

CITY OF CANEY CITY
ORDINANCE NO. 2018-06
UNWHOLESOME CONDITIONS

AN ORDINANCE OF THE CITY OF CANEY CITY ESTABLISHING WHAT CONSTITUTES AN UNWHOLESOME CONDITION INCLUDING CONDITIONS THAT POSE A THREAT TO HEALTH AND SAFETY OF CITIZENS OR OTHERS AND CONDITIONS THAT CONSTITUTE A PUBLIC NUISANCE; INCLUDING DEFINITIONS, LITTERING AND DISPOSAL OF GARBAGE, JUNK, RUBBISH, AND HAZARDOUS WASTE, VEGETATION OR GRASS GREATER THAN TWELVE INCHES HIGH, MOTOR VEHICLE MAINTENANCE, ASSEMBLAGE AND THE LIKE ON PRIVATE PROPERTY, AND PARKING OF HEAVY VEHICLES AND UTILITY VEHICLES; PROVIDING OUTDOOR BURNING REQUIREMENTS; PROVIDING FOR DUTY TO ABATE, NOTICE OF VIOLATION AND DEMAND FOR COMPLIANCE; PROVIDING FOR CITATIONS, ABATEMENT BY THE CITY AND EXPENSES AND FEES CHARGED TO OWNER; PROVIDING FOR A PENALTY OF NOT LESS THAN \$200 AND NOT MORE THAN \$500 PER DAY AND/OR ENJOINMENT; PROVIDING FOR FINES AND/OR POSSIBLE IMPRISONMENT IN ACCORDANCE WITH STATE LAW FOR ILLEGAL DUMPING; REPEALING ALL PREVIOUS ORDINANCES THAT ADDRESS UNWHOLESOME CONDITIONS; PROVIDING FOR SEVERABILITY, AND SETTING AN EFFECTIVE DATE.

WHEREAS, it is the purpose and intent of the City Council in enacting this ordinance that the requirements and penalties herein established have been made for the purpose of promoting health, safety and the general welfare of the City.

NOW THEREFORE,

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

01.01 AUTHORIZATION

The Mayor of the City of Caney City, Texas, or his designee, is hereby authorized to implement the provisions of this ordinance, 2018-06, known as the Ordinance for Unwholesome Conditions for Caney City, Henderson County, Texas.

01.02 DEFINITIONS

CONSTRUCTION MATERIALS – Rocks, bricks, concrete, other similar materials and waste materials resulting from construction or remodeling. This definition includes insulation products, used and waste lumber as well as unused lumber (new or used) being stored on property for which there exists no current or valid building permit pertaining to the property.

DUMPSTERS - A type of mobile garbage bin designed to be brought and taken away by a special truck, or a bin that a specially designed garbage truck lifts, empties into its hopper, and lowers, on the spot.

ENJOIN – To direct or order someone to do something; to give a legal order preventing or requiring something.

DOMESTIC GARBAGE/WASTE – Includes wastes that normally result from the function of life within a residence including but not limited to kitchen garbage, cardboard boxes, packaging, clothing, bottles, cans, rags, paper, food, food containers, decayable waste, including animal/fish and their carcasses, and vegetable matter. Furniture, carpet, appliances, electrical wire, and construction debris are not considered to be domestic waste.

HAZARDOUS WASTE – Solid or liquid waste, in any amount, which is defined, characterized, identified or designated as hazardous by the United States Environmental Protection Agency or appropriate state agency by or pursuant to federal or state law, or waste, in any amount, which is regulated under federal or state law, including motor oil and radiator, transmission or differential fluid, gasoline, paint, paint cans, toxic or corrosive materials.

IMMINENT DANGER – A condition which is such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided within this ordinance.

JUNK – Worn out or discarded material, including, but not limited to scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals and their alloys; bones, rags, glass, paper, cloth, rubber, rope, tinfoil bottles, machinery, tools, construction materials, appliances, furniture, fixtures, utensils, boxes or crates, pipe or pipe fittings, tires, dismantled motor vehicles, dismantled boats or travel trailers or associated parts, or other manufactured goods or odds and ends that are worn out, worthless, deteriorated, obsolete, especially those that are unusable in their existing condition. This definition shall include the above objects and materials that are obscured by fencing or other materials or covered by a tarp or other similar covering.

LITTER – Any quantity of domestic garbage/waste, yard waste, construction materials, rubbish, hazardous waste or junk.

NATURAL AREA –A geographical area having a physical individuality developed through natural growth rather than design, planning, alteration or construction. Includes wooded and/or unimproved open areas which may contain native grasses and plant life.

PUBLIC NUISANCE – The use of premises or of building exteriors which is detrimental to the health, safety and general welfare of others or which causes or tends to cause a decline in the value of other property.

RUBBISH – All junk, rejected tin cans, old vessels of all sorts, abandoned pipe, waste wood, wood products, wood chips, shavings, sawdust, printed matter, paper, rags, straw, used and discarded clothing, used and discarded shoes and boots, combustible waste, pulp and other products used for packaging or wrapping, floor sweepings, glass; and items that produce or tend to produce an unhealthy, unwholesome or unsanitary condition to the general locality where the same are situated.

TRASH CANS, TRASH CARTS OR RECYCLE CARTS – A receptacle for temporarily holding waste or items for recycle; smaller in size than a dumpster and made to be transported by hand or wheeled to a place where it can be picked up for disposal.

UNWHOLESOME MATTER – All stagnant water, filth, toxic material, dead animals, materials which may constitute a fire hazard, raw sewage, and any condition liable to produce, harbor or spread disease or germs or cause noxious, foul and offensive odors, including food or by product from food of any animal nature, or any fruit, vegetable or other thing which may become tainted, diseased, fermented or decaying or otherwise unwholesome or unclean.

UNDEVELOPED PROPERTY – A section of land that has *not* been divided, through laying out on paper or mapping, into separate parcels showing the location and boundaries of individual parcels with streets and easements. Legal descriptions usually refer to portions or sections rather than block and lot numbers.

YARD WASTE – Lawn trimmings, tree trimmings, hedge trimmings, leaves, grass clippings, dead plants, weeds, dead trees, tree bark, tree limbs or other landscape debris or refuse from yards or other areas, including undeveloped property.

01.03 UNWHOLESOME CONDITIONS INCLUDING CONDITIONS THAT POSE A THREAT TO HEALTH AND SAFETY AND/OR PUBLIC NUISANCE

- A. A person responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the city limits of Caney City commits an offense by permitting or allowing: 1) unwholesome conditions, and/or 2) conditions that pose a threat to health and safety of citizens or others who frequent the city, and/or 3) conditions that constitute a public nuisance.

B. Unwholesome conditions, conditions that pose a threat to health and safety of citizens or others and/or public nuisance are violations of this ordinance and include, but are not limited to, the following:

- a. Permitting or allowing weeds, dead trees, tree limbs, filth, or rubbish of any kind to remain on any premise or in the public street or public easement
- b. Allowing stagnant or unwholesome water to accumulate
- c. Any collection of water in which mosquitoes are breeding or may breed, excluding ponds or lakes at least six (6) feet or more in depth
- d. Organic material accumulations such as manure piles in barns, stables, etc. that are breeding places of insects, flies or mosquitos or convenient harborage for rats and mice
- e. Furniture not intended for outdoor use
- f. Discarded or unused flooring material
- g. Dismantled or disassembled vehicle parts
- h. Inoperable tractors, lawn and garden equipment
- i. Discarded or unused construction materials,
- j. Abandoned automobiles
- k. Discarded furniture, stoves, refrigerators, freezers, cans or containers, bath tubs, toilets, sinks which are not in use for their original intended purpose, i.e., an old bathtub cannot be used for a storage container or a container for plants or flowers, etc.
- l. Fences which are falling down, structurally unsafe, and/or creating a health and safety hazard to the public.
- m. Structures of any type that must be covered with plastic or other makeshift materials to prevent deterioration.
- n. Any objectionable, unsanitary or unsightly matter of whatever nature which has accumulated or remains on such real property, including the improvements thereon. This includes building trusses and mobile/manufactured home chassis.
- o. Buildings, barns, sheds, or any part thereof, which are in such a dilapidated or filthy condition as to harbor vermin or endanger the life or health of persons living in the vicinity or the public generally.

- p. The following items, when allowed to accumulate or when not properly stored or disposed of:
- i. Landscape materials
 - ii. Grass clippings on a public right of way including easements
 - iii. Yard waste
 - iv. Waste paper
 - v. Scrap wood or lumber and other building materials
 - vi. Pallets
 - vii. Scrap metal of any kind
 - viii. Rags
 - ix. Tires
 - x. Plastic
 - xi. Metal
 - xii. Domestic garbage/waste
 - xiii. Litter
 - xiv. Ceramic or glass bottles
 - xv. Canisters, barrels, or cans
 - xvi. Combustible materials including propane tanks that are no longer in use
 - xvii. Hazardous waste
 - xviii. Junk
 - xix. Rubbish
 - xx. Appliances, bath tubs, toilets and sinks
 - xxi. Unwholesome matter
- q. Failure to maintain property free of accumulations of brush, construction materials, domestic garbage/waste, litter, junk, refuse, rubbish, weeds, unwholesome matter and any other objectionable, unsightly, or unsanitary matter of whatsoever nature.

C. The above stipulated violations apply to any easement area on such real property or upon any adjacent right of way for streets between the property line for such real property and where the paved surface of the street begins.

01.04 LITTERING AND DISPOSAL

- A. It shall be unlawful for any person or business to throw, discard, place, or deposit litter in any manner or amount on any public or private property within the corporate limits of the City (including the area outside the dumpster at City Hall), except in lawfully provided containers and/or as required by this ordinance.
- B. To facilitate proper disposal of litter by pedestrians and patrons, publicly patronized establishments shall provide and maintain adequate trash receptacles. This requirement applies to all commercial businesses and public institutions within the City.
- C. Residents shall provide for the proper disposal of domestic garbage/waste by utilizing the City Dumpster, County Landfill, or a commercial service to which they subscribe.
- D. Residents shall utilize the County Landfill or other commercial service for disposing of construction materials, yard waste, junk, rubbish, and unwholesome matter. These materials cannot be buried and as a general rule, cannot be burned. Refer to Section 01.09 of this ordinance for further guidance on outdoor burning.
- E. Residents shall dispose of hazardous materials in accordance with requirements of the Environmental Protection Agency and/or appropriate state agency. This pertains to motor oil, oil filters, paint, industrial waste, etc.
- F. It shall be unlawful for any person to transport any material, matter, substance or apparatus into the City for the purpose of disposal by burning, burial, decay or any other means. Such activity shall constitute illegal dumping and is subject to Texas Health & Safety Code 365.012 which prescribes fines and possible imprisonment.

- G. Dumpsters are not allowed in residentially zoned areas of the City. Temporary dumpsters used for a construction project may be considered/allowed at the time that a building permit is requested.
- H. Dumpsters used by commercial establishments are not allowed in any City or State road easements within the corporate limits of the City except for ones provided at City Hall.
- I. Trash cans, trash carts, recycle containers, and recycle carts used for temporary storage or which are provided by commercial services are allowed in all areas of the City, as long as they are not stored in front yards and/or on City/State road easements.

01.05 VEGETATION OR GRASS GREATER THAN TWELVE INCHES HIGH

- A. It shall be unlawful for an owner, or person responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the city limits by permitting or allowing weeds, grass, brush, or any vegetation to grow to a height greater than twelve (12) inches upon any such real property. Such real property shall include, but not be limited to 1) any city road easement, 2) the area outside the property to a distance of ten (10) feet from the property line, if such area is part of or adjacent to a drainage easement or creek. This provision applies to all property which is part of a platted subdivision recorded with the Henderson County Appraisal District. Currently, Caney City has three plated subdivisions: Deep Water Bay, Palm Harbor, and Bridgeview.
- B. Section 01.05 shall not apply to property considered a "natural area" or for the growing of agricultural crops, livestock, or grass if such property has not been platted for residential lots, provided that such vegetation is not greater than twelve (12) inches within fifty feet (50) from any adjacent property under different ownership, a road right-of-way or easement and provided that such vegetation on the entire area does not exceed thirty - two (32) inches.

- C. It shall not be an offense under this Section 01.05 to permit or allow weeds, grass, brush or other vegetation to grow to a height greater than twelve (12) inches if it is growing in an area of undeveloped property located more than fifty (50) feet from the center line of State Road 1214 (Barron Road) AND more than fifty (50) feet from developed property.

01.06 MOTOR VEHICLE MAINTENANCE, ASSEMBLAGE AND THE LIKE ON PUBLIC PROPERTY

- A. It shall be unlawful to repair, strip, assemble, or perform ordinary maintenance on a motor vehicle on public property, parking lots or any vacant lots within the city limits, except in those situations in which immediate action is necessary because the vehicle is disabled and the vehicle remains on public property no longer than 72 consecutive hours.

01.07 MOTOR VEHICLE MAINTENANCE, ASSEMBLAGE AND THE LIKE ON PRIVATE PROPERTY

- A. It shall be unlawful to repair, strip, assemble or store a disabled motor vehicle, or parts thereof, on any private property, unless said vehicle is totally enclosed within a structure or behind a six-foot privacy fence where the vehicle is completely screened from the view of the public and is not visible from a public roadway.
- a. In accordance with City Ordinance 2018-04, Building Permits, fences do not require a permit for construction or installation but must be originally constructed of new materials including stone, wood, metal and masonry as per the definition of Accessory Structures-Residential found in Zoning Ordinance 2016-02.
 - b. Flexible fabric, canvas, vinyl, or polyethylene sheeting cannot be used for enclosure or fencing material.

- B. In those situations where immediate action is necessary because a vehicle is disabled, it shall not be unlawful to repair, strip, or assemble the vehicle on private property, as long as the vehicle remains in a repair state for no longer than two (2) weeks.
- C. Covering or obscuring a motor vehicle or parts thereof with a tarp or other similar covering shall not constitute a legal defense or excuse to any enforcement or prosecution pursuant to this chapter.

01.08 PARKING OF HEAVY VEHICLES AND UTILITY VEHICLES

- A. It shall be unlawful for any person or any owner to park any truck-tractor, road tractor, semi-trailer, bus, truck or trailer, or commercial vehicle with a rated capacity in excess of one ton, according to the manufacturer's classification, upon any public street or highway or within any area zoned as residential according to the zoning ordinance of the city. This shall not prevent the parking or standing of the above-described vehicles for the purpose of expeditiously loading and unloading passengers, freight or merchandise.
- B. It shall be unlawful for any person or any owner to park utility trailers, boats, lawn equipment, etc. upon any residential street easement for a duration of greater than two weeks.
- C. It shall be unlawful for any person or any owner to park utility trailers, boats, lawn equipment, etc. upon any non-residential street easement for a duration of greater than 23 hours.

01.09 OUTDOOR BURNING

- A. The Outdoor Burning Rule, Title 30, Texas Administrative Code (TAC), prohibits outdoor burning anywhere in Texas but allows exceptions for specific situations in which burning is necessary or does not pose a threat to the environment.

- B. Local ordinances, governmental entities, and the Texas Commission on Environmental Quality (TCEQ) may restrict when, where, how and if individuals and organizations can conduct outdoor burning. Residents must comply with all such regulations as well as TCEQ rules.
- C. The Henderson County Commissioners Court by order may prohibit or restrict outdoor burning in general or in all or part of an unincorporated area of the county.
- D. Those portions of the regulations that pertain to homeowners and rural residents are as follows.

These apply only when a general or restricted burn ban has not been issued by the Henderson County Commissioners Court.

a. Household trash or rubbish may not be burned as Caney City allows on-premises trash collection provided by Republic Waste.

b. Trees, brush and other yard waste may be burned to maintain rights-of-way, clear land or maintain the banks of water canals where there is no practical alternative and when the materials are generated only from the property on which the burning occurs.

1. Burning may not produce adverse effects for structures such as buildings, barns or greenhouses.
2. Any yard waste that has any components listed in 01.09 D. (d) may not be burned.
3. Burning may not be conducted on city easements or rights-of-way.

c. Outdoor burning, when a county issued burn ban is not in effect, is allowed when used solely for recreational or ceremonial purposes, in the noncommercial preparation of food, or exclusively as a means to provide warmth in cold weather. This includes campfires, bonfires, and cooking fires. All such burning must be supervised and must not cause a nuisance or traffic hazard.

d. The burning of leaves, brush, grass clippings, tree branches and logs on property within fifty (50) feet of the lake shore is allowed if the wind conditions carry the smoke over the open water of the lake.

e. The following items may not be burned under any circumstance (Source: Chapter 30, Texas Administrative Code (TAC), 111.219):

1. Electrical insulation
2. Treated lumber
3. Plastics
4. Construction or demolition materials not made of wood
5. Heavy oils
6. Asphaltic materials
7. Potentially explosive materials
8. Chemical waste
9. Items that contain natural or synthetic rubber

E. A person commits an offense if the person knowingly or intentionally violates the outdoor burning prohibition or restriction. An offense is a Class C misdemeanor, which is punishable by a fine up to \$500.

F. The party responsible for the burn remains liable for damages, injuries, or other consequences that may result from burning, even when it is carried out in compliance with this ordinance.

G. More extensive and useful information/ guidelines for outdoor burning is available through the Texas Forest Service.

01.10 DUTY TO ABATE

A. When any of the items listed in Section 01.03 Through Section 01.09 of this Ordinance occurs upon any lot or parcel in the city, the same is hereby declared to constitute a violation of this ordinance.

- B. Violations of Section 01.03 and 01.05 of this ordinance constitute violations for which the prompt abatement of such shall be declared to be a public necessity. The City has the authority to proceed to cause the violation to be abated in accordance with Section 01.11 and 01.12 of this ordinance. Reference Texas Health and Safety Code, Chapter 342.
- C. Violations of Section 01.04 Littering and Disposal, Section 01.06 Motor Vehicle Maintenance, Assemblage and the Like on Public Property, Section 01.07 Motor Vehicle Maintenance, Assemblage and the Like on Private Property, Section 01.08 Parking of Heavy Vehicles and Utility Vehicles, and 01.09 Outdoor Burning are subject to fines and possible imprisonment.

01.11 NOTICE OF VIOLATION AND DEMAND FOR COMPLIANCE- (Violations of Sections 01.03 and 01.05)

- A. In the event any person responsible for or claiming or having supervision or control over real property (hereinafter "owner") governed by the ordinance fails to comply with the provisions of Sections 01.03 and 01.05 of this ordinance, the city, by and through its Chief of Police, designee or Code Enforcement Officer shall give notice of the violation /demand for compliance to such owner. Such notice shall be given in any one of the following ways:
1. Personally, to the owner in writing
 2. By letter addressed to the owner at the owner's address as recorded in the appraisal district records
 3. If the above two ways cannot be accomplished, in accordance with Health and Safety Code, Section 342.006:
 - a. by publication in the city's official newspaper;
 - 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 notice to a placard attached to a stake driven into the ground on the property to which the violation relates.

- B. If the city mails a notice to the owner in accordance with 01.11 A. and the United States Postal Service returns the notice as “refused”, “unclaimed”, “not deliverable as addressed” or an equivalent marking, the validity of the notice is not affected and the notice is considered as delivered.
- C. In a notice provided under this Section 01.11, the city may inform the owner by regular mail and a posting on the property, or by personally delivering the notice, 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 twelve (12) months 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. Reference Health and Safety Code, 342.006.
- a. If another violation occurs on or before the twelve (12) months and the city has not been informed in writing by the owner that there has been an ownership change, then the city, without notice, may correct the violation and assess its expense as provided in this ordinance.
- D. The notice of violation/demand for compliance provided by this section shall allow the property owner, at a minimum, fifteen (15) days to remedy the violation(s); ten (10) days for vegetation or grass greater than twelve inches high.
- E. The owner of the real property may file a written statement with the Chief of Police within ten (10) days after receipt of the notice regarding vegetation or grass greater than twelve (12) inches high or fifteen (15) days regarding all other violations after receipt of the Notice in Section 01.11, stating that such real estate complied with the provisions of this ordinance before the respective dates and providing definitive proof of such compliance.

F. The Chief of Police, designee or Code Enforcement Officer shall determine whether the violation has been remedied based on the proof of compliance provided.

- a. If the violation has been remedied, no further action is necessary and abatement activities will not proceed and/or no citation shall be issued.
- b. If, based on the information provided by the property owner, the violation has not been remedied, the original notice of violation/demand for compliance will stand and remedy and abatement will follow Section 01.11 and 01.12 of this ordinance.

01.12 CITATIONS, ABATEMENT BY CITY, EXPENSES AND FEES CHARGED TO OWNER (Reference Health & Safety Code, Title 5, Chapter 342)

- A. If the owner fails or refuses to remove or abate the violation(s) in the manner and within the timeframe provided in the notice given pursuant to Section 01.11, the City may abate the violation or cause the same to be done and charge the expense incurred and associated administrative fees to the owner of the real property and/or issue a citation.
 - a. If the owner fails or refuses to pay such expenses/fees charged to the owner within thirty (30) days after the first day of the month following the month in which the work was done, a lien may be obtained against the property by the City Secretary.
 - i. The City Secretary shall file a statement of the expenses /fees incurred in correcting the condition of the real property with the County Clerk of Henderson County. The lien shall attach to such real property immediately upon the filing of the statement with the County Clerk.
 - ii. The city's lien shall be a priority lien on such property, second only to tax liens.

- iii. The lien amount shall include simple interest, which shall accrue at the rate of ten (10) percent per annum until fully satisfied in accordance with Section 342.007 of the Texas Health and Safety Code (and shall be revised in accordance with any future amendments thereto). Such interest shall begin to accrue from the date of payment by the municipality or the date the lien was filed.
- iv. The city may bring a suit for foreclosure to recover the expenditure/fees and the interest due.

01.13 CITATIONS AND PENALTIES

- A. Any owner, person, firm, corporation or business entity violating this ordinance shall be subject to a misdemeanor fine of not less than \$200 and not more than \$500 and/or subject to expenses and fees associated with abatement of the violation by the City, in accordance with Section 01.12., depending on the violation. Each continuing day's violation under this ordinance shall constitute a separate offense.
- B. Fines for illegal dumping shall follow the schedule of fines and possible imprisonment as prescribed in state law.
- C. This penalty provision does not preclude the city from filing suit to enjoin the violation.
- D. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.

01.14 REPEAL

This ordinance repeals Ordinance 2009-02 REV A, and Ordinance 2009-03 and all other ordinances addressing the herein described conditions.

01.15 SEVERABILITY

If any section or part of any section or paragraph of this ordinance is declared invalid or unconstitutional for any reason, it shall not be held to invalidate or impair the validity, force or effect of any other section or sections or part of a section or paragraph of this ordinance.

01.16 EFFECTIVE DATE

This ordinance shall be effective as of the date of approval by the City Council of the City of Caney City, Texas.

PASSED AND APPROVED this 11 day of Oct., 2018.



Ronald Welch, Mayor

ATTEST:



City Secretary

/Ordinance 2018-06 Unwholesome Conditions for final Council vote 10_11_18