

ORDINANCE NO. 2019-07

AN ORDINANCE OF THE CITY OF BUDA, TEXAS, AMENDING THE BUDA CODE OF ORDINANCES BY ADDING A NEW ARTICLE 12.02 OF CHAPTER 12; PROVIDING REGULATIONS REGARDING CERTAIN HEALTH AND SANITATION NUISANCES GENERALLY AND REGARDING OFFENSIVE ODORS SPECIFICALLY; DECLARING SUCH OFFENSIVE ODORS TO BE NUISANCES; PROHIBITING CERTAIN NUISANCES INCLUDING OFFENSIVE ODORS WITHIN THE CITY LIMITS AND WITHIN 5000 FEET OUTSIDE THE CITY LIMITS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES OR RESOLUTIONS; PROVIDING A PENALTY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 51.001 of the Texas Local Government Code, the City Council of the City of Buda may adopt an ordinance, rule, or police regulation that is for the good government, peace, or order of the City or for the trade and commerce of the City and is necessary or proper for carrying out a power granted by law to the City or to an office or department of the City; and

WHEREAS, pursuant to Subsection 217.042(a) of the Texas Local Government Code, except as otherwise prohibited, the City may define and prohibit any nuisance within the limits of the City and within 5,000 feet outside the city limits; and

WHEREAS, pursuant to Subsection 217.042(b) of the Texas Local Government Code, the City may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, property conditions and uses that cause or result in offensive odors on neighboring public property or the private property of others, harm the public welfare, property values, economy, and quality of life in the City of Buda; and

WHEREAS, the City Council of the City of Buda now deems it appropriate to establish regulations related to nuisances and to regulate offensive odors within the city limits and within 5,000 feet outside the city limits in the extraterritorial jurisdiction of the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BUDA, TEXAS:

Section 1: The facts and recitations set forth in the preamble of this ordinance are hereby found to be true and correct.

Section 2: The rules, regulations, terms, conditions, provisions and requirements of this ordinance are hereby found to be reasonable and necessary to protect the public health, safety and quality of life in the City of Buda.

Section 3: The City of Buda Code of Ordinances is hereby amended by adding a new article 12.02 of chapter 12 to provide as follows:

**“CITY OF BUDA
CODE OF ORDINANCES**

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**CHAPTER 12
HEALTH AND SANITATION**

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ARTICLE 12.02 Nuisances

Sec 12.02.001 In General, reserved.

Reserved.

Sec 12.02.002 Nuisances Generally.

Whatever renders the ground, water, air or food hazardous or injurious to human life or health or is offensive to the senses or whatever is or threatens to become detrimental to the public health is hereby declared to be a nuisance, prohibited and made unlawful.

Sec 12.02.003 Duty to abate.

- (a) It shall be the duty of the owner, or the owner’s agent, or the occupant or the occupant’s agent, of any lot, building, premises or place of any kind within the city where any nuisance may exist or of any person who commits, causes, creates, permits, keeps or otherwise maintains a nuisance to remove, abate or destroy the same without delay.
- (b) Summary abatement authority rests in the city's enforcement or health officials when imminent threat to the public health, safety, or welfare may arise.

Sec. 12.02.004 Violation and Penalty.

- (a) Any person who violates, or any person who causes or allows another person to violate, any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by as provided in section 1.01.009. Each occurrence of any violation of this article shall constitute a separate offense. Each day in which any violation of this article occurs shall constitute a separate offense.

(b) Whenever the prosecution of a nuisance results in a conviction and the court presiding over such prosecution finds the nuisance continues at the time of conviction, such court shall order and adjudge the removal, abatement or destruction of the nuisance, as the case may require, and shall issue a separate warrant therefor. The court shall inquire into the probable costs of such removal, abatement or destruction and shall tax the costs thereof against the defendant as costs in the case.

Sec. 12.02.005 Applicability.

Under authority of the Texas Local Government Code, section 217.042, any violation of provisions of this article is here declared a nuisance and extends to and shall be applicable within both the corporate limits of the city and within five thousand (5,000) feet outside the limits.

Sec 12.02.006 Offensive Odors prohibited.

(a) Any unreasonably noxious, unpleasant, or strong odor, which causes material distress, discomfort or injury to persons of ordinary sensibilities and extends beyond the boundaries of the property on which such odor originates, is hereby declared to be a nuisance, is prohibited and is made unlawful.

(b) Any odor of such character, strength and continued duration which substantially interferes with the comfortable enjoyment of private homes by persons of ordinary sensibilities is hereby declared to be a nuisance, is prohibited and made unlawful.

(c) The following things, among others, are declared to be offensive odors and health and sanitation nuisances in violation of this article and are hereby prohibited and made unlawful, but said enumerations shall not be deemed to be exclusive:

(1) *Chemicals.* Offensive odors from the use or possession of chemicals or from industrial processes or activities which shall disturb the comfort and repose of persons of ordinary sensibilities.

(2) *Smoke.* Offensive odors from smoke from the burning of rubbish, trash, rubber, chemical substances or other things or substances which shall disturb the comfort and repose of persons of ordinary sensibilities.

(3) *Stagnant pools, refuse, and composting.* Offensive odors from stagnant pools, rotting garbage, refuse, offal, or composting which shall disturb the comfort and repose of persons with ordinary sensibilities.

(4) *Dead Animals.* Offensive odors from dead animals which shall disturb the comfort and repose of persons with ordinary sensibilities.”

Section 4: Severability. If any clause or provision of this ordinance shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the ordinance, which shall continue to have full force and effect.

Section 5: Repeal. All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Section 6: Penalty. Any person who violates, or any person who causes or allows another person to violate, any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each occurrence of any violation of this Ordinance shall constitute a separate offense. Each day in which any violation of this Ordinance occurs shall constitute a separate offense.

Section 7: Passage. Pursuant to Section 3.12 of the City Charter, if the Council determines that the first reading of this ordinance is sufficient for adequate consideration by an affirmative vote of five or more members of the City Council during the first reading and the ordinance is passed by the affirmative vote of four or more members of the City Council, this ordinance is adopted and enacted without further readings. In the event a second reading is necessary, this ordinance is adopted and enacted upon the affirmative vote of four or more members of the City Council upon second reading.

Section 8: Effective Date. Pursuant to Section 3.12 of the City Charter, this ordinance is effective upon adoption, except that every ordinance imposing any penalty, fine or forfeiture shall become effective only after having been published once in its entirety, or a caption that summarizes the purpose of the ordinance and the penalty for violating the ordinance in a newspaper designated as the official newspaper of the City. An ordinance required by the Charter to be published shall take effect when the publication requirement is satisfied.

PASSED, APPROVED, AND ADOPTED on first and final reading by an affirmative vote of the City Council of the City of Buda, this 7th day of May, 2019.

CITY OF BUDA, TEXAS:

George Haehn, Mayor

ATTEST:

Alicia Ramirez, City Clerk