

HEALTH, SAFETY, AND NUISANCES

CHAPTER 13

Article 1. Unsanitary, Unsightly, and Public Nuisance Conditions on Property.

Sec. 13-1. Stagnant Water.

It shall be unlawful for the owner of any lot or other premises in the City to allow or permit holes or places where water may accumulate and become stagnant or be or remain on such lot or premises or to allow or permit the accumulation of stagnant water thereon, or to permit the same to remain thereon. (Ord. of 7-28-59, 11, Ord. of 5-27-08)

Sec. 13-2. Accumulation of Carrion. Filth. Etc.

It shall be unlawful for the owner of any lot, building, house, establishment or premises in the City to allow or permit any carrion, filth, garbage, or any other impure or unwholesome matter of any kind to accumulate or remain thereon. (Ord. of 7-28-59, 12, Ord. of 5-27-08)

Sec. 13-3. Definitions.

For the purpose of this Article the following words shall have the meaning herein described to them:

(A) *“Abate.”* The word “abate” shall mean to eliminate or remedy by removal, repair, rehabilitation, demolition, or other means;

(B) *“Any and all other objectionable, unsightly or unsanitary matter of whatever nature”.* The words “any and all other objectionable, unsightly or unsanitary matter of whatever nature” shall include all uncultivated vegetable growth objects and matter not included within the meaning of terms as herein used or any other matter or thing which is liable to produce or tend to produce unhealthy, unwholesome or unsanitary condition;

(C) *“Building.”* The word “building” shall mean a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property;

(D) *“Garbage.”* The word “garbage” shall mean decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product;

(E) *“Lot or parcel of real estate”.* The words “lot or parcel of real estate” as herein used shall be held to include, in addition to those grounds within the respected boundaries, or lots, or parcels of ground, the additional real property located between the property line and the curb of adjacent streets where curb line has been established and also to the center of adjacent alleys;

(F) *“Premises.”* The word “premises” shall mean all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure

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appurtenant to the property;

(G) *Rubbish.* All refuse, tin cans, old vessels of all sorts, useless articles, discarded clothing and bottles of all sorts, and other nondecayable waste;

(H) *“Undeveloped Lot.”* The words “undeveloped lot” shall mean land which has not been cleared, either fully or partially, and is in an undisturbed natural condition for this part of the State of Texas;

(I) *Weeds.* The word “weeds” as herein used shall include all rank of uncultivated vegetable growth or matter which;

(1) has grown to more than 12 inches in height; or

(2) creates an unsanitary condition or becomes a breeding place for mosquitoes, rodents, vermin, or other disease-carrying pests regardless of the height of the growth; or

(3) endangers property or is liable to be a fire hazard.

(Ord. of 7-28-59, 2, Ord. of 03-11-97, Ord. of 5-27-08)

Sec. 13-4. Accumulation of Weeds, Rubbish, Garbage and Other Matter Declared a Public Nuisance and Unlawful.

(A) *Violation – Public Nuisance.* Whenever and wherever weeds, rubbish, garbage, or any other objectionable, unsightly and unsanitary matter of whatever nature as defined herein shall exist, covering or partly covering the surface of any lot or parcel of real estate within the corporate limits of the City or within 5000 feet outside the corporate limits of the City, such condition is hereby declared to be a public nuisance and unlawful and the prompt abatement of such condition shall be a public necessity. The person owning or having supervision or control of the lot or parcel of real estate shall be subject to the penalties provided in Section 13-10 if such condition is not promptly abated.

(B) *Exeptions.* The owner of any undeveloped property within the corporate limits of the City of Big Spring zoned on the official zoning map as Agrcultural “A,” or any undeveloped property within five thousand (5000) feet of the corporate limits of the City, may allow vegetation to achieve its natural height, provided that the following clear zones are maintained to a height not to exceed twelve (12”).

(1) The clear zone will be maintained for two hundred feet (200') from contiguous occupied property lines.

(2) Two Hundred feet (200') behind the property line along all public right-of-way. (Ord. of 5-25-93, Ord. of 5-23-95)

(3) The clear zone shall be maintained within an adjoining half of a public right-of-way or adjoining half of an alley/easement.

(Ord. of 03-11-97, Ord. of 5-27-08)

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Sec. 13-5. Abatement.

(A) It shall be the duty of the person owning or having possession or control of any lot or parcel upon which conditions as defined in Section 13-4 exist to promptly remove or abate such condition or to cause any and all other action necessary to comply with this article.

(B) If the person owning or having possession or control of any lot or parcel shall fail to abate or correct such condition following notice in accordance with Section 13-7, the City may cause the same to be done and pay therefore, and charge the cost and expense incurred in having such work done for improvements made to the owner of such property. If such costs and expenses are unpaid, the City shall have the right to fix a lien or file suit seeking payment in a court of competent jurisdiction. Pending removal of such condition by the City, appropriate signage identifying the condition may be erected upon the subject property.

(C) The cost of work done on improvements made in abating such condition, shall lwhen performed by private independent contractors or the City, be assessed according to the actual cost to the City and any fees incurred per lot or parcel of land.

(Ord. of 7-28-59, °3, Ord. of 03-11-97, Ord. of 5-27-08)

Sec. 13-6. Additional Authority to Abate Dangerous Weeds.

(A) Within the corporate limits of the City or within 5000 feet of the corporate limits of the City, the City may abate, without notice, weeds that:

- (1) have grown higher than 48 inches, except as allowed in Section 13-4 (B) above; and
- (2) are an immediate danger to the health, life, or safety of a person or property.

(B) Not later than the tenth (10th) day after the date the City abates weeds under this section, the City shall give notice to the property owner.

(C) The notice shall contain:

- (1) an identification, which is not required to be a legal description, of the property;
- (2) a description of the violations of the ordinance that occurred on the property;
- (3) a statement that the municipality abated the weeds; and
- (4) an explanation of the property owner's right to request an administrative hearing about the City's abatement of the weeds.

(D) If a property owner files a written request for a hearing within thirty (30) days of the date of the abatement notice, the City shall conduct an administrative hearing on the abatement of the weeds under this section.

(E) An administrative hearing conducted under this section shall be conducted not later than the 20th day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the City's abatement of the

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weeds.

(Ord. of 7-28-59, p, Ord. of 03-11-97, Ord. of 5-27-08)

Sec. 13 -7. Notice and Hearing.

(A) Notice. Before exercising the abatement powers granted in Sections 13-5 of this Chapter, the City must send notice in writing to the owner according to the appraisal records of Howard County, of the lot, lots or other premises at least ten (10) days prior to the City's entry upon the same. 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 Howard County appraisal district records; or
- (3) if personal service cannot be obtained or the owner's post office address is unknown:
 - (i) by publication at least twice within ten consecutive days;
 - (ii) by posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (iii) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings.

If the notice is mailed to a property owner in accordance with this section, and the U.S. Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.

(B) Annual Notice. The City, in the notice of violation, may inform the owner that if the owner commits another violation of the same kind or nature that poses a public nuisance 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 had not been informed in writing by the owner of an ownership change, then the City without notice may do the work and make the improvements required and pay for the work done or improvements made and charge the expenses to the owners of the property and then assess its expenses as provided for in Sections 13-5 and 13-8.

(C) Contents of Notice. The notice of violation shall at a minimum contain the following:

- (1) The name of the owner, if known, of the premises proposed to be entered upon by the City;
- (2) The address or legal description of the premises proposed to be entered upon by the City;
- (3) The offending conditions existing on the lot, tract or parcel of land;
- (4) A statement that the recipient has seven (7) days from the date of receipt of the notice to correct the violation, that if he or she fails to do so, the City will enter upon the premises and remedy the same, and that the City is entitled to attach a lien to the

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property to secure payment for the services rendered; and

(5) A statement that the recipient is entitled to a hearing before the City Manager or his designee if requested in writing in the office of the City Secretary within five days of receipt of the notice; and

(6) If an annual notice is given, it shall state, in addition to the foregoing, that the City may enter upon the premises to remedy any violation at thirty (30) day intervals during the year.

(D) **Hearing.** Any person or entity receiving a notice of violation under this Section, and making a written request to the office of the City Secretary for a hearing no later than five days after receipt of the notice, shall have the right to meet with the City Manager or his designee within ten (10) days of receipt of such notice to assert any legal defense as to why the City should not proceed with abatement and attachment of a lien as provided in this Section. (Ord. of 7-28-59, 14, Ord. of 03-11-97, Ord. of 10-14-97, Ord. of 5-27-08)

Sec. 13-8. Filing of Liens.

Whenever any work is done or improvements are made by the City under the provisions of Section 13-5, 13-6, or 13-7(B), the Mayor or his designee, on behalf of the City shall file a statement of expenses incurred thereby with the County Clerk. Such statement shall give the name of the owner, if known, the legal description of the property, the amount of such expense(s) and the date(s) on which the work was done or the improvements made. (Ord. of 7-28-59, 14, Ord. of 03-11-97, Ord. of 5-27-08)

Sec. 13-9. Prohibitions and Remedies of Article Not Exclusive.

The numerations of the unlawful conditions and the remedy for abating the same as set out in this article shall not be exclusive but cumulative. (Ord. of 7-28-59, 14, Ord. of 03-11-97, Ord. of 5-27-08)

Sec. 13-10 Penalty for Violation of this Article.

In addition to the other remedies contained in this Article, in the event the owner or person having possession or control of such property shall fail or refuse to abate such condition, that person shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than two hundred and fifty dollars (\$250.00) nor more five hundred dollars (\$500.00) for the first (1st) offense and not less than five hundred dollars (\$500.00) nor more than two thousand dollars (\$2,000.00) for subsequent offenses. Each day such violation continues shall constitute a separate offense. (Ord. of 5-27-08)

Sec. 13-11 to 13-19. Reserved.

Article 2. Rodent Control

Division 1. Generally

Sec. 13-20. Definitions.

For the purpose of this article, the following definitions shall apply:

(A) **Business building.**

Any structure, whether public or private, regardless of the type of material used in its construction, located within the boundaries of the city that is adapted to occupancy for the transaction of business, whether vacant or occupied, for the rendering of professional services, for the display, sale or storage of goods, wares or merchandise, or for the performance of work or labor, including hotels, rooming houses, beer parlors, office buildings, public buildings, stores, markets, restaurants, grain elevators, abattoirs, warehouses, workshops and factories.

(B) **Opening.**

Any opening in the foundation, side or walls of any business building, including roof, chimney, eaves, grills, windows, sidewalk grades and sidewalk elevators, through which a rat may pass.

(C) **Premises.**

All business buildings, outhouses, sheds, barns, garages, docks, wharves, piers, grain elevators, and abattoirs, whether public or private, and any and all other structures used in connection with the operation of any "business building" as herein defined.

(D) **Rat harborage.**

Any condition found to exist under which rats may find shelter or protection, and shall include any defective construction which would permit the entrance of rats into any business building.

(E) **Rat stoppage.**

An inexpensive form of rat proofing designed to prevent the ingress of rats into business buildings. It is essentially the closing or protecting of all openings in exterior walls and foundations or the grates in a sidewalk of business buildings with rat proof materials installed in such a manner as to prevent rats from gaining entrance. (Ord. of 9-11-45, §1)

Sec. 13-21. General Prohibition Against Rat Harborage.

It shall be unlawful for any person to use or maintain any business building or other premises in such manner that a rat harborage is brought into existence or maintained. (Ord. of 9-11-45, °10)

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Sec. 13-22. Dumping, Accumulating, Etc., Garbage and Trash So as to Afford Food or Harborage for Rats.

It shall be unlawful for any person to dump or place on any land or on any water or waterway within the city any dead animals, butchers' offal, seafood, or any waste vegetables, animal matter or any food products whatsoever.

No garbage, rubbish, waste or manure shall be placed, left, dumped, or permitted to accumulate or remain in any building or premises in the city so that the same shall or may afford food for or a harboring or breeding place for rats. Rat burrows and other exterior harborage shall be treated under methods directed by the health officer. (Ord. of 9-11-45, °11,12)

Sec. 13-23. Accumulations of Lumber, Boxes, Barrels, Etc.

It shall be unlawful for any person to permit to accumulate on any premises, improved or unimproved, or on any open lot or alley in the city any lumber, boxes, barrels, bricks or stones or similar materials that may be permitted to remain thereon, and that may be used as a harborage by rats, unless the same are placed on open racks and elevated not less than eighteen (18) inches above the ground with a clear intervening space beneath, to prevent the harborage of rats. (Ord. of 9-11-45, §10)

Sec. 13-24. Closing Infested Structures or Premises.

When the health officer or his representative shall find any building, structure, or premises so heavily infested with rats as to result in a present menace to public health, he shall have the authority to close the same to any occupant or use, until rats have been eradicated, or while rats are being eradicated. (Ord. of 9-11-45, °9)

Sec. 13-25 to 13-29. Reserved.

Division 2. Business Buildings

Sec. 13-30. New Construction to Be Rat Proof.

It shall be unlawful for any person to construct within the corporate limits of the city any business building, curb, or farmers' market, unless such construction shall render the business building rat proof in accordance with the regulations prescribed by this article. (Ord. of 9-11-45, §2)

Sec. 13-31. Inspecting Buildings; Correcting Defects.

The health officer of the city or his representative is hereby authorized to make frequent and unannounced inspections of existing business buildings within the corporate limits of the city for the purpose of determining any rat infestation, and to order, by written notice, the owner, occupant, agent, or any other person in custody of any rat-infested business building to protect such building by rat stoppage as provided for in this article, regardless of the need for the remodeling of or repairs to such business buildings, and to further order that such other rat control methods be employed as may be

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deemed necessary by the health officer or his representative to maintain the business building free from rats. The written notice and order shall specify the time, in no event less than thirty (30) days, for completion of such work and improvements. Unless the work and improvements are completed in accordance with the written order and notice within the time so specified or within the time to which a written extension has been granted by the health officer or his representative, the owner, occupant, agent or other person in custody of the building shall be deemed guilty of a misdemeanor. (Ord. of 9-11-45, °3)

Sec. 13-32. Inspection of New Construction.

The health officer or his representative is hereby authorized to make inspections during the course of and upon completion of any construction, repairs, remodeling or installation of rat control measures to business buildings to insure compliance with the provisions of this division, and no person shall interfere with or refuse to permit such inspection. (Ord. of 9-11-45, °4)

Sec. 13-33. Minimum Requirements for Rat Stoppage.

(A) Application of section.

For the purpose of obtaining maximum rat stoppage at a minimum cost to the owner or occupant of business buildings, the regulations prescribed in this section are set forth as the minimum requirements for applying rat stoppage to business buildings.

(B) Approval of materials and method of installation.

The health officer or his representative shall approve all materials used and the method of installation.

(C) Protective coating for metal and wire cloth.

Solid sheet metal, expanded metal and wire cloth specified in this section shall have a rust resisting protective coating, preferably galvanized.

(D) Covering of foundation wall ventilator openings.

All foundation wall ventilator openings shall be covered for their entire height and width with perforated sheet metal plates of a thickness not less than eighteen (18) gauge, or with cast iron grills or grates, or with any other material of sufficient strength and equal rat-resisting properties. The openings herein shall be small enough to prevent the ingress of rats, and in no instance shall be larger than one-half (1/2) inch.

(E) Covering of other openings in foundation or exterior wall.

All foundation and exterior wall openings, excluding those used for the purpose of ventilation, light, doors and windows, such as those openings around pipes, electric cables, conduits, openings due to deteriorated wall, broken masonry or concrete, shall be protected against the ingress of rats by closing such openings with cement mortar, concrete or masonry, or close-fitting sheet metal or suitable size pipe flanges or other material with equal rat-resisting properties, which shall be securely fastened in place.

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(F) Requirements as to doors.

All exposed edges of the lower eight (8) inches of wooden doors and door jambs, serving as front, rear or side entrances into business buildings from the ground, basement or cellar floors, and other doors accessible to rats, shall be protected against the gnawing of rats by covering such doors and jambs with solid sheet metal of not less than twenty-four (24) gauge thickness. The same material shall be used on door sills or thresholds, or such door sills or thresholds may be constructed of cement, stone, steel or cast iron. Doors, door jambs and sills of coal chutes and hatchways that are constructed of wood shall be covered with solid sheet metal of twenty-four (24) gauge or heavier, or they may be replaced with metal chutes of twenty-four (24) gauge or heavier installed in such a manner as will prevent the ingress of rats. All doors on which metal flashing has been applied shall be properly hinged to provide for free swinging. When closed, doors shall fit snugly so that the maximum clearance between any door, door jambs and sill shall not be greater than three-eighths (3/8) of an inch.

Door jambs and sills constructed of metal, concrete, masonry, stone or cement mortar, or cast iron and steel, when fitting closely to exclude rats, are not required to comply with this subsection.

(G) Requirements as to windows.

All windows and other openings for the purpose of light or ventilation located in the side or rear of exterior walls which could afford possible ingress of rats shall be covered for their entire height and width, including frame, with wire cloth of nineteen (19) gauge or heavier, having a mesh of not larger than one-half (1/2) inch. All window and other openings for the purpose of light or ventilation in the exterior walls that may be accessible to rats by way of exposed pipes, wires, conduits and other appurtenances, shall be covered with guards of wire cloth of nineteen (19) gauge or heavier, having a mesh of not larger than one-half (1/2) inch, or in lieu of wire cloth covering, such pipes, wires, conduits and other appurtenances shall be blocked from rat usage by installing sheet metal guards of twenty-four (24) gauge or heavier. Such guards, when used on horizontal pipes, wires, conduits or other appurtenances, shall be placed in a vertical position, and shall be snugly fitted around the pipe, wire, conduit or other appurtenance. Such guard shall measure not less than twelve (12) inches beyond and on all sides of the pipe, wire, conduit or other appurtenance where the intervening space between the wall and pipe permits, and shall extend thirty (30) inches in an upward direction and twelve (12) inches in a downward direction, and shall be securely fastened to the pipe, wire, conduit or other appurtenance and also the adjacent wall, wherever practicable, so that the guard will remain in a vertical position at all times. Such guards, when used on vertical pipes, wires, conduits or other appurtenances, shall be fitted snugly around the pipe, wire, conduit or other appurtenance, shall be placed in a horizontal position (right angle to pipe, etc.), and shall extend horizontally from the pipe, wire, conduit or other appurtenance for a minimum distance of twelve (12) inches beyond and on all sides of the pipe, wire, conduit or other appurtenance, where the intervening space between pipe and wall permits, and shall be securely fastened to the pipe, wire, conduit or other

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appurtenance and also to the adjacent wall, wherever practicable, in such a manner that the guard will remain in a horizontal position at all times.

(H) Protection of light wells.

Light wells with windows in exterior walls that are located below the outside ground level shall be protected from the ingress of rats by one of the following methods:

- (1) Installing over the light wells cast iron or steel grills or steel gratings, or other material of equal strength and rat-resisting properties, with opening in grills or gratings not to exceed one-half (1/2) inch in shortest dimension.
- (2) Installing securely to and completely covering existing metal grills that are broken or have openings larger than one-half (1/2) inch in shortest dimension or otherwise defective, with expanded metal of eighteen (18) gauge or heavier, having openings not greater than one-half (1/2) inch in shortest dimension, or with sixteen (16) gauge or heavier wire cloth with one-half (1/2) inch mesh.
- (3) At the option of the owner, the opening in the wall of the building below the grate may be entirely closed with brick or concrete or partially closed and the remaining open space covered with nineteen (19) gauge or heavier wire cloth with mesh not to exceed one-half (1/2) inch.

(I) Protection of space between floor sill and ground

Where sill is less than 12 inches above ground. Business buildings constructed on piers having wooden floor sills less than twelve (12) inches above the surface of the ground shall have the intervening space between the floor sill and ground protected against the ingress of rats by installing a curtain wall of solid masonry, concrete or other materials of a permanent nature of not less than three (3) inches in thickness and eighteen (18) inches in depth below the ground surface with a shelf which is two (2) inches in thickness extending eight (8) inches outward at the base of the curtain wall. This curtain wall and shelf shall be installed around the entire perimeter of the business building and fastened securely to the exterior wall of the building in such a manner as will prevent rats from entering the building. All openings into such curtain wall for ventilation, or other purposes not heretofore mentioned, shall be covered the entire height and depth with nineteen (19) gauge galvanized hardware cloth or expanded metal of twenty-four (24) gauge or heavier with a mesh not to exceed one-half (1/2) inch.

In lieu of the installation of such curtain walls, all ground floors of wood construction may be replaced with concrete of not less than three (3) inches in thickness with the exterior walls protected for a height of seven (7) inches above the concrete floor with masonry, concrete or solid metal of twenty-four (24) gauge or heavier. Exterior wall protection shall be securely tied into the concrete floor at all points.

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- (J) Same -- Where sill is 12 or more inches above ground.
Business buildings constructed on piers having wooden floor sills twelve (12) inches or more above the ground level shall have the intervening space between the floor sill and ground protected against the ingress of rats by installing curtain walls in accordance with subsection (i) or by installing solid sheet metal coverage of twenty-four (24) gauge or heavier snugly around each pipe, cable, wire, conduit or other utility service passing through the wooden ground floor. Such metal coverage shall not be less than eight (8) inches in diameter larger than the diameter of the pipe, cable, wire, conduit or other utility service, and shall be securely fastened to the wooden floor.
- (K) Protection of miscellaneous openings.
All other openings in wooden ground floors through which rats may gain entrance into double walls or the interior of business buildings, such as openings that may exist in floors and double walls above floor sills, shall be closed with twenty-four (24) gauge or heavier solid sheet metal or sixteen (16) gauge or heavier wire cloth of one-half (1/2) inch mesh, or with masonry or concrete. Wood frame constructed business buildings having concrete or masonry foundation walls shall have ventilators in foundation walls protected as provided in subsection (d). All miscellaneous wall openings, doors and windows shall be protected in accordance with this chapter. (Ord. of 9-11-45, §5)

Sec. 13-34. Special Requirements for Curb and Farmers' Markets.

Curb or farmers' markets in which fruit or vegetables or any other food products are exposed and offered for sale on racks, stands, platforms and in vehicles outside of business buildings, shall have floors paved with concrete or asphalt for the entire surface area of the market. Display racks, stands, or platform . on which fruit or vegetables or any other food products are displayed or offered for sale shall be of sufficient height that all such fruits, vegetables or other food products shall be kept at a distance of not less than eighteen (18) inches above the floor pavement and be so constructed that rats cannot harbor therein or thereunder. (Ord. of 9-11-45, §6)

Sec. 13-35. Protection Against Climbing Rats.

In order to protect business buildings from what is commonly called "climbing" or "roof" rats, all ventilators, chimneys, skylights or other openings on roofs which constitute a possible place of ingress for rats shall be covered the entire width and height with nineteen (19) gauge hardware cloth, except ventilators or skylights constructed of metal with openings not less than eighteen (18) inches above the roof surface.

The owner of a business building shall also protect elevator shafts, fire escapes and guy wires in such manner that rats will not be able to gain ingress into the building. (Ord. of 9-11-45, 58)

Sec. 13-36. Destruction of Rats after Stoppage Applied.

For the purpose of eliminating all rats that may remain in any business building after rat stoppage has been carried into effect, all store rooms, warehouses or other business buildings in the city shall be provided, by the owner, occupant, agent or any other person in custody of such building, with one or more traps, which shall be kept set and freshly baited at frequent intervals, and maintained in

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good working condition and inspected daily, and any rat caught therein shall be killed, removed daily and disposed of in a manner acceptable to the health officer, and such trap reset and rebaited.

Rats may also be destroyed by poisoning and fumigating in a manner approved by the health officer or by an authorized agency of the U.S. Public Health Service or the State Board of Health, subject to applicable laws and ordinances relating to poisonous substances and fumigators. (Ord. of 9-11-85, °7)

Sec. 13-37 to 13-45. Reserved.

Article 3. Abandoned, Inoperative or Junked Motor Vehicles

Sec. 13-46. Definitions.

For the purposes of this article, the following words shall have the meaning hereinafter given:

- (A) “Junked Vehicle” means a vehicle as defined in Title 7, Subtitle H, Chapter 683, Section 683.071, Subchapter E, Vernon’s Texas Codes Annotated, that is self-propelled and inoperable and:
 - (1) does not have lawfully attached to it:
 - (a) an unexpired license plate; or
 - (b) a valid motor vehicle inspection certificate;
 - (2) is wrecked, dismantled or partially dismantled, or discarded; or
 - (3) has remained inoperable for more than:
 - (a) 30 consecutive days on private property or
 - (b) 72 hours on public property.

- (B) “Motor Vehicle Demolisher” means a person in the business of:
 - (1) converting motor vehicles into processed scrap or scrap metal; or
 - (2) wrecking or dismantling motor vehicles.

- (C) “Storage Facility” includes a garage, parking lot, or establishment for the serving, repairing, or parking of motor vehicles.

- (D) “Antique Vehicle” means a passenger car(s) or truck(s) that is at least twenty five (25) years old.

- (E) “Special Interest Vehicle” means a motor vehicle of any age which has not been changed from original manufacturer’s specifications and, because of its historic interest, in being preserved by hobbyists.

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- (F) “Motor Vehicle Collector” means a person who:
- (1) owns one or more antique or special interest vehicles; and
 - (2) acquires, collects, or disposes of an antique or special interest vehicle or part of an antique or special interest vehicle for personal use to restore and preserve an antique or special interest vehicle for historic interest.

(Ord. of 3-14-72; Ord of 5-10-83, °13-46, Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-47. Junked Vehicles Declared a Public Nuisance.

Junked vehicles which are located in any place where they are visible from a public place or public right-of-way are detrimental to the safety and welfare of the general public; tending to reduce the value of private property, to invite vandalism to create fire hazards, to constitute an attractive nuisance creating a hazard to the health and safety of minors, and are detrimental to the economic welfare of the City, by producing urban blight which is adverse to the maintenance and continuing development of the City, and such vehicles are therefore declared to be a public nuisance. (Ord. of 3-14-72; Ord. of 5-10-83, °13-47, Ord. of 10-22-85, Ord. of 10-27-98)

Sec. 13-48. Inapplicability of Subchapter.

Procedures adopted under Section 13-50 may not apply to a vehicle or vehicle part:

- (A) that is completely enclosed within a building in a lawful manner and is not visible from the street or other public or private property; or,
- (B) that is 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 from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.

(Ord. of 3-14-72; Ord. of 5-10-83, °13-48, Ord. of 10-27-98)

Sec. 13-49. Notice to Owner or Occupant to Abate Public Nuisance; Request for Hearing.

For a nuisances on public or private property

- (A) A ten (10) day written notice shall be sent by certified mail with a five (5) day return requested to:
 - (1) the last known registered owner of the nuisance (vehicle);

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- (2) each lienholder of record of the nuisance (vehicle); and
- (3) the owner or occupant of:
 - (a) the property on which the nuisance (vehicle) is located; or
 - (b) if the nuisance (vehicle) is located on a public right of way, the property adjacent to the right of way
- (B) The notice must state:
 - (1) the nature of the nuisance, including, if possible, the vehicle's:
 - (a) description;
 - (b) vehicle identification number; and
 - (c) license plate number; and
 - (2) that it is the responsibility of the property owner or occupant to abate and remove the public nuisance no later than the tenth (10th) day after the date on which the notice was mailed; and
 - (3) any request for a hearing must be made before that ten (10) day period expires, such notice to be mailed to the Director of Public Works.
- (C) If the post office address of the last known registered owner of the nuisance (vehicle) is unknown, notice may be placed on the nuisance itself or, if the owner is located, then the notice may be hand delivered.
- (D) If notice is returned undelivered, action to abate the nuisance (remove the vehicle) shall be continued to a date no earlier than the eleventh (11th) day after the date of the return.
(Ord. of 3-14-72; Ord. of 5-10-83, °13-49, Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-50. Hearing and Abatement.

- (A) Before the removal of the vehicle or vehicle parts as a public nuisance, a hearing shall be held before the Municipal Court of the City of Big Spring. If the hearing is requested by the owner or occupant of the public or private premises, or by the owner or occupant of the premises adjacent to the public right-of-way on which the vehicle is located within ten (10) days after service of notice to abate the nuisance, the hearing will occur no later than the eleventh day after service of notice to abate the nuisance. At the hearing, it is presumed, unless demonstrated otherwise by the owner, that the vehicle is inoperable. A resolution or order requiring the removal of a vehicle or vehicle part must include:
 - (1) a description of the vehicle;
 - (2) the vehicle identification number; and

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- (3) license number of the vehicle if the information is available at the location of the nuisance.
- (B) Provided, however, should a hearing be properly and timely requested, it shall be an affirmative defense to said action that said vehicle or vehicle part:
 - (1) is completely enclosed in a building in a lawful manner and is not visible from the street or other public or private property; or,
 - (2) is 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 from ordinary public view by appropriate means, including a fence, rapidly growing trees, or shrubbery.
- (C) The relocation of a junked vehicle that is a public nuisance to another location within the City limits after the proceeding for the abatement and removal of the public nuisance has commenced has no effect on the proceeding if the junked vehicle constitutes a public nuisance at the second location.
(Ord. of 3-14-72; Ord. of 5-10-83, 513-50, Ord. of 10-22-85, Ord. of 10-27-98, Ord. of 5-13-08, Ord. of 10-13-09)

Sec. 13-51. Order to remove and abate nuisance; removal by City.

- (A) If the nuisance is not removed and abated, and a hearing is not requested in accordance with Section 13-49, then the City Attorney or his/her deputy may request a hearing in the municipal court, and/or may file a complaint for maintaining a public nuisance as defined in Section 13-47.

The court shall, upon conviction, also order the removal and abatement of the nuisance.

- (B) The order to abate shall further provide that if the defendant shall fail or refuse within ten (10) days of said order to remove and abate the nuisance, either the Chief of Police or the Director of Public Works, as appropriate, shall be directed to have the same removed, and either the Chief of Police or the Director of Public Works, as appropriate, or either of their duly authorized representatives, or any other person duly authorized by the City Council shall take possession of such junked motor vehicle and remove it from the premises, and shall therefore dispose of it, in accordance with the provisions of Section 13-56 of this article. Such order shall include a description of the vehicle, the

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correct identification number and license number of the vehicle, if the information is available at the location of the nuisance. (Ord. of 3-14-72; Ord. of 5-10-83, §10-51, Ord. of 10-27-98, Ord. of 5-13-08, Ord. of 10-13-09)

Sec. 13-52. Removed vehicle not to be reconstructed or made operable.

After any such junked motor vehicle has been removed by the City, it shall not be reconstructed or made operable; it shall be demolished and disposed of as scrap or salvage. (Ord. of 3-14-72; Ord. of 5-10-83, 513-52, Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-53. Notice of removal to Texas Department of Transportation.

Whenever a junked motor vehicle or part thereof is removed by the City under the provisions of this article, the Chief of Police shall give notice to the Texas Department of Transportation within five (5) days after the date of such removal, identifying the vehicle or part thereof. Said department shall forthwith cancel the certificate of title to such vehicle pursuant to Title 7, Subtitle A, Chapter 501, Sections 501 et seq., Subchapter A, Vernon's Texas Codes Annotated, as amended. (Ord. of 3-14-72; Ord. of 5-10-83, §10-58; Ord. of 10-22-85, Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-54. Transfer of such junked vehicle to a demolisher.

A junked vehicle which is removed from private or public property by authority of this article, and which is disposed of to a demolisher, must be transferred to such demolisher on a form acceptable to the Texas Department of Transportation. The transfer receipt must stipulate that the disposition of the vehicle is for demolition only, and must contain a complete description of the vehicle, including the license number if ascertainable, and must make reference to this article under the authority of which such transfer is made. The transfer receipt must be listed on the demolisher's inventory list and surrendered to the Texas Department of Transportation in lieu of the certificate of title under the provisions of Article 6687-2, Vernon's Annotated Civil Statutes, as amended. (Ord. of 3-14-72; Ord. of 5-10-83, §10-58; Ord. of 10-22-85, Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-55. Administration by City Employees.

This article shall be administered by regularly salaried, full time employees of the City, except that the removal of vehicles or parts thereof from property may be by any other duly authorized person. (Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-56. Authority to Enforce.

(A) The Director of Public Works or his designee may enter upon private property for any of the following reasons:

- (1) to examine vehicles or parts thereof,
- (2) to obtain information as to the identity of vehicles or
- (3) to remove or cause the removal of a vehicle or parts thereof declared to be a nuisance pursuant to this article.

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- (B) Such junked vehicle or parts thereof shall, after the ten (10) day period be disposed of by removal to a scrap yard, demolisher, or any suitable site operated by the City for processing as scrap or salvage. After a motor vehicle has been declared a public nuisance, it shall not be reconstructed or made operable.
- (C) The City may operate such a disposal site when the City Council determines that commercial channels of disposition are not available or are inadequate, and the City may make final disposition of such vehicles or parts, or the City may transfer such vehicles or parts to any other person, firm or corporation subject to, however, a provision that such vehicles shall not be reconstructed or made operable.

(Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-57. Effect of Article on Other Statutes or Ordinances.

Nothing in this article shall affect statutes or ordinances that permit immediate removal of a vehicle left on public property which constitutes an obstruction to traffic. (Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-58. Penalty.

Any person, firm or corporation violating any of the provisions of this article shall be guilty of a misdemeanor, and upon conviction therefore, shall be subject to a fine of not more than two hundred dollars (\$200.00). Each transaction in violation of any of the provisions hereof shall be deemed a separate offense. (Ord. of 10-27-98, Ord. of 5-13-08)

Sec. 13-59 to 13-60. Reserved.

Article 4. Nuisances

Sec. 13-61. Posting advertisements without permission.

The printing, pasting, sticking or placing of any advertisement, handbill or placard of any printed, pictured or written matter upon any house, wall, building, pole, fence or other property, private or public, without the permission of the owner or person in charge thereof, shall constitute a misdemeanor. (Ord. of 9-2-29, 521)

Sec. 13-62. Accumulation of cotton hulls, other rubbish.

It is hereby declared to constitute a nuisance for owners or operators of cotton gins to permit hulls, waste matter or rubbish resulting from the ginning of cotton to accumulate in, on or around any premises upon which there is operated a cotton gin. The owners and operators of cotton gins shall remove from such premises all hulls, rubbish and other waste matter resulting from the ginning of cotton and keep such premises free from any accumulations thereof. Such waste matter as shall accumulate on the premises as a result of the operating of a cotton gin shall be hauled off or removed, while the gin is in actual operation, and not exceeding twenty (20) cubic yards shall be allowed to

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accumulate on the premises at any one time. In no case shall the same be allowed to accumulate to such an extent as to create or cause a danger of fire. It shall be unlawful for the operator of any gin to burn, or permit to be burned on or around such premises or at any other place within the city limits, any such hulls or waste matter; provided, however, that such hulls and waste matter may be burned off in the furnace of such gin if the smokestack is properly screened. (Ord. Of 7-11 -33, 12)

Sec. 13-63. Feed grinding mills regulated.

The operation of any feed grinding mill within the city is hereby prohibited, unless such mill is completely enclosed within a reasonable well constructed building and adequate provision is made within such building to catch and dispose of the dust, chaff and refuse thrown off by the grinding process so that the same will not be thrown into the air and onto the premises around the mill. Any person shall be deemed to operate a feed mill, within the meaning of this section, if he is the owner thereof and causes or permits same to be operated, and any person actually engaged in the operation of any such mill, whether he is owner, manager or employee, shall be deemed an operator within the meaning of this section. (Ord. of 8-05-41, §1, §2)

Sec. 13-64. Swimming Pools.

It shall be unlawful for any person, firm or corporation to maintain a swimming pool that is not enclosed by a barrier.

Definitions:

Swimming Pool:

Any structure intended for swimming that contains water over 24" inches deep.

Barrier:

Any structure either manmade or natural that is at least 48" above the ground, measured on the side of the barrier away from the swimming pool or at least 72" above the ground measured on the side of the barrier facing the swimming pool. The barrier must have not more than 10N degree slope from vertical. No opening in the barrier may be greater than 5" inches with the exception of a gate or door. A gate or doorway must have a latch or lock at least 48" above the ground. (Ord. of 6-14-94).

Sec. 13-65 to 13-69. Reserved.

Sec. 13-70. Selling fireworks prohibited.

It shall be unlawful for any person, firm or corporation to sell or keep for sale within the corporate limits of the city, any firecrackers, roman candles, torpedoes, or any other fireworks of any kind or make, with the exception of cap pistols. (Ord. of 7-28-59, 61)

Sec. 13-71. Exploding fireworks in city limits.

It shall be unlawful for any person, or persons, to explode, set off, ignite or discharge within the corporate limits of the city any firecrackers, roman candles, torpedoes, or any other fireworks of any kind or make, with the exception of cap pistols. (Ord. of 7-28-59, 12)

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Sec. 13-72. Fireworks displays regulated.

In the event that any firm, corporation, club or civic group desires to have an organized display of fireworks for the benefit of the citizens of Big Spring, they may do so by securing permission from the city council, and under the supervision and control of the city fire marshal. Said request must be presented to the city council at least thirty (30) days prior to the date of the exhibition. (Ord. of 7-28-59, §3)

Sec. 13-73. Penalty.

Any person who violates any of the provisions of this article shall upon conviction thereof, be fined in any sum not less than one dollar (\$1.00) nor more than one thousand dollars (\$1,000.00). Notwithstanding the foregoing, the one thousand dollar (\$1,000.00) maximum fine hereunder shall only apply if the violation is a violation of a provision governing fire safety, zoning or public health and sanitation, including dumping of refuse; if the provision does not govern fire safety, zoning, or public health and sanitation, including dumping of refuse, the maximum permissible fine shall be two hundred dollars (\$200.00) rather than one thousand dollars (\$1,000.00); provided, further, no penalty shall be greater of less than the penalty provided for the same or a similar offense under the laws of this state. A separate offense shall be deemed committed on each day any violation occurs or continues.

This ordinance is enacted pursuant to Articles 1011 and 1095, as amended, effective September 1, 1983. (Original citation; Ord. No 80 83, 10-11-83, 11; Ord. of 10-22-83).

Sec. 13-74 to 13-99. Reserved.

Article 5. Food and Food Establishments

Sec. 13-100. Adoption of Food Establishment Rules.

The City of Big Spring adopts by reference the provisions of the current rules, or the rules as they may be amended in the future by the Texas Board of Health, that are found in 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and 173 through 175 regarding the regulation of food establishments in this jurisdiction, otherwise known as the Texas Food Establishment Rules. (Ord. of 5-12-81a, Ord. of 10-11-83, Ord. of 10-22-85, Ord. of 10-22-09, Ord. of 11-9-10)

Sec. 13-101. Definitions

The following definitions, plus the definitions set forth in the Texas Food Establishment Rules shall apply to this ordinance.

“Authorized Agent or Employee” shall mean an agent or employee of the City of Big Spring.

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“Regulatory Authority” shall mean any certified Health Inspector employed of the City of Big Spring.

“School Food Establishment” shall mean a food service establishment where food is prepared and intended for services primarily to students in institutions of learning including, but not limited to, public and private schools, including kindergarten, preschool and elementary schools, junior high school, high schools, colleges, and universities.

“State Rules” or “Texas Food Establishment Rules” shall mean the State Rules found at 25 Texas Administrative Code, Chapter 229, Sections 161 through 171 and Sections 173 through 175. These rules are also known as the TFER. (Ord. of 11-9-10, Ord. of 6-11-13)

Sec. 13-102. Permits and Exemptions.

- (A) A person may not operate a food establishment without a permit issued by the City of Big Spring unless such persons holds a valid Food Establishment Permit from the State Department of Health issued prior to the effective date of this ordinance. Permits are not transferable from one person to another or from one location to another location, except as otherwise permitted by this ordinance. A valid permit must be posted in or on every food establishment regulated by this ordinance.

- (B) The following are exempt from the permitting requirements of this ordinance, but are not exempt from compliance with State Rules. The City of Big Spring may require any information necessary to determine whether an organization meets this exemption.
 - (1) School Food Establishments, including day care centers, that are inspected annually by the Texas Department of Health;
 - (2) Federally inspected food establishments;
 - (3) Correctional facilities subject to inspection by the Texas Department of Criminal Justice or the Texas Jail Commission;
 - (4) Nursing homes subject to inspection by Long Term Care Regulatory agency of the Texas Department of Human Services;
 - (5) Hospitals subject to inspection by the Health Facility Licensure Division in the Department and that do not serve food to the general public;
 - (6) Food establishments on state campuses inspected by state college or university personnel in accordance with the requirements of §229.373 of title 25 Texas Administrative Code (relating to Minimum Standards for Permitting and Operation);
 - (7) Food establishments licensed under the Health and Safety Code, Chapter 431, as manufacturers of food;
 - (8) Food establishments subject to inspection by the Texas Department of State Health Services; and
 - (9) Food and beverage vending machines.

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- (C) Nonprofit organizations are exempt from the permit fees but not from the permitting requirements of this ordinance or from the State Rules. (Ord. of 11-9-10; Ord. of 11-6-12)

Sec. 13-103. Application for Permit.

- (A) Any person desiring to operate a food establishment and not otherwise exempt from these requirements must make a written application for a permit on forms provided by the City of Big Spring. The application must contain the name and address of each applicant, the location and type of the proposed food establishment and the applicable fee.
- (B) An incomplete application will not be accepted. Failure to provide all required information, or falsifying information required may result in denial or revocation of the permit. Renewals of permits are issued for a two-year term and the same information is required for a renewal permit as for an initial permit.
- (C) Prior to the approval of an initial permit or the renewal of an existing permit, the City of Big Spring shall inspect the proposed food establishment to determine compliance with state laws and rules. A food establishment that does not comply with state laws and rules will be denied a permit or the renewal of a permit.

(Ord. of 11-9-10)

Sec. 13-104. Permit Fees.

- (A) Fees. A person who operates a food establishment shall obtain a permit from the City of Big Spring and pay a permit fee for each establishment unless specifically exempted under this ordinance. All permit fees are nonrefundable. Permits are issued for a two-year term. The fees are based on gross annual volume of sales as follows:
 - (1) For an establishment with gross annual volume of food sales of \$0 - \$49,999.99, the fee is \$250;
 - (2) For an establishment with gross annual volume of food sales of \$50,000 - \$149,999.99, the fee is \$500; or
 - (3) For an establishment with gross annual volume of food sales of \$150,000 or more, the fee is \$750.
- (B) School Contractors. A person who contracts with a school to provide food services on a for-profit basis shall obtain a permit and pay a permit fee for each school where food services are provided. Permits are issued for a two-year term. The permit fee is \$250.
- (C) Mobile Food Establishments. A person who operates a mobile food establishment shall obtain a permit from the City of Big Spring for each mobile food unit operated.

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- (1) Each mobile food establishment shall be inspected and be in compliance with §229.169 of the TFER (relating to Mobile Food Establishments), and pay a nonrefundable permit fee before a permit is issued. If a request for inspection is not received or if the mobile food unit does not meet the minimum standards contained in §229.169 of the TFER (relating to Mobile Food Establishments) within one year of paying the permit fee, a new fee shall be paid.
 - (2) Permits are issued for a two-year term. The permit fee is \$250.
- (D) Temporary Food Establishments. An organizer of an event at which a temporary food establishment is operated shall obtain a permit for each temporary food establishment. In the absence of an event organizer, each temporary event operator shall obtain a permit. The application and permit fee for a temporary food establishment must be submitted to the City of Big Spring at least 30 days prior to the event. The permit fees are as follows:
- (1) Single-event permit. The permit fee is \$50.00 and is valid for the duration of a single event not to exceed 14 consecutive days from the initial effective date specified in the permit application.
 - (2) 14-Day Multiple Event Permit. The permit fee is \$75.00 and is valid at multiple events with-in a 14-day period. The permit shall be valid from the initial effective date specified in the permit application. The applicant must identify each event in the original application by name and provide the address/location of each event.
 - (3) Two-Year Multiple Event permit. Multiple-event permits are issued for a two-year term and the permit fee is \$200.00.
- (E) Roadside Food Vendors. Each roadside vendor shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a two-year term. The permit fee is \$250.
- (F) If the license or permit category changes during the license or permit period, the license or permit shall be renewed in the proper category at the time of the renewal.
- (G) Gross annual volume of food sales may be verified by data from the Texas Comptroller of Public Accounts.
- (Ord. of 11-9-10, Ord. of 5-26-15)

Sec. 13-105. Pre-Permit Inspection.

The City of Big Spring may conduct a pre-permit inspection for the purpose of determining compliance with these rules. (Ord. of 11-9-10)

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Sec. 13-106. Issuance of Permit.

The City of Big Spring may issue a permit or a renewal permit for an establishment based on compliance specified in §§229.161 – 229.171 and §§229-173 – 229.175 of the Texas Food Establishment Rules, and payment of all fees.

- (A) The permit shall be posted in a location in the food establishment that is conspicuous to consumers.
- (B) Permits for mobile food units, including pushcarts and roadside food vendors, shall be displayed on the units at all times.
- (C) A permit shall only be issued when all past due and delinquency fees have been paid. This applies to any delinquent penalties due under an order issued by the City of Big Spring.

(Ord. of 11-9-10)

Sec. 13-107. Renewal of Permit.

The permit holder shall submit a renewal application and permit fees prior to the expiration date of the permit. A person who files a renewal application after the expiration date shall pay an additional \$100 as a delinquency fee. (Ord. of 11-9-10)

Sec. 13-108. Amendment of Permit.

A permit must be amended if there is a change of name or ownership of the establishment. A permit is not transferable upon change of location with the exception of a permit issued to an operator of a mobile food unit or roadside food vendor. (Ord. of 11-9-10)

Sec. 13-109. Suspension of Permit.

- (A) Imminent Hazard. The City of Big Spring may, without warning, notice or hearing suspend any permit to operate a food establishment if the operation of the food establishment constitutes an imminent hazard to public health. Suspension is effective upon service of the notice required by this ordinance. Whenever a permit is suspended under this section, the holder of the permit shall be afforded an opportunity for a hearing within 20 days of receipt of a request for a hearing.
- (B) Suspension Upon Notice. Whenever a permit is suspended the City of Big Spring shall notify, the holder of the permit or the person in charge in writing that the permit is, upon service of notice, immediately suspended and that an opportunity for a hearing will be provided if a written request for a hearing is filed with the City of Big Spring by the holder of the permit within 10 days. If no written request for hearing is filed within 10 days of receipt of such notice, the suspension is sustained.
- (C) The City of Big Spring may end a suspension at any time if reasons for suspension no longer exist. (Ord. of 11-9-10)

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Sec. 13-110. Revocation of Permit.

- (A) The City of Big Spring may, after providing opportunity for a hearing, revoke a permit for serious or repeated violations of any of the requirements of this ordinance or the State Rules or for interference with the City of Big Spring in the performance of its duties. Prior to revocation, the City of Big Spring shall notify the holder of the permit or the person in charge, in writing, of the reason for which the permit is subject to revocation and that the permit shall be revoked at the end of the 10 days following service of such notice unless a written request for a hearing is filed with the City of Big Spring by the holder of the permit within such 10 day period.

- (B) If no request for hearing is filed within the 10 day period, the revocation of the permit becomes final.

(Ord. of 11-9-10)

Sec. 13-111. Administrative Process.

- (A) A notice as required in this ordinance is properly served when it is delivered to the holder of the permit or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the City of Big Spring.

- (B) Any hearing provided for in these rules shall be conducted by the City Manager at a time and place set forth in a written notice to the permit holder or person in charge at least 3 days prior to such hearing. Based upon the recorded evidence of such hearing, the City Manager shall make final findings, and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the City Manager.

(Ord. of 11-9-10, Ord. of 6-11-13)

Sec. 13-112. Penalty.

- (A) Any person who violates a provision of this ordinance or the State Rules, any person who is the permit holder or otherwise operates a food service establishment that does not comply with the requirements herein, or any responsible officer of such permit holder shall be guilty of a misdemeanor upon conviction and subject to a fine of not more than \$2,000.00 dollars. Each day such violation continues shall constitute a separate offense.

- (B) The City of Big Spring may seek to enjoin violations of these rules.

(Ord. of 11-9-10)

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Article 6. Food Service Establishments

Sec. 13-123 to 13-150 Reserved.

Article 6 is repealed in its entirety with such Article to be reserved for future expansion.
(Ord. of 5-12-81b, Ord. of 10-22-09)

Article 7. Vending Machines

Sec. 13-151. Adoption of FDS sanitation ordinance.

The definitions; the requiring of permits for the installation and operation of vending machines; the prohibiting of the sale of unsound or misbranded food or drink; the enforcement of this article; and the fixing of penalties shall be regulated in accordance with the terms of the unabridged form of The Vending of Food and Beverages - 1976 Recommended Sanitation Ordinance of the Food and Drug Administration, a certified copy of which shall be on file in the office of the city secretary. Provided, that sections 6-102, 6-601 and 6-602 of said unabridged ordinance shall be replaced respectively be sections 13-152, 13-153, 13-154 and 13-155 as set out below. (Ord. of 5-12-81c, §1)

Sec. 13-152. Issuance of permits modified.

- (A) Any person desiring to operate one or more vending machines, other than controlled location vending machines, shall make written application for a permit on forms provided by the regulatory authority. Such application shall include the following information:
- (1) The applicant's full name, residence, post office address, and whether such applicant is an individual, firm or corporation. If any partnership exists, the names of the partners together with their addresses shall be included;
 - (2) The location of the commissary or commissaries, and of other establishments where vending machines are repaired or renovated;
 - (3) The identity and form of the product to be dispensed through vending machines and the number of each such type vending machine in applicant's possession;
 - (4) The number of vending machines, other than controlled location vending machines, operated by applicant; and
 - (5) The signature of the applicant or applicants.

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- (B) Upon receipt of such application, the regulatory authority shall make an inspection of the commissary, supply storage, servicing, cleaning and sanitizing facilities, and transport facilities, and representative equipment and machine locations to determine compliance with the provisions of this article. A numbered operator's permit shall be issued to the applicant by the regulatory authority after compliance by the operator with the applicable provisions of this article and after receipt by the regulatory authority of a fee of two dollars (\$2.00) per year per vending machine, other than controlled location vending machines, operated by applicant. Such permit shall not be transferable. Except as otherwise provided by this article, all permits shall be issued on an annual basis and shall expire on August 31 of each year. The fees required for permits shall be adjusted on a pro rata basis, the formula for such adjustments to be as follows:

Number of full calendar months remaining (through expiration date) X annual fee. (Ord. of 5-2-81c, §2).

Sec. 13-153. Penalty.

Any person who violates any of the provisions of this article shall upon conviction thereof, be fined in any sum not less than one dollar (\$1.00) nor more than one thousand dollars (\$1,000.00). Notwithstanding the foregoing, the one thousand dollar (\$1,000.00) maximum fine hereunder shall only apply if the violation is a violation of a provision governing fire safety, zoning, or public health and sanitation, including dumping of refuse; if the provision does not govern fire safety, zoning, or public health and sanitation, including dumping of refuse, the maximum permissible fine shall be two hundred dollars (\$200.00) rather than one thousand dollars (\$1,000.00); provided, further, no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of this state. A separate offense shall be deemed committed on each day any violation occurs or continues.

This ordinance is enacted pursuant to Articles 1011 and 1195, as amended, effective September 1, 1983. (Original citation: Ord. No. 80-83, 10-11-83, 51; Ord. of 10-22-85)

Sec. 13-154. Severability.

Should any section, paragraph, sentence, clause or phrase of this chapter be declared unconstitutional or invalid for any reason, the remainder of such chapter shall not be affected thereby. (Ord. of 5-12-81c, §4)

Sec. 13-155 to 13-169. Reserved.

Article 8. Public Health Service Fees

Sec. 13-170. Fees.

The following fees shall be paid for public health services provided by the Big Spring-Public Health District:

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- (A) IMMUNIZATIONS..... \$ 5.00
PRENATAL - (Including Lab)..... \$75.00
T.B. TEST..... \$ 5.00
S.T.D. (DX & Rx)..... \$15.00
NEW-BORN SCREENING,(PKU)..... \$10.00
CLINIC VISIT (Office Call)..... \$5.00
- (B) Upon the request of individuals seeking the services of Big Spring-Howard County Health District, those individuals may, because of the lack of financial ability, seek services at a reduced rate of 50% of the reasonable, nominal charges set out in Section 13-170(a). If the individual requesting said services makes a statement that he or she cannot pay even a 50% reduction of the fees set forth in Section 13-170(a), the services will be administered on a no-pay basis; but, a request for payment of some amount will be offered before free service will be administered. (Ord. of 7-14-87)

Sec. 13-171 to 13-179. Reserved

Article 9. City Smoking Ordinance

Sec. 13-180. Definitions.

For the purpose of this article, the following definitions shall apply:

- (A) Bar or cocktail lounge means a place where mixed alcoholic beverages are sold for consumption on the premises as the primary business activity where such sales constitute at least 75% of the gross revenues of the business. A bar includes those facilities located within a hotel, motel or other similar transient occupancy establishment.
- (B) Business means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making or not-for-profit purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medicine, dental, engineering, architectural, or other professional services are provided.
- (C) Common traffic area means an area within a building primarily used for the unobstructed passage of pedestrian traffic through the building.
- (D) Designated smoking area means a designated area, which shall:
 - (1) Be a physically enclosed area as defined herein, separated from non-smoking areas; and

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- (2) Be ventilated with a separate heating, ventilation, and air conditioning (HAVC) system as defined herein.
- (E) Electronic vaping device means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic hookahs, e-hookahs or under any other product name or design.
- (F) Electronic vaping liquid (also known as e-juice or e-liquid) means any liquid product composed of propylene glycol or other carrier solvent and may contain nicotine and/or other substance and manufactured for the use with electronic vaping devices.
- (G) Enclosed or enclosed area means all space between a floor and ceiling, which is enclosed on all sides by solid walls or windows, which extend from the floor to the ceiling, including a door which remains closed at all times, except when used for entry or exit. Spaces screened by partitions, which do not extend to the ceiling or are not solid, office landscaping or similar structures are not considered enclosed areas.
- (H) Employee means any person who is employed by an employer in consideration for monetary compensation or profit.
- (I) Employer means any person, partnership, corporation, association or other entity that employs one or more persons.
- (J) Fast food restaurant means a food establishment with:
- (1) A limited fast food only menu; and
 - (2) No wait staff (counterstaff allowed); and
 - (3) A passout window for delivery of food to be consumed off premises (a passout window is not necessary if the establishment is located, within a shopping center). The term “fast food restaurant” does not include cafeterias or establishments where beverages must be consumed on premises.
- (K) Minor means a person younger than eighteen (18) years of age.

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- (L) HVAC means a separate heating, ventilation, and air conditioning system such that air from the smoking area is exhausting directly to the outside and not circulated within the building or mixed with the general dilution ventilation for the building and that creates a negative pressure away from the door into the room sufficient to prevent any flow of smoke from the smoking area to the non-smoking area. Such system shall supply a minimum of thirty cubic feet per minute (30 CFM) outdoor air exchange per person and be under negative pressure.
- (M) Open display unit means any device, furniture or furnishing within or upon which electronic vaping devices are displayed to customers, and includes, but is not limited to, any case, rack, shelf, counter, table, desk, kiosk, booth, stand, vending machine and other surface.
- (N) Place of employment means an enclosed area controlled by any employer, but not used by the general public, and to which employees have access during the course of employment, including but not limited to, work areas, employee lounges, employee restrooms, conference rooms, and employee cafeterias. The term does not include a private residence, unless it is used as a child care, adult care or health care facility.
- (O) Possession means actual care, custody, control or management.
- (P) Private place means any enclosed area to which the public is not invited or in which the public is not permitted, including but not limited to, personal or private residences, private social clubs, or personal automobiles.
- (Q) Public meeting means a meeting that is open to the public and held in an enclosed area of a public space.
- (R) Public place or public area means an enclosed area that is used by the general public, to which the public is invited or in which the public is permitted and includes, but is not limited to:
- (1) All enclosed facilities, including buildings owned, leased, or controlled by the City of Big Spring;
 - (2) All or any part of a building used for local governmental purposes;
 - (3) A retail store, office, service establishment or other commercial establishment;
 - (4) A grocery store;
 - (5) A restaurant, cafeteria, delicatessen, commissary, or mobile food unit;

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- (6) A public primary or secondary school, a public institution of higher education, or any other educational facility;
- (7) A restroom;
- (8) An enclosed theater, movie house, auditorium, arena, music hall, lecture hall, or other performing arts venue;
- (9) An elevator;
- (10) A library, museum, gallery, or aquarium;
- (11) A health care facility or hospital;
- (12) A child care facility;
- (13) A service line, cashier area, over the counter sales area, or common traffic area;
- (14) Sports arenas, stadiums, and convention halls, including bowling facilities and other indoor recreational facilities;
- (15) A lobby, hallway or other common area in apartment buildings, condominiums, trailer parks, retirement facilities, adult care facilities, nursing homes or other multiple-unit residential facilities;
- (16) A polling place;
- (17) A public plane or train;
- (18) A transit system bus or interstate bus, taxicab, or any other public transport;
- (19) A public transportation facility, including ticket, boarding and waiting areas of public transit depots;
- (20) A lobby, reception area, waiting area, hallway, or other common-use area;
- (21) A retail food production and marketing facility;
- (22) All areas available to, and customarily used by, the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, attorney's offices and other offices not otherwise exempted herein, banks, laundromats, hotels and motels; and;

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- (23) The public areas of a fast food restaurant.
- (S) Restaurant means a food establishment where the primary business is the preparation and sale of food.
- (T) Retail electronic vaping store means a retail store utilized primarily for the sale of electronic vaping devices, accessories, and/or electronic vaping liquid, or any other article or product that is for use in an electronic vaping device and in which the sale of other products is merely incidental.
- (U) Retail store means an establishment whose purpose is to offer for sale and sell to consumers, not for resale, goods, wares, merchandise and food, which items are purchased for use and/or consumption off premises, including but not limited to, supermarkets, convenience stores, drug stores, and warehouse stores.
- (V) Retail tobacco store means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (W) Service line means any indoor line in which one of more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (X) Single-pack means any cigarette, cigar, tobacco or smokeless tobacco product sold in less than a carton or similar units.
- (Y) Smoking smokes or smoke means inhaling, exhaling, burning, possessing, carrying, or holding any lighted cigar, cigarette, pipe, weed, plant, or combustible substance in any manner or in any form and/or vaping or the use of any electronic vaping devices.
- (Z) Sports arena means indoor sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.
- (AA) Sports grill means an establishment as defined by the Zoning Ordinance of the City of Big Spring.
- (BB) Tobacco product means a cigarette, cigar, electronic vaping device, smoking tobacco, including granulated, pug-cut, crimp-cut, ready rubbed and any form of tobacco suitable for smoking in a pipe or as a cigarette, chewing tobacco, including plug, scrap, and any kind of tobacco suitable for chewing, snuff or other preparations of pulverized tobacco, nicotine product, dissolvable nicotine, electronic vaping liquid, or any other article or product that is for use in an electronic vaping device.

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- (CC) Vaping means inhaling or exhaling vapors of electronic vaping liquid from an electronic device of any kind. For the purposes of this Article vaping is synonymous with smoking, smokes, or smoke.

(Ord. of 12-21-92, Ord. of 9-12-06, Ord. of 3-24-15).

Sec. 13-181. Offenses; Enforcement.

- (A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.
- (B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.
- (C) It shall be unlawful for any person to smoke in any area within twenty (20) feet of any public entrance to any enclosed area where smoking is prohibited. In addition, it shall be unlawful for any person to smoke in any area within fifty (50) feet of any public entrance to a hospital, medical clinic, medical doctor's office, chiropractor's office or day care.
- (D) A person commits an offense if, at a public meeting or in a public place at an area not designated as a smoking area, the person smokes and fails or refuses to extinguish tobacco products or move to a designated smoking area upon a request by any person to do so.
- (E) The proprietor or person in charge of a business or other public place commits an offense if:
- (1) The proprietor or person in charge allows smoking, but fails to comply with the requirements of this Article as to designation of a smoking area, including the posting of signs; or
 - (2) The proprietor or person in charge fails or refuses upon the request of any person to ask a person smoking while not in a designated smoking area to extinguish smoking material or move to a designated smoking area.
- (F) This article does not require the owner, operator, manager, or any employee of an establishment to report a violation of this Article or to take legal action against any individual violating this Article.
- (G) The police department shall inspect for compliance with this Article.

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- (H) Any owner, manager, operator or employee of any establishment regulated by this Article shall inform personnel violating this Article of the appropriate provisions thereof.

(Ord. of 12-21-92, Ord. of 9-12-06).

Sec. 13-181-1. Sale or Distribution to a Minor Prohibited; Proof of Age Required.

- (A) A person commits an offense if the person:
- 1) Sells, gives or causes to be sold or given a tobacco product to a minor; or
 - 2) Sells, gives or causes to be sold or given a tobacco product to another person who delivers it to a minor.
- (B) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which tobacco products are sold at retail, the employee is responsible for the offense and is subject to prosecution.
- (C) It is a defense to prosecution under Subsection (a)(1) that the person to whom the tobacco product was sold or given presented to the defendant valid proof of identification.
- (D) Proof of identification is valid for purposes of Subsection (c) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is eighteen (18) years of age or older and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government. (Ord. of 3-24-15)

Sec. 13-181-2. Possession, Purchase, Consumption, or Receipt of Tobacco Products by a Minor Prohibited.

- (A) A minor commits an offense if the minor possesses a tobacco product, and the minor was not:
- 1) In the course and scope of the minor's employment by a person or entity holding a permit issued by the state, if required by law, authorizing the person to engage in the business of being a distributor, wholesaler, bonded agent or retailer of tobacco products; or
 - 2) In the presence of an adult parent, legal guardian, or spouse.

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- (B) A minor commits an offense if, in order to acquire a tobacco product, the minor states to any person engaged in the business of selling tobacco products that such minor is eighteen (18) years of age or older, or presents to any such person a document or writing that purports to establish that such minor is eighteen (18) years of age or older. (Ord. of 3-24-15)

Sec. 13-182. Smoking in Public Places.

- (A) Smoking is prohibited in all enclosed public places within the City of Big Spring, except in designated smoking areas, and as otherwise allowed in this Article.
- (B) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare the entire establishment or facility a nonsmoking establishment.
- (C) In the event a public place has common areas not the responsibility of individual tenants, the building owner or his representative shall be responsible for application of this Article to such common areas.
- (D) A smoking area may not be designated in:
 - 1) A facility of a public, primary or secondary school;
 - 2) An elevator;
 - 3) An enclosed theater or movie house, auditorium, music hall, lecture hall, or other performing arts venue;
 - 4) A library, museum, gallery, or aquarium;
 - 5) A hospital;
 - 6) A transit system bus or interstate bus, taxicabs, or any other public transport;
 - 7) A service line, cashier area, over-the-counter sales area, or other common traffic area;
 - 8) A restroom;
 - 9) A lobby, reception area, waiting room, hallway, or any other common-use area;
 - 10) The ticket, boarding, and waiting areas of public transit depots;

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- 11) Any room, chamber, place of meeting or public assembly under the control of any board, council, commission, committee, including joint committees or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
 - 12) Health facilities, including, but not limited to waiting rooms, hallways, wards, and semiprivate rooms, clinics, physical therapy facilities, doctors offices, and dentists offices;
 - 13) The lobbies, hallways and other common areas, in apartment buildings, condominiums, trailer parks, retirement facilities, adult care facilities, nursing homes, and other multiple-unit residential facilities;
 - 14) A polling place;
 - 15) The public areas of a fast food restaurant;
 - (16) A place in which smoking is prohibited by the Fire Marshal or by any other law, ordinance or regulation.
- (Ord. of 12-21-92, Ord. of 9-12-06).

Sec. 13-183. Exceptions.

The prohibitions against smoking contained herein shall not apply to the following places:

- (A) To any facility including, but not limited to, restaurants, hotel, and motel conference or meeting rooms, and public and private assembly rooms in which one or more private functions are being held and which are under the control of the sponsor of the function and not the owner or operator of the facility, so long as the area being used for the private function qualifies as a designated smoking area;
- (B) To performing arts venues, but only by a performer participating in a theatrical performance;
- (C) To a bar or cocktail lounge, as defined by the Zoning Ordinance of the City of Big Spring;
- (D) To a retail tobacco store or retail electronic vaping store, however, this exception shall not apply to an establishment that shares a common HVAC system with any other tenant in the same building in which the retail tobacco store or retail electronic vaping store is located;

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- (E) To private clubs, which are owned by their members;
- (F) To private residences, except when used as a childcare, adult day care, health care facility, or other place of employment;
- (G) To personal automobiles;
- (H) To designated smoking hotel and motel rooms rented to guests provided that designated smoking rooms on the same floor are contiguous and smoke from these rooms do not infiltrate into areas where smoking is prohibited under this Article;
- (I) To outdoor areas or outdoor places of employment;
- (J) To an outdoor dining area that is at least twenty (20) feet from, or separately walled from, gatherings of nonsmokers and which does not require employees or members of the public to walk through it upon entering the restaurant and which is properly posted with signage;
- (K) To restaurants, places of employment, or public places where it is not otherwise prohibited to designate a smoking area. It shall be a requirement for the application of this Subsection that the restaurant, public place, or place of employment has designated smoking areas, has complied with all requirements for the establishment of a designated smoking area, as provided in this Article, and has petitioned the city for, and been granted, a permit to allow smoking. A proprietor or person in charge of a restaurant, public place or place of employment who desires to permit smoking shall designate an area not to exceed thirty (30) percent of the allowable area as the smoking area. The proprietor or person in charge shall locate the designated smoking area so that nonsmokers shall not have to travel through the smoking area to get to the cashier, a restroom, or nonsmoking area. A proprietor or person in charge shall file a petition with the police department demonstrating proof of the percentage of the allowable area designated as a smoking area; the petition shall be filed not later than ninety (90) days after the effective date of this Article, and annually thereafter. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. of 12-21-92, Ord. of 9-12-06, Ord. of 3-24-15).

Sec. 13-183-1. Vendor Assisted Sales Required; Self-Service Merchandising Prohibited.

- (A) Except as provided by Subsection (b), a retailer or other person may not:
 - 1) Offer tobacco products for sale in a manner that permits a customer direct access to the tobacco products;
 - 2) Offer for sale or display for sale tobacco products by means of self-service

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merchandise; or

3) Install or maintain an open display unit containing tobacco products.

(B) It is a defense to prosecution under Subsection (a) if:

- 1) A facility or business is not open to persons younger than eighteen (18) years of age at any time;
- 2) A facility or business is a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code; or
- 3) An open display unit is located in an area that is inaccessible to customers.

Sec. 13-184. Smoking in places of employment.

All employers who operate a place of employment are encouraged to develop, implement, and maintain a written policy that accommodates the wishes of employees by designating smoking and nonsmoking areas under the same requirements as public areas.

- (A) Smoking is prohibited in all enclosed facilities within a place of employment within the City of Big Spring, except for designated smoking areas, if such an area is provided to employees, and except as otherwise allowed by this Article.
- (B) If an area that is normally used for employee purposes such as eating or drinking or any other privilege normally available to employees is selected as the “designated smoking area” then an area offering the same services and privileges that is smoke-free shall be made available to nonsmoking employees.
- (C) Any employer may declare the entire place of employment a nonsmoking workplace.
- (D) Any area designated for smoking by an employer shall meet the requirement of a designated smoking area, and the other provisions of this Article. (Ord. of 12-21-92, Ord. of 9-12-06, Ord. of 3-24-15).

Sec. 13-185. Miscellaneous Regulations and Permitting.

- (A) **Signs:** Every public place where this Article prohibits smoking shall have posted at every public and employee entrance a conspicuous sign clearly stating that smoking is prohibited.
- (B) **Smoking Paraphernalia:** All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of such area.

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- (C) Permit: New or existing smoke-free restaurants, places of employment or public places of employment or public places where it is not otherwise prohibited to designate a smoking area, may apply for a permit upon compliance with other smoking requirements of this article regarding designation of a smoking area. All permits shall be renewed annually.
- (D) Permit Fee: The fee shall be \$50.00. (Ord. of 12-21-92, Ord. of 9-12-06, Ord. of 6-9-15).

Article 10. Illegal Smoking Material

Sec. 13-186. Definitions.

For the purpose of this Article the following words shall have the meaning herein described to them:

- (A) “Illegal Smoking Material” shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices, teas, bath salts or any other substance or blend of substances thereof if it includes any of the following chemicals or a comparable chemical:
 - (1) Salvia divinorum or salvinorium A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
 - (2) Datura stramonium; all parts of the plant presently classified botanically as datura stramonium, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
 - (3) 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(-methyloctan-2-yl) phenol (also known as CP47, 497) and homologues;
 - (4) (6aS, 10aS)-9-(hydroxymethyl-3-(2-methyloctan-2-yl)-6a, 7, 10, 10a-tetrahydrobenzo [c] chromen-1-ol (also known as HU-211 or Desanabinol);
 - (5) 1-pentyl-3-(a-naphthoyl) indole (also known as JWH-018);

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- (6) 1-butyl-3-(1-naphthoyl) indole (also known as JWH-073); or
- (7) 1-pentyl-3-(4-methoxynaphthoyl) indole (also known as JWH-081)

Products containing some or all of the above substances are currently being marketed under the following commercial names: “K-2”, “K-2 SUMMIT”, “K-2-SEX”, “GENIE”, “DASCENTS”, “ZOHAI”, “SAGE”, “SPICE”, “KO KNOCK-OUT 2”, “SPICE GOLD”, “SPICE DIAMOND”, “YUCATAN FIRE”, “SOLAR FLARE”, “PEP SPICE”, “FIRE N’ ICE”, “SALVIA DIVINORUM”, “JIMSON WEED”, “GYPSUM WEED”, “DEVIL’S TRUMPET”, “DEVIL’S WEED”, “THORN APPLE”, “TOLGUACHA”, “JAMESTOWN WEED”, “STINKWEED”, “LOCOWEED”, “DATURA”, “PRICKLYBURR”, “DEVIL’S CUCUMBER”, “HELL’S BELLS”, and “MOONFLOWER”.

Any material containing any of the botanical or chemical compounds set forth above shall be subject to the provisions of this Ordinance, regardless of whether they are marketed under these or other names.

- (B) “Illegal Smoking Paraphernalia” shall mean any paraphernalia, equipment or utensil that is used or intended to be used for the purpose of ingesting, inhaling or otherwise introducing into the human body, illegal Smoking Material as defined herein, and may include, but is not limited to:
- (1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
 - (2) A water pipe;
 - (3) A carburetion tube or device;
 - (4) A smoking or carburetion mask;
 - (5) A chamber pipe;
 - (6) A carburetor pipe;
 - (7) An air-driven pipe;
 - (8) Achillum;
 - (9) A bong; or
 - (10) An ice pipe or chiller.

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- (C) “Person” shall mean an individual, a group of two or more individuals, proprietorship, corporation, partnership, wholesaler, association or other legal entity, or any licensed or unlicensed business. (Ord. of 12-14-10)

Sec. 13-187. Sale, Delivery, Offer, or Gift.

It shall be unlawful for any person to sell, offer to sell, publicly display, barter, deliver or give any illegal smoking material to any person. (Ord. of 12-14-10)

Sec. 13-188. Use or Possession of Illegal Smoking Material.

It shall be unlawful for any person to have in their possession or to purchase, use, ingest, inhale, or otherwise introduce into the human body, illegal smoking material within the corporate limits of the City of Big Spring. (Ord. of 12-14-10)

Sec. 13-189. Use or Possession of Illegal Smoking Paraphernalia.

It shall be unlawful for any person to have in their possession within the corporate limits of the City of Big Spring, any illegal smoking paraphernalia with the intent to use it to ingest, inhale or otherwise introduce into the human body, illegal smoking material. (Ord. of 12-14-10)

Sec. 13-190. Defenses to Prosecution.

- (A) It shall be a defense to prosecution of a violation of this Article if the use of the illegal smoking material is done at the direction of or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.
- (B) It shall be a defense to prosecution of a violation of this Article if the person charged with such violation presents legitimate and complete documentation from clergy or a spiritual leader recognized by the State of Texas that the use of such material is part of a religious ceremony or activity of a religious denomination in which the person charged has a documented long standing membership. (Ord. of 12-14-10)

Sec. 13-191. Penalty.

Any person violating any prohibition, requirement, duty or provision of this Article shall , upon conviction be punished by a fine not to exceed Two thousand dollars (\$2,000.00). Each day that such violation continues shall constitute a separate offense. (Ord. of 12-14-10)

Sec. 13-192. Other Remedies.

The penal provisions imposed herein shall not preclude the filing of a lawsuit to enjoin violation of this ordinance. The City of Big Spring shall retain all legal rights and remedies available to it pursuant to local, state and federal law. (Ord. of 12-14-10)

Sec. 13-193 to Sec. 13-208 Reserved.

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Article 13. Ambulance Service.

Sec. 13-209. Definitions:

For the purpose of this chapter, the following definitions will apply:

Advanced Life Support, Level 1 (ALS1) – Where medically necessary, transportation, the provision of medically necessary supplies and services, and either an ALS assessment by ALS personnel OR the provision of at least one ALS intervention.

Includes, but is not limited to:

- Administration of intravenous (IV) fluids
- Peripheral venipuncture
- Blood drawing
- Monitoring IV solutions
- Administration of approved medications, IV, Sub Q, sublingual, nebulizer inhalation

Advanced Life Support, Level 2 (ALS2) – Where medically necessary, transportation, medically necessary supplies and services and at least three separate administrations of one or more medications by IV push/bolus or by continuous infusion. OR transportation, medically necessary supplies and services, and the provision of at least one of the following procedures:

- Manual defibrillation/cardioversion
- Endotracheal intubation
- Cardiac pacing
- Chest decompression
- Surgical airway
- Intraosseous line

ALS Personnel – ALS personnel are individuals trained to the level of Emergency Medical Technician – Intermediate or Paramedic.

Basic Life Support (BLS) Non Emergency – Transportation and the provision of medically necessary supplies and services when staffed by Emergency Medical Technician – Basic as defined by DSHS.

DSHS – Texas Department of State Health Services, formerly Texas Department of Health (TDH).

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Emergency Response – Emergency response is a BLS or ALS1 level of service that has been provided in immediate response to a 911 call. (Ord. of 07-22-97, Ord. of 2-14-06, Ord. of 9-23-08)

Sec. 13-210. Ambulance Fees.

Basic Fees for emergency ambulance service shall be according to the following schedule:

(1)	ALS 1	\$ 850.00
(2)	ALS 2	\$1,050.00
(3)	SCT (scheduled inner facility transfer)	\$1,275.00
(4)	BLS	\$ 750.00
(5)	ALS (Non-Emergency)	\$ 850.00
(6)	BLS (Non-Emergency)	\$ 750.00
(7)	Treatment/No transport	\$ 150.00
(8)	ALS Disposables	\$ 375.00
(9)	BLS Disposables	\$ 225.00
(10)	Oxygen	\$ 150.00
(11)	Mileage	\$ 15.00 per mile

Medicare/Medicaid Assignments:

The ambulance service will accept Medicare and Medicaid assignments. Patients will be required to pay only the balance due on the Medicare approved fee after Medicare reimbursements.

Ambulance Subscriber Service:

The ambulance service offers an Ambulance Subscriber Service to residents for a \$150.00 yearly membership fee. This fee covers all emergency and medically necessary ambulance services for the subscriber's entire household (all persons living in that household). Everyone is eligible for membership, regardless of lack of private insurance coverage. If a member does have insurance coverage, the charges will be filed with the insurance company for payment. The member will not be responsible for any remaining balance after Insurance reimbursements. (Ord. of 9-12-95, Ord. of 07-22-97, Ord. of 12-10-02, Ord. of 2-14-06, Ord. of 9-23-08, Ord. of 1-27-15)

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ARTICLE 14 – FIRE AND RESCUE SERVICE FEES

Sec. 13-211. Assessment of Fees for Services.

The City of Big Spring shall assess and collect fees for certain services rendered by the Fire Department. The fees for use of equipment and supplies set out in Section 14-2 shall be assessed and collected when such equipment and/or supplies are used in connection with the following events or incidents:

- (A) Vehicle fires;
- (B) Vehicle accidents;
- (C) Hazardous material spills or releases, and
- (D) Rescues or rescue attempts at low water crossings or other rescues performed by the Fire Department.

Sec. 13-212. Fee Schedule.

The following fees shall be assessed and collected for the use of equipment and supplies as specified in Section 13-211 above. Fees listed are charged per incident unless otherwise noted.

(A) VEHICLES

<u>Vehicle Type</u>	<u>Aparatus</u>	<u>Fee Per Hour</u>
	Battalion Chief (Unit-11)	\$200.00
1	Rescue (Heavy)	\$600.00
1	Brush Truck (Unit-10)	\$400.00
4	Command Car/Truck	\$200.00
1	Engines 1 – 5 (E-1 –E5)	\$500.00

(B) HAND TOOLS

<u>Tool</u>	<u>Fee</u>
Flathead Axe	\$17.00
Pickhead Axe	\$17.00
Long Pike Pole	\$17.00
Sheetrock Pike Pole	\$17.00
Short Pike Pole	\$17.00
Pry Axe	\$17.00
Haligan Tool	\$17.00
Bolt Cutters	\$17.00
Pry Bar	\$17.00
Fire Rake	\$17.00

BIG SPRING CITY CODE

HAND TOOLS CONT.

<u>Tool</u>	<u>Fee</u>
Shovel	\$17.00
Scoop	\$17.00
Broom	\$12.00
Misc. Hand Tool	\$12.00

(C) FIRE EQUIPMENT

<u>Tool</u>	<u>Fee</u>
Foam Nozzle	\$55.00
Foam Eductor	\$50.00
AFFF Foam	\$40.00 per/Gal.
Class A Foam	\$25.00 per/Gal.
Piercing Nozzle	\$40.00
M/S Fog Nozzle	\$55.00
M/S Straight Bore Nozzle	\$30.00
Salvage Cover	\$28.00
SCBA Pack	\$85.00 ea.
Hall Runner	\$18.00
SAWZALL	\$55.00
PPV Fan – Per Hour	\$55.00 per Hr.
Generator, Portable	\$55.00 per Hr.
Heat Detection Gun	\$75.00
Chain Saw	\$45.00 per Hr.
Water Extinguisher	\$22.00
Dry Chemical Extinguisher	\$45.00
Scene Lights	\$22.00
Water Vests	\$30.00
Thermal Imaging Camera	\$75.00

(D) HAZARDOUS MATERIAL EQUIPMENT

<u>Supplies/Service</u>	<u>Fee</u>
Absorbent	\$17.00 per Bag
Gas Multi Meter	\$65.00
CO2 Meter	\$65.00
Disposable Coveralls	\$30.00
Barricade Tape	\$22.00

HEALTH, SAFETY, AND NUISANCES

Latex Gloves	\$ 6.00
Disposable Goggles	\$15.00
Gas Plug Kit	\$50.00

(E) **RESCUE EQUIPMENT**

<u>Tool</u>	<u>Fee</u>
Spreaders	\$250.00
Cutters	\$250.00
Rams	\$250.00
Air Bag	\$250.00
K-12 Saw	\$ 55.00
Rope	\$ 25.00
Ajax Tool	\$ 25.00
K-Tool	\$ 25.00
Windshield Tool	\$ 15.00
Rescue Blanket	\$ 32.00

(Ord. of 3-11-14)