

# CHAPTER 7

## OFFENSES AND NUISANCES

### § 1-00. FIREARMS

#### § 1-01. Carrying Weapons Unlawful

It shall be unlawful for any person to intentionally, knowingly or recklessly carry on or about his person a handgun, illegal knife or club, as defined in Section 46.01 of the Penal Code, within the city limits, except as follows:

- (a) In the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution;
- (b) On his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a private security guard to protect persons or property, in which event he must comply with subsection (e) below;
- (c) Traveling;
- (d) Engaging in lawful hunting, fishing or other sporting activity, if the weapon is a type commonly used in the activity;
- (e) Who holds a security officer commission issued by the Texas Board of Private Investigators and private security agencies, if:
  - (1) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;
  - (2) he is wearing a distinctive uniform; and
  - (3) the weapon is in plain view; and/or
- (f) Who is a peace officer.

#### § 1-02. Unlawful to Discharge Firearms within the City Limits

- (a) It shall be unlawful to fire or discharge within the city limits any gun, pistol, or other firearm of any description, including air guns, B.B. guns and pellet guns.
- (b) This section shall not be construed to prohibit the following:
  - (1) Any officer of the law from discharging a firearm in the lawful performance of his duty;

- (2) Any citizen from discharging a firearm in self-defense;
- (3) The use by workers in the construction business of any mechanism designed to propel nails, bolts, screws, rivets or other fasteners, as long as such mechanism is being used in the manner in which it was intended;
- (4) The discharge of "blanks" during official celebrations or athletic events;
- (5) Gunsmiths and commercial shooting ranges, operating lawfully, from carrying out the normal pursuit of their business. (Ordinance adopting Code)

## § 2-00. *JUNKED VEHICLES*

### § 2-01. Junked Vehicle Defined

Junked vehicle means any motor vehicle as defined in Section 1 of Article 6701d-11, Vernon's Texas Civil Statutes, as amended, which:

- (a) is inoperative and which does not have lawfully affixed thereto both an unexpired license plate or plates and a valid motor vehicle safety inspection certificate and which is wrecked; dismantled; partially dismantled; or discarded; or
- (b) remains inoperable for a continuous period of more than 120 days.

### § 2-02. Junked Vehicles Within City Deemed Public Nuisance; Exception

The location or presence of any junked vehicle or junked vehicles on any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the City of Payne Springs shall be deemed a public nuisance and it shall be unlawful for any person or persons to cause or maintain such public nuisance by wrecking, dismantling, rendering inoperable, abandoning or discharging his or their vehicle or vehicles on the property of another or to suffer, permit, or allow the same to be placed, maintained, or exist upon his or their own real property; provided that this section shall not apply to (1) a vehicle or part thereof which is completely enclosed within a building in a lawful manner where it is not visible from the street or other public or private property; (2) a vehicle or part thereof which is stored or parked in a lawful manner on private property in connection with the business of a licensed vehicle dealer or a junkyard; or (3) unlicensed, operable or inoperable antique or special interest vehicles stored on private property provided, however, that the vehicles and outdoor storage areas are maintained in such a manner that they do not constitute a health hazard and are screened from ordinary public view by means of a fence, trees, shrubbery, or other appropriate means.

### § 2-03. Notice to Abate or Remove Junked Vehicles

(a) Whenever such public nuisance as described in § 2-02 hereabove exists within the city, the code enforcement officer or any police officer or other designated official enforcing this section shall either serve written notice personally or by registered mail with a return receipt requested the following notice as appropriate:

- (1) Nuisances on Private Property - To the owners or the occupant of the private premises where upon such public nuisance exists stating the nature of the public nuisance on the private property and that it must be removed and abated within 10

days and further that a request for a hearing must be made before the expiration of said 10 day period.

(2) Nuisances on Public Property or Right-Of-Way - To the owners of the alleged public nuisance where upon it exists on public property or on a public right-of-way stating the nature of the public nuisance and that it must be removed and abated within the 10 days and further that a request for a hearing must be made before the expiration of said 10 day period.

(b) If the notice is returned undelivered by the U. S. Postal Service, official action to abate said nuisance shall be continued to a date not less than 10 days from the date of such return.

#### § 2-04. Public Hearings

Whenever a hearing is requested by the owner, occupant, or their designated representative to whom notice to abate a public nuisance has been served, said hearing shall be held before the governing body of the city within 30 days after service of the notice to abate the nuisance. Any resolution or order requiring the removal of the junked vehicle or part thereof shall include a description of the vehicle, and the vehicle identification number and license number of the vehicle, if available.

#### § 2-05. Failure to Remove Junked Vehicles; Disposition

(a) If such junked vehicle is not removed and the public nuisance is not abated by said owner or occupant after notice is given in accordance with this section, the mayor or any police officer, or any person delegated by them, may enter the property and take possession of the junked vehicle or part thereof and remove it from the premises after a showing of the facts to the judge and such an order is issued by the court to have the same removed.

(b) After any vehicle has been removed it shall not be reconstructed or made operable.

(c) Junked vehicles, and/or parts thereof, may be disposed of by removal to a scrapyard, demolishers, or any suitable site operated by the city for processing as scrap or salvage.

#### § 2-06. Notice to Texas Highway Department Upon Removal

Notice shall be given to the Texas Highway Department that a junked vehicle has been impounded within five days after the removal of the junked vehicle, or part thereof, and identifying the junked vehicle, or part thereof.

#### § 2-07. Authority to Enforce These Provisions

Any person given the authority in this section to administer the provisions of this section may enter upon private property for the purpose of examining vehicles or parts thereof, obtain information as to the identity of vehicles and/or parts, and to remove or cause the removal of a vehicle, or parts thereof, declared to be a nuisance pursuant to this section. The municipal court of the City of Payne Springs shall have the authority to issue all orders necessary to enforce the provisions of this section.

§ 2-08. City Not to be Held Liable

Neither the city nor any authorized agent acting under the terms of this section shall be liable or have any liability by reason of orders issued or the removal of the junked vehicles, or parts thereof, in compliance with the terms of this section.

§ 2-09. Exceptions to Provisions

Nothing in this section shall effect any ordinance or law that permits immediate removal of a vehicle left on public property which constitutes an obstruction to traffic. (Ordinance adopting Code)

§ 3-00. *CONSUMPTION OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES PROHIBITED*

It shall be unlawful for any person to consume alcoholic beverages while on any public property. Any person found consuming alcoholic beverages on the public streets or in public places in the City of Payne Springs shall be deemed guilty of a misdemeanor. (Ordinance adopting Code)

§ 4-00. *MISDEMEANORS UNDER STATE LAW ADOPTED*

All misdemeanors named in the penal code of the state for which the municipal court has jurisdiction are hereby declared to be offenses against the city, and the fines and penalties and other punishments shall be the same as prescribed in said penal code. (Ordinance adopting Code)

§ 5-00. *DAMAGING PUBLIC PROPERTY*

It shall be unlawful for any person to willfully or maliciously damage, destroy, injure, molest, or to tamper with any public building, structure, fence, pole, pipe, line, street, sign, or other public property, whether real or personal. (Ordinance adopting Code)

§ 6-00 *NOISE*

§ 6-01. Loud Noise Prohibited

No person shall make or cause to be made any loud and raucous noise in the city which is offensive to the ordinary sensibilities of the inhabitants of the city, which noise renders the enjoyment of life or property uncomfortable or interferes with public peace and comfort.

§ 6-02. Specific Noises Enumerated

The following acts, among others, are declared to be loud, disturbing, and unnecessary noises in violation of this section; provided, however, that such enumeration shall not be construed to be exclusive to other noises, to-wit:

(a) Horns and Signal Devices - The sounding of any horn or signal device on any automobile, motorcycle, bus, or other vehicle while not in motion, except as a danger signal if another vehicle is approaching apparently out of control; or, if in motion, only as a danger signal after or as brakes are being applied and deceleration of the vehicle is intended; the creation by means of any such signal device of any unreasonably loud or harsh sound; and the sounding of such device for any unnecessary and unreasonable period of time, except as the same may be used by authorized emergency vehicles while on emergency calls, or as may be otherwise required while on duty, shall be deemed as unnecessary noise.

(b) Radios, Phonographs, and Musical Instruments - The playing of any radio, phonograph, or any musical instrument in such a manner, or with such volume, particularly between the hours of 11:00 p.m. and 7:00 a.m., so as to create a noise such as reasonably calculated to disturb a person of ordinary disposition under the same or similar circumstances, residing in a dwelling or other type of residence in the vicinity shall be deemed a violation of this section.

(c) Vehicles and Motorcycles - The use of any automobile, motorcycle, or other vehicle or motorized equipment so out of repair, or loaded or operated in such manner as to create loud or unnecessary noises, such as spinning or squealing of tires, grating, grinding, rattling, or other noises, shall be deemed a violation of this section.

Also, the parking, storage or repairing of any motor vehicle, motorcycle, or motorized equipment between the hours of 10:00 p.m. and 7:00 a.m. with any motor or motors left in operation for a extended period shall be deemed a violation of this section.

(d) Building and Demolition Procedures - The erection (including excavation), demolition, alteration, or repair of any building other than between the hours of 7:00 a.m. and 9:00 p.m., except in case of urgent necessity in the interest of public safety and then only with a permit from the mayor, shall be deemed a violation of this section.

(e) Shouting or Crying by Peddlers - The shouting and crying of peddlers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood shall be deemed unnecessary noise and a violation of this section.

(f) Drums, Loudspeakers, Etc. - The use of any drum, loudspeaker, or other instrument or device for the purpose of attracting attention to any performance, show, or sale of merchandise by creation of noise shall be deemed unnecessary noise and a violation of this section. (Ordinance adopting Code)

§ 7-00. LOITERING

§ 7-01. Loitering Unlawful

It shall be unlawful for any person to loiter, as hereinafter defined, in, on, or about any place, public or private, when such loitering is accompanied by activity or is under circumstances that afford probable cause for alarm or concern for the safety and well-being of persons or for the security of property, in the surrounding area.

§ 7-02. Definitions

(a) Loiter - The term "loiter" shall include the following activities: the walking about aimlessly without apparent purpose; lingering; hanging around; lagging behind; the idle spending of time; delaying; sauntering and moving slowly about, where such conduct is not due to physical defects or conditions.

(b) Place - The term "place", public or private, shall include, but not be limited to, the following: all places commonly known as being distinctively public, such as public streets, public restrooms, sidewalks, parks, municipal airports, parking lots, alleys and buildings; all places privately owned but open to the public generally such as shopping centers, transportation terminals, retail stores, movie theaters, office parking lots, buildings, and restaurants; and all places distinctively private, such as homes or private residences and apartment houses.

(c) Surrounding Area - The term "surrounding area" shall be defined as follows: that area easily and immediately accessible to the person under observation.

§ 7-03. Examples of Loitering Activities

The term "loiter" is herein defined to include any of the following activities, although this list is not meant to be all inclusive:

(a) Lingering in the streets, sidewalks, parking lots, or vicinity of a business, in which the person has no ownership or employment interest, either within or outside of a vehicle, when the premises are not open for business to the public.

(b) Failure to leave private property when requested to do so by the owner, manager, proprietor, or lessee of such property.

(c) Walking, standing, driving a vehicle, or parking a vehicle in the business district or nonresidential areas of the city under circumstances that show no apparent business or employment related need for such activity.

(d) Lingering in the street, sidewalks, or vicinity of a residence, either within or outside of a vehicle, without the permission of the owner or tenant of the residence.

(e) Lingering in the streets, alleys, sidewalks, parks, or other public places, either within or outside of a vehicle, under circumstances that show no apparent reason or business to do so.

(f) The systematic checking by a person of doors, windows, or other means of access to buildings, houses, or vehicles.

(g) Repeated activity by a person, continuous or broken, which outwardly manifests no purpose, such as going from one place to another and back with no showing of use for such movement.

(h) Continuous presence by a person in close proximity to any building, house, vehicle, or any other property or to any other person, at any time, when the activity of such person manifests possible unlawful activity, such continuous presence being for an unreasonable period of time under the circumstances then existing.

#### § 7-04. Exemptions

The following activities shall not be considered "loitering" and shall be exempt from the provisions of this section.

(a) A person shall not be considered loitering while in direct route, and not lingering, to or from work or to or from place of residence.

(b) A person shall not be considered loitering while engaged in the repair of a disable vehicle.

(c) A person under the age of eighteen (18) shall not be considered loitering while engaged in, or in direct route to school, church, or entertainment activities with permission of his or her parent or guardian.

(d) A person shall not be considered loitering while sleeping in a vehicle, provided the vehicle is parked on private property with the permission of the owner or manager of the premises, or if the vehicle is parked on public property, with permission of a police officer. (Ordinance adopting Code)

### § 8-00. *OBSCENE MATERIALS*

#### § 8-01. Definitions

(a) Obscene - Materials that a person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex and depicts or describes patently offensive representations or descriptions of sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy and sexual bestiality or patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, covered male genitals in a discernibly turgid state, or a device designed and marketed as useful primarily for stimulation of the human genital organs.

(b) Material - Anything tangible that is capable of being used or adopted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

(c) Patently Offensive - So offensive on its face as to affront community standards of decency.

(d) Promote - To manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate or to offer or agree to do the same.

(e) Minor - An individual younger than eighteen (18) years of age.

§ 8-02. Reckless Display, Distribution or Promotion of Obscene Materials Unlawful

It shall be unlawful for any person to knowingly display, distribute or promote any obscene photographs, drawings or similar visual representations or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution. Prohibited acts include the following, although this list should not be considered all inclusive:

- (a) The prominent display of obscene materials within the visual observation or hearing of any person who does not request or consent to such display;
- (b) The exhibition or delivery of obscene material to any person who does not regret such exhibition or delivery;
- (c) Making obscene material available to the access of minors not accompanied by a consenting parent, guardian or spouse; and
- (d) The advertisement or promotion of obscene material to the general public through the print or electronic media, posters, circulars or billboards either by reproduction of obscene materials or a patently offensive description of such material.

§ 8-03. Sale, Distribution or Display of Obscene Material to Minors

It shall be unlawful for any person to knowingly sell, distribute, exhibit or possess for sale, distribution or exhibition to a minor any obscene material or is reckless about whether a minor is present who will be offended or alarmed by the display or hires, employs or uses a minor to do or accomplish or assist in doing or accomplishing any prohibited acts herein. However, it shall be a defense to prosecution when the sale, distribution or exhibition was to a minor who is accompanied by a consenting parent, guardian or spouse. (Ordinance adopting Code)

§ 9-00. *THEFT OF CITY SERVICES*

Under the provisions of Sec. 31.04 of the Texas Penal Code, it shall be unlawful for any person to intentionally avoid payment for any service or use of any property or facility of the city, whether real or personal, that he knows is provided or used only with compensation and he intentionally or knowingly secures performance of the service or uses the property of facility which he is not entitled to either by deception, threat, false token, impersonation or fraud. Such services, property or facilities shall include, but not be necessarily limited to: utilities, ballfields, parks and other recreational facilities, trash collection services, or any other service or property owned, operated or provided by the city. It shall also be unlawful to have or exercise control over the disposition of city services, property of facilities of another to which he is not entitled to unless authorized by the city and that person. For these purposes, intent to avoid paying is presumed if the actor absconded without paying for the services or knowingly uses or is in possession of such property or facility not authorized to use or receive. (Ordinance adopting Code)



§ 10-00. *ABANDONED REFRIGERATORS AND FREEZERS*

§ 10-01. Definitions

(a) Abandon - The throwing away of an icebox, refrigerator or freezer on vacant property, junk heaps, trash piles or debris accumulations or any other act which at common law would constitute an abandonment of personal property.

(b) Dangerous Exposure - The placing of an icebox, refrigerator or freezer not in use in a garage, barn, outbuilding, porch, yard, lot or other portion of premises where children at play may come upon it and be attracted to it.

§ 10-02. Deemed Public Nuisance

The abandonment or dangerous exposure of an icebox, refrigerator or freezer with its door, or doors, in normal latching or locking condition is hereby declared to be a public nuisance and a serious menace to life because of the danger of children entering such an icebox, refrigerator or freezer and becoming locked inside and suffocating.

§ 10-03. Owner to Remove Latches and/or Locks

The owner of an abandoned or dangerously exposed icebox, refrigerator or freezer and the owner or occupant of the premises where an abandonment or dangerous exposure occurs, has the duty to remove the door or dismantle or remove the latch or lock holding the door shut on the icebox, refrigerator or freezer.

A person commits an offense if he abandons or dangerously exposes, or causes or permits to be abandoned or dangerously exposed, an icebox, refrigerator or freezer unless the latch or lock holding each door shut is dismantled or removed so that the door may be opened from within by simply pushing on it. (Ordinance adopting Code)

§ 11-00. *NUISANCES OF PRIVATE PROPERTY*

§ 11-01. Nuisance of Private Property Defined

For the purposes of this section, the term "nuisance" is defined to mean any condition or use of premises or of building exteriors which is detrimental to the property of others or which causes or tends to cause substantial diminution in the value of other property in the neighborhood in which such premises are located. This includes, but is not limited to, the keeping or the depositing on, or the scattering over the premises of any of the following:

(a) Lumber, building materials, junk, trash, or debris;

(b) Storage of furniture, other than furniture designed for outside use, household items, products of a commercial trade or business enterprise, whether such items are so used or not outside;

(c) Abandoned, discarded or unused objects or equipment such as automobiles and equipment parts, furniture, fixtures, appliances, cans, bottles, or containers;

- (d) Items of salvage such as scrap metals, rags, papers, bottles, cans and similar items;
- (e) Any compost pile which is of such a nature as to spread or harbor disease, emit unpleasant odors or harmful gas, or attract rodents, vermin or other disease-carrying pests, animals or insects;
- (f) Any deleterious or septic material upon any premise, unless such material is retained in containers or vessels which deny access to humans, flies, insects, rodents and animals.

§ 11-02. Duty to Maintain Private Property

No person owning, leasing, occupying or having charge of any premises shall maintain or keep any nuisance thereon, nor shall any such person keep or maintain such premises in a manner causing substantial diminution in the value of the other property in the neighborhood in which such premises are located.

§ 11-03. Notice to Remove or Abate Nuisance

(a) Upon becoming aware of nuisance conditions set forth herein, the mayor or his designated representative shall make a determination whether or not the conditions and circumstances constitute a nuisance as herein defined. If it is determined that the conditions constitute a nuisance, the mayor shall cause a written notice to be given to the owner, tenant or person in control of said premises, or an agent thereof, to remove or abate the nuisance. Such notice shall state the nature of the nuisance and that it must be removed or abated within ten (10) days and that failure to do so may cause a complaint to be filed in municipal court for violation of maintaining a nuisance. Such notice shall be given by delivering the written notice personally or by leaving it at his or her dwelling or usual place of abode with some person of suitable age and discretion residing therein or by mailing the written notice by certified mail, return receipt requested. If the whereabouts of the owner of the property is unknown, the notice shall be mailed, by certified mail, return receipt requested, to the last known address listed on the tax roll and by publication in the official newspaper and a regional newspaper of general circulation in the area for at least two (2) successive days. Where the notice is mailed it shall be prima facie evidence of service if an executed return receipt is received.

(b) Where after diligence has been exercised to serve notice to the owner, tenant, or person in control of said premises, or agents thereof, and such notice cannot be delivered and/or where such notice has been served but the nuisance has not been removed or abated within the ten (10) day period, the mayor shall then cause a summons to be obtained and delivered to the owner, tenant, or person in control of said premises, or an authorized agent thereof, requiring such condition to be abated or to appear before the municipal court of Payne Springs, Texas at a stated time and place. The summons shall be served to the defendant by a peace officer by delivering a copy to him personally; or leaving it at his usual place of abode with some person of suitable age and discretion residing therein; or by mailing it to the defendant's last known address by certified mail, return receipt requested. The summons shall state the nature of the nuisance on the property and that it must be removed or abated within ten (10) days or the complaint will be heard in municipal court for violation of maintaining a nuisance as defined in this section. And furthermore, any person found guilty of maintaining such nuisance shall be guilty of a misdemeanor and be subject to a fine for each offense and that the municipal court shall order the removal and abatement of the nuisance.

§ 11-04. City May Remove or Abate Nuisance

If the owner, tenant, or person in control of said premises, or agent thereof fails to comply with the order to remove or abate any nuisance then in addition to any fine which may be levied against such person, the court may allow the city to remove or abate such nuisance. The city may then cause the said nuisance to be removed or abated, and the expenses of such procedure shall be charged against the owner and shall thereupon become a valid and enforceable personal obligation of the owner of such premises which may be recovered by the city in a suite brought for the purpose; and the city may assess the expenses on the property on which the nuisance is located or situated, and make the same a lien thereon.

§ 11-05. Filing Statement of Expenses; Lien

(a) Whenever the city shall have performed any work or paid any necessary expenses in connection with any work done in the removal or abatement of any nuisance, it shall be the duty of the mayor to immediately prepare and deliver or mail to the owner of the property upon which the nuisance was located an itemized statement in the form of an affidavit, duly sworn to, of all such work performed and all costs and expenses incurred and paid by the city in connection therewith. Said statement shall be sent to the owner of said property if his true address is known; if not, then to the owner of record according to the last official tax rolls of the city at the address carried in connection therewith. Such affidavit, among other things and provisions, shall contain the following:

- (1) Name and address of owner, and name and address of tenant or agent of property, if known, and if unknown recite the fact;
- (2) Description of the property sufficient to identify same, and where property has been subdivided, a description by lot and block number of any particular subdivision shall be sufficient, or the description as per the map of the city;
- (3) Statement of the action of the city;
- (4) Itemized statement of the work done and performed, together with the cost thereof opposite each item; and
- (5) Statement of payment made by the city to other parties, and to whom made, or reasonable charges by any concerned city department.

(b) Upon delivery or mailing of the statement and affidavit provided for above, the city shall be entitled to the payment of the aggregate amount so expended, or reasonable charges for city work, or costs paid, as therein set forth. Should the owner fail or refuse to pay the amount due within 30 days thereafter, the affidavit containing the information as set out hereinabove, signed by the mayor, shall be filed with the County Clerk of Henderson County, Texas. Such statement, when filed, shall constitute a lien upon the property on which the expense was incurred, second only to tax liens and liens for street improvements, and the amount remaining unpaid on said statement shall accrue interest at the rate of 10% per annum from the date of expenditure by the city, or from the date that the city itself performed such work and incurred said expense, as provided for in Vernon's Annotated Civil Statute, art. 4436. (Ordinance adopting Code)