

ORDINANCE NO. 110998-2

AN ORDINANCE OF THE CITY OF MERKEL, TEXAS, PROHIBITING ALLOWING A NUISANCE TO EXIST, DEFINING WHAT CONSTITUTES A NUISANCE, PROVIDING A SEVERABILITY CLAUSE, PROVIDING FOR THE ABATEMENT OF A NUISANCE, AND DECLARING A PENALTY.

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

- PART 1: That the Code of Ordinances of the City of Merkel is amended by adding Chapter \_\_\_\_ as set forth in Exhibit "A," attached hereto and made a part of this Ordinance for all purposes.
- PART 2: That if any provision or any section of this Ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this Ordinance, which shall remain in full force and effect.
- PART 3: That any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a class "C" misdemeanor, and upon conviction thereof shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Said Ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper.

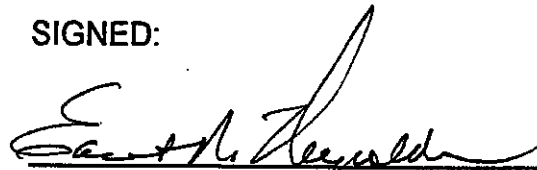
PASSED ON FIRST READING this 9<sup>th</sup> day of November, 1998.

PASSED ON SECOND READING this <sup>14<sup>th</sup></sup> <sup>DECEMBER</sup> day of November, 1998.

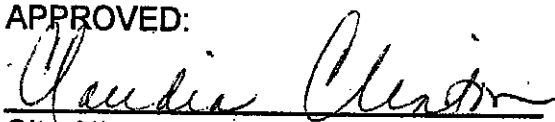
ATTEST:

SIGNED:

  
\_\_\_\_\_  
City Secretary

  
\_\_\_\_\_  
Mayor

APPROVED:

  
\_\_\_\_\_  
City Attorney

## **"EXHIBIT A"**

### **CHAPTER**

**ARTICLE I. Definitions, General Information, Sec. 1-1 to 1-25**

**ARTICLE II. Weeds/Vegetation, Sec. 1-26 to 1-49**

**ARTICLE III. Substandard Buildings, Sec. 1-50 to 1-75**

#### **ARTICLE I. IN GENERAL**

##### **Sec. 1-1. Definition.**

For the purposes of this chapter, the word "nuisance" is defined as any person doing any unlawful act, or omitting to perform a duty, or suffering or permitting any condition or thing to be or exist, which act, omission, condition or thing either:

- (a) Injures or endangers the comfort, repose, health or safety of others; or
- (b) Offends decency; or
- (c) Is offensive to the senses; or
- (d) Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any public or private street, highway, sidewalk, stream, ditch or drainage; or
- (e) In any way renders other persons insecure in life or the use of property; or
- (f) Essentially interferes with another person's comfortable enjoyment of life and property or tends to depreciate the value of the property of others.

##### **Sec. 1-2. Illustrative enumeration.**

The maintaining, using, placing, depositing, leaving or permitting to be or remain on any public or private property of any of the following items, conditions, or actions is hereby declared to be and constitute a nuisance; provided, however, this enumeration shall not be deemed or construed to be conclusive, limiting or restrictive:

- (a) Noxious weeds and other rank vegetation.
- (b) Accumulation of rubbish, trash, refuse, junk and other abandoned materials, metals, lumber or other things.

- (c) Any condition which provides harborage for rats, mice and other vermin.
- (d) Any building or other structure which is in such a dilapidated condition that it is unfit for human habitation or kept in such an unsanitary condition that it is a menace to the health of people residing in the vicinity thereof, or presents a more than ordinarily dangerous fire hazard in the vicinity where it is located.
- (e) All unnecessary or unauthorized noises and annoying vibrations, including animal noises.
- (f) All disagreeable or obnoxious odors and stenches, as well as the conditions, substances or other causes which give rise to the emission or generation of such odors and stenches.
- (g) The carcasses of animals or fowl not disposed of within a reasonable time after death.
- (h) The pollution of any public well or cistern, stream, lake, canal, or body of water by sewage, dead animals, creamery, industrial wastes or other substances.
- (i) Any building, structure or other place or location where any activity which is in violation of local, state, or federal law is conducted, performed or maintained.
- (j) Any accumulation of stagnant water permitted or maintained on any lot or piece of ground.
- (k) Dense smoke, noxious fumes, gas, soot or cinders, in unreasonable quantities.
- (l) Burning of trash, grass clippings, debris, wood, brush, etc.

### **Sec. 1-3. Prohibitions.**

It shall be unlawful for any person to cause, permit, maintain, or allow the creation or maintenance of a nuisance.

### **Sec. 1-4. Notice to abate.**

When a nuisance is found to exist within the City or within the City's extraterritorial jurisdiction, an attempt to contact the responsible party (owner/occupant) shall be made by the City and said party shall be given an opportunity to correct violations prior to further action. If the nuisance is not corrected within a reasonable amount of time, a duly designated officer of the City shall give ten (10) days written notice to the owner or occupant of the property upon which such nuisance exists or upon the person causing or

maintaining the nuisance. The City shall set the amount of time to be considered reasonable on a case by case basis.

#### **Sec. 1-5. Contents of notice.**

The notice to abate a nuisance issued under the provisions of this chapter shall contain:

- (a) An order to abate the nuisance within a stated time, which shall be reasonable under the circumstances, or to request a hearing within ten (10) days after service of notice to abate the nuisance. Request for a hearing shall be in writing and shall be addressed to the mayor.
- (b) The location of the nuisance, if the same is stationary.
- (c) A description of what constitutes the nuisance.
- (d) A statement of acts necessary to abate the nuisance.
- (e) A statement that if the nuisance is not abated as directed and no request for hearing is made within the prescribed time, the City will abate such nuisance and assess the costs thereof against such person.
- (f) A statement that failure or refusal to comply with the provisions of this notice shall constitute a misdemeanor, and conviction thereof shall be punishable by a fine not to exceed Four Hundred Dollars (\$400.00) per day, per violation, for each day the violation(s) exist. *500.00*

#### **Sec. 1-6. Hearing on nuisance.**

A public hearing must be held prior to the abatement of the nuisance by the City when such a hearing is requested by the owner or occupant of the property upon which such nuisance exists or by the person causing or maintaining the nuisance. The hearing shall be held before the City Council. The City Council shall determine at the hearing whether or not a nuisance exists. If a nuisance is found to exist, the council shall order the abatement of the nuisance. Any ruling or order by the City Council at this hearing shall become final unless appealed within ten (10) days to a district court of the state.

#### **Sec. 1-7. Service of notice.**

The notice to abate a nuisance shall be mailed, by certified mail, with a five (5) day return receipt requested, to the owner or occupant of the property upon which such nuisance exists or to the person causing or maintaining the nuisance. If the notice is returned undelivered by the United States Post Office, official action to abate such nuisance shall

be continued to a date not less than ten (10) days from the date of such return.

**Sec. 1-8. Abatement by City.**

Upon the failure of the person upon whom notice to abate a nuisance was served pursuant to the provisions of this chapter to abate the same, or to request a hearing before the City Council, a duly designated officer of the City shall proceed to abate such nuisance, or to cause such nuisance to be abated and shall prepare a statement of costs incurred in the abatement thereof.

**Sec. 1-9. City's costs declared lien.**

If the bill for the City's expenses in correcting or abating any condition coming under the provisions of this article, including the administrative and penalty charges, shall remain unpaid for a period of ninety (90) days after the date of the mailing of the bill, the City shall file a statement of each bill and the reasons therefor with the county clerk of the county in which the property is located. From the date of filing, the City shall have a lien on the parcel upon which the expenses are incurred second only to tax liens and liens for street improvements. The amount of debt shall accumulate interest at the rate of ten (10) per cent per annum from the date on which payment was due. For any such debt and interest, suit may be instituted and recovery and foreclosure had in the name of the City. In such suits the statement, or certified copy, shall be deemed prima facie evidence of the debt and interest due.

**Secs. 1-10 through 1-25. Reserved.**

**ARTICLE II. WEEDS/VEGETATION**

**Sec. 1-26. Maximum growth.**

- (a) It shall be unlawful for any person having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City to suffer or permit grass, weeds, brush, or vegetation that is uncultivated to grow to a height greater than twelve (12) inches on any such land.
- (b) With respect to tracts or parcels of land of two acres or more in size under single ownership, it shall be unlawful to permit grass, weeds and brush in excess of twelve (12) inches in height to grow uncultivated within one hundred fifty (150) feet adjacent to and along any open public street within the corporate limits of the City or within one hundred fifty (150) feet from any adjacent property under different ownership on which a business or dwelling structure is located.

**Sec. 1-27. Notice to property owners.**

- (a) When any violation of this article is found to exist, the City may, at its option, mail a notice by letter addressed to the owner of the property in question. If the address of the property owner is unknown, then notice may be given by publication one time in a local newspaper of general circulation.

**Sec. 1-28. Contents of notice.**

The notice of violation of this article shall contain the following statements:

- (a) That chapter 1, article 2, section 1-26 of the City Code of Ordinances requires that you maintain your property so as to keep grass, weeds, brush and vegetation, which is uncultivated, at a height of less than twelve (12) inches.
- (b) The location of the violation of this article.
- (c) An order to correct the violation within ten (10) days from receipt of this notice to abate, or to request a hearing, in writing, before the City Council.
- (d) A statement that if the violation is not corrected or no hearing request is received by the City Council within the prescribed time, the City will enter upon the property and mow or have it mowed at thirty (30) day intervals during such annual growing season, when the height is found to be greater than twelve (12) inches, and assess the costs incurred by the City in abating the violations, including administrative costs, against the owner and/or the property involved.
- (e) A statement that the abatement of any violation by the City shall be in addition to any punitive action taken by the City for violation of this article.
- (f) A statement that failure or refusal to comply with the provisions of this notice shall constitute a misdemeanor and conviction thereof shall be punishable by a fine not to exceed five hundred dollars (\$500.00) per day, per violation, for each day the violation(s) exist.

**Sec. 1-29. Penalty; action by City.**

- (a) If, after notification as required by this article, or after the hearing if requested, any person fails or refuses to comply with the provisions of this article within the prescribed time established in the notice or by the City Council, such failure or refusal shall constitute a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed five hundred dollars (\$500.00) per day, per violation, for each day the violations exist.
- (b) In addition to court action, the City may enter upon the property found in violation of this article and mow or have said property mowed at thirty (30) day intervals during such annual growing season, when the height is found to be greater than twelve (12) inches, in the event the owner fails to comply with the required notice

to abate.

**Sec. 1-30. Assessment of City's expenses; billing.**

Expenses incident to the action taken by the City to correct any condition coming under the provisions of this article, including a service charge established from time to time by the City Council to cover administrative costs, shall be assessed against the owners of all outstanding interests in the lot or parcel of land involved. An itemized bill of such costs shall be mailed to each such owner if such person's address is known.

**Sec. 1-31. City's expenses declared a lien; recovery.**

If the bill for the City's expenses in correcting any condition coming under the provisions of this article, including the administrative and penalty charges, shall remain unpaid for a period of ninety (90) days after the date of the mailing of such bill, the City Secretary shall file a statement of such bill and the reasons therefor with the county clerk. From the date of such filing, the City shall have a lien on the lot or parcel upon which such expenses are incurred second only to tax liens and liens for street improvements. The amount of such debt shall accumulate interest at the rate of ten (10) percent per annum from the date on which payment was due. For any such debt and interest, suit may be instituted and recovery and foreclosure had in the name of the City. In such suits the aforementioned statement, or certified copy thereof, shall be deemed prima facie evidence of the debt and interest thereon.

**Sec. 1-32. Savings clause.**

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

**Secs. 1-33 through 1-49. Reserved.**

**ARTICLE III. SUBSTANDARD BUILDINGS.**

**Sec. 1-50 Minimum Standards for Continued Use and Occupancy.**

Regardless of their date of construction, all structures within the City shall meet the following standards for continued use and occupancy:

(a) **Structural Standards.** An owner shall:

- (1) Keep the doors, windows and other openings of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry. A vacant structure or vacant portion of a structure is open if a door, window or other opening is not securely closed to prevent unauthorized entry, and the structure is left unattended.
  - (2) Repair holes, cracks and other defects so that the structure is maintained in such a condition that persons coming in or about the structures are not in danger of injury.
- (b) **Fire Prevention.** All structures shall be in a condition, and must be maintained in such a condition, as not to constitute a fire hazard and in such a condition so not to constitute an unreasonable risk of fire.
- (c) **Health Standards.** An owner shall:
- (1) Provide and maintain a structure in such a condition so as not to constitute a menace to health or safety.
- (d) **Responsibilities of Occupant.** The occupant shall:
- (1) Not alter a structure or its facilities so as to create a nonconformity with subsections (a),(b), or (c).

#### **Sec. 1-51. Inspections.**

- (a) An inspection shall be made of every building located within the City on which a complaint has been received, that is obviously in violation or that is suspected of being in violation of this article. Such inspection shall be conducted by the Fire Marshall or an official appointed by the City.
- (b) An attempt to contact the responsible party, owner, or occupant shall be made by the City and they shall be given an opportunity to correct the violation prior to further action.

#### **Sec. 1-52. Notice of Public Hearing.**

When, as a result of the inspection referred to in Section 1-51, a structure is found to be in non-compliance with one or more of the minimum standards of Section 1-50 and the structure is an urban nuisance, the following actions shall apply:

- (a) Written notification of the nature of the violation shall be made to the owner. The notice may be delivered in person to the owner or may be delivered by return receipt requested. If the identity or address of the owner cannot be determined, then such notice shall be directed to the person listed on the rolls of the City tax assessor as the person in charge of the premises and to whom tax notices are directed. The notice shall contain an identification of the structure and the property on which it is located and designate a time and place for a public hearing before the



City Council for the purpose of determining whether the structure is, in fact, dilapidated, substandard, dangerously damaged or deteriorated, unfit for human habitation, or a hazard to public health, safety and welfare to the extent that it requires repair, securing, vacating, removal or demolition.

- (b) Notice may also be given, so as to inform all persons who may have legal interest in the structure or the property on which the structure is located, of the public hearing by publication three (3) times before the fifteenth (15th) day before the date of the hearing in a newspaper of general circulation in the municipality. In addition to the contents of the written notice, described in (a) (1) of this subsection, the publicized notice shall state that unless persons having interest in the structure or the property on which the structure is located make their identity, mailing address, and interest known to the City code enforcement personnel at or before the public hearing, then such person shall not receive notice of the City Council's order concerning the structure, if any, and furthermore, shall waive any right to any additional time to comply with any council order in the event an owner fails to comply.

### **Sec. 1-53. Public Hearing.**

A public hearing shall be held by the City Council after the notice required by section 1-52. At the public hearing, it shall be the duty of the Fire Marshall or duly designated City official to present evidence to the City Council concerning the condition of the structure in question. An owner, lessor, occupant, mortgagee, lienholder, as well as any interested person, may present evidence on relevant issues. All evidence shall be given under oath. At the conclusion of the hearing, the City Council shall make its findings and may:

- (a) find that the structure is not an urban nuisance. No further action is necessary.
- (b) find that the structure is an urban nuisance, and order:
- (1) securing the structure;
  - (2) repair of the structure;
  - (3) assessment of a civil penalty against the owner for each day that the owner fails to repair, secure, remove, correct or demolish the structure; or
  - (4) any combination of orders listed above necessary to remedy the urban nuisance; or
  - (5) an action brought in district court in accordance with Section 214.003 of the Texas Local Government Code for the appointment of a receiver of the property.

Regardless of the order issued under this subsection, the City Council shall specify a reasonable time, as determined by the Council, for the owner to comply with the order. Any mortgagee or lienholder who shall make their identity known at or before the hearing, shall

be granted an additional reasonable time, not to exceed the specified time granted the owner, to comply with the order in the event the owner fails to comply.

#### **Sec. 1-54. Abatement; Other Remedies**

- (a) Demolition of a structure in accordance with Section 1-59 of this Article may be accomplished by an owner, mortgagee, or lienholder as compliance with this Article.
- (b) Closure (securing) of an open (unsecured) structure in accordance with Section 1-58 of this Article may be accomplished by an owner, mortgagee, or lienholder as compliance with this Article, or by the City;
- (c) Repair of a structure may be accomplished by an owner, mortgagee, or lienholder as compliance with this Article, or by the City but only to the extent necessary to bring the structure into compliance with minimum standards.
- (d) If, at the expiration of the time allotted to an owner to comply with an order issued under Section 1-53, the order has not been fully accomplished, then the City Officer responsible for code enforcement shall:
  - (1) furnish all identified mortgagees and lienholders with a copy of the order so that such mortgagees or lienholders may comply with the order within a reasonable time, as specified by the City Council. No other notice is required to be given to any mortgagee or lienholder.
  - (2) give notice of impending repair by the City, or the assessment of a civil penalty, to the owner, if the Code Enforcement Officer determines that the owner has not complied with an order issued under Section 1-53. If the order required the securing of a structure, an impending notice shall not be required prior to closure by the City.

#### **Sec. 1-55. Assessment of City's Expenses: Billing**

Expenses incident to the action taken by the City to correct any condition coming under the provisions of this Article, including a service charge, as established from time to time by the City Council, to cover administrative costs, shall be assessed against the owners of all outstanding interests in the lot or parcel of land on which the structure stands or stood, or to which it is or was attached. An itemized bill of such costs shall be mailed by the City Secretary to each such owner if such person's address is known.

#### **Sec. 1-56. City's Expenses Declared as Lien: Recovery.**

If the bill for the City's expenses in correcting any provisions coming under the provisions of this Article, including the administrative charges and the assessment of any civil penalty, shall remain unpaid for a period of ninety (90) days after the date of the mailing of such bill, the City Secretary shall file a statement of such bill as a notice of lien with the County Clerk. Such filing shall constitute a non-transferable lien against the real property on which the structures stands or stood, unless it is a homestead as protected by the Texas

Constitution, and the lien runs with the land. The lien is extinguished if the property owner or another person having an interest in the legal title to the property reimburses the municipality for the expenses. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the County Clerk in the county in which the property is located. The notice must contain the name and address of the owner, if reasonably determinable; a legal description of the real property; the amount of expenses incurred by the City; and the balance due. The City's lien for abatement expenses is a privileged lien subordinate only to tax liens and all previously recorded bona-fide mortgage liens attached to the property, if each mortgagee and lien holder is given notice and an opportunity to repair, remove, or demolish the structure.

**Sec. 1-57. Additional Authority Regarding Substandard Structures.**

- (a) In accordance with Sec. 214.0011 of the Texas Local Government Code, the City may secure a structure without prior notification or City Council determination if the City Code Enforcement Officer determines that the structure:
- (1) is in non-compliance with one or more of the minimum standards listed in Sec. 1-50 of this Article; and
  - (2) is unoccupied or occupied only by persons who do not have a right of possession to the building.
- (b) Before the eleventh (11th) day after the date the structure is secured, the City Code Enforcement Officer shall give notice to the owner by:
- (1) personally serving the owner with a written notice;
  - (2) depositing the notice in the United States Mail addressed to the owner at the owner's post office address;
  - (3) publishing the notice at least twice within a ten-day period in a newspaper of general circulation in the county in which the structure is located if personal service cannot be obtained and the owner's post office address is unknown;
  - (4) posting the notice on or near the front door of the building if personal service cannot be obtained and the owner's post office address is unknown.
- (c) The written notice must contain:
- (1) an identification, which is not required to be a legal description, of the building and the property on which it is located;
  - (2) a description of the violation of the municipal standards that is present at the building;
  - (3) a statement that the municipality will secure, or has secured, as the case

may be, the building; and

- (4) an explanation of the owner's entitlement to request a hearing about any matter relating to the municipality's securing of the building.
- (d) The City Council shall conduct a hearing at which the owner may testify or present witnesses or written information about any matter relating to the municipality's securing of the building if, within thirty (30) days after the date the municipality secures the building, the owner files with the City Secretary a written request for the hearing. The City Council shall conduct the hearing within twenty (20) days after the date the request is filed.
- (e) The City shall have the same authority to assess expenses under this Section, and a lien is created under this Section in the same manner that a lien is created under Section 1-56 of this Article and is subject to the same conditions as a lien created under that Section.
- (f) The following items are pursuant to Texas Local Government Code § 214.001 et. seq.:
  - (1) An action may be brought under this Act to compel the repair or demolition of a structure and, in the alternative, for a determination of the City's right to remove the structure and for recovery of the removal costs incurred by the City. The action may also include a claim for civil penalties.

In connection with the action, the City may file a notice of lis pendens in the office of the County Clerk and, if the City files a notice, any subsequent purchaser or mortgagee who acquires an interest in the property takes the property subject to the enforcement proceeding and all subsequent orders of the court.

- (2) The City may obtain, upon showing a substantial danger of injury or adverse health impact to any person or to any property of any person other than the defendant, an injunction against the owner or owner's representative with control over the premises that:
  - A. prohibits specified future conduct in violation of the ordinance; and
  - B. requires specific conduct necessary to achieve compliance with the ordinance.
- (3) The City may recover in a suit against the owner or owners representative with control over the premises a civil penalty not to exceed five hundred dollars (\$500.00) a day for a violation of an ordinance to which §214.001 et. seq. applies, on proving that:
  - A. the defendant was actually notified of the provisions of the ordinance; and

B. the defendant thereafter committed acts that were in violation of the ordinance or failed to take actions that were necessary to achieve compliance with the order.

(4) The allegations required to be pleaded in any proceeding under that section are limited to the identification of the real property involved in the violation, the relationship of the defendant to the real property or activity involved in the violation, a citation to the applicable ordinance, a description of the violation and a statement that the ordinance is one to which this Act applies.

A. The standard for proof is the same as is otherwise applicable in suits for extraordinary relief.

B. The Texas Rules of Civil Procedure apply to the action except as otherwise provided for by this Act. All means of discovery set forth and provided for in those rules are available to the parties to the action.

#### **Sec. 1-58. Closure of a Structure.**

Pursuant to Section 1-50 of this Article, all vacant structures or vacant portions of a structure shall be maintained in a securely closed condition at all times to reduce the possibility of fire, infestation, injury, or unauthorized human habitation.

A vacant structure or vacant portion of a structure shall be considered secured if all doors, windows, or other openings are securely closed in the following manner:

- (a) All entrance doors in such condition to suit their intended manufactured use, and locked in the closed position or in compliance with subsection (c) of this Section.
- (b) All windows in such condition to suit their intended manufactured use, and locked in the closed position or in compliance with subsection (c) of this Section.
- (c) As an alternative to subsections (a) and (b) above and for all other openings, the openings shall be secured.

#### **Sec. 1-59. Demolition of a Structure.**

Demolition of a structure shall not be considered complete until fully dismantled, torn down, and brought down smooth and level with the ground, including the proper removal and disposal of debris or other remnants of the act of demolition.

#### **Sec. 1-60. Savings Clause.**

If any provision, section, subsection, sentence, clause, or phrase of the Chapter, or the application of the same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Chapter or their applications to other persons or circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Chapter that no portion thereof or provision

or regulation contained therein shall become inoperative or fail by reason of unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Chapter are declared to be severable for that purpose.

**Secs. 1-61 through 1-75. Reserved.**