

ORDINANCE NO. 1505

AN ORDINANCE AMENDING CHAPTER 8.08 – UNSANITARY PROPERTY CONDITIONS, TITLE 8, HEALTH AND SAFETY, OF THE BENBROOK MUNICIPAL CODE (1985), AS AMENDED, BY REVISING THE CITY’S UNSANITARY PROPERTY CONDITIONS REGULATIONS; PROVIDING FOR VIOLATIONS, PENALTIES AND INJUNCTION; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR ENGROSSMENT AND ENROLLMENT; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Benbrook, Texas (the “City”), is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Chapter 342 of the Texas Health and Safety Code authorizes municipalities to regulate weeds, brush, and other unsanitary conditions that create a public nuisance; and

WHEREAS, the City Council has previously adopted regulations addressing unsanitary property conditions, including high grass and weeds, and now finds it appropriate to amend those regulations to provide greater clarity on the applicability of said regulations; and

WHEREAS, the City Council finds that the amendment adopted herein is necessary to promote and protect the health, safety, and welfare of the public.

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

SECTION 1

That Chapter 8.08 – Unsanitary Property Conditions of the Benbrook Municipal Code (1985), as amended, is hereby revised by amending Chapter 8.08 in its entirety to read as follows:

Chapter 8.08 UNSANITARY PROPERTY CONDITIONS

8.08.010 Weeds, rubbish, stagnant water, etc.

- A. Violations. It is an offense for a person, firm, or corporation owning, occupying, or having control of land within the city, whether occupied or unoccupied, to permit the following violations, which are declared to be a nuisance:
1. Grass, weeds, or any plant that is not cultivated as part of an agricultural operation, as defined by Section 251.002 of the Texas Agricultural Code, to grow to a height greater than ten inches in height on the land or between the property line of the land and curb of an adjacent street or if there is not curb, then between the property line of the land and the edge of pavement;
 2. Rubbish, brush, or other unsanitary or unsightly matter, including, but not limited to junk, trash, garbage, refuse, junk appliances, or junk machinery to accumulate or be present upon the property.
 3. Miscellaneous Sanitation Nuisances.
 - a. A person commits an offense if the person owns or is in control of property that contains a pond, pool, depression, or container holding stagnant water that creates an unreasonable and noxious odor in a public place or that is detrimental to the health of humans or animals.
 - b. A person commits an offense if the person owns or is in control of property which has sewage leaking from any pipe, tank or other source onto the premises or surrounding land.
 - c. A person commits an offense if the person owns or is in control of property that contains a condition or place that is a breeding ground for rats, snakes, mosquitoes, flies, cockroaches, or other vermin.
 - d. A person commits an offense if the person owns or is in control of a place where sleeping accommodations are offered to the public where ectoparasites suspected to be disease carriers are present.
 - e. A person commits an offense if the person owns or is in control of property and accumulates or allows the accumulation of garbage, solid waste, liquid waste, recyclables, or materials in a composting pile or bin on the property in a manner that creates unreasonable and noxious odor in a public place, that provides a breeding ground or harborage for vectors, or that is detrimental to the health of humans or animals.
 4. Open Storage. It is an offense for the owner, occupant, or person in charge of property to store openly an item that is not customarily used or stored outside, or that is made of material that is not weather resistant, in an unenclosed outdoor area for more than twenty-four continuous hours. Open storage is prohibited in the front yard, on a front porch, under a carport, or

any other unenclosed area. Items stored in this manner are considered a public nuisance if they are visible from a public place or public right-of-way.

5. **Equipment or Building Material Storage.** It is an offense for the owner, occupant, or person in charge of residential property to: park, stand, or store any construction equipment or building materials in any residentially zoned area within the city, unless the equipment and/or building materials are being used in conjunction with an active construction project and on the property where a building permit has been issued and construction is in progress.
 6. **Liquid Waste.** No person shall deposit or discharge from any place onto private or public property in the city any liquid waste. The application of this section does not include discharges to the city's municipal separate storm sewer system (MS4), which is regulated under a separate portion of the Benbrook Municipal Code.
- B. **More Than Two Acres.** If a parcel of land consists of two or more acres under single ownership, the provisions of subsection A (1) do not apply to:
1. The area that is located in excess of one hundred feet from a public right-of-way or any adjacent street; or
 2. The area that is located in excess of one hundred feet from adjacent property under different ownership on which a building is located.
- C. **Penalty.** A person who violates subsection A or who fails to perform an act required by this chapter commits an offense. A person commits a separate offense each day or portion of a day during which a violation is committed, permitted, or continued. Each separate offense under this chapter is punishable by a fine of not more than two thousand dollars and not less than:
1. Fifty dollars for the first offense;
 2. One hundred dollars for the second offense within any twelve-month period; and
 3. Two hundred fifty dollars for the third offense within any twelve-month period.

8.08.020 Responsibility for cutting, clearing.

It is the responsibility of a person, firm or corporation owning, occupying, or having control of land within the city, to cut or cause to be cut, grass, weeds or plants, and to remove or cause to be removed, rubbish, brush, stagnant water, holes and depressions that collect stagnant water, and other unsanitary or unsightly matter as often as necessary to prevent violations of Section 8.08.010.

8.08.030 Abatement of prohibited conditions.

- A. The Code Compliance Officer (CCO) is hereby authorized to give notice to the owner of any property upon which a nuisance under this Section exists to abate the nuisance.
- B. If an owner of land fails to prevent a violation of Section 8.08.010 or fails to provide for the removal of unsanitary conditions as required by Section 8.08.020, a city official may give notice to the property owner to cut the grass, weeds or other uncultivated plants or to remove the rubbish, brush, stagnant water, holes and depressions that collect stagnant water, or other unsanitary or unsightly matter within ten days of the date of the notice.
- C. The notice must be given:
 - 1. Personally, to the owner in writing; or
 - 2. By letter addressed to the owner at the owner's post office address; or
 - 3. If personal service cannot be obtained or the owner's post office address is unknown:
 - a. By publication in the city's official newspaper at least twice within ten consecutive days,
 - b. By posting the notice on or near the front door of each building on the property to which the violation relates, or
 - c. If the property contains no buildings, by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
 - 4. Notice will be deemed to have been received:
 - a. For personal service, as of the date the notice was given personally to the owner;
 - b. For mailed notice, three (3) days after it was mailed;
 - c. For notice by publication, on the date the last notice was published in the official newspaper; or
 - d. For notice by posting, ten (10) days after the notice was posted.
 - 5. The CCO in the notice of violation may inform the owner by certified mail, return receipt requested, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, the city without further notice may correct the violation at the owner's expense and assess the expense against the property.
 - 6. If a violation covered by a notice under subsection (5) above occurs within the one-year period, and the CCO has not been informed in writing by the owner of an ownership change, then the city without notice may take any action permitted by this Chapter.

7. If the nuisance presents an immediate danger to the health, life, or safety of any person or to the environment, the CCO may, without complying with the notice provisions of this Chapter or without waiting the ten (10) day period, enter the subject property and:
 - a. Do or cause to be done any work or improvements necessary to abate the nuisance and remediate and restore the environment; and
 - b. Pay for the work or improvements done and charge the expenses to the owner of the property.
- D. If the owner does not cut the weeds, grass or plants or remove the rubbish, brush, stagnant water, holes and depression that collect stagnant water, or other unsanitary or unsightly matter within ten days of the notice, the city may do the work and charge the expenses to the owner of the property and assess the expenses against the real estate on which the work is done.

8.08.040 Notice for abating continuing violations.

Although it is not required, if the notice required by Section 8.08.030 is given by certified mail, return receipt requested:

- A. The city may include in the notice a statement that if the owner commits another violation of the same kind on or before one year from the date of the notice, the city without further notice, may correct the violation at the owner's expense and assess the expense against the property; and
- B. If a violation does reoccur within the one-year period, and the city has not been informed in writing of a change in ownership, the city may without additional notice take corrective action and assess the expenses against the owner and the property.

8.08.050 Assessment of expenses—Notice—Lien.

- A. In order to assess the expenses incurred pursuant to Section 8.08.030C against the real estate on which the work is done, the city shall send the owner of the property upon which the work was done a notice which shall include:
 1. Identification of the property;
 2. Description of the violation;
 3. A statement that the city abated the condition;
 4. A statement of the city's charges and expenses in abating the condition;
 5. An explanation of the property owner's right to request a hearing within ten days of the date of the letter; and
 6. A statement that if the owner fails or refuses to pay the expense within thirty days after the first day of the month following the month in which the work was done, the mayor or the mayor's designee shall obtain a lien against the property by filing with the county clerk of Tarrant County a notice of lien and statement of expenses incurred.

- B. The city manager or the city manager's designee will conduct a hearing if the property owner submits a written request to the city manager within ten days of the property owner's receipt of the notice. The city manager may, based on a preponderance of the evidence presented at the hearing, affirm or modify the charges.
- C. If no hearing is requested, or a hearing is held and the charges are determined to be valid, and the owner fails or refuses to pay the expense within thirty days after the first day of the month following the one in which the work is done, the mayor or the mayor's designee shall obtain a lien against the property by filing with the county clerk of Tarrant County a notice of lien and statement of expenses incurred.
- D. The lien is security for the expenditures made and interest accruing at the rate of ten percent per annum from the date of payment by the city.
- E. When the statement is filed, the city shall have a privileged lien on that property, second only to tax liens and liens for street improvements.
- F. The city may institute suit to recover the expenditures with interest and may foreclose on the property. The original or a certified copy of the statement of expenses is prima facie proof of the expenses incurred by the city in doing the work or making the improvements, as specified in 342.007, Texas Health and Safety Code, which is adopted and incorporated into this chapter by reference.

SECTION 2 CUMULATIVE CLAUSE

This Ordinance shall be cumulative of all provisions of ordinances and of the Benbrook Municipal Code, as amended, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3 SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 4 PENALTY CLAUSE

Any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety, or public health and sanitation, including dumping of refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5 SAVINGS CLAUSE

All rights and remedies of the City are expressly saved as to any and all violations of the provisions of the Benbrook Municipal Code, as amended, or any other ordinances affecting the matters regulated herein which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

SECTION 6 PUBLICATION IN PAMPHLET FORM

The City Secretary of the City is hereby authorized to publish this Ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof, as provided in Section 3.10 of the City Charter.

SECTION 7 ENGROSSMENT AND ENROLLMENT

The City Secretary of the City is hereby directed to engross and enroll this Ordinance by copying the caption, penalty clause, and effective date clause of this Ordinance in the Ordinances records of the City.

SECTION 8 PUBLICATION IN OFFICIAL NEWSPAPER

The City Secretary of the City is hereby directed to publish the caption and penalty clause of this Ordinance as required by law.

**SECTION 9
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law.

PASSED AND APPROVED this 21st day of November 2024.



Jason Ward, Mayor

ATTEST:



Elizabeth Fischer, City Secretary

ADOPTED: 11. _____

EFFECTIVE: _____

**SECTION 9
EFFECTIVE DATE**

This Ordinance shall be in full force and effect from and after the date of its passage and publication as required by law.

PASSED AND APPROVED this 21st day of November, 2024.



Jason Ward, Mayor

ATTEST:



Elizabeth Fischer, City Secretary

ADOPTED: 11.21.2024

EFFECTIVE: 12.1.2024