

## **ORDINANCE 12-07**

**AN ORDINANCE OF THE CITY OF COMMERCE, AMENDING THE CITY OF COMMERCE CODE OF ORDINANCES BY AMENDING CHAPTER 38 OF THE CODE OF ORDINANCES BY AMENDING ARTICLES I, II AND III AND BY ADDING ARTICLE V, ENTITLED ENVIRONMENTAL CODE; AND REPEALING CHAPTER 22, ARTICLE IX, SECTIONS 22-266 THROUGH 22-323; AND REPEALING ALL OTHER ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith.**

**BE IT ORDAINED BY THE CITY OF COMMERCE, TEXAS:**

### **SECTION 1. AMENDMENT.**

The Code of Ordinances of the City of Commerce, Texas are hereby amended as follows:

### **SECTION 2. REPEAL OF PROVISIONS OF CHAPTER 22.**

Chapter 22, Article IX, Sections 22-266 through 22-323 are hereby repealed.

### **SECTION 3. ADDITIONS TO CHAPTER 38.**

Chapter 38 is hereby amended by substituting the following Articles I-III and by adding Article IV as follows:

## **ARTICLE I. GENERAL**

### **Sec. 38-1. - Definitions.**

For purposes of this article, the terms set forth below shall have the following meanings, and any words not herein defined shall be construed in the context used and by ordinary interpretation and not as a word of art:

*Brush* shall mean scrub vegetation; dense undergrowth; dead, cut or broken tree or shrubbery limbs and branches, whether standing or fallen; or cut or mowed weeds or other vegetative growth characterized by woody branches or stalks.

*Carrion* shall mean the dead and putrefying flesh of any animal, fowl or fish.

*Dump* shall mean to dispose, discharge, place, deposit, throw, leave, sweep, scatter, unload, or toss.

*Filth* shall mean any matter in a putrescent state.

*Garbage* shall mean any kitchen refuse, foodstuffs or related material, including all decayable waste.

*Impure or unwholesome matter* shall mean any putrescible or nonputrescible condition, object or matter which tends to, may or could cause injury, death or disease to human beings.

*Includes and including* are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

*Junk* shall mean all worn out, worthless or discarded material, including but not limited to any of the following materials, or parts of said materials or any combination thereof: new or used iron, steel or nonferrous metallic scrap, brass or waste materials; used and/or inoperative household appliances, household electrical or plumbing fixtures, floor coverings and/or window coverings not currently in use; used lumber, brick, cement block, wire, tubing and pipe, tubs, drums, barrels, and/or roofing material not currently in use; air conditioning and heating equipment not currently in use; used vehicle components and parts not currently in use; used furniture other than that designed for outdoor use or that which would normally be considered as antique furniture; used and/or inoperative residential lawn care equipment and machinery not currently in use; used pallets, windows or doors not currently in use; new or used sheet metal, structural steel and/or chain not currently in use; used and/or inoperable vending machines, radios and/or televisions, or other electronic devices not currently in use; and any other type of used and/or inoperable machinery or equipment not currently in use.

*Matter* shall mean that of which any physical object is composed.

*Nuisance* shall mean any condition, object, material or matter that is dangerous or detrimental to human life or health; or that renders the ground, the water, the air or food a hazard or likely to cause injury to human life or health, or that is offensive to the senses, or that threatens to become detrimental to the public health; and shall include but not be limited to: any abandoned wells, shafts or basements, abandoned refrigerators, stagnant or unwholesome water, sinks, privies, filth, carrion, rubbish, junk, trash, debris or refuse, impure or unwholesome matter of any kind, any objectionable, unsightly, or unsanitary matter of whatever nature.

*Objectionable, unsightly or unsanitary matter* shall mean any matter, condition or object which is objectionable, unsightly or unsanitary to a person of ordinary sensitivities.

*Owner* shall mean any person or entity shown as the property owner on the latest property tax assessment rolls of the City, or any person having or claiming to have any legal or equitable interest in the property, or any person claiming, occupying or having supervision or control of any property, including any tenant of the property and any agent who is responsible for managing, leasing or operating the property.

*Person* shall mean any individual, firm, partnership, association, business, corporation, or any other entity recognized at law.

*Property* shall mean all land, occupied or unoccupied, and any improvements located on or within such land, including any building or other structure designed or used for residential, commercial, business, industrial, or religious purposes. The term shall also include a yard, ground, wall, driveway, fence, porch, steps or other structure appurtenant to the land.

*Putrefaction* shall mean decomposition of organic matter resulting in production of foul-smelling matter; or putrefied matter; or the condition of being putrefied.

*Putrescible* shall mean subject to putrefaction.

*Refuse* shall mean heterogeneous accumulation of worn out, used, broken, rejected or worthless materials, including but not limited to garbage, rubbish, paper or litter, and other decayable or nondecayable matter.

*Rubbish* shall mean junk, trash, debris, rubble, stone, useless fragments of building materials, and other miscellaneous, useless waste or rejected matter.

*City* shall mean the City of Commerce, Texas.

*Trash* and *debris* shall mean all manner of refuse including but not limited to: mounds of dirt; piles of leaves; grass and weed clippings; paper trash; useless fragments of building material; rubble; furniture, other than furniture designed for outside use; items of salvage, such as scrap metal and wood; old barrels; old tires; tree and brush trimmings; and other miscellaneous wastes or rejected matter.

*Vegetative growth* shall mean any grass, weeds, shrubs, trees, brush, bushes, vines, or other plant material.

*Weeds* shall mean any vegetation that because of its height is objectionable, unsightly or unsanitary, excluding: shrubs, bushes and trees, cultivated flowers, and cultivated crops.

## **ARTICLE II. NUISANCE AND OTHER OFFENSIVE CONDITIONS.**

Sec. 38-2. - Prohibited accumulations, dumping, stagnant water, trash, and other unsightly or unsanitary matter declared a nuisance.

(a) It is unlawful and declared a nuisance for an owner of property within the corporate limits of the City to permit or allow any stagnant or unwholesome water, sinks, refuse, filth, carrion, weeds, rubbish, brush, refuse, trash, debris, junk, garbage, impure or unwholesome matter of any kind, or objectionable or unsightly matter of whatever nature to accumulate or remain upon such property or within any public easement on or across such property or upon any adjacent public street or alley right-of-way between the property line of such property and where the paved surface of the street or alley begins.

(b) It shall be unlawful and declared a nuisance for any person to dump, or permit to be dumped, upon or along any drain, gutter, alley, sidewalk, street, park, right-of-way, vacant land, body of water, or any other public or private property within the City, any unwholesome water, refuse, rubbish, trash, debris, filth, carrion, weeds, brush, junk, garbage, impure or unwholesome matter of any kind, or other objectionable or unsightly matter of whatever kind.

(c) It shall be the duty of the owner of property within the City to keep the sidewalks in front of such property free and clear of all such matter described in subsections (a) and (b), and to fill up, drain, or regrade any such property which shall have stagnant water thereon, and to cleanse and disinfect any such property from refuse, rubbish, trash, filth, carrion, or objectionable, unsightly or unsanitary matter of any kind, or other impure or unwholesome matter of any kind.

Sec. 38-3. - Weeds, brush, and other objectionable matter.

(a) It shall be unlawful for an owner of property within the City to permit weeds, grass, brush, or any objectionable or unsightly matter, to accumulate or grow to a height greater than 12 inches upon such property within 150 feet of any property line of such property which abuts any street right-of-way, alley, utility easement, subdivided property, developed property, or any buildings or other structures. It shall be the duty of such owner to keep the area from the property line of the owner's property to the curblane next adjacent to it, if there is a curblane, and, if not, then to the centerline of any adjacent unpaved street, or to the edge of the pavement of such street, cleared of any of the matter referred to above, and it shall be unlawful for an owner to fail to do so. All vegetative growth (including hay, unless the hay is cultivated on property which has been granted an agricultural property tax exemption on the most recent tax roll as certified by the Hunt County appraisal district), except regularly cultivated row crops, which exceed 12 inches in height, shall be presumed to be objectionable and unsightly matter; provided further that regularly cultivated row crops shall not be allowed to grow within the right-of-way of any public street, right-of-way, or easement, nor shall they be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein, and it shall be unlawful to allow the same.

(b) With respect to property five or more contiguous acres in size, the provisions of this section shall not apply to any part of such property which is greater than 150 feet from any open public street, thoroughfare, or right-of-way, as measured from the right-of-way line of said street, thoroughfare, or right-of-way, and which is greater than 150 feet from any adjacent property under different ownership and on which any building is located or on which any improvement exists, as measured from the property line.

#### Sec. 38-4. - Inspections.

(a) For the purpose of ascertaining whether violations of this article exist, the chief building official of the City, or the building official's designee, or the fire marshal of the City, or the fire marshal's designee, is authorized to enter property at a reasonable time to inspect, investigate, or abate a nuisance or other violation of this article or to enforce this article, in accordance with law. In connection therewith, the chief building official or the fire marshal, as the case may be, must exhibit proper identification to the owner of the property or other appropriate person.

(b) If an inspection or investigation of property is sought from an owner of property but is refused, the building official or the fire marshal, or their respective designees, as the case may be, shall have every recourse provided by law, including an injunction to secure entry. If the owner of property cannot be identified or located, the chief building official or the fire marshal, or their designee, may enter the property to the extent allowed by law. The fire marshal is hereby designated as a code enforcement official of the City to be issued a search warrant as authorized by Vernon's Ann. C.C.P. art. 18.05, as the same may be amended or superseded.

#### Sec. 38-5. - Duty of owner to cut and remove weeds, brush, and unsightly matter.

It shall be the duty of an owner of property to drain and/or fill any such property or portion thereof which is unwholesome, contains stagnant water, or in any other condition that may produce disease. It shall be the duty of an owner of property to cut and remove all weeds, brush,

vegetative growth, and other objectionable or unsightly matter as often as may be necessary to comply with section 38-3, and to use every precaution to prevent the same from occurring, growing, or accumulating on such property.

Sec. 38-6. - Notice of violation and to abate; failure to comply; correction by City .

(a) If property within the City is in violation of this article, the City's chief building official or fire marshal, or their duly appointed designee or representative, may give notice to an owner of property that such property is in violation of this article and the nature of the violation.

(b) If the owner of property for which such notice has been given does not comply with the terms of this article and the demand for compliance as set forth in the notice within seven days of the notice of a violation, the City may:

(1) Do or cause to be done the work or make or cause to be made the improvements required to obtain compliance with this article; and

(2) Pay for the work done or improvements made and charge the expenses to the owner of the property. The City shall be entitled to reimbursement of all such expenses. All such expenses incurred in doing or in having such work done shall be a charge to, and a personal liability of, such owner.

(c) The notice must be given:

(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 of the appraisal district in which the property is located; or

(3) If personal service cannot be obtained by:

A. Publication at least once;

B. Posting the notice on or near the front door of each building on the property to which the violation relates; or

C. Posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(d) If notice is mailed to the owner of property in accordance with subsection (b) of this section, and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(e) In a notice provided under this section, the City may inform the owner of property 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 the first anniversary of the date of the notice, the City, without further notice may correct the violation at the owner's expense and assess the expense against the property. If the violation covered by a notice under this subsection occurs within the one-year period, and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by subsections (b)(1) and (b)(2) of this section and assess its expenses as provided by section 38-8.

Sec. 38-7. - Additional authority to abate nuisance.

- (a) The City may abate, without notice, weeds that:
  - (1) Have grown higher than 48 inches; and
  - (2) Are an immediate danger to the health, life, or safety of any person.
- (b) Not later than the tenth day after the date the City abates weeds under this section, the City shall give notice to the property owner in the manner required by section 38-6. The notice shall contain:
  - (1) An identification, which is not required to be a legal description, of the property;
  - (2) A description of the violations of this article that occurred on the property;
  - (3) A statement that the City abated the weeds; and
  - (4) An explanation of the property owner's right to request an administrative hearing about the City's abatement of the weeds.
- (c) The City shall conduct an administrative hearing before the City zoning board of adjustment on the abatement of weeds under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the City a written request for a hearing.
- (d) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the weeds.
- (e) The City may assess expenses and create liens under this section as it assesses expenses and creates liens under section 38-8. A lien created under this section is subject to the same conditions as a lien created under section 38-8
- (f) The authority granted the City by this section is in addition to the authority granted by section 38-6.

Sec. 38-8. - Assessment of expenses; lien.

- (a) Any and all expenses incurred by the City under or pursuant to section 38-6 may be assessed against the property on which the work is done or improvements made.
- (b) In order to obtain a lien against the property, the City's mayor, municipal health officer, or municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the City is located. The lien statement shall be filed in the real property records of the said county. The lien statement must state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.
- (c) The lien obtained by the City is security for the expenditures made and interest accruing at the rate of ten percent on the amount due from the date of payment by the City.
- (d) The lien is inferior only to:
  - (1) Tax liens; and

(2) Liens for street improvements.

(e) The City attorney may bring a suit for foreclosure in the name of the City to recover the expenditures and interest due.

(f) The City attorney may foreclose a lien on property under this section in a proceeding relating to the property brought under V.T.C.A., Tax Code ch. 33, subch. E as amended or superseded.

(g) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the City in doing or causing to be done the work or making or causing to be made the improvements.

(h) The remedy provided by this section is in addition to any fines or civil penalties that may be assessed.

Sec. 38-9. - Enforcement.

The provisions of this article shall be enforced by the chief building official, or the building official's duly appointed representative, and/or by the fire marshal or the fire marshal's duly appointed representative, and it shall be unlawful for any person to interfere with or hinder any such person in the exercise of that person's duties under this article.

Sec. 38-10. - Violation; penalty for failure to comply.

(a) It shall be unlawful for any person to violate any provision of this article, and after any period of notice which may be required hereunder, any such violation shall be punishable, upon conviction, by a fine in an amount not to exceed \$2,000.00. A separate offense shall be deemed committed upon each day during or on which a violation or failure to comply occurs or continues to occur. This section shall be in addition to and cumulative of the provisions for abatement of a nuisance by the City and charging the cost of same against the owner of the property.

(b) Notwithstanding the foregoing, any violation of any provision of this article which constitutes an immediate danger or threat to the health, safety and welfare of the public may be enjoined in a suit brought by the City for such purpose.

(c) Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this article.

Sec. 38-11 – 38-19 reserved for future expansion.

**ARTICLE III. JUNKED, WRECKED AND ABANDONED MOTOR VEHICLES.**

Sec. 38.20. - Definitions.

The following terms used in this article shall be defined as follows:

*Abandoned motor vehicle:* A motor vehicle that:

- (a) Is inoperable, is more than five years old, and has been left unattended on public property for more than 48 hours; or
- (b) Has remained illegally on public property for more than 48 hours; or
- (c) Has remained on private property without the consent of the owner or person in charge of the property for more than 48 hours; or
- (d) Has been left unattended on the right-of-way of a designated county, state, or federal highway for more than 48 hours; or
- (e) Has been left unattended for more than 24 hours on the right-of-way of a turnpike project constructed and maintained by the Texas Turnpike Authority division of the Texas Department of Transportation or a controlled access highway; or
- (f) Is considered an abandoned motor vehicle under V.T.C.A., Transportation Code § 644.383(r).

*Antique vehicle*:: A passenger car or truck that is at least 25 years old.

*Junked vehicle*: A vehicle that is self-propelled and:

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

*Motor vehicle*: A vehicle that is subject to registration under V.T.C.A. Transportation Code, ch. 501, as amended or superseded.

*Motor vehicle collector*: 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.

*Outboard motor*: An outboard motor subject to registration under V.T.C.A., Parks and Wildlife Code, ch. 31, as amended or superseded.

*Special interest vehicle*: 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.

*Watercraft*: A vessel subject to registration under V.T.C.A., Parks and Wildlife Code ch. 31, as amended or superseded.

Sec 38-21. - 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:

- (a) Is detrimental to the safety and welfare of the public;
- (b) Tends to reduce the value of private property;
- (c) Invites vandalism;
- (d) Creates a fire hazard;
- (e) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (f) Produces urban blight adverse to the maintenance and continuing development of the City ; and
- (g) Is a public nuisance.

Sec. 38-22. - Offense.

- (a) A person commits an offense if the person maintains a public nuisance described by section 38-21 of this article.
- (b) An offense under this division is a misdemeanor punishable by a fine not to exceed \$200.00.

Sec. 38-23. - Procedure for disposition of junked vehicle.

(a) The procedure for the abatement and removal of a junked vehicle or part thereof as a public nuisance from private property, public property, or public right-of-way shall be as follows:

(1) *Notice.* After a determination is made by the code enforcement officer of the City or the officer's designee, or other appropriate City employee (each such person being a regularly salaried, full time employee of the City ) that a particular vehicle is a junked vehicle, or after an order is issued by the municipal court pursuant to section 38-42 of this article, there shall be provided not less than ten days notice of the nature of the nuisance.

A. Such notice must be personally delivered or sent by certified mail with a five-day return requested to:

- 1. The last known registered owner of the nuisance;
- 2. Each lienholder of record of the nuisance; and
- 3. The owner or occupant of:
  - i. the property on which the nuisance is located; or
  - ii. if the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.

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 the notice is returned undelivered, action to abate the nuisance shall be continued to a date not earlier than the 11th day after the date of the return.

(b) The notice must 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;

(2) Any request for a hearing must be made before that ten-day period expires;

(3) If the vehicle is not removed and abated within the said ten-day period, a public hearing will be held on the abatement and removal (which hearing, if requested by a person for whom notice is required under subsection (1)a.3. shall not be earlier than the 11th day after the date of the service of the notice); and

(4) The date, time and place of the hearing (if known at the time the notice is sent).

(c) *Hearing.*

(1) If the junked vehicle is not removed and abated within the prescribed time period, the municipal court judge of the City shall hold a public hearing on the abatement and removal of the junked vehicle. At the hearing, the municipal court judge shall hear and consider all relevant evidence, objections or protests and shall receive testimony from owners, witnesses, city personnel and interested persons relative to such alleged public nuisance. The hearing may be continued from time to time.

(2) At the hearing, the junked motor vehicle is presumed, unless demonstrated otherwise by the owner, to be inoperable.

(3) Following the hearing, the municipal court judge shall consider all evidence and determine whether the vehicle or any part thereof, constitutes a public nuisance as alleged. If the municipal court judge finds that a public nuisance does exist and that there is sufficient cause to abate the nuisance, and that the notice requirements provided in this article have been met, the municipal court judge shall make a written order setting forth the judge's findings and ordering that the nuisance be abated.

(4) If the information is available at the location of the nuisance, the order requiring removal of the nuisance must include the vehicle's:

A. Description;

B. Vehicle identification number; and

C. License plate number.

In addition, the order must state that the vehicle will be disposed of in accordance with the Texas Transportation Code.

D. The relocation of a junked vehicle that is a public nuisance to another location within the corporate limits of the City after a proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.

(d) *Abatement of nuisance.*

(1) In the event the municipal court judge orders abatement of the nuisance, the City or any duly authorized person may abate such public nuisance by removal and disposal of the junked vehicle.

(2) Not later than the fifth day after the date of the removal, notice identifying the vehicle or part of the vehicle must be given to the Texas Department of Transportation.

Sec. 38-24. - Junked vehicles not to be reconstructed or made operable after removal.

After any junked vehicle has been removed under the authority of this article, it shall not be reconstructed or made operable again.

Sec. 38-25. - Disposal of junked vehicles.

Any junked vehicle taken into custody by the City or any duly authorized person pursuant to this article shall be disposed of in accordance with applicable provisions of V.T.C.A., Transportation Code ch. 683, as amended or superseded.

Sec. 38-26. - Application.

The provisions of this division of this article shall not apply to a vehicle or vehicle part that is:

(a) Completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or

(b) Stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or junkyard, or that is an antique or special interest vehicle stored by a motor vehicle collector on the collector's property, if the vehicle or part and the outdoor storage area, if any, are:

(1) Maintained in an orderly manner;

(2) Not a health hazard; and

(3) Screened from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery. For purposes hereof, a car cover is not an appropriate means to screen a vehicle or vehicle part.

Sec. 38-27. - Enforcement.

(a) Any regularly salaried, full-time City employee is authorized to enforce this article. Such employee may issue a warning or a citation before issuing a notice.

(b) Upon conviction on a citation issued under this article, the municipal court judge shall order that the vehicle be abated and removed within a prescribed period of time, subject to the terms and provisions of this article.

(c) The enforcement remedies authorized under this article shall not be deemed exclusive, and the City reserves the right to seek any enforcement remedy available at law, in equity, or otherwise. The failure of the City to seek enforcement of this article by any means provided for hereunder shall not foreclose the enforcement of this article by any other means.

Sec. 38-28-38-39 reserved for future expansion.

Sec. 38-40. - Taking into custody.

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 its own personnel, equipment, and facilities or, when specifically authorized by the City council, contract for other personnel, equipment, and facilities, to remove, preserve, store, send notice regarding, and dispose of an abandoned motor vehicle, watercraft or outboard motor it takes into custody.

Sec. 38-41. - Notice.

The police department shall send notice of abandonment of a vehicle, watercraft, or outboard motor taken into custody to:

(a) The last known registered owner of each motor vehicle, watercraft, or outboard motor (i) taken into custody by the police department, or (ii) for which a garagekeeper's report is received pursuant to V.T.C.A., Transportation Code § 683.031, as amended or superseded; and

(b) Each lienholder recorded under V.T.C.A., Transportation Code, ch. 501 (as amended or superseded) for the motor vehicle or under V.T.C.A., Parks and Wildlife Code ch. 31, (as amended or superseded), for the watercraft or outboard motor.

Sec. 38-42. - Contents of notice.

The notice under section 38-41 of this division must:

(a) Be sent by certified mail not later than the tenth day after the date the police department:

(1) Takes the abandoned motor vehicle, watercraft, or outboard motor into custody;  
or

(2) Receives the garagekeeper's report under V.T.C.A., Transportation Code § 683.031;

(b) Specify the year, make, model, and identification number of the abandoned motor vehicle, watercraft, or outboard motor;

- (c) Give the location of the facility where the abandoned motor vehicle, watercraft, or outboard motor is being held;
- (d) Inform the owner and lienholder of the right to claim the abandoned motor vehicle, watercraft, or outboard motor not later than the 20th day after the date of the notice on payment of:

- (1) Towing, preservation, and storage charges; or

- (2) Garagekeeper's charges and fees under V.T.C.A., Transportation Code, § 683.032, and if the vehicle is a commercial motor vehicle impounded under V.T.C.A., Transportation Code § 644.383(a) (as amended or superseded), the delinquent administrative penalties and costs; and

- (e) State that failure of the owner or lienholder to claim the abandoned motor vehicle, watercraft, or outboard motor during the period specified by subsection (4)b. is:

- (1) A waiver by that person of all right, title, and interest in the item; and
  - (2) Consent to the sale of the item at a public auction.

#### Sec. 14-42. - Notice by publication.

Notice by publication in one newspaper of general circulation in the City is sufficient notice under this division if:

- (a) The identity of the last registered owner cannot be determined;
- (b) The registration has no address for the owner; or
- (c) The determination with reasonable certainty of the identity and address of all lienholders is impossible.

Notice by publication (i) must be published in the same period that is required by section 46-91 of this division for notice by certified mail and contain all of the information required by that section, and (ii) may contain a list of more than one abandoned motor vehicle, watercraft, or outboard motor.

#### Sec. 38-44. - Storage fees.

- (a) The police department or the agent of the police department that takes into custody an abandoned motor vehicle, watercraft, or outboard motor is entitled to reasonable storage fees:

- (1) For not more than ten days, beginning on the day the item is taken into custody and ending on the day the required notice is mailed; and
  - (2) Beginning on the day after the day the police department mails notice and ending on the day accrued charges are paid and the vehicle, watercraft, or outboard motor is removed.

#### Sec. 38-45. - Auction or use of abandoned items; waiver of rights.

(a) If an abandoned motor vehicle, watercraft, or outboard motor is not claimed under sections 38-41 and 38-42 of this division:

(1) The owner or lienholder:

A. Waives all rights and interests in the item; and

B. Consents to the sale of the item by public auction or the transfer of the item, if a watercraft, as provided in V.T.C.A., Transportation Code, § 683.014(d), (as amended or superseded); and

(2) The police department may sell the item at a public auction, transfer the item, if a watercraft, as provided in V.T.C.A., Transportation Code § 683.014(d), (as amended or superseded), or use the item as provided by section 38-47 of this division.

(b) Proper notice of the auction shall be given. A garagekeeper who has a garagekeeper's lien shall be notified of the time and place of the auction.

(c) The purchase of an abandoned motor vehicle, watercraft, or outboard motor:

(1) Takes title free and clear of all liens and claims of ownership;

(2) Shall receive a sales receipt from the police department; and

(3) Is entitled to register the motor vehicle, watercraft, or outboard motor and receive a certificate of title.

#### Sec. 38-46. - Auction proceeds.

(a) The police department is entitled to reimbursement from the proceeds of 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

(3) The cost of notice or publication as required by sections 38-41, 38-42 and 38-43 of this division.

(b) After deducting the reimbursement allowed under subsection (a) of this section, the proceeds of the sale shall be held for 90 days for the owner or lienholder of the item.

(c) After the 90-day period provided in subsection (b) of this section, proceeds unclaimed by the owner or lienholder 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.

(d) The city may transfer funds in excess of \$1,000.00 from the account described in subsection (c) of this section to the City's general revenue account to be used by the police department.

#### Sec. 38-47. - Police department use of certain abandoned motor vehicle.

- (a) The police department may use an abandoned motor vehicle, watercraft, or outboard motor for department purposes if the item is not claimed as provided for in this article.
- (b) If the police department discontinues the use of an abandoned motor vehicle, watercraft, or outboard motor, the department shall auction the item.
- (c) This section does not apply to a vehicle on which there is a garagekeeper's lien.

Sec. 38-48. - Disposal of vehicle abandoned in storage facility.

- (a) The police department shall take into custody an abandoned vehicle left in a storage facility (as described in V.T.C.A., Transportation Code § 683.031, as amended or superseded) that has not been claimed in the period provided by notice required under sections 38-41 and 38-42 of this division.
- (b) The police department may use such a vehicle as authorized by section 38-47 of this division or sell the vehicle at auction as provided by section 38-45 of this division. If the vehicle is sold, the proceeds of the sale shall first be applied to a garagekeeper's charges for providing notice regarding the vehicle and for service, towing, impoundment, storage, and repair of the vehicle.
- (c) As compensation for expenses incurred in taking the vehicle into custody and selling it, the police department shall retain:
  - (1) Two percent of the gross proceeds of the sale of the vehicle; or
  - (2) All the proceeds if the gross proceeds of the sale are less than \$10.00.
- (d) Surplus proceeds from the sale shall be distributed as provided by section 38-46 of this division.
- (e) If the police department does not take the vehicle into custody before the 31st day after the date the vehicle was reported abandoned under V.T.C.A., Transportation Code § 683.031, (as amended or superseded), the police department may not take the vehicle into custody, and the storage facility may dispose of the vehicle as set forth in V.T.C.A., Transportation Code § 683.034(e), (as amended or superseded).

Sec. 38-49. - Demolition of abandoned motor vehicles.

The procedures for handling the demolition of an abandoned motor vehicle shall be in accordance with V.T.C.A., Transportation Code, ch. 683, subch. D, as amended or superseded.

38-50-38-85 reserved for future expansion.

*(Article IV. Entitled "Noise" not amended by this ordinance.)*

## **ARTICLE V. SUBSTANDARD AND DANGEROUS BUILDINGS.**

### **Sec. 38-101. - Attributes of dangerous buildings.**

(a) Any building or structure which has any or all of the conditions or defects described in this section shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property, welfare, or safety of the public or its occupants are endangered or adversely affected:

(1) Whenever any door, aisle, passage, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

(2) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(3) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than 1½ times the working stress allowed in the building code for new building of similar structure, purpose or location.

(4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the building code for new building of similar structure, purpose or location.

(5) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(6) Whenever any portion of a building or any member, appurtenance ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in the building code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the building code for such buildings.

(7) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

(8) Whenever the building or structure, or any portion thereof, because of:

- A. Dilapidation, deterioration or decay;
- B. Faulty construction;
- C. The removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building;
- D. The deterioration, decay or inadequacy of its foundation; or
- E. Any other cause, is likely to partially or completely collapse.

(9) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(10) Whenever, the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(11) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or coverings.

(12) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become:

- A. An attractive nuisance to children;
- B. A harbor for vagrants, vermin, criminals or immoral persons; or
- C. As to enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

(13) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the building code or of any law or ordinance of state or jurisdiction relating to the condition, location or structure of buildings.

(14) Whenever, any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 66 percent of the strength; fire-resisting qualities or characteristics, or weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

(38) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

(16) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined to be a fire hazard.

(17) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence.

(18) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

(19) The term "building code" as used in this section, refers to the building code as adopted by the City .

Sec. 38-102. - Dangerous buildings as public nuisance.

All dangerous buildings and structures within the terms of section 38-101 are hereby declared to be public nuisances and shall be repaired, vacated or demolished as provided in this article.

Sec. 38-103. - Minimum standards for continued use or occupancy of buildings.

The minimum standards for the continued use and occupancy of all buildings or structures, regardless of the date of their construction, are that buildings or structures shall not be in a condition or have a defect which constitutes a dangerous building or structure as defined in section 38-101. The following standards shall be followed by the building official and the City council in ordering repair, vacation or demolition.

- (1) If the dangerous building or structure can reasonably be repaired so that it will no longer exists as a dangerous building or structure, it shall be ordered repaired.
- (2) If the dangerous building or structure is in such a condition as to make it dangerous to the health, safety, morals or general welfare of its occupants, it shall be ordered to be vacated.
- (3) In any case where a dangerous building or structure is 50 percent or more damaged, decayed or deteriorated from its original value or structure, it shall be demolished and in all cases where a building or structure cannot be repaired so that it will no longer exist in violation of the terms of this section, is shall be demolished. In all cases where a dangerous building or structure is a fire hazard existing or erected in violation of the terms of this section or any ordinances of the City or statues of the state, is shall be demolished. Included in the terms "demolished" in this section is the cleaning of the property and removing all debris and trash, and sealing sewer service (belowground) to prevent infiltration into the City sanitary sewer system.

Sec. 38-103. - Duties of building official.

- (a) It shall be the duty of the building official or his designee to:

- (1) *Inspections.* Inspect or cause to be inspected, when deemed necessary, public buildings, schools, halls, churches, theatres, hotels, dwellings, tenements or apartments, other multifamily residences and commercial manufacturing building for the purpose of determining whether any condition exist which render such a place a dangerous building or structure within the terms of section 38-101
- (2) *Investigations of complaints.* Inspect any building, wall or structure about which complaints are filed by any person to the effect that the building, wall, or structure is or may be a dangerous building or structure as defined in this article.
- (3) *Procedure for inspection.* Upon probable cause to suspect that any building or premises are in violation of this article, and if such building or premises are opened and clearly unoccupied, the building official may enter such building or premises for the purpose of

inspecting the building or premises without prior notice to any person; or if such building or premises are closed, or if a reasonable prudent person would have reason to believe that such premises are occupied, the building official shall have recourse to every procedure, right or remedy provided by law to secure entry for the purpose of inspecting the building or premises.

(4) *Commencement of proceedings.* When the building official has inspected or caused to be inspected any building or structure, and has found and determined that such building is a dangerous building or structure, the building official shall commence proceedings to cause repair, vacation or demolition of the building or structure. The building official may commence criminal proceeding or civil proceedings, or both, as determined by the conditions existing on such premises.

(5) *Written notice to owner.* Notify in writing, by certified mail, the owner of the building or structure, as determined by using the records in the office of the county clerk in the county in which the building or structure is located, that the building is a dangerous building or structure as defined in this section. The notice to the owner shall further state their reason that the building does not meet the minimum standards for continued use and occupancy of a building and that unless the building is put in a condition so that the building is not a dangerous building or structure within a reasonable time not exceeding 60 days (as specified by the building official), then a hearing will be scheduled before the building commission to determine whether the building complies with the minimum standards set forth in this section. The building official, in his sole discretion, may elect not to send this notice to remedy and may instead proceed directly with notice of hearing as set forth in section 38-107.

(6) *Appearance at hearings.* Appear at all hearings conducted by the City council and testify as to the conditions of the dangerous building or structure.

(7) *Placement of notice on dangerous buildings; contents of notice.* Place a notice on all dangerous building or structures, upon a determination by the City council, reading as follows:

"THIS BUILDING HAS BEEN FOUND TO BE A DANGEROUS BUILDING BY THE CITY COUNCIL OF THE CITY OF COMMERCE, TEXAS. THIS NOTICE IS TO REMAIN ON THIS BUILDING UNTIL IT IS REPAIRED, VACATED OR DEMOLISHED IN ACCORDANCE WITH THE NOTICE WHICH HAS BEEN GIVEN THE OWNER. IT IS UNLAWFUL TO REMOVE THIS NOTICE UNTIL SUCH NOTICE IS COMPLIED WITH."

#### Sec. 38-105. - Criminal enforcement.

(a) The building official is hereby authorized to commence criminal proceedings whenever he finds that there has been a violation of any subsection of this section.

(b) It shall be unlawful for any owner, occupant or person in control to maintain a dangerous building or structure as defined in section 38-101. All buildings or structures which are determined to be dangerous buildings or structures are declared to be public nuisances. For purposes hereof, the term "maintain" shall mean keep, preserve, use, maintain status quo or permit to exist.

(c) After the notice described in section 38-104 is posed, it shall be unlawful for any person to use, enter, remain in or occupy such building or structure, or for the owner of such building to normally permit any person to use, enter, remain in or occupy such building. It shall be a defense

to any prosecution occurring under this subsection that entry was made for the sole purpose of repairing, demolishing or removing such building or structure.

(d) It shall be unlawful for any person to remove or deface the notice posted pursuant to section 38-104 until the required repairs, demolition or removal have been completed and a certificate of occupancy has been issued pursuant to the provisions of the building code.

(e) It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure without first obtaining the appropriate permits for each building or structure according to the applicable conditions prescribed in the building code.

#### Sec. 38-106. - Civil enforcement.

(a) *Assessment lien or civil penalty.* If the dangerous building or structure is not vacated, secured, repaired, removed or demolished within the allotted time, the City may:

(1) Without further action by the City council, vacate, secure, remove or demolish the building at its own expense, by City personnel or its contractor. Any costs incurred by the City in securing, removing or demolishing the building or structures may be charged to the owner. The City may assess the expenses on, and the City shall have a lien against, the property on which the building was located, unless the property is a homestead as protected by the state Constitution. The lien arises and attaches to the property by the state Constitution. 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 which the property is located. The notice of lien must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the building is located, the amount of expenses incurred by the municipality and the balance then due; or

(2) Acting by and through the City council, assess a civil penalty under the applicable state law not exceeding \$2,000.00 per day for failure to repair, remove or demolish the building or structure. Notice of the hearing in which the civil penalty will be considered shall be given to the owner by personally serving the owner with written notice; or by sending the notice in the United States mail by certified mail, return receipt requested, addressed to the owner at the owner's post office address at least ten days prior to the administrative hearing. Before holding a hearing to consider a civil penalty, the board shall have evidence that the property owner was actually notified of the requirements of the order and his need to comply with such requirements. Any civil penalty assessed shall be imposed as a lien against the land on which the building stands or stood, unless it is a homestead as protected by the state Constitution, to secure the payment of such civil penalty.

Promptly after the imposition of the lien, the City shall file for record, in recordable form in office of the county clerk of the county in which the land is situated, a written notice of the imposition of the lien. The notice must contain a legal description of the land. In addition to the filing of the lien, the City may seek a judgment against the owner for the civil penalty in accordance with applicable state law.

(b) *Additional remedies.* In addition to any remedy set forth in this section, the City may exercise any and all of its rights to abate any nuisance as defined in this section and seek appropriate relief as authorized by applicable state law.

Sec. 38-107. - Notice of hearing to owner, lienholder or mortgagee.

(a) Upon notification from the building official that he, or his designee, has determined that a building or structure is a dangerous building or structure as defined in this article, and does not meet the minimum standards for continued use and occupancy, the City council shall cause a notice of hearing to be issued to the owner, lienholder and mortgagee of the alleged dangerous building or structure. The notice of hearing must be sent by certified mail at least ten days prior to the hearing and must include 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 so that the building or structure will not constitute a dangerous building or structure and the time it will take to reasonably perform the work. The building official or his designee shall make diligent effort to discover each mortgagee and lienholder for purposes of giving them notice and an opportunity to comment at the hearing. The records in the office of the county clerk in the county in which the building or structure is located shall be used to determine, if possible, the identity and address of any owner, lienholder or mortgagee of the building or structure. The City may file notice of the hearing in the official public records of real property in the county in which the property is located. The notice shall contain the name and address of the owner of the affected property if that information can be determined from a reasonable search of the instruments on file in the office of the county clerk, a legal description of the affected property and a description of the hearing. The filing of the notice is binding on subsequent grantees, lienholder or other transferees of an interest in the property who acquire such interest after the filing of the notice and constitutes notice of the hearing on any subsequent recipient of any interest in the property who acquired such interest after the filing of the notice.

Sec. 38-108. - Hearing.

(a) On the date set forth in the notice, the City Council shall hold a hearing to determine whether the building is a dangerous building or structure as defined in section 38-101. If the City council determines that the building or structure is a dangerous building or structure, the City council may order that the building be vacated, secured, repaired, removed or demolished by the owner within a reasonable time as provided for by V.T.C.A., Local Government Code ch. 214. In addition, if there is a mortgagee or lienholder, the City council may provide in the order an additional reasonable time as provided by this section for the ordered action to be taken by any mortgagee or lienholder in the event the owner fails to comply with the order within the time provided for action by the owner. No notice to any mortgagee or lienholder shall be required other than a copy of the order in the event the owner fails to timely take the ordered action. The owner of the building or the lienholder or mortgagee may present proof at the hearing of the scope of any work that may be required so that the building or structure will not be dangerous building or structure and the time it will take to reasonably perform the work.

**Sec. 38-109. - Findings of fact.**

(a) The City Council shall make written findings of facts from the testimony offered, as to whether or not the building in question is a dangerous building within the terms of section 38-101.

**Sec. 38-110. - Copy of order to owner.**

(a) After the hearing, a copy of the order issued by the City council, if any, shall be promptly mailed by certified mail, return receipt requested, to the owner of the building.

**Sec. 38-111. - Filing and publishing order.**

(a) Within ten 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 in a newspaper of general circulation in the City a notice containing the street address of legal description of the property, the date of the hearing, a brief statement indicating the results of the order and instruction stating where a complete copy of the order may be obtained.

**Sec. 38-112. - Copy of order to mortgagee and lienholder.**

After the hearing, if the owner does not take the ordered action within the allotted time, a copy of the building commission order shall be promptly mailed by certified mail, return receipt requested, to each identified mortgagee and lienholder.

**Sec. 38-113. - Citation for violation.**

At the conclusion of the hearing, the City council may order the building or structure repaired, demolished or removed as the council may deem necessary. In no event, however, shall the time fixed for such repair, demolition or removal be more than 90 days from the date of the council order, unless the council allows for additional time which shall be entered only if the council finds that the building is in violation of the standards set out herein and the applicable codes of the City .

**Sec. 38-114. - Demolition and assessment.**

Should the owner or other person responsible for such building or structure fail or refuse to comply with the order of the City council, the City council may order the fire marshal, fire chief, or building official to close the building or structure or to demolish or remove the same and to assess the expenses incurred against the property owner. Notice of the amount of the assessment shall be given the owner and all lienholders by certified mail, return receipt requested to the addressee only, and upon the owner's failure to pay the same within 30 days after notice, the mayor may proceed to file a sworn affidavit of such expenses in the Office of the County Clerk, Hunt County, Texas, to establish the City's lien for such removal expenses against the property to which the building was attached. The lien shall be extinguished if the property owner or other interested party reimburses the City for the removal expenses.

Sec. 38-138. - Violation, penalty.

Any person violating the provisions of this article shall upon conviction, be subject to a fine not to exceed the sum of \$2,000.00 and that each day in violation shall constitute a separate offense.

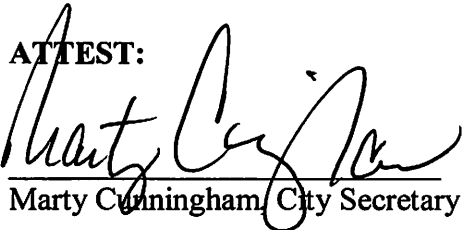
**SECTION 4.** All ordinances and parts of ordinances inconsistent with or in conflict with the provisions of this Ordinance shall be and the same are hereby expressly repealed.

**SECTION 5.** If any section, subsection, word, sentence, or phrase of this ordinance is declared to be invalid it shall not effect the validity of this ordinance.

**PASSED AND APPROVED** on its **FIRST READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 19<sup>th</sup> day of June 2012.

**PASSED AND APPROVED** on its **SECOND READING** at a regular meeting of the City Council of the City of Commerce, Texas on this the 17<sup>th</sup> day of July, 2012.

**ATTEST:**

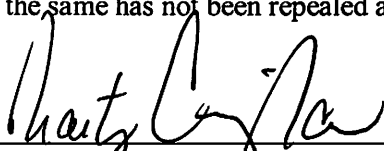
  
Marty Cunningham, City Secretary

**CITY OF COMMERCE:**

  
Richard Hill, Mayor Pro Tem

(seal)

I, Marty Cunningham, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an Ordinance, and that the same has not been repealed and is in full force and effect.

  
Marty Cunningham, City Secretary

(seal)

Sworn to and subscribed before me, on this the 7 day of  
AUGUST 2012 to certify which witness my hand and seal of office.

(seal)



  
Notary Public, State of Texas