

ORDINANCE NO. 95-13A

AN ORDINANCE PROVIDING A STATEMENT OF POLICY AND DEFINITIONS; DECLARING THE ACCUMULATION OF STAGNANT WATER, FILTH, WEEDS AND OTHER UNWHOLESOME MATTERS ON PROPERTY TO BE UNLAWFUL; DECLARING SPECIFIED ACTIONS A NUSIANCE; PROVIDING FOR THE ABATEMENT OF NUSIANCES; DECLARING THE DISCHARGE OF SEWAGE IN A MANNER TO CAUSE ODOR, OBNOXIOUS, UNHEALTHY OR UNWHOLESOME CONDITIONS A VIOLATION; PROVIDING FOR THE FILING OF LIENS TO SECURE CITY'S COST(S); PROVIDING A PENALTY AND SAVINGS CLAUSE; PROVIDING AN EFFECTIVE DATE AND OPEN MEETINGS CLAUSE.

Whereas, the accumulation of litter, solid waste, garbage, trash and vegetative overgrowth impair the quality of life and are injurious to the prospects for economic development of our community; and

Whereas, standing and stagnant water, the accumulation of solid waste, garbage, trash and vegetative overgrowth, together with overgrown grass, weeds and brush on lots and property, are a threat to the health of the community, create fire hazards and otherwise detract from the quality of life in our community; and,

Whereas, the regulation, management and control of solid waste, garbage and trash, together with stagnant water and the growth of grass, weeds and brush on property within the City of Marfa, Texas are essential to the public health, safety and welfare of the community,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marfa, Texas that:

ARTICLE I: POLICY AND DEFINITIONS

SECTION 1.1 Findings of Fact:

The findings and recitations set out in the preamble of this Ordinance are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes.

SECTION 1.2 Statement of Policy:

The terms and provisions hereof shall apply to stagnant water and to the accumulation and storage of any solid waste, including garbage and trash, and to the

growth, accumulation, cutting and storage of grass, weeds and any other vegetative material upon property in the City of Marfa, Texas (the "City"), to the end that property shall be maintained in a sanitary and healthful condition for the benefit of all residents of the community.

SECTION 1.3 Definitions:

The following definitions shall apply in the interpretation and enforcement of this ordinance:

- (a) **Brush:** All uncultivated shrubs, bushes and small trees.
- (b) **Cultivated:** No longer in the natural state; soil prepared for raising plants, shrubs, bushes, trees, or crops by employing agricultural techniques (tilling, fertilizing, etc), labor, and attention, all intended to promote or improve growth.
- (c) **Earth and Construction Materials:** Earth, rocks bricks, concrete, other similar materials and waste materials resulting from construction or remodeling.
- (d) **Garbage:** Rubbish, trash, kitchen and household waste, ashes, bottles, cans, rags, paper, food, food containers, lawn trimmings, tree trimmings, hedge trimmings, leaves, grass, weeds and refuse, and all decayable wastes, including animal and vegetable matter, but not including sewage, hazardous, toxic or corrosive materials, earth and construction materials as herein, or any other material which may be found to be harmful to garbage collection and handling personnel or equipment.
- (e) **Injure:** Any and all character of physical damage, whether caused by fire or force, and which shall be done or caused willfully by any person.
- (f) **Junk:** All worn out, worthless and discarded material, in general, including but not limited to, odds and ends, old iron or other metal, glass, paper, cordage or other waste or discarded materials.
- (g) **Lot:** In addition to land within the boundaries of the property lines, all land adjacent to and extending beyond the property lines of any lot or parcel of land to the curblines or adjacent streets where curblines have been established or, where no curblines have been established, to eight (8) feet beyond the property lines.
- (h) **Native Vegetation:** Grasses, wildflowers, and other plant life that grows naturally in a certain region and climate. Native plants

are distinctive to their landscape, grow in the wild without the supplemental watering, fertilizing, or pesticides that are required by non-native plants, and provide habitat for native wildlife.

- (i) **Ornamental Grass:** An annual or perennial grass plant valued for its unique texture and color. As a result, ornamental grasses are not grown as a lawn grass. For this reason, an ornamental grass is not mown, but is allowed to grow to its full potential and is used in the garden landscape in the same way as perennials or other ornamental plants.
- (j) **Refuse:** See “garbage”.
- (k) **Rubbish:** All refuse, rejected tin cans, old vessels of all sorts, useless articles, abandoned pipe, discarded clothing and textiles of all sorts, and in general all litter. The words “any and all objectionable or unsanitary matters,” not included within the meaning of the other terms as herein used, mean those which are liable to produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the general locality where the same are situated.
- (l) **Solid Waste:** Household garbage and refuse and commercial garbage and refuse, brush cuttings and weeds.
- (m) **Tall Grass:** Any type of uncultivated grass of a height exceeding twelve (12) inches in length.
- (n) **Trash:** See “garbage”.
- (o) **Uncultivated:** Any plant or grass not existing in a cultivated environment; plants or grasses growing in a wild or unkept state.
- (p) **Unwholesome Matter:** All stagnant water, filth, carrion, impure matters and any condition liable to produce disease. All rank and uncultivated vegetable growth or matter which is liable to become an unwholesome or decaying mass or breeding place for flies, mosquitoes or vermin.
- (q) **Weeds:** Any undesired, useless, or harmful uncultivated plant, especially one growing in profusion so as to crowd out a desired plant or crop, or to disfigure a lawn.

**ARTICLE II: WEEDS AND OFFENSIVE
CONDITIONS ON PRIVATE PROPERTY**

SECTION 2.1 Prohibited Conduct:

It shall be unlawful for an owner, occupant, lessee or renter of a lot or parcel of ground within the City to fail to keep the property free from brush, earth and construction materials, garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature, or to fail to keep the property to the sidewalks in front of the property free and clear from weeds and tall grass from the line of such property to the established curblines next adjacent thereto, or to fail to fill up and drain holes and depressions in which water collects, or to regrade any lots, grounds or yards or any other property owned or controlled by the owner, occupant, lessee, or renter which shall be unwholesome or have stagnant water thereon, or which from any other cause, is in such condition as to be liable to produce disease or to fail to keep any house, building, establishment, lot, yard or ground owned or occupied or under his or her control at all times free from filth, impure or unwholesome matter of any kind.

SECTION 2.2 Nuisance Declared; Duty to Abate:

Whenever brush, tall grass, earth and construction materials garbage, junk, refuse, rubbish, solid waste, trash, weeds, unwholesome matters and any other objectionable, unsightly, or unsanitary matter of whatsoever nature shall exist, covering or partially covering the surface of any lot or parcel of any real estate situated within the City, or when any of said lots or parcels of any real estate as aforesaid shall have the surface thereof filled or partly filled with holes or be in such condition that the same holds or is liable to hold stagnant water therein, or if from any other cause shall be in such condition as to cause disease, or produce, harbor or spread disease germs of any nature or tend to render the surrounding atmosphere unhealthy, unwholesome or obnoxious, or shall contain unwholesome matter of any kind or description, the same is hereby declared to constitute a public nuisance, the prompt abatement of which is hereby declared to be a public necessity. Any such nuisance shall be removed from the property by the owner or other person in possession or control of such property.

SECTION 2.3 Right to Inspect:

The City Administrator, or the Code Enforcement Officer is authorized to inspect any property within the City limits of the City, at any reasonable time, subject, however, to the restrictions against such inspection and entry of private residence for health inspection as are provided for in the laws of the State of Texas.

SECTION 2.4 Violations: Notice: Failure to abate.

- (a) In the event the officer charged with enforcement of this article shall determine that a situation exists which immediately affects the health, safety and well-being of the general public and that immediate action is necessary, such officer may take such action as shall be necessary, including issuing citations for violations of the terms and provisions hereof to the owner or occupant of the property upon which such condition exists, as may be deemed appropriate and necessary.
- (b) In the event the officer charged with enforcement of this article determines a situation constitutes an immediate threat to the public health, safety and welfare, and the owner or occupant of the property is absent or fails to immediately remedy the violation, the City Commission may, at a regular session or at an emergency session called for the purpose of considering the issue, upon evidence heard, determine that an emergency exists and order such action as may be required to protect the public health, safety and welfare. In such event, the City may prosecute an action in any court of competent jurisdiction to recover its costs.
- (c) In the event any owner or occupant shall fail or refuse to remedy any of the conditions prohibited by § 2.1 of this Ordinance within ten (10) days after notice to do so, the City may do such work or cause the same to be done, and pay therefore, and charge the expenses in doing or having such work done or improvements made, to the owners of the property, whereupon such charge shall be a personal liability of such owner to the City. Such notice may be in writing, served upon such owner and/or occupant in person by an officer or employee of the City, or may be letter addressed to such owner or occupant at their post office address, or if personal service may not be had, or the owner and occupant's address be not known, then notice may be given by publishing a brief summary of such order two (2) times within ten(10) consecutive days in the official newspaper of the City addressed "Sanitary Improvements", "To Whom it May Concern," and such publication shall be deemed sufficient notice.

SECTION 2.5 Assessment of City's Abatement Cost; Collections of Cost; Appeals:

In addition to the remedy provided in § 2.4 and cumulative thereto, the City Administrator or Code Enforcement Officer, after giving to the owner of the property ten (10) days personal notice in writing, or be notice sent by registered United States Mail addressed to such owner at his or her post office address or by publication two (2) times within ten (10) consecutive days in the official newspaper of the City, if the owner's address or whereabouts be not known, may cause any of the work or improvements mentioned in §§2.1, 2.2 and 2.4 to be done at the expense of the City, on the account of the owner of the property on which such work or improvements are

done, and cause all of the actual cost to the City to be assessed on the real estate or lot on account of which such expenses occurred; provided, that the owner of any such real estate may appeal to the City Commission from the order of the City Administrator or Code Enforcement Officer by filing a written statement with the City Administrator within ten (10) days after receipt of the notice provided for above, stating that such real estate complied with the provision of § 2.1 before the expiration of a ten (10) day period. The City Commission shall set a date, within thirty (3) days from the date of the appeal, for hearing upon such appeal to determine whether the real estate complied with the provisions of § 2.1 before the expiration of such ten (10) day period. The authority of the City Administrator or Code Enforcement Officer to proceed to cause such work to be done shall not be suspended while an appeal from the order is pending, but if it shall be determined by the City Commission that the premises complied with the provisions of § 2.1 before the expiration of such ten (10) day period then no personal liability of the owner shall arise nor shall any lien be created against the premises upon which such work was done.

SECTION 2.6 Costs of City Abatement Constitutes Lien:

Cumulative of the City's remedy by fine, as set forth in the preceding section hereof, the City may do such work or cause the same to be done to remedy such condition to remove such matter from such owner's premises at the City's expense and may charge the same to the account of the owners of such property and assess the same against the real estate or lot or lots upon which such expense is incurred. The lien statement must state the name of the owner, if known, and the legal description of the property. Upon filing with the County Clerk of Presidio County, Texas, of a statement by the City Administrator or Code Enforcement Officer of such expenses, the City shall have a privileged lien upon said real estate or lot or lots, second only to tax liens and liens for street improvements, to secure the expenditure so made and ten (10) percent interest on the amount from the date of such payment so made by the City. The City may institute suit and recover such expenses and foreclose such lien in any court of competent jurisdiction, and the statement so filed with the County Clerk or a certified copy thereof shall be prima facie proof of the amount expended in any such work or improvements to remedy any condition or remove any matter.

SECTION 2.7. Limitation on Height of Uncultivated Grass and Weeds; Permit Procedure for Native Vegetation and Ornamental Grasses; Required Firebreak; Agricultural Exemption

- (a) It shall be unlawful for any person who shall own or occupy any lot or lots in the City to allow weeds and/or uncultivated grass to grow on such lot to a height of more than twelve (12) inches. Weeds and/or grass of a height exceeding twelve (12) inches are declared a nuisance, and constitute a violation of this ordinance.
- (b) Any person may petition the City Council in writing for a permit to grow native vegetation or ornamental grasses exceeding twelve (12) inches on his or her lot(s). If the requestor is not the record owner of the property, then a letter of

support from the record owner must also accompany the request for a permit, along with a \$25 fee to cover City costs. Upon receipt of the permit request, the City will send out notice by mail to the adjoining landowners notifying them of the request and giving them an opportunity to respond. The City Council will then consider the request for a permit to grow native vegetation or ornamental grasses at a regularly scheduled or special called meeting, and will notify the requestor so that he or she may attend the meeting in support of the request.

- (c) Any permit granted under section 2.7(b) will be in the name of the applicant(s) and shall be non-transferable. It shall be a one (1) year permit, which will automatically renew for up to five (5) years with no additional fee unless an adjoining landowner objects. If an adjoining landowner objects during the five-year period, then the permit will not be automatically renewed, and the applicant will be required to appear personally before City Council to secure his or her automatic renewal. When a permit expires, the applicant will be required to re-apply for a new permit and pay an additional permit fee.
- (d) For fire safety purposes, any person granted a permit under section 2.7(b) to grow native vegetation or ornamental grasses will be required to limit any such vegetation to a height of less than twelve inches (12") along any portion of a property line that is within twenty feet (20') of a neighbor's structure.
- (e) Section (a) setting a limitation on the height of uncultivated grass and weeds shall not apply to property located in the City which has a valid agricultural exemption for crops or grazing; however, the firebreak requirement in section (d) shall still apply, and all property owners within the city of Marfa, regardless of parcel size or use, will be required to limit any vegetation to a height of less than twelve inches (12") along any portion of a property line that is within twenty feet (20') of a neighbor's structure.

SECTION 2.8 Discharge of Sewage:

Any person or persons who shall allow or permit sewage to discharge into the ground or subsurface soil, which shall have the effect of causing odors, obnoxious, unhealthy and unwholesome conditions to exist, is declared to have caused a public nuisance and shall be in violation of this article.

ARTICLE III: GENERAL PROVISIONS

SECTION 3.1 Penalties:

Any person convicted of violating the terms and provisions of this Ordinance shall be fined not less than \$25.00 nor more than \$2,000.00 for such offense and each day that such offense is maintained shall be a separate offense.

SECTION 3.2 Severability:

If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or the application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Commission in adopting this Ordinance that no portion be inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION 3.3 Effective Date:

This Ordinance takes effect immediately upon final passage and publication as may be required by law.

SECTION 3.4 Compliance with Open Meetings Act:

That it is hereby officially found and determined that the meeting which this Ordinance was passed was open to the public as required by law and that the public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act; Chapter 551 Texas Government Code.

PASSED AND APPROVED on this the 15th day of December,
2009.

CITY OF MARFA, TEXAS

Lemuel P. Dunlap
Mayor, City of Marfa

ATTEST:

City Secretary