

AN ORDINANCE OF THE TOWN OF PROSPER, TEXAS, REPEALING ORDINANCE NOS. 82-4 AND 86-3; PROVIDING FOR THE REGULATION AND ABATEMENT OF WEEDS, RUBBISH, BRUSH, AND OTHER OBJECTIONABLE, UNSIGHTLY, OR UNSANITARY MATTER; PROVIDING FOR THE ASSESSMENT AND COLLECTION OF EXPENSES FOR WORK DONE OR IMPROVEMENTS MADE BY PROSPER; PROVIDING FOR LIENS; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas ("Town Council") has investigated and determined that it is dangerous to the public health and that it constitutes a fire hazard for properties in the Town of Prosper, Texas ("Prosper") to have places thereon where weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter accumulate;

WHEREAS, Chapter 342, Texas Health and Safety Code, provides municipalities with the power to regulate and abate accumulations of weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter;

WHEREAS, the Town Council has investigated and determined that Prosper Ordinance Nos. 82-4 and 86-3 should be repealed and that such provisions contained therein should be revised to clarify the requirements for the regulation and abatement of weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter;

WHEREAS, Prosper has complied with all notices as required by law; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Repeal of Prosper Ordinance Nos. 82-4 and 86-3. Prosper Ordinance Nos. 82-4 and 86-3 are hereby repealed. Such repeal shall not abate any pending prosecution for violation of the repealed Prosper Ordinance Nos. 82-4 and 86-3, nor shall the repeal prevent prosecution from being commenced for any violation if occurring prior to the repeal of Prosper Ordinance Nos. 82-4 and 86-3.

SECTION 2: Definitions. For the purposes of this Ordinance, the following terms shall have the following definitions:

- a. "Agricultural property(ies)" shall be defined as property, whether cultivated or uncultivated, that has been granted a property tax exemption, by the county central appraisal district, or equivalent authority, pursuant to the Texas Property Tax Code or Texas Constitution, for agricultural land.
- b. "Brush" shall be defined as scrub vegetation or dense undergrowth;
- c. "Carrion" shall be defined as the dead and putrefying flesh of any animal, fowl, or fish;
- d. "Filth" shall be defined as any matter in a putrescent state;
- e. "Garbage" shall be defined as decayable waste, including, but not limited to, vegetable, animal and fish offal, animal and fish carcasses;
- f. "Junk" shall be defined as all worn out, worthless, or discarded material, including, but not limited to, old iron or other metal, glass, and cordage;

- g. "Impure or unwholesome matter" shall be defined as a putrescible or nonputrescible condition, object or matter which tends, may, or could produce injury, death, illness or disease to human beings;
- h. "Objectionable, unsightly, or unsanitary matter" shall be defined as any matter, condition, or object which is or should be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities;
- i. "Occupant" shall be defined as any person claiming or having possessory control of any property;
- j. "Owner" shall be defined as a person having record title to real property;
- k. "Person" shall be defined as any individual, firm, partnership, association, business, corporation, or other entity;
- l. "Refuse" shall be defined as a heterogeneous accumulation of worn out, used up, broken, rejected, or worthless materials and includes, but is not limited to, garbage, rubbish, paper, or litter and other decayable or nondecayable waste;
- m. "Rubbish" shall be defined as trash, debris, rubble, stone, useless fragments of building materials, or other miscellaneous useless waste or rejected matter;
- n. "Trash and debris" shall be defined as mounds of dirt; piles of leaves, grass, and weed clippings; paper trash; useless fragments of building materials; rubble; furniture other than furniture designed for outdoor use; useless household items and appliances; items of salvage, such as scrap metal and wood; old barrels; old tires; objects that hold water for an extended period of time; tree and brush trimmings; and other miscellaneous wastes or rejected matter.
- o. "Weeds" shall be defined as vegetation that because of its height is objectionable, unsightly, or unsanitary, but excluding shrubs, bushes, and trees, cultivated flowers, and cultivated crops; and
- p. Any word not defined herein shall be defined in the context used and by ordinary interpretation.

SECTION 3: Regulation of Weeds, Rubbish, Brush, and Other Objectionable, Unsightly, or Unsanitary Matter.

- a. The owner or occupant of any property or a portion thereof, occupied or unoccupied, within Prosper, shall not keep, store, allow, maintain, permit, or accumulate upon any property any refuse, trash and debris, stagnant water, filth, carrion, junk, garbage, impure or unwholesome matter, or objectionable, unsightly, or unsanitary matter that:
 - 1. is visible from a street or alley;
 - 2. creates or may create an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests; or
 - 3. emits a noxious odor.
- b. The owner or occupant of any property or a portion thereof, occupied or unoccupied, within Prosper, shall not allow, maintain, or permit upon any property grass, weeds, brush, or other unsightly vegetation to grow thereon to a height greater than twelve (12) inches. Such property shall include the area between the property and the curb or edge of pavement of any adjacent street or alley with the exception that the owner of a single-family or two-family lot backing or siding to a median divided or future median divided thoroughfare depicted on the Town's Thoroughfare Plan is not required to mow between their rear or side property line and the adjacent

median divided or future median divided thoroughfare. With respect to uncultivated or agricultural properties, the owner or occupant of such property shall be required to maintain grass, weeds, brush, or other unsightly vegetation to a height less than twelve (12) inches only within one hundred (100) feet of any adjacent street, alley, or property of different ownership.

SECTION 4: Abatement of Weeds, Rubbish, Brush, and Other Objectionable, Unsightly, or Unsanitary Matter.

- a. In the event that any owner or occupant of any property, occupied or unoccupied, within Prosper, fails to comply with the requirements of Section 3 of this Ordinance, the Town Administrator or his/her designee shall give notice of the violation to the owner as follows:
 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:
 - a. by publication at least once;
 - b. by posting the notice on or near the front door of each building on the property to which the violation relates; or
 - c. by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.
- b. If Prosper mails a notice to the property owner in accordance with subsection (a) and the United States Postal Service returns the notice as "refused", "unclaimed" or if the address required by subsection (a)(2) was used and the notice is returned as "not deliverable as addressed" (or an equivalent marking), the validity of the notice is not affected, and the notice is considered as delivered.
- c. In a notice provided under this Section, Prosper may inform the owner, by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety on or before the first anniversary of the date of the notice, Prosper without further notice may correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and Prosper has not been informed in writing by the owner of an ownership change, then Prosper may, without notice, take any action permitted in this Ordinance and assess its expenses as provided in this Ordinance.
- d. If the owner or occupant of a property does not comply with the requirements of this Ordinance within seven (7) days of notice of violation, Prosper may:
 1. issue a citation to the owner or occupant for every day that the violation continues to exist,
 2. do the work or make the improvements required to abate the violation, and/or
 3. pay for the work done or the improvements made and charge the expenses to the owner of the property.

SECTION 5: Assessment and Collection of Expenses for Work Done or Improvements Made by Prosper.

- a. Prosper may assess expenses incurred under this Ordinance against the real estate on which the work is done or improvements made.
- b. In the event that the owner fails or refuses to pay the expense incurred under Section 4(d) within thirty (30) days after the first day of the month following the month in which the work was done, the Town Administrator or his/her designee shall obtain a lien against the property by filing a statement of expenses incurred in abating the violation with the County Clerk in which the subject property is located. The statement must also state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the statement with the County Clerk.
- c. The lien is security for the expenditures made and interest accruing at the rate of ten (10) percent per annum on the amount due from the date of payment by Prosper.
- d. Prosper's lien shall be privileged and shall be inferior only to tax liens and liens for street improvements.
- e. Prosper may bring a suit for foreclosure in the name of Prosper to recover the expenditures and interest due. The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by Prosper in doing the work or making the improvements.
- f. The remedy provided by this Section is in addition to the remedy provided by Section 7 below.

SECTION 6: Authority to Immediately Abate Dangerous Weeds:

- a. Notwithstanding any of the foregoing Sections, Prosper may abate, without notification, weeds that:
 1. have grown higher than forty-eight (48) inches; and
 2. are an immediate danger to the health, life, or safety of any person.
- b. Prosper must give notice, in the manner provided in Section 4, to the property owner no later than the tenth (10th) day after the date Prosper abates weeds under this Section. The notification shall contain:
 1. an identification, which is not required to be a legal description, of the property;
 2. a description of the violation(s) of this Ordinance that occurred on the property;
 3. a statement that Prosper abated the weeds; and
 4. an explanation of the property owner's rights to request an administrative hearing regarding Prosper's abatement of the weeds.
- c. Prosper, by and through its Town Administrator or his/her designee, shall conduct an administrative hearing on the abatement of weeds under this Section if, not later than the thirtieth (30th) day after the date of the abatement of the weeds, the owner files a written request for a hearing with Prosper.
- d. Prosper shall conduct the administrative hearing not later than the twentieth (20th) day after the date a request for hearing is filed. At the administrative hearing, the owner may testify or present any witnesses or written information relating to Prosper's abatement of the weeds.
- e. Prosper may assess expenses and create liens under this Section in the same manner and subject to the same conditions as set forth in Section 5 above.
- f. The authority granted Prosper by this Section is in addition to the authority granted by Section 4.

SECTION 7: Penalty Provision: Any person, firm, corporation or business entity violating this Ordinance, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Five Hundred Dollars (\$500.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 8: Severability: Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 9: Savings/Repealing Clause. All Prosper ordinances shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

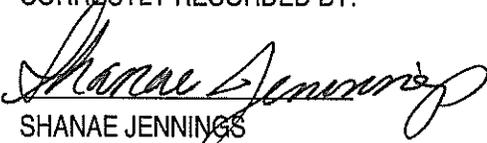
SECTION 10: Effective Date: This Ordinance shall become effective from and after its adoption and publication as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, on this 21st day of December, 2004.



CHARLES NISWANGER, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:


SHANAE JENNINGS
Town Secretary

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