

## ARTICLE II. - CLEANLINESS, SANITATION AND SAFETY OF PREMISES<sup>[2]</sup>

Footnotes:

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**Cross reference**— Solid waste disposal, § 20-20 et seq.

### DIVISION 1. - GENERALLY

Sec. 9-20. - Abandoned refrigerators, etc.

It shall be unlawful for any person to place or permit to remain outside of any dwelling, building, or other structure, or within any warehouse or storage room or any unoccupied or abandoned dwelling, building or other structure, under such circumstances as to be accessible to children, any icebox, refrigerator, or other airtight or semi-airtight container which has a capacity of one and one-half (1½) cubic feet or more and an opening of fifty (50) square inches or more and which has a door or lid equipped with a latch or other fastening device capable of securing such door or lid shut.

(Ord. No. 71-59, § 10, 9-13-71)

**State Law reference**— Similar provision, V.A.C.S. art. 9203.

Sec. 9-21. - Scattering materials from vehicles.

It shall be unlawful for any person engaged in transporting garbage, trash, refuse or dirt, sand, cement or other building supplies to permit any of the hauled material to be scattered or thrown into the streets, and it shall be the duty of each person so transporting such materials to so modify his equipment and to so operate his equipment that such spillage and scattering shall not occur. It shall further be the duty of such person, should such scattering or spillage occur, to immediately remove the same from the city streets upon notification by the city health officer or his duly authorized representative or any peace officer, including but not limited to the chief of police and any deputy sheriff or the county.

(Ord. No. 70-28, § 25(d), 10-26-76)

**Cross reference**— Parking vehicles or parts of vehicles on residentially zoned property, § 12-6; prohibited of garbage removal contractor, § 20-29.

Sec. 9-22. - Depositing trimmings on property.

It shall be unlawful for any person to throw, place, dump or deposit any lawn trimmings, hedge trimmings or any other cuttings or trimmings of weeds, flowers or other vegetation, on driveways, lawns, vacant or improved lots, or any other private property or in any gutter, street, sidewalk, parkway, driveway, curb, alley or any other public property of the city, including storm drains.

(Ord. No. 70-28, § 25(a), 10-26-76)

Sec. 9-23. - Depositing garbage, junk, etc., on property.

It shall be unlawful for any person to throw, place, dump or deposit garbage, trash, ashes, rubbish, paper, old automobile parts or junk of any nature on any gutter, street, alley, sidewalk, curb, driveway,

parkway, or between any curb and sidewalk or on any other public property, including storm drains, of the city or on driveways, lawns, vacant or improved lots, or any other private property within the city.

(Ord. No. 70-28, § 25(b), 10-26-76)

**Cross reference**— Polluting waters of fountains in parks or lake, § 13-10(2).

**Sec. 9-24. - Depositing of petroleum products in storm drains.**

It shall be unlawful for any person to use the storm drains of the city for the purpose of disposing of any oil, gasoline or any other petroleum product. Products such as these must be removed from the city and disposed of by the owner, occupant, tenant or lessee of the building, business or premises where such wastes originate and the city health officer shall have the power to determine what other liquid wastes constitute a health hazard to the city and fall within this classification of liquids that may not be poured into the storm drains and which are subject to the requirement that they be removed and disposed of at the expense of the user.

(Ord. No. 70-28, § 25(e), 10-26-76)

**Sec. 9-25. - Depositing obnoxious matter or substance.**

It shall be unlawful for any person to place, deposit or throw or permit to accumulate in such a manner as to emit noxious, disagreeable and offensive smells, or permit or cause to be placed, deposited or thrown any garbage, trash or refuse of any kind on public or private property outside of any house, building, town house, apartment, hotel, motel, church or school or similar structure, unless the same has been deposited in accordance with the provisions of this chapter.

(Ord. No. 70-28, § 25(f), 10-26-76)

**State Law reference**— Accumulations constituting nuisance, V.A.C.S. art. 447—1, § 2(f).

**Sec. 9-26. - Unsanitary animal, vegetable or mineral matter remaining on public property.**

It shall be unlawful for any person to cause or permit to be or remain in or upon any public premises, any animal, vegetable or mineral matter, or any composition or residue thereof, which is in an unsanitary condition or is injurious to public health.

(Ord. No. 70-28, § 25(g), 10-26-76)

**Sec. 9-27. - Stagnant water—Holes, etc., prohibited.**

It shall be unlawful for any person, who shall own or occupy any lot or tract of land in the city to permit or allow holes, places or locations on said lot or tract where water may accumulate and become stagnant, or to permit the same to remain on said premises. Lakes are exempt from the provisions of this section.

(Ord. No. 71-59, § 1, 9-13-71)

**Cross reference**— Holes in parking lots, § 9-41.

Sec. 9-28. - Same—Accumulations prohibited on private premises.

It shall be unlawful for any person who shall own or occupy any lot or tract of land in the city to permit or allow the accumulation of stagnant water thereon, or to permit the same to remain on said premises.

(Ord. No. 71-59, § 2, 9-13-71)

Sec. 9-29. - Accumulations of impure or unwholesome matter generally on private premises.

It shall be unlawful for any person who shall own or occupy any house, building, establishment, lot or tract of land in the city to permit or allow any carrion, filth, animal matter, waste food products or other impure or unwholesome matter to accumulate or remain thereon.

(Ord. No. 71-59, § 3, 9-13-71)

Sec. 9-30. - Reserved.

**Editor's note**— Ord. No. 2003-573, adopted Nov. 10, 2003, deleted § 9-30 in its entirety. Former § 9-30 pertained to accumulation of weeds, rubbish, etc., on private premises and derived from Ord. No. 71-59, § 4, adopted Sept. 13, 1971; Ord. No. 77-191, § 1, adopted Apr. 11, 1977; and Ord. No. 91-409, adopted Sept. 9, 1991.

Sec. 9-31. - Rat control—Accumulations of impure or unwholesome matter.

No garbage, rubbish, carrion, filth, animal matter, waste food products or other impure or unwholesome matter shall be allowed to accumulate or remain in any building or premises in the city so that the same may or shall afford food for or a harboring or breeding place for rats.

(Ord. No. 71-59, § 3, 9-13-71)

Sec. 9-32. - Same—Accumulations of lumber, etc.

It shall be unlawful for any person to permit to accumulate on any premises, improved or unimproved, or on any open lot or alley in the city, any lumber, boxes, barrels or similar material that may be permitted to remain thereon and that may be used as a harborage for rats, unless the same is placed on open racks and elevated not less than eighteen (18) inches above the ground, with a clear intervening space underneath, to prevent the harborage of rats. This section shall not apply when such lumber or other materials are stored temporarily, for a period not to exceed fourteen (14) days, at an elevation designated by the city health officer.

(Ord. No. 71-59, § 3, 9-13-71)

Sec. 9-33. - Same—Inspection of premises; ordering remedial or preventive action.

The city health officer or his representative, is authorized to make frequent and unannounced inspections of existing business buildings within the city for the purpose of determining any rat infestation, and order, by written notice, either the owner, occupant, agent or any other person in custody of any rat-infested business building to protect such business building by ordering that such rat-control methods be employed as may be deemed necessary by the city health officer, or his representative, to maintain business buildings free from rats, regardless of the need for the remodeling of or repairs to such business buildings. The written notice or order shall specify the time, in no event less than fifteen (15) days, for

completion of such work and improvements. Unless such work and improvements are completed in accordance with the written order or notice within the time so specified or within the time to which a written extension has been granted by the city health officer, or his representative, then, in such event, the owner, occupant, agent or other person in custody of the building shall be deemed guilty of a misdemeanor punishable by fine as provided in section 1-6, and each day such violation shall continue shall constitute a separate offense. The city health officer, or his representative, is authorized to make inspections during the course of and upon completion of any construction repairs, remodeling or installation of rat-control measures to business buildings to insure compliance with the provisions of this section, and no person shall interfere with or refuse to permit such inspection. Whenever the city health officer notifies the occupant of a business building, in writing, that there is evidence of rat-infestation of the building, such occupant shall immediately institute anti-rat-infestation measures and shall continuously maintain such measures in a satisfactory manner until the premises are declared by the city health officer to be free of rat-infestation. Unless such measures are undertaken within fifteen (15) days after receipt of notice, it shall be construed as a violation of the provisions of this section and the occupant shall be held responsible therefor.

(Ord. No. 71-59, § 3, 9-13-71)

Sec. 9-34. - Same—Disposal of dead rats; continuation of preventive measures; methods of rat destruction.

Any rats caught or killed therein shall be removed daily and disposed of in a manner acceptable to the city health officer, and all traps reset and rebaited and other anti-rat-infestation measures shall be continued. Rats may also be destroyed by such means other than trapping as are approved by the city health officer, or by any authorized agency of the United States Public Health Service, or the state board of health.

(Ord. No. 71-59, § 3, 9-13-71)

**Cross reference**— See also § 9-36.

Sec. 9-35. - Dangerous structures.

(a) This section is adopted so that the city council may promote the public health, safety, and general welfare within the city through the regulation of substandard, uninhabitable and dangerous buildings or structures. By requiring the repair, demolition or removal of substandard, uninhabitable and dangerous buildings and structures, the city council seeks to protect property values and prevent bodily injury, death, and property damage within the city limits. City council hereby adopts the provisions of Subchapter C Quasi-Judicial Enforcement of Health and Safety Ordinances of Subchapter C of Chapter 54 of the Texas Local Government Code and hereby designates the city council as the building and standards commission under said subchapter.

(b) *Definitions.* As used in this section, the following terms shall be defined as follows, unless the clear meaning of the text mandates otherwise:

*Appraised value* shall mean the value given the structure by the county tax assessor's office.

*Building* shall mean any structure of any kind or any part thereof, erected for the support, shelter or enclosure of persons, animals, chattel or property of any kind and includes any structure used as storage whether or not associated with a living unit.

*Building inspector/fire marshal* shall mean the person(s) appointed by the city to conduct periodic inspections of buildings and structures to insure that the same are being maintained in a manner consistent with prescribed applicable codes of the city and not in violation of this section.

*City* shall mean the City of Nassau Bay, Texas.

*City council* shall mean the governing body of the City of Nassau Bay, Texas.

*Diligent effort* shall mean best or reasonable effort to determine the identity and address of an owner, a lienholder, or a mortgagee including a search of the following records:

- (1) County real property records of the county in which the building is located;
- (2) Appraisal district records of the appraisal district in which the building is located;
- (3) Records of the secretary of state;
- (4) Assumed name records of the county in which the building is located;
- (5) City tax records; and
- (6) City utility records.

*Minimum housing standards* shall mean those standards found in the city's adopted standard building, electrical, plumbing, gas, mechanical, existing building and fire prevention codes and any other housing and structure regulations adopted under Chapter 214, Local Government Code.

*Owner* shall mean any person, agent, firm, corporation, or other entity named in the real property records of the county where the building is located as owning the property.

*Structure* shall mean that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built or composed of parts joined together in some definite manner, or any part thereof.

- (c) *Declaration of nuisance.* Any building or structure requiring repair, removal or demolition, as described and defined herein below, and all buildings or structures within the city which, because of their condition, are unsafe, unsanitary, uninhabitable or otherwise dangerous to the health, safety and general welfare of the citizens of the city are hereby declared to be a public nuisance and unlawful and subject to the provisions of this section regarding repair, removal or demolition.
- (d) *Inspection.* An inspection shall be made of every building located within the city which is suspected of being in violation of this section. The building inspector/fire marshal or their official designee(s) are hereby authorized to conduct inspections of buildings suspected of being in violation of this section and take such actions as may be required to enforce the provisions of this section.
- (e) *Notice of violation.* Whenever a violation of this section has been discovered and reported by the building inspector/fire marshal or their designee(s), a public hearing shall be held by the city council to determine whether a building complies with the standards set out in this section.

A notice of the hearing shall be sent to the occupant, if any, and record owner, lienholder and/or mortgagee. Such notice shall be in writing and shall be served by personal delivery or by certified mail return receipt requested. Additionally, a copy of the notice shall be posted on the front door of each affected structure situated on the property or as close to the front door as practicable. It is not necessary that the notice to the occupant of the property list an occupant by name. Service of the notice may be accomplished by the first class U.S. mail or by personal delivery to any occupant of the property who is above the age of eighteen (18) years.

The notice shall contain:

- (1) The names of all persons to whom the notice is being served;
- (2) The street address or legal description of the premises;
- (3) The date of inspection;
- (4) The nature of the violation;
- (5) The date, time and location of the hearing; and
- (6) A statement that the owner, lienholder, or mortgagee will be required to submit at the hearing proof of the scope of any work that may be required to comply with [this section] and the time it will take to reasonably perform the work.

- (f) *Standards.* The following standards shall be utilized in determining whether a building should be ordered repaired, removed or demolished:
- (1) The building or structure is liable to partially or fully collapse; or
  - (2) The building or structure has been constructed or maintained in violation of any provision of the city's building code or fire code or in violation of Section 54.032 of the Local Government Code; or
  - (3) Any wall or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside the middle one-third ( 1/3 ) of its base; or
  - (4) The foundation or the vertical or horizontal supporting members are twenty-five (25) percent or more damaged or deteriorated; or
  - (5) The non-supporting coverings of walls, ceilings, roofs, or floors are fifty (50) percent or more damaged or deteriorated; or
  - (6) The structure has improperly distributed loads upon the structural members, or the structural members have insufficient strength to be reasonably safe for the purpose used; or
  - (7) The structure of any part thereof has been damaged by fire, water, earthquake, wind, vandalism, or other cause to such an extent that it has become dangerous to the public, health, safety and welfare; or
  - (8) The structure does not have adequate light, ventilation, or sanitation facilities as required by the city; or
  - (9) The structure has inadequate facilities for egress in case of fire or other emergency or has insufficient stairways or elevators or fire escapes or other means of ingress or egress; or
  - (10) The structure, because of its condition, is uninhabitable, unsafe, unsanitary, or dangerous to the health, safety or general welfare of the city's citizens including all conditions conducive to the harboring of rats or mice or other disease carrying animals or insects reasonably calculated to spread disease.
- (g) *Hearing.* The date of the hearing shall not be less than ten (10) days after notice is made (as described herein).

If a building is found to be in violation of this section, the city shall require the owner, lienholder or mortgagee of the building to, within thirty (30) days, repair, remove or demolish the building, unless it is proven at the hearing that the work cannot reasonably be done in thirty (30) days.

If the city allows more than thirty (30) days for the building to be repaired, removed or demolished, the city shall establish specific time schedules for the work to be commenced and performed and shall require the owner, lienholder, or mortgagee to secure the property in a reasonable manner from unauthorized entry while the work is being performed.

The city shall not allow the owner, lienholder or mortgagee more than ninety (90) days to repair, remove or demolish the building or fully perform all work required to comply with the order unless a detailed plan and time schedule for the work are submitted at the hearing and it is proven at the hearing that the work cannot reasonably be completed within ninety (90) days because of the scope and complexity of the work. Additionally, the owner, lienholder, or mortgagee must submit work progress reports to demonstrate compliance with the time schedule established.

In any case where repairs are estimated to cost fifty (50) percent or more of the appraised value, a building shall meet all current code requirements; and in all cases where a structure cannot be repaired so that it will no longer exist in violation of the provisions of this section, it shall be demolished or removed.

- (h) *Order for repair or demolition.* After the public hearing, if a building is found to be in violation of any of the standards set out in this section, the city may order that the building be repaired, removed or demolished within a reasonable time, as established herein.

If the building is ordered to be repaired, removed or demolished, the city shall promptly mail by certified mail, return receipt requested, or personally deliver a copy of the order to the owner of the building and to any lienholder or mortgagee of the building. The city shall make a diligent effort to discover each owner, mortgagee and lienholder having an interest in the building or property on which the building is located.

- (i) *Notice of repair or demolition.* In addition to the owner, each identified mortgagee or lienholder shall be sent a notice containing:
- (1) An identification of the building and property on which it is located (this does not have to be a legal description);
  - (2) A description of the violation of the section; and
  - (3) A statement that the municipality may demolish the building if the ordered action is not taken.

If the notice is returned "refused" or "unclaimed," the validity of the notice is not affected and the notice shall be deemed delivered.

Within thirty (30) days after the date that the order is issued, the city shall:

- (1) File a copy of the order in the office of the city secretary; and
  - (2) Publish a notice in a newspaper of general circulation in the city (and where the building is located) stating:
    - a. The street address or legal description of the property;
    - b. The date the hearing was held;
    - c. A brief statement indicating the results of the order; and
    - d. Instructions as to where a complete copy of the order may be obtained.
- (j) *Appeal.* The owner, lienholder or mortgagee shall have the right to appeal the decision made at the hearing to a district court. A notice of appeal must be filed with the district court within thirty (30) calendar days from the date the order is mailed by certified mail, return receipt requested, to the owner, lienholder or mortgagee, as provided herein.
- (k) *Demolition and repair expenses.* Whenever it is discovered upon reinspection that the owner, mortgagee or lienholder has failed to repair, remove or demolish the building or take other ordered action within the allotted time, the city or its authorized agent may repair, remove or demolish and remove said building or cause the same to be done and charge the expenses incurred in doing such work or having the same done to the owner, mortgagee or lienholder of said land or otherwise assess the expenses against the property on which the building is located.

If such work is done at the expense of the city, then said expense shall be assessed against any salvage resulting from the demolition of the building and against the lot, tract, or parcel of land, or the premises upon which such expense was incurred.

- (l) *Assessment of lien.* When the city incurs expenses to repair, remove or demolish a building, the city may assess the expenses on and obtain a lien against the property on which the building is located. The lien arises and attaches to the property when the city has the lien recorded and indexed with the county clerk of the county in which the property is located. The notice shall contain:
- (1) The name and address of the owner, if that information can be determined with a reasonable effort;
  - (2) A legal description of the real property on which the building was located;
  - (3) The amount of expense incurred by the city;
  - (4) The balance due; and
  - (5) The date on which said work was done or improvements made.

The city shall have a privileged lien on such lot, lots, or other premises or real estate upon which said building was located, to secure the expenditure so made, second only to other liens as provided by law. It is further provided that for any such expenditure, suit may be instituted and foreclosure of said lien may be made in the name of the city; and the statement of expenses to be made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended for such work or expense.

The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the city for the expenses.

(m) *Penalty.* The city shall have the power to administer and enforce the provisions of this section as may be required by governing law.

(1) *Civil remedies:* A property owner violating any provision of this section shall, upon conviction, be fined a sum not exceeding the maximum amount allowed by law for each and every day of violation, or, if the owner shows the property is the owner's lawful homestead, in an amount not to exceed ten dollars (\$10.00) per day for each violation, provided that:

- a. The owner was notified of the requirements of the section and the owner's need to comply with the requirements; and
- b. After notification, the owner committed an act in violation of the section or failed to take action necessary for compliance with section.

If such a civil penalty is assessed, the city secretary shall file a certified copy of the order containing such amount and duration of the penalty as required by law in Section 214.0015 of the Local Government Code.

(2) *Other remedies:* The remedies provided herein shall be available to the city in addition to any penal or other remedy provided by law or equity which the city, state, or any other person may provide to remedy the unsafe building condition. The city may bring a civil action in a court of competent jurisdiction to collect the amount due plus all associated costs and fees.

(n) [*Violations.*] Any person who intentionally, knowingly, recklessly, or with criminal negligence violates any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction, may be fined an amount not to exceed two thousand dollars (\$2,000.00) per violation, with each day constituting a separate offense.

(Ord. No. 71-59, § 5, 9-13-71; Ord. No. 2010-675, §§ 2—15, 10-11-10)

**Cross reference—** Maintaining building constituting fire hazard, § 8-4 et seq.

Sec. 9-36. - Abandoned construction.

It shall be unlawful for any person who shall own any lot or tract of land in the city, to allow, in connection with any partially constructed building, shed or erection of any kind, the continuation of a condition wherein said partially completed structure is abandoned, leaving exposed to the young and the curious any protruding metal objects, rusted metal projections, broken masonry or concrete orifices into which a person might reasonably be expected to fall, spaces beneath the structure accessible to children or where the accumulation of stagnant water or refuse would, in the opinion of the city health officer, create a condition where mosquitoes, rats, mice or other vermin would breed. Any partially completed structure upon which no construction activity has been conducted for a continuous period of one (1) year shall be presumed to be abandoned. Such a condition existing in an abandoned structure is declared to be a nuisance and a menace to the health, safety and welfare of the citizens of the city and may be abated and removed by the city in the manner described in sections 9-35 and 9-39.

(Ord. No. 71-59, § 5, 9-13-71)

Sec. 9-37. - Abatement generally—Stagnant water; accumulations of impure or unwholesome matter.

Should any owner of such lot or tract of land within the city that has holes, places or locations thereon where stagnant water may accumulate and/or which are not properly drained, or the owner of any premises or building upon which filth, carrion, animal matter, waste food products, or other impure or unwholesome matter may be, fail and/or refuse to drain and/or fill the same lot or lots, tract or tracts, or remove such filth, carrion, animal matter, waste food products or other impure or unwholesome matter within ten (10) days after notice to said owner to do so, in writing, by letter addressed to such owner at his last known address and at the address for said owner reflected on the tax rolls of the tax assessor-collector of the city, if said addresses are not the same, or within ten (10) days after notice by publication as many as two (2) times within ten (10) consecutive days in the official newspaper of the city, if personal service may not be had as aforesaid, or if the owner's address is not known; then, in that event, the city may do such filling or draining or removal of filth, carrion, animal matter, waste food products, or other impure or unwholesome matter or any other unsightly, objectionable or unsanitary matter, or cause the same to be done and may pay therefor and charge the expenses incurred in doing such work or having such work done or improvements made to the owner of such lot or lots, tract or tracts, and if such work is done or improvements are made at the expense of the city, then such expense shall be assessed on the lots or tracts of land upon which such expense was incurred.

(Ord. No. 71-59, § 6, 9-13-71)

Sec. 9-38. - Reserved.

**Editor's note**— Ord. No. 2003-573, adopted Nov. 10, 2003, deleted § 9-38 in its entirety. Former § 9-38 pertained to abatement of unsightly, objectionable or unsanitary matter and derived from Ord. No. 71-59, § 7, adopted Sept. 13, 1971.

Sec. 9-39. - Same—Dangerous structures; abandoned construction.

Should any owner of any lot or tract of land, within the city, who shall permit the continuation of a dangerous condition of a structure determined by resolution of the city council, after public hearing and after reasonable notice as required in sections 9-35 and 9-36 fail and/or refuse to abate such dangerous condition within the time required by this article, the city council may remove such dangerous or objectionable structure or cause the same to be done and may pay therefor, and charge the expenses incurred in doing such work or having such work done to the owner of such lot or tract of land, or real estate; and, if such work is done at the expense of the city, then such expenses shall be assessed on the real estate, lot or tract of land, upon which such expense was incurred.

(Ord. No. 71-59, § 8, 9-13-71)

Sec. 9-40. - Reserved.

**Editor's note**— Ord. No. 2003-573, adopted Nov. 10, 2003, deleted § 9-40 in its entirety. Former § 9-40 pertained to filing statement of expense, impressing lien and recovery of expense and derived from Ord. No. 71-59, § 9, adopted Sept. 13, 1971.

Sec. 9-41. - Damaged or defective parking lots—Holes or depressions.

It shall be unlawful for any person who shall own any lot or lots, tract or tracts upon which vehicle parking spaces are provided upon an asphalt or concrete surface, and said surface is intended for use by the public for parking purposes, to permit or allow on said parking area of said lots or tracts any holes,

depressions or damaged places that exceed eight (8) inches in diameter or width, or four (4) inches in depth, or where water may accumulate or become stagnant, or to permit same to remain on said premises. Nothing herein shall apply to any lot or lots, tract or tracts devoted exclusively to single-family use.

(Ord. No. 77-195, § 1, 7-11-77)

Sec. 9-42. - Same—Maintenance of painting of stripes.

It shall be unlawful for any person who shall own any lot or lots, tract or tracts, upon which vehicle parking spaces are provided upon an asphalt or concrete surface and are intended for use by the public to fail to maintain by painting with visible stripes, or causing to be painted with visible stripes, areas where cars and other vehicles are intended to be parked, where parking is prohibited in fire lanes or where moving traffic is intended to be channeled, including directional arrows for traffic flow, or any other traffic-control directions or parking prohibitions required by some state or municipal statute, ordinance or regulation. Such striping shall be conducted and accomplished in accordance with city or state standards, whichever is applicable.

(Ord. No. 77-195, § 2, 7-11-77)

Sec. 9-43. - Same—Correction of violations.

It shall be unlawful for any person to fail to correct any violation of sections 9-41 through 9-44 within twenty-one (21) calendar days after receipt of written notification by the city of such violation. The method and extent of repairs shall be determined by the city engineer and shall conform, as a minimum, to the standards more fully defined in section 9-44.

(Ord. No. 77-195, § 3, 7-11-77)

Sec. 9-44. - Same—Repair specifications.

Specifications for repair are as follows:

- (1) *For asphalt parking lots:* Remove asphalt material and flexible base material in all damaged areas and soft spots. All new base material shall be cement stabilized shell (six (6) minimum). Placement shall be such that a bond between new base material and adjoining base material is established. Alternate base material may be used, if approved by the city engineer. Asphalt maintenance mixture shall be distributed by shovels and rakes and spread into place in a uniform layer of such amount that after receiving ultimate compaction, a minimum thickness of one and one-half (1½) inches is achieved. Surface shall be compressed thoroughly and uniformly by hand tamping or power rolling.
- (2) *Concrete parking lots:* Remove broken and damaged pavement. Remove flexible base material in all soft spots. All new base material shall be cement stabilized shell (six (6) minimum). Placement shall be such that a bond between new base material and adjoining base material is established. Alternate base may be used if approved by the city engineer. Replace concrete to original thickness. Reconstruct or replace damaged sections of expansion or contraction joints, reinforcing steel or load transfer devices. Concrete must develop a minimum compression strength of three thousand (3,000) psi within twenty-eight (28) days. Repaired areas must be protected from traffic for a minimum of seven (7) days.

(Ord. No. 77-195, App. A)

Secs. 9-45—9-49. - Reserved.

DIVISION 2. - JUNKED OR ABANDONED VEHICLES<sup>[3]</sup>

Footnotes:

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**Editor's note**— Ord. No. 2003-572, adopted Nov. 10, 2003, amended Art. II, Div. 2, in its entirety. Former Div. 2 pertained to similar material and derived from the 1978 Code of Ordinances.

**Cross reference**— Impounding of vehicles illegally parked, § 19-30.

**State Law reference**— Abandoned Motor Vehicle Act, V.A.C.S. art. 6687—9; impounding of vehicles abandoned on streets, art. 6701d, § 94.

Sec. 9-50. - Definitions.

A "junked vehicle" as defined in Subchapter E, Sub-Section 683.071 of the Texas Transportation Code, as amended, means a vehicle that is self-propelled and:

- (1) Does not have lawfully attached to it:
  - a. An unexpired license plate; or
  - b. A valid motor vehicle inspection certificate; and
- (2) Is:
  - a. Wrecked, dismantled or partially dismantled, or discarded; or
  - b. Inoperable and has remained inoperable for more than:
    1. Seventy-two (72) consecutive hours, if the vehicle is on public property; or
    2. Thirty (30) consecutive days, if the vehicle is on private property.

An "abandoned motor vehicle" in Subchapter C, Sub-section 683.031 of the Texas Transportation Code is one that:

- (1) Is inoperable, is more than five (5) years old, and has been left unattended on public property for more than forty-eight (48) hours;
- (2) Has remained illegally on public property for more than forty-eight (48) hours;
- (3) Has remained on private property without the consent of the owner or person in charge of the property for more than forty-eight (48) hours;
- (4) Has been left unattended on the right-of-way of a designated county, state, or federal highway for more than forty-eight (48) hours.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-51. - Declared to be public nuisance.

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:

- (1) Is detrimental to the safety and welfare of the public;

- (2) Tends to reduce the value of private property;
- (3) Invites vandalism;
- (4) Creates a fire hazard;
- (5) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) Produces urban blight adverse to the maintenance and continuing development of the city; and
- (7) Is a public nuisance.

(Ord. No. 2003-572, 11-10-2003; Ord. No. 2012-699, 5-14-12)

Sec. 9-52. - Offense.

A person commits an offense if the person maintains a public nuisance described by section 9-51. An offense under this section is a Class C misdemeanor punishable by a fine not to exceed the maximum allowed by law per day that the offense remains after official notification to abate, in accordance with this chapter, has been given. The municipal court of the City of Nassau Bay shall order abatement and removal of the nuisance on conviction.

(Ord. No. 2003-572, 11-10-2003; Ord. No. O2012-699, 5-14-12)

Sec. 9-53. - Authority to abate nuisance; procedures.

The city has adopted procedures in accordance with state law for the abatement and removal from private or public property or a public right-of-way of a junked vehicle or part of a junked vehicle as a public nuisance. Those procedures:

- (1) Prohibit a vehicle from being reconstructed or made operable after removal by the city.
- (2) Authorize the owner/violator the ability to request a public hearing prior to removal of the public nuisance.
- (3) Require that notice identifying the vehicle or part of the vehicle be given to the Texas Department of Public Safety ("department") not later than the fifth (5<sup>th</sup>) day after the date of removal. Upon receipt of this notice, the department will immediately cancel the certificate of title issued for the vehicle.

The municipal court of the city is authorized to issue all orders to enforce these procedures. Procedures for abatement and removal of a public nuisance will be administered by regularly salaried, full-time employees of the city, except that any authorized person may remove the nuisance. A person authorized by the city to administer the procedures of this section may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.

Relocation of a junked vehicle or parts that are declared to be a junked vehicle to another location in the same municipality after proceedings for the abatement and/or removal have commenced have no effect on the proceedings if the junked vehicle constitutes a public nuisance at the new location.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-54. - Notice.

- (a) The procedures for the abatement and removal of a public nuisance under this subchapter shall provide not less than ten (10) days' notice of the nature of the nuisance. The notice will be personally

delivered or sent by certified mail with a five-day return requested to the last known registered owner of the nuisance;

- (b) Each lien holder of record of the nuisance; and
- (c) The owner or occupant of:
  - (1) The property on which the nuisance is located; or
  - (2) If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (d) The notice shall state that:
  - (1) The nuisance must be abated and removed not later than the tenth day after the date on which the notice was personally delivered or mailed; and
  - (2) Any request for a hearing must be made before that 10-day period expires.

If the post office address of the last known registered owner of the nuisance is unknown, notice may be placed on the nuisance or, if the owner is located, personally delivered. If notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11<sup>th</sup> day after the date of the return.

(Ord. No. 2003-572, 11-10-2003)

#### Sec. 9-55. - Public hearings and appeals.

If a hearing is requested by a person for whom notice is given by section 9-54, the hearing shall be held not earlier than the 11th day after the date of the service of the notice.

At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable. The council may hear evidence appealing the junked vehicle in question. The council shall reverse or modify the order or affirm same. Any order of the council requiring the removal of the nuisance must include a description of the vehicle and the vehicle identification number and license plate number, if available.

(Ord. No. 2003-572, 11-10-2003; Ord. No. O2012-699, 5-14-12)

#### Sec. 9-56. - Exceptions—Inapplicability.

The provisions of this section applying to junked motor vehicles and public nuisances shall not apply to a vehicle or vehicle part:

- (1) That is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property; or
- (2) That is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or
- (3) That is an antique or special interest vehicle stored by a motor vehicle collector on his property, provided that the vehicle or parts in the outdoor storage area are maintained in such a manner that they 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. Screening must comply with existing city ordinances and zoning requirements.

In this section:

- (1) "Antique vehicle" means a passenger car or truck that is at least twenty-five (25) years old.
- (2) "Motor vehicle collector" means a person who:
  - a. Owns one or more antique or special interest vehicles; and

- b. Acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

- (3) "Special interest vehicle" means a motor vehicle of any age that has not been changed from original manufacturer's specifications and, because of its historic interest, is being preserved by a hobbyist.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-57. - Junked vehicle disposal.

A junked vehicle, including a part of a junked vehicle, may be removed to a scrap yard, a motor vehicle demolisher, or another suitable site as determined by the city.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-58. - Abandoned motor vehicles: Seizure.

The police department of the city may take into custody an abandoned motor vehicle, watercraft, or outboard motor found on public or private property. The police department may use agency personnel, equipment, and facilities or other personnel, equipment, and facilities to remove, preserve, and store an abandoned motor vehicle, watercraft, or outboard motor taken into custody under this division.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-59. - Taking abandoned motor vehicles into custody—Notice.

Upon taking an abandoned motor vehicle, watercraft or outboard motor into custody, the police department shall send notice by certified mail not later than the tenth day after taking the vehicle, watercraft or outboard motor into custody to:

- (1) The last known registered owner of each motor vehicle, watercraft, or outboard motor taken into custody, and each lien holder of record.
- (2) The notice shall specify the year, make, model and identification number of the item; give the location of the facility where the item is being held; inform the owner and leinholder of the right to claim the item not later than the 20<sup>th</sup> day after the date of the notice on payment of all towing, preservation and storage charges, or garage keeper's charges.

Failure of the owner or leinholder to claim the item during that prescribed period constitutes a waiver by that person of all title, right and interest in the item and consent to the sale of the item at a public auction.

Notice by publication in one newspaper of general circulation in the area where the motor vehicle, watercraft or outboard motor was abandoned is sufficient notice under this section if:

- (1) The identity of the last known registered owner cannot be determined;
- (2) The registration has no address for the owner; or
- (3) The determination with reasonable certainty of the identity and address of all lien holders is impossible.

Notice by publication shall be in the same period that is required for notice by certified mail and contain all of the information required by that subsection and may contain a list of more than one abandoned motor vehicle, watercraft or outboard motor.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-60. - Redemption of impounded property—storage fees.

The owner or any person legally entitled to possession of any abandoned motor vehicle impounded as provided for in this section may redeem the same after payment of all towing, preservation, storage or garage keeper's charges to the impounder.

If the motor vehicle, watercraft or outboard motor is stored on or in a city impoundment lot, the police department is entitled to collect reasonable storage fees for not more than ten (10) days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed; and, beginning on the day after the day the department mails notice and ending on the day accrued charges are paid and the vehicle, watercraft, or outboard motor is removed.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-61. - Auction or use of abandoned items; waiver of rights.

If an abandoned motor vehicle, watercraft or outboard motor is not claimed in accordance with section 9-59, the owner or lien holder shall be deemed to have waived all rights and interests in the item and consents to the sale of the item by public auction. The police department may sell the item at a public auction or use the item as provided elsewhere in this chapter.

Proper notice of the auction shall be given. A garage keeper who has a garage keeper's lien shall be notified of the time and place of the auction. The purchaser of a motor vehicle, watercraft or outboard motor takes title free and clear of all liens and claims of ownership and shall receive a sales receipt from the police department and is entitled to register the motor vehicle, watercraft or outboard motor and receive a certificate of title.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-62 - Auction proceeds.

The police department is entitled to reimbursement from the proceeds of the sale of an abandoned motor vehicle, watercraft or outboard motor for:

- (1) The cost of the auction;
- (2) Towing, preservation and storage fees resulting from the taking into custody and storing in a city owned or controlled storage lot; and
- (3) The cost of notice or publication as required.

After deducting the reimbursement allowed to the police department, the proceeds of the sale shall be held for ninety (90) days for the owner or lien holder of the vehicle. After that period of time, proceeds unclaimed by the owner or lien holder shall be deposited in an account that may be used for the payment of auction, towing preservation, storage and notice and publication fees resulting from taking other vehicles, watercraft, or outboard motors into custody if the proceeds from the sale of the other items are insufficient to meet those fees.

The city may transfer funds in excess of one thousand dollars (\$1,000.00) from the account to the city's general revenue account to be used by the police department.

(Ord. No. 2003-572, 11-10-2003)

Sec. 9-63. - Police department's use of certain abandoned motor vehicles.

An abandoned motor vehicle taken into custody by the police department that is not claimed may be used for department purposes. The police department shall auction the vehicle as provided in this chapter upon discontinuance and use of the vehicle. This section does not apply to an abandoned vehicle on which there is a garage keeper's lien.

(Ord. No. 2003-572, 11-10-2003)

Secs. 9-64—9-69. - Reserved.