

## Chapter 66

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**ARTICLE I. IN GENERAL****Sec. 66-1. Notice prerequisite to liability by city for personal injury or property damage.**

(a) The city shall never be liable for any claim for property damage or for personal injury, whether such personal injury results in death or not, unless the person damaged or injured, or someone in his behalf, or in the event the injury results in death, the person or persons who may have a cause of action under the law by reason of such death or injury shall, within six months from the date the damage or injury was received, give notice in writing to the mayor and city council of the following facts:

- (1) The date and time when the injury occurred and the place where the injured person or property was at the time when the injury was received.
- (2) The nature of the damage or injury sustained.
- (3) The apparent extent of the damage or injury sustained.
- (4) A specific and detailed statement of how and under what circumstances the damage or injury occurred.
- (5) The amount for which each claimant will settle.
- (6) The actual place of residence of each claimant by street, number, city and state on the date the claim is presented.
- (7) In the case of personal injury or death, the names and addresses of all persons who, according to the knowledge or information of the claimant, witnessed the happening of the injury or any part thereof and the names of the doctors, if any, to whose care the injured person is committed.
- (8) In the case of property damage, the location of the damaged property at the time the claim was submitted along with the names and addresses of all persons who witnessed the happening of the damage or any part thereof.

(b) No suit of any nature whatsoever shall be instituted or maintained against the city unless the plaintiff therein shall prove that previous to the filing of the original petition the plaintiff applied to the city council for redress, satisfaction, compensation or relief, as the case may be, and that the same was by vote of the city council refused.

(c) All notices required by this section shall be effectuated by serving them upon the city secretary at the following location: 303 S. Teel, Devine, Texas 78016; and all such notices shall be effective only when actually received in the office of the person named above.

(d) The above written notice requirements shall be waived if the city has actual knowledge of death, injury or property damage likely to result in a claim against the city. The city shall not be deemed to have actual knowledge unless that knowledge is attributable to an appropriate city official whose job duties include the authority to investigate and/or settle claims against the city.

(e) The written notice required under this section shall be sworn to by the person claiming the damage or injuries or by someone authorized by him to do so on his behalf. Failure to swear to the notice as required herein shall not render the notice fatally defective, but failure to so verify the notice may be considered by the city council as a factor relating to the truth of the allegations and to the weight to be given to the allegations contained therein.  
(Code 1972, § 11-1; Ord. of 10-12-1961; Ord. No. 4-80, 4-15-1980; Ord. No. 11-92, §§ 1—5, 11-17-1992)

**Sec. 66-2. Regulation of spilled gravel and concrete from ready-mix concrete trucks.**

It shall be unlawful for any person to permit his ready-mix concrete trucks to spill loose gravel or concrete on the streets of the city in such a manner or in such quantity that necessitates sweeping of the street to clear such gravel or concrete, or in such a manner to cause danger to other automobiles or pedestrians.  
(Code 1972, § 11-2; Ord. No. 34, § 2, 12-10-1964)

**Sec. 66-3. Regulation of discharge of firearms.**

(a) The term "firearm," as used in this section, shall consist of any instrument used in the propulsion of shot, shell or bullets by the action of gunpowder exploded within it, and shall specifically also include BB and pellet guns.

(b) The use and discharge of any firearms within the corporate limits of the city is hereby prohibited except where such use is by or under the supervision of the city chief of police or any duly authorized peace officers of this state, acting in their official capacity.  
(Code 1972, § 11-3; Ord. No. 33, § 12, 2-16-1960)

**State law reference**—Municipality may regulate discharge of firearms, V.T.C.A., Local Government Code § 229.001(b)(2).

**Sec. 66-4. Impediments in Burnt Boot Creek declared nuisance; right of entry for city employees to maintain.**

(a) The presence of trash, debris, obnoxious weeds and any impediment of the natural flow of Burnt Boot Creek is hereby declared to be a nuisance and injurious to the public health of the citizens of the city.

(b) In order to avoid flooding and to prevent damage and loss of life, the duly authorized employees and agents of the city are hereby given the right to enter upon private lands within the city limits for the purpose of removing trash, debris, weeds and any other impediments to the natural flow of Burnt Boot Creek and for the purpose of placing machinery thereon to widen or deepen or clean the passageway of Burnt Boot Creek.

(c) Any person interfering with a city employee or agent exercising the right provided for in subsection (a) of this section shall be deemed guilty of an offense.  
(Code 1972, § 11-5; Ord. No. 35, §§ 1, 2, 6-4-1959)

**Sec. 66-5. Destruction or removal of trees and other plants on public property prohibited.**

It shall be unlawful for any unauthorized person to injure, destroy or remove any shade or ornamental tree, or other plant growing or planted along any street, sidewalk or alley, or within any public grounds or property of the city.

(Code 1972, § 11-6; Ord. No. 28, § 1, 10-2-1951)

**Sec. 66-6. Removal of turf, gravel, etc., from public property prohibited.**

It shall be unlawful for any person to dig up, remove or carry away any turf, gravel, dirt, sand or paving material from any street or other public property of the city, without permission from the city council.

(Code 1972, § 11-7; Ord. No. 28, § 3, 10-2-1951)

**Sec. 66-7. Injuring, defacing, etc., public property prohibited.**

(a) It shall be unlawful for any person to injure, deface, damage or destroy any public property including, streetlights, street signs, white way lights, signal lights, power lines, electric light lines, light poles, transformers or guywires supporting or steadying any light pole, or other equipment of the city.

(b) It shall be unlawful for any person to place or paint any sign, street sign, picture, character or other advertisement upon any sidewalk, pavement, curbstone, public bridge, public building or other public property, without permission from the city council.

(Code 1972, § 11-8; Ord. No. 28, §§ 2, 3, 10-2-1951)

**Sec. 66-8. Marking or defacing windows prohibited.**

It shall be unlawful to mark or deface any show-windows, display windows or any other windows with soap or any other substance.

(Code 1972, § 11-9; Ord. No. 28, § 3, 10-2-1951)

**Sec. 66-9. Filling or covering required for unused wells.**

All persons owning any land on which is situated any unused well are hereby required to fill same or have such well walled at least 12 inches above the ground with brick or cement and to cover the same, so as to prevent all insects and reptiles from getting therein.

(Code 1972, § 11-10)

**Sec. 66-10. Drilling in Devine City Park prohibited.**

(a) Drilling shall not be permitted in the area known as the Devine City Park. This restriction does not prohibit the land from being included in a lease for the extraction of oil, gas or water but does prohibit the drilling rig from being set on the property or in any other area designated by the city or state or any other regulatory agency.

(b) No mining either surface or subsurface shall be allowed on or under the land of the Devine City Park.

(Code 1972, § 11-10.1; Ord. No. 9-89, §§ 1, 2, 9-19-1989)

**Sec. 66-11. Disorderly conduct.**

(a) No person, acting alone or in concert with others, may engage in disorderly conduct. Disorderly conduct consists of any of the following:

- (1) Behavior of a boisterous and tumultuous character in a residential area or a public place, such that there is a clear and present danger of alarming persons where no legitimate reason for alarm exists;
- (2) Interfering with the peaceful and lawful conduct of persons in or about their homes or public places under circumstances in which such conduct tends to cause or provoke a disturbance;
- (3) Violent and forceful behavior at any time in or near a public place, such that there is a clear and present danger that free movement of other persons will be arrested or restrained, or other persons will be incapacitated in the lawful exercise of business or amusement;
- (4) Behavior involving personal abuse or assault when such behavior creates a clear and present danger of causing assaults or affrays;
- (5) In a public or private place, violent, abusive, unreasonably loud or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance;
- (6) Willful and malicious behavior that interrupts the speaker or any lawful assembly or impairs the lawful right of others to participate effectively in such assembly or meeting when such conduct tends to cause or provoke a disturbance;
- (7) Behavior near a courthouse or other public building wherein judicial proceedings are being held, designed or having the effect of interfering with the administration of justice, whether by disrupting the courts or by intimidating the judges, witnesses, jurors or other persons having business with the courts;
- (8) Behavior near any public building wherein matters affecting the public are being considered or deliberated, designed or having the effect of interfering with such proceedings under circumstances in which such conduct tends to cause or provoke a disturbance;
- (9) Willful and malicious behavior which obstructs or causes the obstruction of any doorway, hall or any other passageway in a public building to such an extent that the employees, officers and other persons, including visitors and tourists, having business with the government are denied entrance into, exit from or free passage in such building;

- (10) Behavior involving the display of any deadly weapon in a public place in such a manner as to alarm or frighten other persons present; or
- (11) Entering upon the property of another and for a lewd or unlawful purpose deliberately looking into a dwelling on the property through any window or other opening in it.

(b) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than \$200.00.

(Code 1972, § 11-11)

**Sec. 66-12. Curfew hours for minors.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Curfew hours* means:

- (1) On any Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday, 11:00 p.m. until 6:00 a.m. of the following day; and
- (2) On any Monday, Tuesday, Wednesday, Thursday, or Friday, while school is in session in the Devine Independent School District, 9:00 a.m. until 2:30 p.m.

*Emergency* means an unforeseen combination of circumstances or the resulting state that calls for immediate action. The term includes, but is not limited to, a fire, a natural disaster, an automobile accident, or any situation requiring immediate action to prevent serious bodily injury or loss of life.

*Establishment* means any privately owned place of business operated for a profit to which the public is invited, including but not limited to any place of amusement or entertainment.

*Guardian* means:

- (1) A person who, under court order, is the guardian of the person of a minor; or
- (2) A public or private agency with whom a minor has been placed by a court.

*Minor* means any person under 17 years of age.

*Operator* means any individual, firm, association, partnership or corporation operating, managing or conducting any establishment. The term includes the members or partners of an association or partnership and the officers of a corporation.

*Parent* means a person who is:

- (1) A natural parent, adoptive parent or stepparent of another person; or
- (2) At least 18 years of age and authorized by a parent or guardian to have the care and custody of a minor.

*Public place* means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

*Remain* means to: linger or stay, or fail to leave premises when requested to do so by a police officer or the owner, operator, or other person in control of the premises.

*Serious bodily injury* means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(b) *Offenses.*

- (1) A minor commits an offense if he remains in any public place or on the premises of any establishment within the city during curfew hours.
- (2) A parent or guardian of a minor commits an offense if he knowingly permits, or by insufficient control allows the minor to remain in any public place or on the premises of any establishment within the city during curfew hours.
- (3) The owner, operator or any employee of an establishment commits an offense if he knowingly allows a minor to remain upon the premises of the establishment during curfew hours.

(c) *Defenses.*

- (1) It is a defense to prosecution under subsection (b) of this section that the minor was:
  - a. Accompanied by the minor's parent or guardian;
  - b. On an errand at the direction of the minor's parent or guardian, without any detour or stop;
  - c. In a motor vehicle involved in interstate travel;
  - d. Engaged in an employment activity, or going to or returning home from an employment activity, without any detour or stop;
  - e. Involved in an emergency;
  - f. On the sidewalk abutting the minor's residence or abutting the residence of a next-door neighbor if the neighbor did not complain to the police department about the minor's presence;
  - g. Attending an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the minor, or going to or returning home from, without any detour or stop, an official school, religious or other recreational activity supervised by adults and sponsored by the city, a civic organization or another similar entity that takes responsibility for the minor;

- h. Exercising First Amendment rights protected by the United States Constitution, such as the free exercise of religion, freedom of speech and the right of assembly; or
- i. Married or had been married or had disabilities of minority removed in accordance with V.T.C.A., Family Code ch. 31.

- (2) It is a defense to prosecution under subsection (b)(3) of this section that the owner, operator or employee of an establishment promptly notified the police department that a minor was present on the premises of the establishment during curfew hours and refused to leave.

(d) *Enforcement.* Before taking any enforcement action under this section, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this section unless the officer reasonably believes that an offense has occurred and that, based on any response and other circumstances, no defense in subsection (c) of this section is present.

(e) *Penalties.*

- (1) A person who violates a provision of this section is guilty of a separate offense for each day or part of a day during which the violation is committed, continued or permitted. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.
- (2) When required by V.T.C.A., Family Code § 51.08, as amended, the municipal court shall waive original jurisdiction over a minor who violates subsection (b)(1) of this section and shall refer the minor to juvenile court.

(Code 1972, § 11-11.1; Ord. No. 7-75, §§ 1—4, 7-8-1975; Ord. No. 1-94, § 1, 1-18-1994; Ord. No. 6-16A, §§ 1, 2, 6-28-2016)

**State law references**—Juvenile curfew in general law municipality, V.T.C.A., Local Government Code § 341.905; review of curfew every three years, V.T.C.A., Local Government Code § 370.002; children taken into custody for violation of curfew, Vernon's Ann. C.C.P. art. 45.059.

**Secs. 66-13—66-42. Reserved.**

**ARTICLE II. UNSANITARY OR UNSIGHTLY CONDITIONS ON PRIVATE  
PROPERTY\***

**Sec. 66-43. Vegetation or grass height restrictions.**

(a) *Violation.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the city limits of the city commits an offense by permitting or allowing weeds, grass, brush, or any vegetation to grow to a height greater than 12 inches upon any such real property. Such real property shall include, but not be limited to:

- (1) The parkway between the sidewalk and the curb;
- (2) The right-of-way between any fence, wall or barrier and the curb or pavement if such exists or the centerline of such right-of-way;
- (3) The area between a fence, wall or barrier and within any abutting drainage channel easement to the top of such channel closest to the property;
- (4) The area outside the property to an abutting curblineline;
- (5) The area outside the property to a distance of ten feet from the property line if such area is part of or adjacent to a drainage easement or creek; or
- (6) Any area directly across an alley or traveled way that borders the property which is between the edge of the alley or traveled way and a screening wall or other barrier.

(b) *Presumed nuisance.* Vegetation not regularly cultivated that exceeds 12 inches in height shall be presumed to be a nuisance, objectionable, unsanitary and unsightly.

(c) *Exception.* It shall not be an offense under this section to permit or allow weeds, grass, brush or other vegetation to grow to a height greater than 12 inches if they are growing in an area designated as a natural conservation area, preserve or habitat by any federal or state law or agency and the removing or cutting of the vegetation within that area is prohibited by the federal or state law or agency.

(Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Sec. 66-44. Property to be free of conditions constituting public nuisances.**

A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the city limits commits an offense by permitting or allowing stagnant or unwholesome water, filth, carrion, weeds, rubbish, rubble, junk or garbage, or impure or unwholesome matter of any kind, including, but not limited to, dead grass, tree limbs, tree stumps, improper composting or improper storage of landscape materials, waste paper, scrap wood or lumber, scrap metal, rags, rubber

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\***Editor's note**—Ord. No. 6-13A, § 2(Exh. A), adopted June 25, 2013, repealed Art. II in its entirety and enacted new provisions to read as herein set out. Former Art. II, §§ 66-43—66-49 pertained to similar subject matter, and derived from the 1972 Code, §§ 11-22—11-28; an ordinance adopted June 8, 1967, §§ 1, 4, 6—9.

tires, plastic, metal, ceramic or glass bottles, canisters, barrels or cans, combustible materials, appliances, furniture, discarded or unused flooring material, dismantled or disassembled vehicle parts, discarded or abandoned construction materials and exposed or uncovered fill materials, or any objectionable, unsanitary or unsightly matter of whatever nature to accumulate or remain on such real property, including the improvements thereon, or within any easement area on such real property or upon any adjacent right-of-way for streets and alleys between the property line for such real property and where the paved surface of the street or alley begins. Such conditions are hereby defined as public nuisances. (Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Sec. 66-45. Cultivated and uncultivated agricultural properties; height limitations.**

(a) *Uncultivated agricultural properties.* A person, owner, tenant or agent responsible for or claiming or having supervision or control over uncultivated agricultural property commits an offense if such person permits or allows:

- (1) Vegetation to grow to a height greater than 12 inches within ten feet from any adjacent property under different ownership, a right-of-way or easement;



- (2) Vegetation to interfere with the visibility requirements at any intersection of public thoroughfares.

(b) *Cultivated agricultural properties.* Where the distance between the growing crop and adjacent property under different ownership, a right-of-way or easement is less than ten feet, the person, owner, tenant or agent responsible for or claiming or having supervision or control over cultivated agricultural property commits an offense if such person permits or allows:

- (1) Vegetation to grow to a height greater than 12 inches between such growing crop and any adjacent property under different ownership, a right-of-way or easement; or
- (2) Such growing crop interferes with the visibility requirements at any intersection of public thoroughfares.

(c) *Definition of agricultural property.* For the purposes of this section, property is considered to be agricultural property, whether cultivated or uncultivated, if it has been appraised by the county central appraisal district, or equivalent authority, pursuant to the Texas Property Tax Code or state constitution, as agricultural or wildlife management land or a property that has not been appraised by the county appraisal district as agricultural or wildlife management land but is routinely cultivated producing an agricultural crop during the past three calendar years.

(Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Sec. 66-46. Notice of violation.**

(a) In the event any owner, tenant, agent or person responsible for or claiming or having supervision or control over real property (hereinafter owner) governed by this article fails to comply with the provisions of this article, the city, by and through its code enforcement division or designee shall give notice of the violation to such owner. Such notice shall be given in any one of the following ways:

- (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 in the city's official newspaper at least once;
  - b. Posting notice on or near the front door of each building on the property to which the violation relates; or
  - c. Posting a notice to a placard attached to a stake driven into the ground on the property to which the violation relates.

(b) If the city mails a notice to the owner in accordance with subsection (a) of this section, and the United States Postal Service returns the notice as refused, unclaimed, or if the address required by subsection (a)(2) of this section 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 the city 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, the city, without further notice, may correct the violation at the owner's expense and assess the expense against the property or issue citations. If a 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 section 66-47 and assess its expenses as provided in section 66-48. (Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Sec. 66-47. Notice to remove weeds or abate a public nuisance.**

(a) It shall be the duty of the city secretary of the city, or her designees, to notify the owner and/or agent of any premises within the city which are grown up in weeds to a greater height than 12 inches, or any premises on which a public nuisance is located, to remove such weeds or to abate such public nuisance within seven days of notice of a violation.

(b) 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:
  - 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.

(c) If the notice is mailed to a property owner in accordance with subsection (b), 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.

(d) In a notice provided under this section, the city 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, the city 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 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 section 66-48 and assess its expenses as provided by section 66-48.

(Ord. No. 6-13A, § 2(Exh. A), 6-25-2013; Ord. No. 2-16C, § 1, 2-16-2016)

**Editor's note**—Ord. No. 2-16C, § 1, adopted Feb. 16, 2016, changed the title of § 66-47 from "Citations; work or improvements by the city; charges against owner" to read as herein set out.

**Sec. 66-48. Assessment of expenses; lien.**

(a) In the event the owner fails or refuses to pay such expenses charged to the owner under section 66-47(2) within 15 days after the first day of the month following the month in which the work was done, a lien may be obtained against the property. To obtain a lien, the city administrator, must file a statement of the expenses incurred in correcting the condition of the real property with the county clerk in which the 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 filing of the statement with the county clerk. Unless provided for by state law, the lien described herein shall not attach to homestead property.

(b) The city's lien shall be a priority lien on such property, second only to tax liens and liens for street improvements. The lien amount shall include simple interest, which shall accrue at the rate of ten percent per annum from the date the expenses were incurred by the city. The city may, and hereby authorizes the city attorney to, bring a suit for foreclosure to recover the expenditures and the interest due.

(Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Sec. 66-49. Charge to be levied and collected for weed removal and/or abatement of public nuisance.**

(a) The city may assess expenses incurred under section 66-48 against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the mayor, or municipal official designated by the mayor, must file a statement of expenses with the Medina County Clerk. 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 may bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to any fine that may be imposed.

(h) The city may foreclose a lien on property under this subchapter in a proceeding relating to the property brought under V.T.C.A., Tax Code, Ch. 33, Subch. E. (Ord. No. 6-13A, § 2(Exh. A), 6-25-2013; Ord. No. 2-16C, § 1, 2-16-2016)

**Editor's note**—Ord. No. 2-16C, § 1, adopted Feb. 16, 2016, changed the title of § 66-49 from "Authority to immediately abate dangerous tall vegetation" to read as herein set out.

**Sec. 66-50. Authority to immediately abate dangerous public nuisances.**

(a) Notwithstanding any of the foregoing sections, the city may abate, without notification, any public nuisance that is an immediate danger to the health, life, or safety of any person. The city must give notice, in the manner provided in section 66-46, to the property owner no later than the tenth day after the date the city abates the dangerous public nuisance. 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 of this article that occurred on the property;
- (3) A statement that the city abated the public nuisance; and
- (4) An explanation of the property owner's rights to request an administrative hearing regarding the city's abatement of the public nuisance.

(b) The city shall conduct an administrative hearing before the municipal court not later than the thirtieth day after the date of the abatement of the public nuisance, if the owner files a written request for a hearing with the city. The city shall conduct the administrative hearing not later than the twentieth 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 the city's abatement of the public nuisance.

(c) The city may assess expenses and create liens under this section in the same manner and subject to the same conditions as set forth in section 66-48.

(Ord. No. 6-13A, § 2(Exh. A), 6-25-2013)

**Secs. 66-51—66-71. Reserved.**

**ARTICLE III. JUNKED MOTOR VEHICLE\***

**Sec. 66-72. Definitions.**

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

**\*Editor's note**—Ord. No. 6-13B, § 1(Exh. A), adopted June 25, 2013, repealed Art. III in its entirety and enacted new provisions to read as herein set out. Former Art. III, §§ 66-72—66-77 pertained to similar subject matter, and derived from the 1972 Code, §§ 11-50—11-55; and Ord. No. 6-97A, § II(1)—(6), adopted June 17, 1997.

*Administrator* means the city administrator or the city administrator's designee.

*Inoperable* means a vehicle that is in such condition at the time of inspection, that it is no longer usable for the purpose for which it was manufactured, regardless of the potential for repair or restoration. If the vehicle is wrecked, dismantled or partially dismantled it is presumed to be inoperable.

*Junked vehicle* means a vehicle that is self-propelled or was manufactured to be self-propelled, or any part thereof, in ordinary public view, which remains inoperable for a continuous period of 30 days if the vehicle is on private property or for 72 consecutive hours if the vehicle is on public property.

*Ordinary public view* means a vehicle or any part thereof or the tarp or cover thereon is visible at any time of the year from any public right-of-way, or adjacent land or the first floor level of a building thereon, which is owned or occupied by a person other than the property owner or occupant of the property on which the vehicle is located or parked.

*Property owner* means the owner of any premises, as listed in the real property tax records of the city on which the junked vehicle is located.

(Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Sec. 66-73. Declaration of junked vehicle to be a 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:

- (1) Is detrimental to the safety and welfare of the public;
- (2) Tends to reduce the value of private property;
- (3) Invites vandalism;
- (4) Creates a fire hazard;
- (5) Is an attractive nuisance creating a hazard to the health and safety of minors;
- (6) Produces urban blight adverse to the maintenance and continuing development of municipalities; and
- (7) Is a public nuisance.

(Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Sec. 66-74. Offense.**

(a) A person commits an offense if the person maintains a public nuisance as described by section 66-73.

(b) An offense under this article is a misdemeanor punishable by a fine not to exceed \$200.00. In the event, a defendant has once previously been convicted under this article; the defendant shall be fined an amount not less than \$100.00 for each conviction thereafter. Each day a violation is permitted to exist shall constitute a separate offense.

(Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Sec. 66-75. Procedures for abating nuisance.**

(a) *Generally.* The city's procedures for the abatement and removal of a junked vehicle or a part of a junked vehicle as a public nuisance from private property, public property or public rights-of-way are set out in this section.

- (1) Procedures for abatement and removal of a public nuisance must be administered by the administrator or another regularly salaried, full-time employee of the City of Devine, except that any authorized person may remove the nuisance.
- (2) Pursuant to the procedures established by this section, the person authorized to administer these procedures may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance.
- (3) The municipal court may issue necessary orders to enforce an action taken by the city council, or the administrator, or both, under this section, pursuant to V.T.C.A., Transportation Code § 683.074.
- (4) Once a proceeding for the abatement and removal of the public nuisance has commenced under this section, the relocation of a junked vehicle that is a public nuisance to another location within the City of Devine has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the new location.
- (5) In the event that the city removes a junked vehicle from private or public property pursuant to this section, the administrator shall provide notice to the Texas Department of Transportation, identifying the vehicle or part of the vehicle being removed, not later than the fifth day after the date of removal.
- (6) A junked vehicle removed pursuant to the provisions of this section may not be reconstructed or made operable after removal.

(b) *Notice of nuisance.*

- (1) The administrator shall give not less than ten days' written notice stating the nature of the public nuisance. The notice must be personally delivered, sent by certified mail with a five-day return requested, or delivered by the United States Postal Service with signature confirmation service to:
  - a. The last known registered owner of the nuisance;
  - b. Each lienholder of record of the nuisance; and
  - c. The owner or occupant of:
    1. The property on which the nuisance is located; or
    2. If the nuisance is located on a public right-of-way, the property adjacent to the right-of-way.
- (2) The notice must state:
  - a. That 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; and

- b. The time, date and place of the public hearing to be held by the municipal court in the event that the nuisance is not abated in response to the notice. The public hearing shall not be set earlier than the eleventh day after the date of the service of notice.
- (3) 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.
- (4) If 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.
- (c) *Public hearing.* If the nuisance is not abated the municipal court shall conduct a public hearing, not earlier than the 11th day after the date of the service of notice, pursuant to the procedures that follow:
- (1) At the hearing, the junked motor vehicle is presumed to be inoperable, unless demonstrated by a preponderance of evidence to be otherwise by the owner.
- (2) If the municipal court finds the junked motor vehicle to be a nuisance and such information is available, an order requiring removal of the nuisance must include:
- a. For a motor vehicle, the vehicle's:
1. Description;
  2. Vehicle identification number; and
  3. License plate number;
- b. For an aircraft, the aircraft's:
1. Description; and
  2. Federal aircraft identification number as described by Federal Aviation Administration aircraft registration regulations in 14 C.F.R. Part 47; and
- c. For a watercraft, the watercraft's:
1. Description; and
  2. Identification number as set forth in the watercraft's certificate of number.
- (3) Any party aggrieved by the decision of the municipal court after the public hearing, shall have ten days to appeal the decision to the city council.
- (Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Sec. 66-76. Removal and disposal of nuisance.**

(a) Compliance with an order for removal of a public nuisance may be carried out by any person or entity so authorized by the administrator.

(b) Unless an appeal is taken pursuant to section 66-75(c)(3) and no earlier than ten days after the municipal court has ordered a vehicle or part of a vehicle to be a nuisance, pursuant to section 66-75(c), the vehicle, including a part of a junked vehicle, may be removed to a scrapyard, a motor vehicle demolisher, or a suitable site operated by the city, or the city may

operate a disposal site if the council determines that commercial disposition is not available or is inadequate, and it may make final disposition of the vehicle or vehicle parts, including transferring it or them to another disposal site if the disposal is scrap or salvage only.

(c) Any proceeds from the transfer of the junked vehicle or part thereof to the site authorized by this section shall be used to reimburse the city for all costs incurred in the notification, investigation, hearing, and disposal procedures (including any and all variable towing and disposal fees from contracted sources) within this article. Any remaining proceeds shall be transferred to the lienholder of record or, if none, the owner of record.

(Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Sec. 66-77. Exceptions.**

The procedures and penalties authorized by this article shall not apply to a vehicle or vehicle part that is:

- (1) Completely enclosed in a building in a lawful manner and is not visible from the street or public or private property; or
- (2) 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:
  - a. Maintained in an orderly manner;
  - b. Not a health hazard; and
  - c. Screened completely from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(Ord. No. 6-13B, § 1(Exh. A), 6-25-2013)

**Secs. 66-78—66-87. Reserved.**

**ARTICLE IV. SALE OR DISPOSAL OF UNCLAIMED OR SURPLUS PROPERTY\***

**Sec. 66-88. Authority to sell generally.**

All abandoned, stolen or recovered property of every kind, except motor vehicles, which shall remain unclaimed with the police department for a period of two months without being claimed or reclaimed by the owners, whether known or not, may be sold and disposed of at public auction, as provided in this article.

(Code 1972, § 11-71; Ord. No. 5-81, § 1, 5-14-1981)

\***State law reference**—Disposition of most unclaimed and abandoned property, V.T.C.A., Penal Code § 18.17.

**Sec. 66-89. Delivery to city secretary.**

The chief of police shall give to the city secretary a list of all property subject to sale hereunder and shall thereafter deliver such property to the city secretary before the date of sale and take a receipt from such city secretary showing in detail all property so delivered. (Code 1972, § 11-72; Ord. No. 5-81, § 2, 5-14-1981)

**Sec. 66-90. Notice; manner of sale.**

Thirty days' notice of the time and place of sale of all property, and a descriptive list of the property to be offered for sale shall be posted at the door of the courthouse of the county and at the city hall bulletin board and a copy thereof sent by registered mail to the last known address of the owner, in the event the name of the owner is known to the city secretary. Thereafter, such property shall be offered for sale at public auction to the highest bidder for each piece of property or assembled in lots, whichever, in the discretion of the city secretary, shall offer the best price obtainable for such property. (Code 1972, § 11-73; Ord. No. 5-81, § 3, 5-14-1981)

**Sec. 66-91. Time for sales; all sales for cash.**

The public auction provided for in the preceding section shall be conducted at the place and hour designated in the notice. All sales shall be for cash. (Code 1972, § 11-74; Ord. No. 5-81, § 4, 5-14-1981)

**Sec. 66-92. Reports by city secretary; delivery of proceeds to city accountant.**

The city secretary shall conduct such public auction and he shall keep an accurate statement of each article sold and the price bid and paid therefor, and shall make a complete report in writing to the city accountant of the city of the time, place and manner of conducting such sale. All funds received on account of such auction shall be delivered to the city accountant, who shall give his receipt therefor. (Code 1972, § 11-75; Ord. No. 5-81, § 5, 5-14-1981)

**Sec. 66-93. Proceeds to be credited to general fund.**

The city accountant shall place all funds received by him under and by virtue of this article to the credit of the general fund, to be thereafter disbursed as the city council shall order. (Code 1972, § 11-76; Ord. No. 5-81, § 6, 5-14-1981)

**Sec. 66-94. Disposition of surplus or obsolete personal property.**

(a) Any personal property owned by the city which is worn out, scrap or obsolete, which has been declared surplus by the city council or which has been condemned as useless by the director of a department, and is not needed for public use, shall be disposed of by the city secretary, by public auction, in the same manner as unclaimed property, or by advertising for sealed bids.

(b) If the city secretary determines that the personal property shall be disposed of by advertising for sealed bids, he shall advertise for sealed bids for a period of at least seven days or more, at the discretion of the city secretary. The highest bid is subject to confirmation by city council resolution.

(Code 1972, § 11-77; Ord. No. 5-81, § 7, 5-14-1981)

**Sec. 66-95. Destruction of pistols and illegal weapons; exceptions.**

All pistols, dirks, daggers, knives and slingshots and other weapons prohibited by the penal code of the state, which for a period of two years have remained unclaimed, abandoned or unidentified by the rightful owner and which are not being held as evidence in any pending cases filed of record, shall be destroyed in the presence of one police officer of the city, the city secretary, the mayor and two city councilmembers, who shall make a report under oath to the city council, listing the make, model, type and serial number of the property destroyed, together with the time, date, place and manner of destruction. Provided, however, that this section shall not apply to:

- (1) Pistols which the chief of police of the city has determined to be serviceable, which shall be kept in reserve by the city police department for use in the event of civil disorder or disaster;

- (2) Pistols which have been classified as antique or collector's items by a qualified expert in the firearms field, which shall be advertised as such and sold at public auction as provided in this article. The chief of police shall determine and select a qualified expert in the firearms field to classify such pistols.

(Code 1972, § 11-78; Ord. No. 5-81, § 8, 5-14-1981)

**Sec. 66-96. Variance of certain provisions of article by councilmanic resolution.**

In unusual circumstances, in the sale of surplus personal property, the terms and provisions of this article may be varied by resolution of the city council.

(Code 1972, § 11-79; Ord. No. 5-81, § 9, 5-14-1981)

**Sec. 66-97. Penalty for violation of article.**

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor. In addition to the penalties otherwise provided, any officer or employee of the city violating any provisions of this article shall forfeit his office or employment.

(Code 1972, § 11-81; Ord. No. 5-81, § 11, 5-14-1981)

**Secs. 66-98—66-108. Reserved.**

**ARTICLE V. CARNIVALS\***

**DIVISION 1. GENERALLY**

**Secs. 66-109—66-119. Reserved.**

**DIVISION 2. CARNIVAL OPERATION, SPONSORSHIP BY NONPROFIT GROUPS**

**Sec. 66-120. Carnivals permitted; exceptions.**

Carnivals which are within the purview of this division are defined to be those which are operated by or on behalf of local nonprofit groups or organizations for the purpose of raising funds to be used for charitable purposes or for the maintenance of a nonprofit organization or corporation as defined in the Texas Civil Statutes. All other carnivals are specifically prohibited from operation within the city limits.

(Code 1972, § 11-106; Ord. No. 8-86, 11-18-1986)

**Sec. 66-121. License required; penalty for violation.**

(a) In order to govern fire safety and public health and sanitation, it shall be unlawful for any group or organization to show or exhibit any carnival within the city limits without first obtaining a license to do so from the city secretary.

\*State law reference—Type A municipality may license, tax and regulate assorted amusements and exhibitions, V.T.C.A., Local Government Code § 215.032.

(b) Any carnival operating within the city limits in violation of this section shall be closed immediately, and any person, group or organization showing or exhibiting, or in any manner connected with or taking part in the showing or exhibiting of a carnival within the city limits in violation of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed \$1,000.00. Each day of a violation of this section shall be a separate offense of this section.

(Code 1972, § 11-107; Ord. No. 8-86, 11-18-1986)

**Sec. 66-122. Application for license—Filing of application.**

(a) Any local nonprofit group or organization desiring to operate or sponsor a carnival within the city limits shall make application for a license and file the same with the city secretary not less than 30 days prior to the time when it is desired to show or exhibit such carnival. Such application shall give the name and permanent address of the owner of the carnival, and if the carnival is owned by a company or corporation, the application shall show the name of the manager or other officer in charge of the carnival. In any event, the application shall show the person in active charge and control of showing and exhibiting the carnival.

(b) The application shall further show the name and address of the local nonprofit group or organization making such application, along with the documentation of its nonprofit status and its purpose in operating or sponsoring the carnival. The application shall further give a list of all shows, rides, booths and other businesses and attractions operated in connection with the carnival, listing each by name with a description of each show or attraction. Such applicant shall also submit with the application, in the form of affidavits and statements, evidence as to insurance, solvency and responsibility of the owner of the carnival, and as to the kind and character of shows and attractions exhibited by the carnival. In making such application, the group or organization making same shall also state at the end of the application an agreement to conduct the carnival and each and all of the shows, attractions and exhibits therein in a decent, orderly and law-abiding manner.

(Code 1972, § 11-108; Ord. No. 8-86, 11-18-1986)

**Sec. 66-123. Same—Approval of application.**

After an application is filed under this division, if the city secretary is convinced from the evidence submitted that the owner of the carnival has sufficient liability insurance and is solvent, that he has in the past conducted and proposes to conduct the carnival in a decent, orderly and law biding manner, that the group or organization applying for such license is in fact a local nonprofit group or organization, that the purpose of operating or sponsoring the carnival is charitable in nature or for the maintenance of the organization, and that the chosen site is appropriate for such purpose, the city secretary shall approve the application.

(Code 1972, § 11-109; Ord. No. 8-86, 11-18-1986)

**Sec. 66-124. Same—Appeal in the event of disapproval.**

If the city secretary disapproves the application for license, the owner or the sponsoring organization may appeal that decision to the city council. The council must act on the appeal before the proposed date of the carnival.

(Code 1972, § 11-110; Ord. No. 8-86, 11-18-1986)

**Sec. 66-125. License—Fee payment, security personnel required.**

As a condition and requirement of the licensing of any carnival to show in the city, the applicant for such license shall pay to the city secretary a license fee as established from time to time by ordinance. In addition to such fee, the applicant shall be responsible for providing adequate security (certified law enforcement personnel) during all hours of operation, adequacy of security to be determined by the chief of police of the city.

(Code 1972, § 11-111; Ord. No. 8-86, 11-18-1986)

**Sec. 66-126. Same—Issuance.**

Upon approval by the city secretary of an application for a license under this division, and payment of the fee prescribed in section 66-125 above, the city secretary shall issue a license to the applicant to show and exhibit the carnival in the city.

(Code 1972, § 11-112; Ord. No. 8-86, 11-18-1986)

**Sec. 66-127. Same—Term.**

A license issued under this article shall cover one appearance in the city and shall be good only for four consecutive days. A new license shall be required each time the carnival returns to the city.

(Code 1972, § 11-113; Ord. No. 8-86, 11-18-1986)

**Sec. 66-128. Operation under license; penalty for violation of order to cease operation.**

(a) Any group or organization obtaining a license to show and exhibit a carnival within the city limits shall have the right to show, maintain and operate only such shows, rides, booths and other attractions as shall be under the direct charge of the owner or operator of the carnival, and it shall not be lawful for any person to show or exhibit in connection with the carnival any show, attraction or concession of any kind or character independent of the carnival's ownership and management. The license granted in accordance with the provisions of this article covers and permits only such shows, attractions and concessions as are owned and operated by the carnival.

(b) If at any time during the term of the license, the city fire marshal determines that the operation of the carnival constitutes a fire hazard, or if the city public health officer determines that the operation of the carnival constitutes a danger to public health or sanitation, the city fire marshal or city public health officer shall order the carnival to cease operations until such fire hazard or danger to public health or sanitation is abated. Any carnival operating in

violation of the city fire marshal or city public health officer's order shall be in violation of this article and shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not to exceed \$1,000.00. Each day of a violation of this article shall be a separate offense. (Code 1972, § 11-114; Ord. No. 8-86, 11-18-1986)

**Sec. 66-129. Hours of operation.**

Any carnival operating under the provisions of this article may operate only from 6:00 p.m. until 12:00 midnight each day.

(Code 1972, § 11-115; Ord. No. 8-86, 11-18-1986)

**Secs. 66-130—66-136. Reserved.**

**ARTICLE VI. SMOKING IN MUNICIPAL BUILDINGS**

**Sec. 66-137. Smoking in buildings of the city.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*City's buildings* means all of the enclosed area that is used by the city and its employees and general public including, but not limited to, all or any part of the building used for any of the operations of the city, such as the city hall, police station, municipal court, library, city maintenance facilities and wastewater treatment plant, mechanics shop, EMS facilities.

*Smoke, smokes or smoking* means:

- (1) Carrying or holding a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or device;
- (2) The combustion of any cigar, cigarette, tobacco or similar article, or any other combustible substance in any manner, or in any form; or
- (3) Emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

(b) *Offenses; penalty.*

- (1) A person commits an offense if, in a city building, the person smokes and fails, or refuses, to extinguish smoking materials or move outside the building upon request by any person to do so.
- (2) Any person convicted of violating this provision shall be guilty of a class C misdemeanor, punishable by a fine of not less than \$1.00 nor more than \$1,000.00 as set by a judge or jury.

(c) *Signs.* Signs shall be visibly placed at each public entrance to city buildings to notify persons entering the premises that smoking is prohibited.

(Ord. No. 10-00A, § 1, 10-17-2000)

**Secs. 66-138—66-157. Reserved.**

## ARTICLE VII. GRAFFITI

### **Sec. 66-158. Purpose and intent.**

(a) The city council of the city is enacting this article to help prevent the spread of graffiti vandalism. Unless the city acts to remove graffiti from public and private property, the graffiti tends to remain. Other properties then become the target of graffiti, and entire neighborhoods are affected and become less desirable places in which to be, all to the detriment of the city.

(b) The city council intends, through the adoption of this article, to provide additional enforcement tool to protect public and private property from acts of graffiti vandalism and defacement. The council does not intend for this article to conflict with any existing anti-graffiti state laws.

(Ord. No. 1-03A, § 1, 1-21-2003)

### **Sec. 66-159. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aerosol paint container* means any aerosol container that is adopted or made for the purpose of applying spray paint or other substances capable of defacing property.

*Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth of an inch, containing ink or other pigmented liquid that is not water soluble.

*Etching equipment* means any tool, device or substance that can be used to make permanent marks on any natural or manmade surface.

*Graffiti* means any unauthorized inscription, work, signature, symbol, design, figure, painting or other defacement that is written, etched, scratched, sprayed, drawn, painted, engraved on or applied to or otherwise affixed to any surface of public or private property improvement by a graffiti implement.

*Graffiti implement* means a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.

*Guardian* means a person who, under court order, is the guardian of the person of a minor; or a public or private agency with whom a minor has been placed by a court.

*Minor* means any person under 18 years of age.

*Owner* means any person with the legal right of possession to tangible property which includes, but is not limited to, the actual owner or his lessee.

*Paint stick or graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth of an inch in width.

*Parent* means a person who is a natural parent, adoptive parent or stepparent of another person.

*Person* means any individual, partnership, cooperative association, private corporation, personal representative receiver trustee, assignee or other legal entity.

*Unauthorized* means without the permission of the owner or person in control of property, whether public or private.

(Ord. No. 1-03A, § 2, 1-21-2003)

**Sec. 66-160. Prohibited acts.**

(a) *Defacement.* V.T.C.A., Penal Code § 28.08, makes it an offense under state law to knowingly make markings with aerosol paint or an indelible marker. Accordingly, it shall be unlawful for any person to intentionally or knowingly apply graffiti by any other method to any manmade surface, on any publicly owned or privately owned property within the city, without the permission of the owner or occupant.

(b) *Possession of graffiti implements.*

- (1) *In designated public places.* It shall be unlawful for any person to possess any graffiti implement or aerosol paint container while in or upon any park, playground, swimming pool, recreational facility or other public building or structure owned or operated by the city unless otherwise authorized by the city, or while on private commercial property after business hours, unless authorized by the business.
- (2) *In designated specific places.* It shall be unlawful for any person to possess any graffiti implement or aerosol paint container while in or upon any private property that has been condemned or been abandoned, without the prior written consent of the owner of such private property.
- (3) *At or near school facilities.* It shall be unlawful for any person to possess any graffiti implement or aerosol paint container while on any school property, grounds, facilities, buildings or structures, or in areas immediately adjacent to those specific locations upon public property, without the consent of school officials. The provisions of this section shall not apply to the possession of graffiti implements by a minor attending or traveling to or from a school at which the minor is enrolled if the minor is participating in a class at the school that formally requires the possession of graffiti implements. It shall be a complete defense in any prosecution for violation of this section that the minor student was required by the school to possess a graffiti implement.

(Ord. No. 1-03A, § 3, 1-21-2003)

**Sec. 66-161. Responsibility of parent or guardian for graffiti created by minor.**

A parent or guardian of a minor commits an offense if he intentionally, knowingly, recklessly or with criminal negligence permits the minor to create graffiti on tangible property in city without the property owner's consent.

(Ord. No. 1-03A, § 4, 1-21-2003)

**Sec. 66-162. Penalties.**

(a) *Fines.* Any person violating section 66-160 and/or section 66-161 shall be punished by a fine of up to \$500.00 for the first offense, with a minimum of at least \$250.00 for the second offense and each subsequent offense.

- (1) In the case of a minor, the parents or legal guardian shall be jointly and severally liable with the minor for payment of all fines.
- (2) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents' or legal guardians' property that includes the fine and administrative cost.

(b) *Restitution.* In addition to any punishment specified in this section, the court may order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of a minor, the parents or legal guardian shall be ordered jointly and severally liable with the minor to make the restitution.

(c) *Community service.* In lieu of, or as part of, the penalties specified in this section, a minor or adult may be required to perform community service as described by the court based on the following minimum requirements:

- (1) The minor or adult shall perform at least 30 hours of community service.
- (2) At least one parent or guardian of the minor shall be in attendance at a minimum of ten percent of the period of assigned community service.
- (3) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that is graffiti removal.

(Ord. No. 1-03A, § 5, 1-21-2003)

**Secs. 66-163—66-180. Reserved.**

**ARTICLE VIII. TEMPORARY SALES\*****Sec. 66-181. Definitions.**

For the purpose of this article, the following words and terms shall have the following meanings:

*Applicant.* A person who applies for a permit, and includes all persons residing at the address of the location where the temporary sale is to be conducted and all persons representing a charitable or nonprofit organization which owns property within the City of Devine where a temporary sale is to be conducted.

*Charitable or nonprofit organization.* Any organization qualifying as nonprofit under section 501(c) of the Federal Income Tax Code or the state Nonprofit Corporation Act, including churches, and as such statutes may be amended.

*Person.* Individuals, partnerships, voluntary associations, corporations and charitable or nonprofit organizations.

*Personal property.* Property which is owned, utilized and maintained by a person or members of his residence and acquired in the normal course of living in or maintaining a residence.

*Residence.* Any single-family structure or multi-family complex which may be owned, rented or leased as a dwelling for nontransient occupants, excluding licensed residential care facilities.

*Residential premises.* Any property containing a residence and not otherwise being used for commercial purposes.

*Retail sales.* All retail sales, except "temporary sales" as that term is defined in this section, which are prohibited in all residential and multi-family zoning classification districts in the city.

*Temporary sale.* Any offering of goods, wares, merchandise, or other personal property for sale to the general public, on a residential premises, by a temporary sale operator, as an intermittent activity, including but not limited to garage sales, patio sales, yard sales, rummage sales, and all other onsite sales that are not the usual and customary source of that person's livelihood. Such sales include situations in which more than five specific items of tangible personal property are to be sold. Property obtained by any means, whether purchased or obtained by consignment or trade, for intended resale may not be sold at a temporary sale.

*Temporary sale operator.* Any person named on a permit issued by the City of Devine to conduct or operate a temporary sale, which shall be limited to residents of this city and representatives of charitable or nonprofit organizations located within this city.

(Ord. No. 07-08, § 1, 7-15-2008)

**\*Editor's note**—Sections 1—10 of Ord. No. 07-08, adopted July 15, 2008, did not specify manner of inclusion; hence, codification as a new art. VIII, §§ 66-181—66-190 was at the discretion of the editor.

**Sec. 66-182. Applications for permits.**

(a) All temporary sales, as defined in section 18-181, shall require a permit from the City of Devine, Texas. All permits issued hereunder shall be issued upon application and payment of a fee as provided for in the fee schedule found in the appendix of this Code, and as such schedule may be from time to time amended by the city council.

(b) Any applicant who desires a permit to conduct a temporary sale, shall make an application, in writing, to the city. All applications shall be made to the city secretary or to her designee. All applications shall contain the following information:

- (1) Name of the applicant, residence of the applicant, and, proof of the applicant's address (driver's license, utility bills or other identification).
- (2) The names of any other people, up to three, who will be contributing personal property to be offered for sale, and who do not reside at the location of the sale.
- (3) The proposed beginning and ending dates of the temporary sale.
- (4) The general type of personal property to be offered for sale (for example, furniture, used clothing, etc.).
- (5) The proposed hours that such temporary sale shall be conducted each day.
- (6) Location of the sale (this location must be the same as the residence address of the applicant).

(c) The application shall be submitted by 12:00 noon, two days prior to the requested starting date of the temporary sale.

(d) Only the owner, lessee or agent of the residential property upon which the temporary sale is being conducted may obtain such a permit.

(e) Upon verification and compliance with the provisions of this article, and payment of the proper fee, the applicant will be issued a permit for a temporary sale.

(f) The permit shall be clearly displayed and visible from a distance of six feet from the curbline of the nearest edge of the paved portion of the street or right-of-way.

(g) The permit may be revoked, or refused, if the application contains false, fraudulent or misleading statements.

(Ord. No. 07-08, § 2, 7-15-2008)

**Sec. 66-183. Responsibility of temporary sale operator.**

(a) The temporary sale operator shall be responsible for the maintenance of good order and decorum on the premises during all hours of the sale.

(b) By making application for a temporary sale permit, accepting such a permit and conducting such a sale, the temporary sale operator authorizes any officer or employee of the City of Devine to enter upon the property for the purpose of determining that such sale is being conducted in accordance with the provisions of this article.

(c) The temporary sale operator shall not allow loud or boisterous conduct on the premises.

(d) The temporary sale operator shall not permit vehicles to impede the passage of traffic on streets in the area of the location of the sale. Vehicle parking shall be in compliance with applicable laws and ordinances.

(Ord. No. 07-08, § 3, 7-15-2008)

**Sec. 66-184. Frequency, duration, and hours of operation for temporary sales.**

(a) All permits issued hereunder shall be valid for no more than three consecutive days, and shall be for the same days as shown on the application. A separate permit is required for each temporary sale, and remains valid for the dates and time specified in the permit.

(b) No more than four permits shall be issued for a temporary sale to be conducted at any one location, or address, during a 12-month period. The 12-month period shall be from the date of issue of the first permit to a location.

(c) A second permit for a location shall not be issued within 60 days of the issuance of the first permit for the location.

(d) Temporary sales shall be limited to daylight hours only.

(e) In the event the person who is issued a permit does not hold the temporary sale on the days for which the sale was originally permitted, he/she may return the paperwork to the city on or before the first working day after the originally permitted sale date and reschedule the sale for a date not more than 30 days after the originally permitted date.

(Ord. No. 07-08, § 4, 7-15-2008; Ord. No. 8-20C, § 1A.), 8-18-2020)

**Sec. 66-184.5. City-wide sale.**

Once per calendar year, the City of Devine shall schedule a city-wide sale. The city-wide sale shall not require a permit from the city and shall be in addition to any other sale allowed under this chapter of the Code of Ordinances.

(Ord. No. 8-20C, § 1B.), 8-18-2020)

**Editor's note**—Ord. No. 8-20C, § 1B.), adopted Aug. 18, 2020, has been added to the Code as § 66-184.5 at the discretion of the editor.

**Sec. 66-185. Combined sales.**

No more than three people, who do not reside at the address of the applicant and sale location, may contribute goods, wares, and/or merchandise to be offered for sale. Such contribution of goods, or participation in a temporary sale by persons other than the applicant, shall not be considered as a permit for those persons to conduct a temporary sale at any other time, date, or location.

(Ord. No. 07-08, § 5, 7-15-2008)

**Sec. 66-186. Certain sales prohibited.**

The following sales are prohibited under a temporary sales permit:

- (1) The sale of personal property obtained by any means, whether purchased or obtained by consignment or trade, for resale;
  - (2) Any retail sales; and
  - (3) The sale of any food items.
- (Ord. No. 07-08, § 6, 7-15-2008)

**Sec. 66-187. Display of sale items.**

Personal property displayed or exhibited at a temporary sale shall not be displayed or exhibited closer than five feet to the front or side property lines of the property where the temporary sale is being conducted and shall not be placed in the public right-of-way.

(Ord. No. 07-08, § 7, 7-15-2008)

**Sec. 66-188. Temporary sale signs.**

Temporary sale signs shall be temporary signs and shall not be exhibited more than two days prior to the sale, and shall not be exhibited prior to obtaining the required permit, and shall be removed immediately after the completion of the sale by the temporary sale operator. Signs shall be limited to two on-premises signs that do not exceed four feet square each in surface area, and the placement of such signs shall not obstruct the view of traffic on any street. Temporary sale signs must be staked on the private property at which the sale is being conducted (not closer than five feet to the front or side property lines) and shall not be attached to utility poles, street light standards or other public facilities. The person or persons exercising ownership or leasehold rights over property on which a sale is held or advertised to be held shall be presumed to have placed and exhibited the signs advertising the sale.

(Ord. No. 07-08, § 8, 7-15-2008)

**Sec. 66-189. Exception for churches, charitable and nonprofit organizations.**

Churches and charitable or nonprofit organizations may hold a maximum of four temporary sales per calendar year, provided that the church or organization:

- (1) Does not hold more than one temporary sale in the same calendar quarter;
- (2) The sale must be conducted on the church or organization property;
- (3) A member of the church or organization, authorized to represent it, must obtain a permit for a temporary sale; however, the church or organization shall be exempt from the required permit fee;
- (4) All of the net earnings of a temporary sale shall be used to promote the goals of the church or organization; and

- (5) Only goods, wares, merchandise, and other personal property donated to the charitable or nonprofit organization shall be sold.

Sales allowed by this section shall conform to those requirements and limitations for temporary sales as set out in this article.

(Ord. No. 07-08, § 9, 7-15-2008)

**Sec. 66-190. Penalty.**

Each violation of this article shall be punished by a penalty of a fine of not less than \$1.00 nor more than \$500.00 for each offense. Each day or portion of a day that a person does not comply with this article shall constitute a separate offense.

(Ord. No. 07-08, § 10, 7-15-2008)

Chapters 67—69

**RESERVED**

