

ORDINANCE NO. 2010- 10

An ordinance amending Chapters 10, 13, 14 and 21 of the Victoria City Code to address issues related to property maintenance enforcement, repealing conflicting ordinances, providing for severability, providing for codification and savings, providing for enforcement, providing a penalty not to exceed \$2,000 upon conviction and publication, and declaring an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VICTORIA, TEXAS:

1.

The following sections of Chapter 10 of the Victoria City Code are amended to read as follows:

DIVISION 2. - CONTROL OF WEEDS, BRUSH, RUBBISH, JUNK, UNSIGHTLY MATTER AND STAGNANT WATER*

Sec. 10-40. – Definitions.

(a) As used in this division, the following terms shall have the respective meanings ascribed to them:

Abate: Eliminate by mowing, clearing, grading, filling, removal, repair, rehabilitation or demolition.

Brush: All trees or shrubbery under seven (7) feet in height and less than three (3) inches in diameter which are not maintained, cared for, or cultivated.

Debris: Dirt, concrete, rocks, brick or other building materials not being used for onsite improvements pursuant to a duly issued building permit.

Developed Property: Any property that has been improved by the installation of a building, home or other physical improvement.

Director: Director of the Development Services Department, or an authorized representative of such director.

Disease: Any condition that impairs the normal functioning of an organism or body, including, but not limited to, poisoning or anaphylaxis from stinging insects.

Junk: All worn out, worthless, and discarded material; other metals, glass, paper and cordage; ~~furniture other than that designed for outdoor use; discarded motor vehicle parts; tires; and used and/or inoperable appliances, electrical or plumbing fixtures.~~

Lot: Land within the property lines and all areas of public right-of-way adjacent to and extending beyond the property line of said lot:

(1) To the curb line of adjacent streets, where a curb line has been established; or

(2) ~~For a distance of fourteen (14) feet~~ To the edge of pavement, where no curb line has been established; and

(3) To the center of adjacent alleys.

Objectionable, unsightly or unsanitary matter: Animal, vegetable or mineral matter or any composition or residue thereof.

Owner: Any person owning any interest in a lot, or any person leasing, occupying, or having supervision or control of a lot.

~~Rubbish~~: ~~Garbage, trash and other discarded articles and materials.~~

Stagnant water: Water which stands upon premises in such a manner, and over such a period of time, that it is likely to become a breeding place for mosquitoes.

Trash: All manner of refuse other than garbage, debris and brush; including any household and/or yard and other miscellaneous wastes, litter or rejected matter. ~~trash (grass clippings, leaves, etc.)~~

Weeds: All rank and uncultivated vegetable growth or matter that:

- (1) Has grown to more than twelve (12) inches in height; or
- (2) May create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds.

(b) As used in this division, the following shall apply:

Supervision and control shall be determined as follows:

- (1) The present occupant of the premises shall give rise to prima facie presumption of supervision and control;
- (2) If the property is unoccupied, then supervision and control shall be presumed to be in the owner as determined by the current tax roll; or
- (3) If the property is unoccupied and is listed with a real estate agency, such agency shall, in absence of any other designated agent, be presumed to be the agent of the owner and shall therefore be presumed to have supervision and control.

Sec. 10-41. - Weeds, brush, rubbish, junk, unsightly matter, stagnant water--Declared nuisance and prohibited.

- (a) The existence of brush, debris, junk, objectionable, unsightly or unsanitary matter, rubbish, stagnant water, trash, weeds, or any condition that may produce disease on property in violation of this division is hereby declared to constitute a public nuisance subject to the abatement procedures prescribed in this article or otherwise provided in this chapter.
- (b) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit weeds or grass to grow to a height greater than twelve (12) inches upon said premises. With respect to contiguous lots or parcels of land of more than five (5) acres ~~under single ownership~~, the provision of ~~this Section 10-41(b)~~ shall not be applicable to the area in excess of one hundred twenty (120) feet from:
 - 1) any open public street or alley; or
 - 2) ~~to the area in excess of one hundred twenty (120) feet from~~ any adjacent developed property under different ownership ~~on which habitable dwellings are located.~~Lots and parcels of land five (5) acres or less must be maintained in accordance with this section in its entirety.
- (c) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit weeds, grass or any plant to grow in, upon or across any sidewalk or street adjacent to the lot or property. Cultivated vegetation may be adjacent to the sidewalk when not in violation of other sections of the City Code.
- (d) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit any junk, brush, trash, debris, rubbish stagnant water or any other objectionable, unsightly, or unsanitary matter of whatever nature to accumulate ~~to be present~~ upon any such lot or parcel of land.
- ~~(e) It shall be unlawful for any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to permit the storage of any ice box or similar items upon any such lot or parcel of land.~~
- (f) (c) ~~It shall be unlawful for any owner of a lot to allow stagnant water to accumulate upon the surface of such lot. All tires stored within the city must be kept in a structure that prevents their exposure to and collection of the elements of nature.~~

- (g) (f) It shall be unlawful for any owner of a property to permit the presence of any condition that may produce disease, including, but not limited to, the presence of non-domesticated insects, such as bees nesting in areas other than frame hives, that have a sting capable of causing poisoning or anaphylactic shock in susceptible persons.

Sec. 10-42. – Same-Duty to abate.

It shall be the duty of any owner of any lot or parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the City to cut, or cause to be cut, and remove such brush, weeds, debris, rubbish, trash, junk, stagnant water, ~~ice boxes, refrigerators, stoves, and~~ alleviate conditions that may cause disease, including, but not limited to, non-domesticated bees, and any and all other objectionable, unsightly or unsanitary matter of whatever nature as often as may be necessary to comply with the provisions of section 10-41 hereof.

2.

The following section of Chapter 13 of the Victoria City Code is amended to read as follows:

Sec. 13-186. – Commercial Collection; offenses.

- (a) A person commits an offense if he disturbs a container or its contents without permission from the owner, occupant, tenant or lessee.
- (b) A person commits an offense if he makes a fire or burns any material in a container or paints or marks upon or places a poster or sign on a container without permission from the owner, occupant, tenant or lessee.
- (c) Accumulation of refuse around a commercial container. An owner, occupant, tenant or lessee commits an offense if he allows any accumulation of refuse around or in the vicinity of a commercial container.
- (d) Every person who uses commercial containers shall have such containers emptied as often as necessary to prevent their contents from overflowing or causing offensive odors.
- (e) An owner, tenant or lessee in control of premises where commercial containers are located, shall keep all lids and doors of such containers securely closed at all times, except when being emptied or filled.

3.

The following sections of Chapter 14 of the Victoria City Code are amended to read as follows:

Sec. 14-100. - Definitions.

As used in this article, the following terms shall have the respective meanings ascribed to them:

Business premises, premises: The area of a junkyard as that term is defined herein.

Junk: Old iron, scrap metal, steel, brass, copper, tin, lead, or other base metals; old cordage, ropes, rags, fibers, or fabrics, old rubber, old bottles or other glass; bones, wastepaper and other waste or discarded material which might be prepared to be used again in some form; ~~as well as motor vehicles no longer used as such including wrecked automobiles incapable of being operated; motor vehicles to be used for scrap metal or parts stripped from motor vehicles;~~ but junk shall not include materials or objects accumulated by persons as by-products, waste, or scraps from the operation of their own business or materials or objects held and used by manufacturer as an integral part of its own manufacturing processes

Junk dealer: A person who operates a junkyard or a salvage yard, as defined here, within the City.

Junkyard or salvage yard: A yard, lot, or place, covered or uncovered, outdoors or in an enclosed building, containing junk and/or salvage as defined ~~above~~ herein, upon which occurs one or more acts of buying, keeping, dismantling, processing, selling or offering for sale any such junk, in whole units or by parts, for a business or commercial purpose, whether or not the proceeds from such acts are to be used for charity.

Salvage: motor vehicles no longer used as such, including wrecked automobiles incapable of being operated; motor vehicles to be used for scrap metal or parts stripped from motor vehicles.

Sec. 14-103. – Same – General operating requirements.

The following general operating requirements shall apply to all junk dealers in accordance with the provisions of this article:

- (1) The junkyard, together with things kept therein, shall at all times be maintained in a sanitary condition.
- (2) No water shall be allowed to stand in any place on the premises in such a manner as to afford a breeding place for mosquitoes.
- (3) Weeds and vegetation on the premises, other than trees, shall be kept at a height of not more than four (4) inches.
- (4) No garbage or other waste liable to give off a foul odor or attract vermin shall be kept on the premises; nor shall any refuse of any kind be kept on the premises unless such refuse is junk as defined herein and is in use in the junkyard business.
- (5) No junk shall be allowed to rest upon or protrude over any public street, walkway, or curb or become scattered or blown off the business premises.
- (6) Junk shall be stored in piles not exceeding ~~ten (10)~~ eight (8) feet in height and shall be arranged so as to permit easy access to all such junk for firefighting purposes.
- (7) No combustible material of any kind not necessary or beneficial to the business shall be kept on the premises; nor shall the premises be allowed to become a fire hazard.
- (8) Gasoline and oil shall be removed from any scrapped engines or vehicles on the premises.
- (9) No junk or other material shall be burned on the premises in any incinerator not meeting the requirements of the building code; and no junk or other material shall be burned on the premises in the open.
- (10) No noisy processing of junk or other noisy activity shall be carried on in connection with the business on Sunday, Christmas, Thanksgiving, or any other time between the hours of 6:00 p.m. and 7:00 a.m.
- (11) ~~The area on the premises where junk is kept (other than indoors) shall be enclosed, except for entrances and exits with a solid, vertical wall or fence of a minimum height of eight (8) feet measured from ground level. Entrances and exits shall not be wider or more numerous than reasonably necessary for the conduct of the business. Outdoor storage areas on the premises shall be enclosed with a solid, opaque fence eight (8) feet in height. Unacceptable fence materials include, but are not limited to, plywood and chain link fence with weave. In the event any developed property abuts the premises, fencing materials shall be further limited to solid wood made of treated pine, cedar or redwood, and masonry walls, and comply with all other requirements in the City Code.~~
- ~~(12) Sufficient off-street parking shall be provided for on the junkyard premises so as to avoid customer parking on any street or roadway adjacent thereto.~~

4.

The following section of Chapter 14 of the Victoria City Code is hereby repealed:

Sec. 14-104. — Same — Variances as to fences.

~~At the discretion of the city council an exception may be made to the provisions requiring the premises to be fenced on one or more sides where application is made to the city in writing and it is shown that the granting of the exception will not violate the purpose and intent of the article and that undue hardship will be suffered by the operator unless such exception is granted. When application for exception is made, a public hearing before the city council will be set by the city secretary at the earliest meeting of the city council after said application is received. Notice of said hearing shall at the sole cost and expense of applicant, be published at least once in a newspaper distributed in the city; said notice shall be published not less than ten (10) days prior to said hearing date. All exceptions granted by the city council shall be recorded in the minutes of the city council proceedings.~~

5.

The following subsections of Section 21-101 of the Victoria City Code are amended to read as follows:

Sec. 21-101. – Landscaping.

- (e) *General requirements for landscaped areas.* Landscaped areas shall meet the following general requirements:
- (1) Landscaped areas shall include a combination of the following types of materials: trees, shrubs, annual and/or perennial plants, vines, grass, and/or groundcover. Nonliving, durable materials commonly used in landscaping, such as, but not limited to organic mulches, rocks, pebbles, sand, walls and fences, but excluding paved surfaces, may also be utilized in landscaped areas. Pervious, decorative paving materials and brick pavers may be included in the form of walkways or driveways through landscaped areas; however, off-street parking areas paved with such materials shall not be considered as landscaped areas. The use of nonliving materials shall not exceed 50% of the required landscape area ~~predominate over the use of organic plant materials~~, except where the xeriscape principles described in Section 21-101(m) are followed.
- (m) *Water Conservation (xeriscape) Principles.* Developers are encouraged to follow xeriscape, or water conservation principles, in meeting the requirements of this section. Xeriscape principles include the use of landscape rocks, mulches, native and adapted lower water demand plants, limited turf areas, and efficient watering methods; resulting in significantly lower water use and decreased maintenance. The xeriscape principles are outlined in a booklet entitled “Landscape Water Conservation... Xeriscape” by Douglas F. Welsh, William C. Welch and Richard L. Duble, published by the Texas Agricultural Extension Service. Copies of the booklet may be obtained from the Development Services Department ~~or the Victoria County Agricultural Extension Service~~. If a landscape plan is developed using the xeriscape principles, the provision in Section 21-101(e)(1), which requires living materials to predominate over nonliving materials, may be reduced to allow for the use of additional mulched areas.

6.

All parts of ordinances in conflict with this ordinance are repealed to the extent of such conflict.

7.

In addition to any other remedy provided by law, the City and its officers shall have the right to enjoin any violation of this ordinance by injunction issued by a court of competent jurisdiction.

8.

If any provision of this ordinance, or the application thereof to any person or circumstances, shall be held invalid or unconstitutional by a Court of competent jurisdiction, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

9.

It is the intention of the City Council that this ordinance shall become a part of the Code of the City of Victoria, Texas, and it may be renumbered and codified therein accordingly, in the manner approved by the City Attorney. The Code of the City of Victoria, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

10.

Any person violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed \$2,000.00 as provided in Section 1-8 of the City Code. The City Secretary shall publish the caption or a descriptive title of this ordinance one time within 10 days after final passage of the ordinance in a newspaper of general circulation in the City of Victoria in accordance with Article II, § 10 of the City Charter.

This ordinance shall become effective 10 days after final passage and approval by the City Council of the City of Victoria, Texas.

PASSED FIRST READING, this the 15th day of June, 2010.

AYES: 7

NAYS: 0

ABSTENTIONS: 0

PASSED SECOND READING, this the 6TH day of JULY, 2010.

AYES: 5

NAYS: 0

ABSTENTIONS: 0

PASSED THIRD READING, this the 6TH day of JULY, 2010.

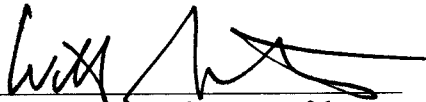
AYES: 5

NAYS: 0

ABSTENTIONS: 0

APPROVED AND ADOPTED, this the 6TH day of JULY, 2010.

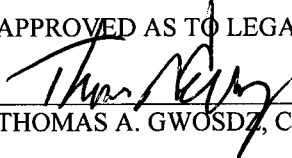



WILL ARMSTRONG, Mayor of the
City of Victoria, Texas

ATTEST:


SCARLET SWOBODA, City Secretary

APPROVED AS TO LEGAL FORM:


THOMAS A. GWOSDZ, City Attorney

Distribution: Legal Department
City Secretary's Office
Development Services

Copies Sent: JULY 7, 2010