Transportation Code, Chapter 683, Subchapter E, and any successor statutes, to establish procedures for the abatement and removal from private or public property or public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance.

(b) A junked vehicle, including a part of a junked vehicle that is visible at any time of the year from a public place or public right-of-way, is hereby declared a public nuisance pursuant to Texas Transportation Code Section 683, Subchapter E, as may be amended, and this ordinance. Such nuisance, when covered with plastic or any other temporary covering, shall not be exempted from the provisions of this division.

(c) The following are exempted from the provisions of this Division: a motor 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 junkyard, or that is an antique motor vehicle or part thereof stored by a motor vehicle collector on the collector's property, provided that the vehicle or part and the outdoor storage area, if any, are maintained in an orderly manner, 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.

Sec. 3 -- Notice of nuisance and hearing.

(a) The procedures for the abatement and removal of a public nuisance under this Division must provide for not less than 10 days' notice of the nature of the nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to: (1) the last known registered owner of the nuisance; (2) each lienholder of record of the nuisance; and (3) the owner or occupant of (A) the property on which the vehicle is located or, (B) if the nuisance is located on a public right-of-way, the owner or occupant of the property adjacent to the right-of-way.

(b) The notice shall state that the nuisance must be abated and removed not later than the 10th day after the date on which the notice was personally delivered or mailed, and that any request for hearing must be made before the 10-day period expires. The notice also shall state that the person for whom notice is required may request a hearing to determine whether the vehicle is a public nuisance, and the consequences of the person's failure to request a hearing.

(c) A person for whom notice is required must request the hearing by notifying the Clerk of the Municipal Court not later than the 10th day after the date of receipt of the notice. The request for a hearing must be made in writing and hand-delivered or mailed by certified mail, with no requirement of a bond. The hearing shall be held not earlier than the 11th day after the date of the service of notice.

(d) If a person for whom notice is required does not timely request a hearing as described herein, it is conclusively presumed that the motor vehicle is a junked vehicle and the Abatement autority shall have the junked vehicle removed and take possession of it.

(e) If the post office address of the last known registered owner of the vehicle is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered.

(f) If the notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

(g) The provisions of this Section are provided pursuant to Texas Transportation Code, Section 683.075 as now written. Amendments to that statute as made from time to time by the Texas legislature shall also amend this Section as if fully set out herein.

Sec. 4 -- Hearing.

(a) Where a person for whom notice is required pursuant to Sec. 18-118 requests a hearing, the Municipal Court shall conduct said hearing pursuant to Texas Transportation Code Section 683.076, and any successor statutes, and shall have the authority to order abatement and removal of such nuisance. Notice of the hearing shall be delivered to the Abatement Authority by the Municipal Clerk of Court.

(b) At the hearing, the junked vehicle is presumed to be inoperable, unless demonstrated otherwise by the owner. On finding that the vehicle is a junked vehicle, the Municipal Court shall order that the owner or occupant shall remove the vehicle and/or abate the nuisance within 10 days, and that the Abatement Authority is to have the vehicle/nuisance removed and take possession of it, if the owner or occupant fails to remove and/or abate the nuisance within 10 days of the order. An order of the Municipal Court requiring removal of the nuisance shall include the junked vehicle's description, vehicle identification number, and license plate number, where such information is available at the location of the nuisance.

Sec. 5 -- Abatement, removal, and disposal.

(a) A junked vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by Guadalupe County.

(b) After a junked vehicle is removed by the City, the vehicle may not be reconstructed or made operable. The City shall notify the Texas Department of Transportation, no later than the fifth day after removal of the nuisance, with appropriate identifiers and instructions to immediately cancel registration of the vehicle.

(c) Any relocation of a junked vehicle, that has been declared a public nuisance by the Municipal Court, to another location within the city limits of Marion after a proceeding for its abatement and removal has commenced, shall have no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(d) Upon entry of an order for abatement and removal, the City or its designee shall be ordered by the Municipal Court to dispose of the junked vehicle pursuant to Texas Transportation Code Section 683.078 as now enacted or hereafter amended.

Sec. 6 -- Offense.

A person commits an offense if the person maintains a junked vehicle as described herein. Such offense is a misdemeanor punishable by a fine not to exceed $200.00. A

court of proper jurisdiction shall order abatement and removal of the nuisance on conviction.

Sec. 7 -- Enforcement not limitation.

Actions by the City Council pursuant to these Junked Vehicle ordinances shall not be deemed as any limitation upon the City to enforce junked vehicle statutes pursuant to Texas Transportation Code Sections 683.071—683.078.

III. Severability: If any provision, section, clause, sentence, or phrase of this ordinance is for any reason held to be unconstitutional, void, invalid, or un-enforced, the validity of the remainder of this ordinance or its application shall not be affected, it being the intent of the City Council in adopting and of the Mayor in approving this ordinance that no portion, provision, or regulation contained herein shall become inoperative or fail by way of reasons of any unconstitutionality or invalidity or any other portion, provision or regulation.

IV. Repealer: That all other ordinances, sections, or parts of ordinances heretofore adopted by the City of Marion in conflict with the provisions set out above in this ordinance are hereby repealed or amended as indicated.

V. Penalty: Any person who violates a provision of this ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined as provided in Section 7 herein.

VI. Publication: That the City Secretary is directed to cause this ordinance caption to be published in a newspaper of general circulation according to law.

VII. Effective Date: That this ordinance shall become effective _____.

PASSED, APPROVED and ADOPTED this the 6th day of June, 2011.

CITY OF MARION

GLENN A. HILD, MAYOR

ATTEST:

LAURIE HUEBINGER
CITY SECRETARY