

Village of Volente

Health and Sanitation Ordinance

ORDINANCE NO. 2013-0-4

**AN ORDINANCE OF THE VILLAGE OF VOLENTE, TEXAS
RESTRICTING TRASH, GARBAGE, AND UNSANITARY
CONDITIONS WITHIN THE INCORPORATED CITY LIMITS OF
THE VILLAGE OF VOLENTE.**

WHEREAS, The City Council of the Village of Volente (“City Council”) seeks to promote the health, safety and general welfare to the community by preventing death, injury, property damage and urban blight within the City Limits; and

WHEREAS, The City Council finds that the existence of stagnant water and other unsanitary conditions will harbor and attract rodents and insects , will result in the production of disease to the City; and

WHEREAS, The City Council finds that the inadequate construction and maintenance of private sewage treatment facilities (septic systems) will result in increased sanitation problems, will increase disease, and will increase improper treatment and disposal of sewage and waste matter; and

WHEREAS, The City Council finds that the existence of rubbish, filth, carrion, and other unsanitary, and unwholesome matter will lower the quality of life for citizens of the City, will harbor, rodents, will increase illegal dumping and littering, will increase fire hazards, and will increase crime by decreasing visibility and access; and

WHEREAS, Pursuant to Texas Local Government Code section 51.001 the City Council is authorized by law to adopt an ordinance that is for the good government, peace or order of the City and is necessary or proper for carrying out a power granted by law to the City; and

WHEREAS, Pursuant to Texas Local Government Code section 51.032 the City Council is authorized by state law to adopt an ordinance , not inconsistent with the state law , that the City Council considers proper for the government of the City; and

WHEREAS, Pursuant to Texas Local Government Code Chapter 217 the City has the statutory authority to define and abate nuisances and impose fines; and

WHEREAS, Pursuant to the Texas Health and Safety Code, including but not limited to Chapter 342, the City Council is authorized by law to regulate public health and

46 sanitation within the City in the areas of stagnant water, filth, carrion, and other
47 unhealthy , unsanitary , and unwholesome conditions; and
48

49 **WHEREAS,** The City Council finds that it is necessary and proper for the good
50 government, peace, and order of the City and for proper public health and sanitation to in
51 the City to adopt an ordinance on public health and sanitation that regulates stagnant
52 water, filth, carrion, and other unhealthy, unsanitary, and unwholesome conditions in the
53 City;

54
55 **NOW, THEREFORE, be it ordained by the City Council of the Village of Volente,**
56 **County of Travis , State of Texas, that;**

57
58 **1. ENACTMENT CLAUSES**
59

60 **Popular Name**

61 This Ordinance may be referred to as the Village of Volente’s “Health and Sanitation
62 Ordinance”
63

64 **Findings of Fact**

65 All of the above premises are hereby found to be true and correct legislative and factual
66 findings of the City Council of the Village of Volente, and are hereby approved and
67 incorporated into the body of this Ordinance as if copied in their entirety.
68

69 **Purpose**

70 This Ordinance is adopted to promote the public health, safety, morals and general
71 welfare within the City through reasonable regulation of nuisances. The purpose of this
72 Ordinance is to protect the citizenry, prevent pest and vermin, protect air quality and
73 preserve the water resources of the City.
74

75 **Compliance Required**

76 It shall be unlawful for any person to violate any provisions of this Ordinance.
77

78 **Scope of Jurisdiction**

79 The provisions of this Ordinance shall apply within the incorporated municipal boundary
80 of the City.
81

82 **Effective Date**

83 This Ordinance shall take effect immediately from and after its passage and publication
84 as may be required by governing law.
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92 **2. DEFINITIONS**

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94 **(A) General**

95 Words and phrases used in this Ordinance shall have the meanings set forth in
96 this section. Words and phrases that are not defined in this Ordinance but are
97 defined in other Ordinances of the City shall be given the meanings set forth in
98 those Ordinances. Other words and phrases shall be given their common, ordinary
99 meanings unless the context clearly states otherwise. Headings and captions are
100 for reference purposes only, and shall not be used in the interpretation of this
101 Ordinance.
102

103 **(B) Specific**

- 104
- 105 (1) Animal Carcass: The carcass of an animal exposed so that noxious or
106 disagreeable odors may escape there from and contaminate the air.
107
 - 108 (2) Brush Trimmings: Tree and shrub trimmings, which are not susceptible to
109 placement in regulation containers.
110
 - 111 (3) City: The Village of Volente, an incorporated municipality located in Travis
112 County, Texas
113
 - 114 (4) City Limits: The incorporated municipal boundary of the Village of Volente
115
 - 116 (5) Code Enforcement Officer: The Code enforcement officer of the Village of
117 Volente or Officers designee. The term may also include a licensed peace
118 officer employed by the City.
119
 - 120 (6) Debris: Dirt, concrete, rocks, bricks, scrap wood, other waste or building
121 materials.
122
 - 123 (7) Garbage: Waste capable of decay from a public or private establishment or
124 restaurant. The term includes vegetable, animal, and fish offal and animal and
125 fish carcasses, but does not include sewage, body waste, or an industrial by-
126 product.
127
 - 128 (8) Junk: Worn out, worthless, discarded material, including odds and ends, old iron
129 or other metal, glass, and paper
130
 - 131 (9) Lot: A lot as defined in the zoning regulations plus any additional real property
132 located between the property line and curb or the property line and one half the
133 width of the alley
134
 - 135 (10) Offal: Waste meat products or parts of a butchered animal rejected as unfit
136 for use.
137

- 138 (11) Person: any human individual, association, corporation, institution, or
 139 responsible governmental entity occupying, owning, leasing, renting, or residing
 140 upon a lot that is subject to this Ordinance. The fact that a person is a present
 141 occupant of the premises shall be *prima facie* evidence that the person has
 142 supervision and control of said property. If the premises are unoccupied, the fact
 143 that the current person is listed by the current tax roll as the owner shall be
 144 *prima facie* evidence that the person is the owner and has supervision and
 145 control of said lot.
 146
- 147 (12) Refuse: means garbage, rubbish, junk, paper, and other waste both capable
 148 and not capable of decay, including vegetable matter and fish and animal
 149 carcasses.
 150
- 151 (13) Rubbish: waste not capable of decay from a public or private
 152 establishment.
 153
- 154 (14) Sanitary: A condition of good order and cleanliness that precludes the
 155 probability of disease transmission.
 156
- 157 (15) Trash: Animal carcasses, garbage, debris, junk, offal, refuse, rubbish, and,
 158 as herein defined, including construction trash.
 159
- 160 (16) Undeveloped lot, tract, or parcel of land: Land that has not been cleared
 161 either fully or partially, and is in an undisturbed, natural condition for the
 162 Village of Volente area of the State of Texas.
 163

164 **Burning**

165
 166 It shall be unlawful for any person to burn any non vegetative matter at any time
 167 within the incorporated city limits of the Village of Volente. The burning of
 168 brush, leaves, and yard trimmings is permitted provided said burning does not
 169 cause a health and safety hazard or nuisance to surrounding property owners and
 170 or tenants, or if this is not a burn ban in effect.
 171

172 **Depositing, Dumping**

173
 174 It shall be unlawful for any person to dump, place, deposit, or throw, or otherwise
 175 dispose of any trash of any kind on public or private property. A violation of this
 176 section shall constitute a trespass on said property when committed against or
 177 upon any public property or property owned or occupied by another person.
 178 Violations of this section shall include but are not limited to the following:
 179

- 180 (1) Vegetation and Trimmings: The throwing , placing, dumping, or depositing of
 181 any lawn trimmings, hedge trimmings, or other cuttings or trimmings of
 182 weeds, flowers, or other vegetation on or in any gutter, street, sidewalk,

183 parkway, driveway, curb, alley, or any other public property of the City, or in
184 or on any lot, vacant or occupied, driveway or other private property.

185
186 (2) Trash: The throwing, placing, dumping or depositing of any garbage or refuse
187 of any kind on or in any gutter, street, sidewalk, parkway, driveway, curb,
188 alley, or any other public property of the City, or on any private lot, vacant or
189 occupied, other private property.

190
191 (3) Unsanitary Matter: the throwing, placing, dumping, or depositing of any
192 animal, vegetable or mineral matter or any composition or residue thereof,
193 which is in an unsanitary condition or injurious to public health on or in any
194 gutter, street, sidewalk, parkway, driveway, curb, alley or any other public
195 property of the City, or on or in any lot vacant or occupied, driveway or other
196 private property.

197
198
199 Trash that has been properly disposed of in accordance with the garbage collection
200 provisions of this code shall be exempt from this section

201
202 **Unsanitary Conditions on Property**

203
204 It shall be unlawful for any person to permit any of the following unsanitary conditions to
205 exist on, or emanate from, any such lot, tract, or parcel of land:

206
207 (1) stagnant water or any collection of water that may allow the breeding of
208 insects, exposed animal carcasses, or any other open drain, sewer, or
209 cesspool;

210
211 (2) any waste products, offal, polluting material, spent chemicals, liquors,
212 brines, garbage, rubbish, refuse, sewage, used tires or other waste of any
213 kind that is stored, deposited or disposed in a manner that may cause the
214 pollution of the surrounding land, the contamination of groundwater or
215 surface water or the breeding of insects or rodents; or

216
217 (3) any waste products, offal, polluting material, spent chemicals, liquors,
218 brines, garbage, rubbish, refuse, sewage, used tires or other waste of any
219 kind that is accumulating in, being discharged into or flowing into or onto
220 any gutter, street, sidewalk, parkway, driveway, curb, alley or any other
221 public property of the City, or in or on any lot, vacant or occupied, driveway
222 or other private property.

223
224 (4) Any garbage or waste receptacle or container that is in an unsanitary
225 condition.

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229 **Inspection of Premises**

230

231 The Code Enforcement Officer may inspect or cause to be inspected any property that is,
232 or for which the Officer has probable cause to believe is in an unsanitary condition or
233 otherwise offensive in violation of this Ordinance. In order to perform inspections of
234 private properties reasonably suspected of being in violation of this Ordinance but which
235 is not in plain view, the Officer is authorized to seek a search warrant from any judge of
236 competent jurisdiction.

237

238 **Remediation Required**

239

240 It shall be the duty of any person to: (I) remove all vegetation, trimmings, garbage and
241 refuse; (II) remove or cause to be removed any and all unsafe or unsanitary junk; (III) fill,
242 drain, repair, remove or clean any condition on such lot, tract, parcel of land or portion
243 thereof that is in violation of this Ordinance, or take any and all other corrective or
244 remediation action necessary to comply with this Ordinance, as often as may be
245 necessary.

246

247 **Animal Carcasses- Nuisance**

248

249 (a) No person shall place or deposit the exposed carcass of any animal on any street,
250 alley, highway or public place or on private property.

251

252 (b) No person shall allow or permit any animal that has died, at which at the time of
253 death was owned or controlled or kept by such person, to be in or upon any street,
254 alley, lot or other place in the City, such person shall cause the carcass to be
255 disposed of in a sanitary manner.

256

257 (c) An exposed animal carcass is deemed to be a nuisance and a danger to the public
258 health, safety and welfare. Notwithstanding any other remedy or remedies
259 available to the City under this section or any other ordinance or statute, the Code
260 Enforcement Officer, or any other City employee or their designee may enter
261 upon any premises, whether public or private, where an animal carcass is located
262 to retrieve it and dispose of it in compliance with this section if;

263

264 (1) the carcass has reached a stage of decomposition or the environmental
265 conditions are such noxious odors are emanating from the carcass, or
266 insects, vermin or any other animals have been drawn to the site; or

267

268 (2) The exposed animal carcass is not disposed of in compliance with
269 subsection hereof within 24 hours of the animal's death.

270

271 Any expenses incurred by the City for such removal shall be deducted from the
272 commercial value derived from the carcass, if any, or assessed against the owner of the
273 animal along with any penalty or penalties for violation of this section.

274

275 **Notice**

276
277 (a) In the event that the person shall fail to comply with the requirements of
278 remediation of this Ordinance, notice of such violation shall be given prior to
279 exercising the authority granted in this Ordinance.

280
281 (b) Such notice shall be given:

282
283 (1) Personally to the owner in writing;

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285 (2) By letter addressed to the owner at the owner's address as recorded in the
286 appraisal district's records; or

287
288 (3) If personal service cannot be obtained , notice may be given by:

289
290 (A) By publication at least once;

291
292 (B) Posting the notice on or near the front door of each building on
293 the property to which the violation relates; or

294
295 (C) Posting the notice on a placard attached to a stake driven into the
296 ground on the property to which the violation relates, if the
297 property contains no buildings.

298
299 (4) if a municipality mails a notice to a property owner in accordance with
300 subsection (b) and the United States Postal Service returns the notice as
301 "refused" or "unclaimed", the validity of the notice is not affected, and the
302 notice is considered as delivered.

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304
305 (c) Annual Notice: After a property owner has been given one (1) notice of violation on a
306 lot, tract, or parcel of land, annual notice may be given to the property owner. If the City
307 opts to provide Annual Notice, such notice shall be mailed to the owner at the address
308 recorded with the appraisal district and posted on the property. Once the City has given
309 such annual notice, no further notice shall be required prior to abatement for that lot,
310 tract, or parcel of land for a one (1) year period. If the City does not receive notice in a
311 change of ownership, the City may abate any nuisance contained on the property covered
312 by this Ordinance without further notice and assess expenses to the owner.

313
314 (d) Contents of Notice: The notice of violation shall at a minimum contain the following:

315
316 (1) The name of the owner, if known, of the premises proposed to be entered upon
317 by the City;

318
319 (2) The address or legal description of the premises proposed to be entered upon by
320 the City;

- 321
322 (3) The offending conditions existing on the lot, tract or parcel of land;
323
324 (4) A statement that the recipient has Thirty (30) days for junk and seven (7) days
325 for unsanitary conditions or immediate threats to the health, safety, and welfare
326 from the date of notice to correct the violation, that if he/she fails to do so, the
327 City will enter the premises and remedy the same, and that the City is entitled to
328 attach a lien to the property to secure payment for services rendered; and
329
330 (5) A statement that the recipient is entitled to a hearing.
331
332 (e) If annual notice is given, it shall state, in addition to the foregoing, that the City may
333 enter upon the premises to remedy any violation at thirty (30) day intervals during the
334 year.
335
336 (f) Owner Requested Work: In the event the owner of any such property requests that the
337 City do such work as is necessary in order to abate or prevent a violation of this chapter,
338 then such request will negate the requirement for notification of violation by the City, and
339 the City will have the same remedies as hereinafter set forth.
340
341 (g) Exception: Notwithstanding the foregoing provisions, the City may abate, without
342 prior notice, any unsanitary conditions, animal carcasses are an immediate danger to
343 health, life, or safety of any person.
344

345 **Abatement, Expenses, and Lien**

- 346
347 (a) Abatement: If the owner of any lot, tract, parcel of land or portion thereof does
348 not comply with the provisions of this Ordinance within seven (7) days of receipt
349 of Notice of Violation, the City or its Agents may:
350
351 (1) Enter upon such premises and do such work as necessary , or cause the
352 same to be done, in order that the premises may comply with the
353 requirements set forth in this Ordinance; and
354
355 (2) Pay for the work or improvements made and the charge the expenses to
356 the owner of the property.
357
358 (b) Assessment of Expenses and Lien
359
360 (1) The City designee may assess expenses incurred by the City in exercising
361 the Authority granted in this section. The City attorney, or an assigned
362 representative, may file a lien statement with the county clerk of Travis
363 County of such expenses including administrative, filing and publication
364 costs incurred in abating the unsanitary condition on said premises. The
365 lien statement must state the name of the owner, if known, and a legal
366 description of the property. The City shall have a privileged lien on such

367 lot, tract, or parcel of land, second only to tax liens and liens for street
368 improvements, for the expenses incurred, together with interest at the rate
369 of TEN Percent (10%) per year on the amount due from the date the City
370 paid or incurred such expenses. For any such expenditures and interests,
371 suit may be instituted and recovery and foreclosure had in the name of the
372 City, and the statement of expenses or a certified copy thereof shall be
373 *prima facie* proof of the amount expended in any such work performed by
374 the City.
375

376 (2) The Code Enforcement Officer shall execute and file a release of lien for
377 the subject property with the County Clerk of Travis County within a
378 reasonable time after payment of the amount due on the property including
379 interest through the date of payment
380

381
382 (c) Hearing: Any person or entity receiving an abatement notice under this Ordinance
383 (with the exception of section (g) under the heading Notice in this Ordinance)
384 shall have a right to meet with the code enforcement officer and City
385 Administrator or his designee within ten (10) days of receipt of such notice to
386 assert any legal defense as to why the City should not proceed with the abatement
387 and attachment of a lien as provided in this Ordinance.
388

389 7. ENFORCEMENT

390
391 (a) Civil and Criminal Penalties: The City shall have the power to administer and
392 enforce the provisions of this Ordinance as may be required by governing law.
393 Any person violating any provisions of this Ordinance is subject to suit for
394 injunctive relief as well as prosecution for criminal violations. Any violation of
395 this Ordinance is hereby declared to be a nuisance.
396

397 (b) Criminal Prosecution: Any person violating any provisions of this Ordinance
398 shall, upon conviction, be fined a sum not exceeding two thousand dollars
399 (\$2,000.00) (might want to lower this to \$500.00 to start) per occurrence. Each
400 day that a provision of this Ordinance is violated shall constitute a distinct and
401 separate offense. An offense under this Ordinance is a misdemeanor.
402

403 (c) Civil Remedies: Nothing in this Ordinance shall be construed as a waiver of the
404 City's right to bring a civil action to enforce the provisions of this Ordinance and
405 to seek remedies as allowed by law, including but not limited to the following:
406

407 (1) Injunctive relief to prevent specific conduct that violates the Ordinance or
408 to require specific conduct that is necessary for compliance with the
409 Ordinance; and
410

411 (2) a civil penalty up to one thousand dollars (\$1,000.00) a day when it is
412 shown that the defendant was actually notified of the provisions of this

413 Ordinance and after receiving notice committed acts in violation of the
414 Ordinance or failed to take action necessary for compliance with this
415 Ordinance;

416
417 (3) Other available relief.

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420 **8. REPEALER**

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423 All ordinances or parts of Ordinances in force when the provisions of this Ordinance
424 become effective which are inconsistent or in conflict with the terms and provisions
425 contained in this Ordinance are hereby repealed only to the extent of any such conflict.

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428 **9. SEVERABILITY**

429

430 It is hereby declared to be the intention of the City Council that the phrases, clauses,
431 sentences , paragraphs and sections of this Ordinance be severable, and if any phrase ,
432 clause, sentence, paragraph, or section of this Ordinance shall be declared
433 unconstitutional by the valid judgment or decree of any court of competent jurisdiction,
434 such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences,
435 paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be
436 enforced as written.

437
438

439 **10. PROPER NOTICE AND MEETING**

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440 It is hereby official found determined that the meeting at which this ordinance was passed
441 was open to the public as required and that public notice of the time, place and purpose of
442 said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas
443 Government Code. Notice was also provided as required by Chapter 52 of the Local
444 Government Code.

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446

447 **11. PUBLICATION**

447

448 The City Council hereby directs the City Secretary to publish the caption of this
449 Ordinance in compliance with the requirements of the Texas Local Government Code

450
451

452 **12. EFFECTIVE DATE**

452

453 This Ordinance shall take effect immediately from and after its adoption and it is
454 accordingly so ordained.

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459 Approved this the day of 2013.

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Justine Blackmore Hallista, Mayor

Attest: _____
Joan Jackson, City Secretary