

ORDINANCE NO. 2011-22-04

AN ORDINANCE AMENDING ORDINANCE NO. 2011-22, AS AMENDED BY ORDINANCE NO. 2012-043, AS AMENDED BY ORDINANCE NO. 2013-056, ENTITLED NUISANCE ORDINANCE TO PRESERVE THE PEACE, WELFARE, ORDER, HEALTH, AND SAFETY OF PERSONS AND PROPERTY IN THE TOWN OF PROVIDENCE VILLAGE, TEXAS, AND TO ADD THE DEFINITION FOR "SIDEWALK", MODIFY PROVISIONS RELATING TO MINIMUM PRUNING CLEARANCE, AND ADD ADDITIONAL PROVISIONS TO OWNER'S RESPONSIBILITY TO KEEP PROPERTY CLEAN AND FREE OF PET DEBRIS.

WHEREAS, the Town of Providence Village is a municipal corporation organized under the laws of the State of Texas; and

WHEREAS, it is the intent of the Town of Providence Village to protect the health, safety and welfare and well-being of its citizens; and

WHEREAS, the Local Gov't Code, Section 217.002 specifically provides that a municipality may abate and remove a nuisance and punish by fine the person responsible for the nuisance, define and declare what constitutes a nuisance and abate in any manner considered expedient any nuisance that may injure or affect the public health or comfort; and

WHEREAS, the Town of Providence Village has the authority to adopt and enforce a nuisance ordinance; and

WHEREAS, it is necessary to add the definition of "Sidewalk" and to include provisions relating to the unlawful condition of trees protruding into public sidewalk/parkway or roadway; and

WHEREAS, it is necessary to adopt additional provisions regarding the Owner's responsibility to keep their lot clean and free of pet debris.

NOW THEREFORE:

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROVIDENCE VILLAGE, TEXAS:

SECTION 1. FINDING OF FACTS.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct.

SECTION 2. NUISANCE ORDINANCE.

1. Definitions. For the purposes of this article, the following words shall have the following meanings, except where the context clearly indicates a different meaning.

“*Attractive Nuisance*” means any condition, instrument or machine which is unsafe, unprotected and may prove detrimental to children whether in a building, on the premises of a building, or on an unoccupied lot. This includes but is not limited to abandoned wells, shafts, basements or excavations; abandoned refrigerators, appliances and motor vehicles; structurally unsound fences or structures; or lumber trash, rubbish, brush, or debris which may prove hazardous or dangerous to inquisitive minors.

“*Boat*” means any device used or capable of being used for navigation on water.

“*Code Enforcement Officer*” means a person appointed to enforce ordinances and zoning issues.

“*Dump*” means to throw, discard, place, deposit, discharge, or dispose of a substance.

“*Fence*” means a structure serving as an enclosure, barrier or boundary, usually made of posts, boards, wires, masonry or rails.

“*Front yard*” means that portion of a lot between the adjacent primary street or right-of-way and the front building line or front facade of the primary structure.

“*Hazardous Waste*” means any liquid, material, gas or other substance classified as hazardous by any federal, state or local law, statute, common law duty, rule, regulation, ordinance or code, or any administrative order, directed duty, license, authorization or permit of, or agreement with, any governmental authority, in each case relating to environmental, health, safety and land use matters. The term shall include but is not limited to oil, grease, paint, petroleum products, hazardous materials, volatile chemicals, pesticides, herbicides, fungicides or waste (solid, liquid or gaseous) which is determined by the Town to constitute a fire or environmental hazard, or to be detrimental to human life, health or safety.

“*Nuisance*” means a condition that substantially interferes with the use and enjoyment of land.

“*Occupant*” means a person who resides on, occupies or has possession or control of real property.

“*Owner*” shall mean in addition to the legal owner of property, any person, firm, association or corporation in charge of, in supervision of, having control of or occupying real property. The term “owner” shall also include any mortgage company or lien holder who by foreclosure or other operation of law has acquired any legal or equitable right in and to real property or has acquired the right of possession of real property.

“*Parkway*” means that property adjacent to the property of any owner extending from the property line to the curb line pavement edge or traveled portion of any street, roadway or alley, including adjacent drainage ditches and utility, right-of-way and drainage easements.

“*Person*” means any natural person, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of persons or entities of any kind.

“*Town*” means the Town of Providence Village, Texas, its mayor, the designee of the mayor, and the Town’s code enforcement officer.

“*Traffic Control Device*” means a sign, signal, marking, or device that is placed or erected by a public body or officer having jurisdiction; and is used to regulate, warn, or guide traffic.

“*Sidewalk*” means an improved walkway constructed of concrete or other durable, impervious material and includes sidewalks designed, constructed, in accordance with the Town’s development regulations.

2. Unlawful Conditions.

The owner or occupant of any property within the territorial limits of the Town, whether the same is occupied or unoccupied, shall keep such property and adjacent parkway free of any of the following conditions which hereby constitute nuisances and offensive conditions:

- (1) Stagnant water;
- (2) Accumulations of trash, garbage, or debris including solid waste consisting of dirt, concrete, rocks, bricks, wood, or other similar construction or building waste materials;
- (3) Filth, carrion, or other impure or unwholesome matter;
- (4) Rubbish, brush, and other unsanitary matter;
- (5) Hazardous waste; or
- (6) Any Attractive Nuisance or other condition found by the Town’s building inspector, code enforcement officer, health officer, the county health officer, state health officer, or other authorized person to be unsanitary or unwholesome or a condition that may produce disease.
- (7) To permit grass, weeds, Johnson grass, brush or any objectionable or unsightly matter to grow to a height greater than six (6) inches upon such real property.
- (8) Diseased or damaged trees which are beyond the point of recovery or in danger of falling shall be removed and or replaced by the property owner.
- (9) Trees, shrubs, brush or other plants will be landscaped in a manner that will prevent them from protruding into any public sidewalk or roadway that might interfere with pedestrian or vehicle use. Any limbs that might extend over the sidewalk will be pruned to maintain a minimum of a nine foot and six inch (9’ 6”) clearance from the street curb to

the limb. Any limbs that might extend over the parkway or roadway that might interfere with vehicle use must be pruned a minimum of a nine foot and six inch (9' 6") clearance from the street curb.

(10) No fence, wall, hedge, shrub planting, or tree which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(11) The same sight-line limitations shall apply on any Lot within ten (10') feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(12) No fence, wall, hedge, shrub planting, or tree which obstructs a continuous sight line of a Traffic Control Device shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street right-of-way lines and a line connecting them at points eighty-five feet (85') from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

3. Property Maintenance.

It is hereby declared to be a public nuisance for any owner or occupant of property or premises to keep or maintain the property, premises or adjacent parkway in such a manner that any of the following conditions are found to exist. These conditions are in addition to, and not in lieu of, the conditions enumerated in the foregoing section of this article.

(1) Household appliances.

(A) Abandoned, dismantled, wrecked, inoperable, or discarded objects, furniture, equipment or appliances such as, but not limited to water heaters, refrigerators, clothes dryers, washing machines, cooking stoves, heating stoves, air conditioners, microwave ovens, televisions, dishwashers, furniture which is not designed for outdoor use, household fixtures, machinery, equipment, cans or containers, which are located or stored on real property visible from a public place or adjacent property, or which are stored on private property in violation of any other law or ordinance.

(B) It shall be a defense to an offense under this provision if the item is scheduled for sanitation or trash pickup; any doors have been removed, and are set out for removal on the scheduled removal date.

(2) Trailers. Boat, jet ski, utility, construction, landscaping, and other such trailers parked within the front yard and visible from a public street. Parking of trailers and recreational vehicles on public streets shall be temporary in nature and limited to a maximum of 3 days and shall not interfere with vehicles and traffic.

(3) Construction/landscaping materials. Accumulations or piles of sand, gravel, dirt or other landscaping materials situated in the front yard for a period in excess of sixty (60) days.

(4) Recyclables. Items intended for recycling, including discarded garbage, rubbish, refuse, or other recyclable items situated on the property for a period of at least 14 days, or which are determined by the Town to constitute a fire hazard or to be detrimental to human life, health or safety.

(5) Trash receptacles. Receptacles for trash, discarded materials and recyclables shall not be left at the point of collection on or adjacent to a street, alley, or public right-of-way for a period of more than 24 hours, unless the receptacle is kept within an enclosure that has at least three sides, and is designed and constructed such that:

(A) Trash, discarded materials or recyclables shall not escape; and

(B) Trash receptacles are to be stored out of view from roadway.

(6) Pools. Swimming pools, spas, body of water or excavation which is abandoned, unattended, unsanitary, and empty which is not securely fenced, or which is determined by the Town to be detrimental to life, health or safety.

(7) Dilapidated structures. Any structure which detrimentally impacts the surrounding neighborhood or adjacent properties because of dilapidation, deterioration or decay, or is unsafe for the purpose for which it is intended, or is not secured or is improperly secured.

(8) Nuisances. Any condition that is injurious to health, and safety or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by persons of ordinary sensibilities.

(9) Pets. No animals or livestock shall be raised, bred or kept on the Property for commercial purposes or for food, unless said Property consists of more than three-fourth of an acre. Dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family; however, those pets which make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants or animals of other Lots shall be removed upon request of the Code enforcement officer. All animals must be on a leash while in public away from their dwelling with the exception

of designated dog parks. It is the Owner's responsibility to keep their Lot clean and free of pet debris and to pick up and properly dispose of their pet's waste wherever deposited. Notwithstanding anything seemingly herein to the contrary, no more than four (4) household pets will be permitted on each Lot.

(10) Wild or dangerous animals.

(A) **Prohibited Species.** No person shall harbor, maintain or control any wild or dangerous animal within the Town. Anyone keeping or maintaining any wild animal as of date of this ordinance has thirty (30) days in which to comply with the provisions of this section. Extensions beyond thirty (30) days may be granted by the Town Council for a good cause, but in no case may an extension permanently exempt a person from the requirements of this section. A dangerous animal is one which is capable of inflicting severe bodily harm to humans, and shall include, but not be limited to the following species:

Class mamalia. Members of the class mammalia which are prohibited are as follows:

African buffalo (*Syncerus caffer*)

Hippopotamus (*Hippopotamus amphibious*)

Any member of the Family Canidae, such as wolves, coyotes, dingoes, foxes and jackals, except domesticated dogs

Hyenas, all species except aardwolves (*Proteles cristatus*)
(Family Hyaenidae)

Wolverine (*Gulo gulo*)

Honey badger or ratel (*Mellivora campensis*)

Old world badger (*meles meles*)

Bears (Family Ursidae)

Lions, Jaguars, leopards, tigers (Genus *Panthera*)

Clouded leopard (*Neofelis nebulosa*)

Cheetah (*Acinonyx jubatus*)

Cougar or mountain lion (*Felis concolor*)

Elephants (Family Elephantidae)

Rhinoceroses (Family Rhinocerotidae)

Gibbons, siamangs (Family Huloatidae)

Orangutans, chimpanzees, gorillas (Family Pongidae)

Baboons, drills, mandrills (Genus *Papio*)

Macaques (Genus *Macaca*)

Gleada baboon (*Theropithecus gelada*)

Class reptilia. Members of the class reptilian which are prohibited are as follows:

Gavials (Family Gavialidae)
Crocodiles (Family Crocodylidae)
Alligators, caimans (Family Alligatoridae)
Cobras, coral snakes (Family Elapidae)
Sea snakes (Family Hydrophidae)
Adders, vipers (Family Viperidae)
Pit vipers (Family Cortalidae)
All venomous rear-fanged species (Family Colubridae)

The following species of constricting snakes over eight feet in length:

Boa constrictor (Boa constrictor), all subspecies
Anaconda (Eunectes murinus)
Indian python (Python molurus)
Reticulate python (Python reticulatus)
Rock python (Python sebea)
Gila monsters and bearded lizards (Family Helodermatidae)
Komodo dragon (Varanus komodoensis)

(11) Home Business. No Lot or improvement thereon shall be used for commercial or manufacturing purposes of any kind other than a small home office. No noxious or offensive activity shall be undertaken on the Property, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's use of a residence as a sales office until such builder's last residence on the Property is sold. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet, inoffensive activities such as a small home office, tutoring or giving lessons such as art or music, so long as such activities are consistent with the residential character of the Property, do not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Property, as determined in the Code Enforcement Officer and do not materially increase the number of cars parked on the street.

4. Unlawful Activities.

(a) No person shall cause, permit or allow litter, trash, garbage, or refuse to be buried on private or public property, except where the property is permitted for use as an inert or sanitary landfill by the state.

(b) No person shall deposit or dispose of any litter, trash, refuse, debris, or hazardous material in any private receptacle, container, collection system, or trash dumpster without the consent of the owner thereof.

(c) No person shall throw, drop, dispose of, or cause to be thrown, dropped, or disposed of, litter from a vehicle.

(d) No vehicle shall be driven or moved on any public street, highway or other public road within the Town unless such vehicle is constructed, loaded or equipped in such a manner as to prevent any of its load from dropping, sifting, leaking or otherwise escaping there from; provided, however, that sand or any substance for increasing traction, or water or other substance may be sprinkled on a roadway and the cleaning or maintaining of such roadway may be undertaken by the governmental agency having that responsibility. Any person operating a vehicle from which any glass, litter or other object has fallen or escaped which may constitute an obstruction or may cause damage to other vehicles or otherwise endanger travel on the roadway shall immediately cause the removal of such glass, litter or object from the roadway, and shall pay any costs for such removal. This section shall not apply to any motor vehicle used exclusively for agricultural purposes and which is not operated on a public roadway for any other purpose other than operating it across the roadway or along the roadway from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin, or for the purpose of taking the vehicle to a place of repair.

5. Construction and Demolition Sites.

(a) No person shall commence or cause the commencement of the construction or demolition of a structure without first having applied for and been issued a permit to do so from the Town.

(b) On-site receptacles and containers of sufficient size and composition to effectively and securely hold the accumulation of all debris, paper, building material waste, scrap building materials and other trash and refuse produced by construction or demolition activities shall be installed and maintained. All construction and demolition sites shall be kept in a litter-free condition.

(c) Any accumulation of dirt, mud, silt or any other earth resulting from construction or demolition activity shall be immediately removed if such accumulation may cause a threat to public health or safety or property values, whether real or personal.

(d) No person shall cause or permit the accumulation or deposit of dirt, mud, silt or any other earth, or any construction or demolition supplies, material, waste or debris or any other material resulting from construction or demolition activities on any public street, alley or right-of-way.

(e) No litter, rubbish, waste or debris, including but not limited to brush, limbs, stumps, roots and other by-products of construction or demolition activities may be buried on any property not expressly and properly permitted for such activity, nor may such matter be burned on any

property without a valid permit to do so issued by the Town in accordance with Denton County burn controls.

(f) All construction and demolition sites must be secured with protective and security fencing to prevent erosion of soil and dirt from rain and storm water runoff, the scattering of litter and debris, and entry by children.

(g) In addition to the remedies and relief provided for in this article for violations of this section, the Town may immediately order all work being performed at the site to cease by the issuance of a stop work order. No further work will resume at the site until the violation is corrected and inspected by the Town and all reinspection fees are paid in full. It shall be an offense for any person to fail or refuse to comply with a stop work order.

6. Scavenging.

No person other than the owner thereof or the Town, or an authorized agent or employee thereof, shall interfere with any container placed for the purpose of storing refuse pending collection, or remove or take any of the contents thereof, or remove any such container from the location where the container has been placed by the owner thereof.

7. Nuisance Abatement.

(a) Right of entry. The Town shall have the right of entry onto private property for the purposes of inspecting the property or abating a nuisance or unlawful condition thereon. The Town may enter any property or premises at all times to inspect premises for violations of this article provided:

(1) The Town's enforcement officer shall first present proper credentials, state the reason for entry and request entry from the owner or occupant, if the property is occupied or the owner or occupant is present. If entry is denied, the Town shall have recourse to every remedy provided by law to gain entry, including but not limited to the denial, suspension or revocation of any permit or certificate of occupancy.

(2) The Town shall make a reasonable effort to locate the owner of unoccupied property or premises to inform the owner of the reasons for entry and to request entry.

(3) Once the Town's enforcement officer identifies a nuisance, the nuisance remains until the owner complies with the order of abatement.

(4) Movement of any defined nuisance upon which a notice of violation of this article is given to another location within the Town shall have no effect with regard to the service of notice herein, and said service shall be deemed as valid regardless of the new location of the subject.

(b) Notice. When any duly authorized officer of the Town discovers property which is being maintained in violation of any of the provisions of this article, he shall issue and serve a notice of such as follows:

(1) Delivered personally to the owner or occupant in writing;

(2) By letter addressed to the owner or occupant at the owner's or occupant's post office address, last known address, or property address where the violation exists; or

(3) If personal service cannot be obtained or the owner's or occupant's post office address is unknown:

(A) By publication in the Town's official newspaper at least twice within fourteen 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) By posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) Where such notice of violation is transmitted by mail, properly addressed as set forth herein with proper postage affixed, receipt of the notice of violation shall be presumed on the third day following deposit in the custody of the U.S. mail. Notice may be mailed to the owner or occupant of the property as shown on the most recent tax roll upon which county taxes are assessed. The failure of any addressee to receive the notice sent as provided herein shall not affect or invalidate any proceeding commenced under this article.

(d) If the owner or occupant of the property does not comply with the notice and this article within ten (10) days of notice of the violation given as stated above, the Town may, on written request, with good cause demonstrated, grant up to 21 additional days for correction of the violation, or may:

(1) Issue a citation charging such owner or occupant with a violation of this article;

(2) Do the work or make the improvements required; and

(3) Pay for the work done or improvements made and charge the expenses to the owner of the property.

(e) Once notice under this section has been provided to the owner or occupant, and said owner or occupant of the property continues to fail to comply with the notice or order of abatement, the Town may continue to do the work or make the improvements required and pay for the work done or improvements made and charge the expenses to the owner of the property without providing additional notice.

(f) The Town may assess expenses incurred under this section against the real estate on which the work is done or improvements made in accordance with the provisions of this article.

SECTION 3. ASSESSMENT OF EXPENSES; LIEN.

(a) To obtain a lien against the property, the mayor or his designee, including any other designated Town official, must file a statement of expenses with the county clerk. The statement of expenses must identify the name of the owner, if known, and the legal description of the property. The lien obtained by the Town is security for the expenditures made and interest accruing at the rate of ten percent (10%) per annum on the amount due from the date of payment by the Town for the work done or improvements made. The lien is inferior only to tax liens and liens for street improvements.

(b) The Town may authorize a suit for foreclosure in the name of the Town to recover the expenditures and interest due. The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the Town in doing the work or making the improvements.

(c) The remedy provided in this section is in addition to any fine which may be imposed for a violation of this article and is cumulative of and in addition to any other remedies which may be provided for by the ordinances of the Town or other law, whether civil or criminal.

SECTION 4. PENALTIES.

(a) Any person who violates any of the provisions of this article shall be guilty of a misdemeanor and upon conviction may be subject to a penalty or fine not to exceed the sum of five hundred dollars (\$500.00). Each and every day or part thereof during which any such violation is committed, continued, or allowed shall be a separate offense.

(b) Any person who violates any provision of this article may be liable to the Town for an administrative penalty in a sum not to exceed five hundred dollars (\$500.00) for each violation for each day or part thereof that the violation exists or is allowed to continue. The civil penalty provided herein is cumulative and not exclusive and shall be in addition to all other remedies available to the Town under state law and local ordinances.

(c) The provisions of this article may be enforced against the owner of the property or the occupant, or both.

SECTION 5. REMEDIES CUMULATIVE.

The remedies provided in this article are in addition to any other remedy which may be imposed for a condition, act or omission that may constitute a violation of this article, and are cumulative of and in addition to any other remedies which may be provided for by the ordinances of the Town or other law, whether civil or criminal. Nothing in this article shall preclude the Town from seeking appropriate injunctive relief to halt continuing violations of this article or to prevent or abate a nuisance.

SECTION 6. COSTS OF ENFORCEMENT.

In any civil or administrative action, hearing or appeal commenced by the Town under this article, the Town shall, to the extent allowed by law, be entitled to recover from the opposing party in such action reasonable attorney's fees, costs of suit, any other costs of enforcement, including, but not limited to, inspection costs and cleanup and abatement costs.

SECTION 7. SEVERABILITY.

If any provision, section, subsection, sentence, clause or phrase of this ordinance, or the application of same to any person or set circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance of the application thereby shall remain in effect, it being the intent of the Town Council of the Town of Providence Village, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reason of unconstitutionality or invalidity of any portion or provision.

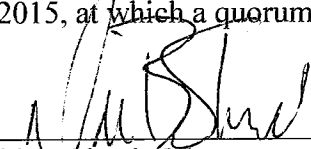
SECTION 8. REPEALING CONFLICT.

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

SECTION 9. PUBLISHING AND EFFECTIVE DATE.

This ordinance shall be published in accordance with the requirement of publishing all ordinances and becomes effect in accordance with state law.

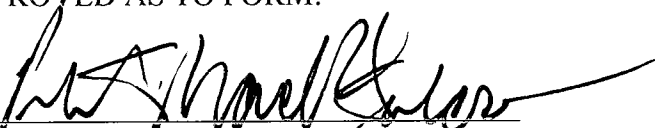
PASSED AND APPROVED by the Town Council at a regular meeting the 9th day of March, 2015, at which a quorum was present.

By: 
David B. Shuck, Mayor

ATTEST:

By: 
Connie S. Hansen, Town Secretary

APPROVED AS TO FORM:

By: 
Philip Mack Furlow, Town Attorney

