

Chapter 12

OFFENSES AND MISCELLANEOUS PROVISIONS

Sec.12-1 Firearms--Discharge prohibited, exceptions.

The discharge of any type of firearms, including, but not limited to, pistols, rifles, shotguns and airguns, is expressly forbidden within the limits of the City. This prohibition does not include the discharge of a firearm by a peace officer or law enforcement officer in the exercise of his lawful duty. (Ord. No. 7, 7-18-73)

Sec.12-2 Noises--Loud, disturbing, etc. prohibited.

(A) **Definitions and Standards.** [As used in this Sec. 12-2, the following words and terms shall have the meanings respectively ascribed:]

A-weighted sound level means the sound pressure level in decibels are measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Daytime/evening shall mean the hours between seven o'clock a.m. and eleven o'clock p.m., Sunday through Thursday and seven o'clock a.m. and midnight Friday and Saturday.

Impulsive sound means sound of short duration, usually less than one second, with an abrupt onset and rapid decay. Examples of sources of impulsive sound include explosions, drop forge impacts, and the discharge of firearms.

Nighttime shall mean the hours between eleven o'clock p.m. and seven o'clock a.m., Sunday through Thursday and midnight. and seven o'clock a.m. Friday and Saturday.

Noise nuisance means any loud, irritating, vexing or disturbing sound originating from a nearby property under separate ownership which causes injury, discomfort, or distress of a person of reasonable nervous sensibilities, or any sound that exceeds the maximum permitted sound levels specified in subsections B(a)(8)-(12).

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network such as A, B or C as specified in American National Standards Institute specifications for sound level meters (ANSI S1,4-1971). If the frequency weighting employed is not indicated, the A-weighting shall apply.

(B) Noise Nuisance Enumeration.

(a) The following acts, among others not hereinafter enumerated, are declared to be "noise nuisances," and are unlawful and in violation of the provisions of this division when such acts are done or accomplished or carried on in such a manner, or with such volume, intensity, or with continued duration, so as to annoy, to distress, or to disturb the quiet,

comfort, or repose of a person of reasonable nervous sensibilities, within the vicinity or hearing thereof, or so as to endanger or injure the safety or health of humans or animals, or so as to interfere with the physical well being of humans or animals, or so as to endanger or injure personal or real property:

(1) The playing or permitting or causing the playing of any radio, television, phonograph, drum, juke box, nickelodeon, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound.

(2) Any loud or vociferous language or any soliciting for, or description of, any amusement house, moving picture theater, or other like place of amusement, or for the performance therein, in the entrance thereto, the foyer or lobby thereof, or on the sidewalks adjoining the same.

(3) The continued or frequent sounding of any horn or other signal device on any automobile or vehicle, motorcycle, bus or other vehicle, except as a danger signal.

(4) The discharge into the open air of the exhaust of any steam engine, stationary internal combustion engine, automobile, motorcycle, or other motor vehicle or boat, except through a muffler or other device which prevents loud or explosive noises therefrom.

(5) The erection, including construction, excavation, demolition, alteration, or repair work, or the permitting or causing the operation of any tools or equipment used in construction, excavation, drilling, demolition, alteration or repair work:

a. Other than during the daytime; or

b. At anytime such that the sound level at or across a real property boundary exceeds 80dBA.

c. This section shall not apply in cases of urgent necessity in the interest of public safety, or in cases of public convenience, including city sponsored or co-sponsored fiestas, parades, and public events.

(6) The crying, calling, or shouting, in person or by a mechanical device, or the use of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, loudspeaker or phonograph with or without an amplifier, hand organ, or other devices or instruments, musical or otherwise.

(7) The raucous shouting, whistling, yelling, singing, hooting, or crying of peddlers, hawkers, vendors or any other persons.

(8) The making of noise which exceeds seventy-five (75) decibels on District zoned "A" property as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(9) The making of noise which exceeds seventy-five (75) decibels on District "E" property as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(10) The making of noise which exceeds seventy-eight (78) decibels on District zoned "B", "B-2" and "NT", properties as defined by Chapter 20, Code of Ordinances (Zoning), when measured from property under separate ownership.

(11) The making of noise which exceeds eighty (80) decibels on District zoned "C", "NC", "TCC", "PBS" and "PBC" property as defined

by Chapter 20 Code of Ordinances, when measured from property under separate ownership.

(12) The making of noise which exceeds eighty-five (85) decibels emanating from property in Districts "BF", "EDC", C-2, PDD, PBN, D, D-1 and D-2 as defined by Chapter 20 Code of Ordinances (Zoning), when measured from property under separate ownership. Any adjacent property owned, leased, controlled or managed by any person or entity or any affiliate that directly or indirectly controls, is controlled by, or shares common control with the other entity that has an ownership interest or lease interest in the monitored property shall not be considered property under separate ownership for purposes of determining the boundaries of the noise source property from in those districts.

(b) Subtract seven (7) decibels for noise at nighttime except in Districts "BF", "EDC", "PBN", PDD, D, D-1 and D-2 as defined by Chapter 20 Code of Ordinances (Zoning).

(C) Vibration.

It shall be unlawful for any person to create, maintain or cause any ground or airborne vibration which is perceptible without instruments at any point on any affected property adjoining the property in which the vibration source is located

(D) Vehicular mounted sound amplification systems.

It shall be unlawful for any person operating or controlling a motor vehicle in either a public or private place within the City to operate any sound amplifier which is part of, or connected to, any radio, stereo receiver, compact disc player, cassette player, or other similar device in the motor vehicle, in such a manner that, when operated, is audible at a distance of thirty (30) or more feet from the source or, when operated causes a person to be aware of the vibration accompanying the sound in any location outside the confines of the vehicle emitting the sound, noise, or vibration. A culpable mental state is not necessary to constitute a violation of this section.

(E) Exceptions.

The provisions of this Sec. 12-2 shall not apply to:

(1) The emission of sound for the purpose of alerting persons to an emergency; or

(2) Sound produced by emergency vehicles; or

(3) Sound produced by a vehicle motor while the vehicle is moving on a public right-of-way or public waterway; or

(4) Sound produced by any governmental body in the performance of a governmental function; or

(5) Sound generated by parade spectators and participant on the parade route during a permitted parade; by outdoor celebration participants sponsored or co-sponsored by the City for the general welfare of the public; by pyrotechnic displays that are inspected and approved by the City Fire Chief.

(6) Sound produced by the operation of any air-conditioning unit, heat pump, or swimming pool machinery which does not produce a sound exceeding sixty-five (65) dBA on residential property or seventy (70) dBA on non-residential property, when measured at a distance of either fifteen (15) feet from the equipment producing the sound, or to the nearest exterior wall of a residential or commercial building under separate ownership, whichever distance is shorter.

(7) Sound produced solely for the purpose of encouraging citizen participation in elections.

(F) Method of Noise Measurement.

(1) Whenever portions of this Chapter prohibit noise over a certain decibel limit, measurement of said noise shall be made with a decibel meter meeting the standards prescribed by the American National Standards Institute. The instruments shall be maintained in calibration and good working order. Calibration corrections shall be employed in meeting the response specifications prior to every sampling of noise. Measurements recorded shall be taken so as to provide a proper representation of the noise being measured. The microphone shall be positioned so as not to create any unnatural enhancement or diminution of the measured noise. A windscreen for the microphone shall be used. Traffic, aircraft and other transportation noise sources and other background noises shall not be considered in taking measurements except where such background noise interferes with the primary noise being measured. Except as provided in Subsection (B)(a)(11), measurements may be taken at a point on adjacent public or private property or on either side of an adjacent public right-of-way at or near the boundary line of the property where the noise is generated.

(2) The decibel standard for the noise source shall be the standard for the zoning district of the property from which the noise source is emitted.

(G) Identification of Violator.

The persons responsible for violations of this Article are identified as follows:

(1) *At private residences.* Any adult resident present at the time of the offense, and any adult guest or adult trespasser with the ability to control the level of noise at the time of the offense when no adult resident is present at the time of the offense.

(2) *At business locations.* Any business owner, operator, manager, employee in charge, and all persons in control or in possession of the noise nuisance generating instrument or property at the time of the offense.

(3) At any location with an unattended noise nuisance producing machine, device, instrument, child, animal or combination of same. Any person who leaves unattended any machine, instrument, device, child, animal, or any combination of same, which thereafter commences producing noise in violation of this Article.

(H) Penalties.

Any person who violates any portion of this Sec. 12-2 is guilty of a misdemeanor and shall upon conviction be subject to a fine, as provided by Section 21-1 of the Code of Ordinances.

[Ord. 06-04. May 2006]

Sec.12-3 Camping--"To camp" defined.

"To camp", as used in this Chapter, is defined as a person or persons remaining stationary for purposes of spending the night, or sleeping during night time hours, including, but not limited to, the erection of a temporary structure such as a tent for purposes of sleeping during the night. (Ord. No. 23, 6-19-74)

Sec.12-4 Same--Prohibited in absence of sewer facilities.

It shall be unlawful for any person to camp within the City limits, unless there are maintained and available at the campsite sanitary sewer facilities consisting of a sanitary sewer system. (Ord. 23, 6-19-74)

Sec.12-5 Same--Prohibited upon private property without owner consent.

It shall be unlawful for any person to camp upon any private property located within the City limits, without the consent of the owner or owners thereof. (Ord. No. 23, 6-19-74)

Sec.12-6 Same--Prohibited upon street, right-of-way, etc.

It shall be unlawful for any person to camp upon any road, street, alley or right-of-way within the City limits. (id)

Sec.12-7 Glass. prohibited on beach.

No glass material or glass containers of any type, size, shape or description may be taken upon, placed, used, or deposited in any manner, within the public beaches contained within the City limits. (Ord. No. 102, 9-15-82)

Sec.12-8 Watering of lawns and shrubbery—Regulated.

The City Manager may, in his discretion, should he deem an emergency exists, prohibit any person or corporation to apply the potable water of Laguna Madre Water District for watering of their lawns or shrubbery, and prohibit said water from being used for any purpose other than for drinking and living purposes. (Ord. 81)

Sec.12-9 Same--Notice.

Such order of the City Manager shall become effective immediately subsequent to posting of notice for three (3) consecutive days at City Hall. (Ord. No. 81, 7-23-80)

Sec.12-10 Airplanes--Prohibitions on landing and operating.

- (A) No aircraft, as the term is defined by the Federal Aviation Administration, nor ultra light aircraft, nor any other type of airborne craft, whether driven by mechanical means or not, may take off, land or taxi upon the public beaches, public right-of-ways, or easements within the City of South Padre Island, unless they hold a permit from the City as provided by this Section.
- (B) No aircraft of any type, licensed or unlicensed, may take off and land from any location within the City unless they have been duly issued a permit by the City Council of the City of South Padre Island as herein provided.

- (C) The City Council upon proper application, may issue a permit for aircraft to take off, land and/or taxi within the City under such conditions and circumstances as may be imposed by the City Council, taking into due consideration the questions of safety, noise and general nuisance that said aircraft may create for the surrounding properties. (Ord 111, Feb 84)
- (D) Regardless of the other provisions of this Section, the City Manager or designee may issue a permit for a helicopter to be used for filming the Island to take off and/or land within the City under such conditions and circumstances as may be imposed by the City Manager or designee. (Ord 01-04)
- (E) Emergency medical evacuation helicopter(s), military and or law enforcement helicopter(s) are exempt from the provisions of the Section. (Ord 01-04)

Sec.12-11 Prohibiting Placement of Material on Utility Structures.

It shall be unlawful for any person to nail, tack, staple, paste or in any manner attach any sign, notice, bill or other advertising matter or any other attachment to any telegraph, telephone, cable, electric utility pole, fire hydrant or any other above ground utility structure in the City limits of the City of South Padre Island, Texas.(Ord. No. 118, 11-20-85)

Sec.12-12 Special Expense for Issuance and Service of Arrest Warrant.

- (A) A person who is arrested after issuance and service of an arrest warrant for an offense under Section 38.11, Penal Code, or under Section 149, Uniform Act Regulating Traffic on Highways (Article 6701d, VATS), shall be assessed a special expense by the judge of the municipal court in the amount of Thirty-Five Dollars (\$35.00). Such special expense shall be paid into the City treasury for the use and benefit of the City.
- (B) After due notice of default of personal bond, a person who is arrested after issuance and service of an arrest warrant for failure to appear under Article 17.04, Code of Criminal Procedure, shall be assessed a special expense by the judge of the municipal court in the amount of Thirty-Five Dollars (\$35.00). Such special expense shall be paid into the City treasury for the use and benefit of the City.(122A.)

Sec.12-13 When Case is Dismissed because of actions by Defendant.

The Judge of the Municipal Court may impose a Special Expense in any case that is dismissed pursuant to Subsection (a), Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d,VATC). Such special expense shall not exceed the actual expenses incurred or Ten Dollars (\$10.00) whichever is less. (Ord. No. 128, 8-87)

Sec. 12-14 Prohibition of Parking on Private Property in No Parking Zones.

Except when necessary to avoid conflict with other traffic or in compliance with laws or the direction of a police officer or official traffic-control device, no person shall stop, stand or park a vehicle on private property:

- (A) In any fire zone or adjacent to any curb that has been marked in red paint (or any hue thereof);
- (B) On a sidewalk;(C) On a crosswalk.

Sec. 12-15. Slow Speed/Minimum Wake Required of all Watercrafts.

All watercraft(s) operating on the public waterways within the incorporated limits of the City shall be operated in a manner not to create more than a minimum wake and is therefore required to operate at slow speed. Slow speed/minimum wake requires that all watercraft be completely off plane and fully settled into the water. If a vessel is operating on a plane (i.e. travels on top of the water) it is not operating at a slow speed/minimum wake and is in violation of this section. All watercraft operating within the City shall maintain a slow speed/minimum wake and may then proceed in a manner that is reasonable and prudent under the existing circumstances. The operator of any watercraft that creates more than a minimum wake shall be deemed in violation of this section and subject to the fines provided in Section 21-1 of the Code of Ordinances.

Sec. 12-16. Riding on portion of vehicle not intended for passengers.

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in space intended for merchandise.

Sec. 12-17. Boarding or alighting from moving vehicles.

No person shall board or alight from any vehicle while such vehicle is in motion.

Sec. 12-18. Loitering.

- (A) Loitering unlawful. It shall be unlawful for any person to loiter, as hereinafter defined, in or about any place, public or private, when such loitering is accompanied by an activity or is under circumstances that afford probable cause for alarm or concern for the safety and well-being of persons or for the security of property in the surrounding area.
- (B) Definitions. [Applicable for enforcement of this Sec. 12-18]
- (1) Loiter. The term "loiter" shall include the following activities: lingering; hanging around; idle spending of time; dawdling, sauntering and moving slowly about where such conduct is not due to physical defects or conditions.
 - (2) Place. The term "place", public or private, shall include, but not be limited to, the following: all places commonly known as being distinctively public, such as public streets, public restrooms, sidewalks, parks, municipal airports, parking lots, alleys and buildings; all places, privately owned but open to the public generally such as shopping centers, transportation terminals, retail stores, movie theaters, office parking lots, buildings, and restaurants, all places distinctively private, such as homes or private residences and apartment houses.
 - (3) Surrounding area. The term "surrounding area" shall be defined as follows: that area easily and immediately accessible to the person under observation.
- (C) Examples of loitering activities. The term "loiter" is hereby defined to include any of the following activities, although this list is not meant to be all-inclusive:

- (1) Lingering or remaining at any place near a business in which the persons has no ownership, employment, or business interest, either within or outside of a vehicle, when the premises are not open for business to the public;
- (2) Lingering or remaining in the streets, sidewalks, parking lots, alleys or vicinity of a residence, home, or dwelling, including an apartment, in which the person has no ownership or other interests;
- (3) Failure to leave private property when requested to do so by the owner, manager, proprietor, or lessee of such property;
- (4) Walking, standing, remaining in a business district or nonresidential area of the city under circumstances which show no apparent business or employment-related need for such activities;
- (5) Lingering in the streets, alleys, sidewalks, parks or other public places, either within or outside of a vehicle, under circumstances that show no apparent reason or business to do so;
- (6) The systematic checking by a person of doors, windows, or other means of access to buildings, houses, or vehicles;
- (7) Loaf or gather, or assemble upon any sidewalk or street of the City in such numbers or in such manner as to impede the free use of such street or sidewalk, or to interfere with persons passing along the same;
- (8) Continuous presence by a person in close proximity to any building, house, vehicle, or any other property or to any other person, at any time, when the activity of such person manifests possible unlawful activity, such continuous presence being for an unreasonable period of time under the circumstances then existing;
- (9) The use of loud, vulgar, obscene, profane, sexually explicit or suggestive language;
- (10) Begging or panhandling; eating from garbage cans, trash, etc.;
- (11) Obstructing or interfering with the free passage of any vehicle or pedestrian in any place;
- (12) Gambling;
- (13) Soliciting or engaging in any commercial trade or commercial transaction unless specifically authorized to do so;
- (14) Creating or causing to be created or threatening to create or cause any breach to the public peace;
- (15) Inhabiting or remaining in any public place for a period longer than which is reasonably necessary to utilize the public place for its intended purpose.

(D) The circumstances which may be considered in determining whether alarm is warranted are as follows:

- (1) The individual takes flight upon the appearance of a peace officer.
- (2) The individual refuses to identify himself.
- (3) The individual attempts to conceal himself or any object;

(E) Unless flight by the individual makes it impracticable, a peace officer, prior to any arrest or citation under this section shall afford the individual the opportunity to dispel the alarm which would otherwise be warranted by requesting him to:

- (1) Cease and desist the activity;
- (2) Depart the public place; or
- (3) Identify himself and explain his presence and conduct.

- (F) Affirmative defenses. The following activities shall not be considered loitering and shall constitute an affirmative defense to the prosecution of violations of this section. A person shall not be considered loitering:
- (1) While in direct route and not lingering when the person is going to or from work or to or from his or her place of residence;
 - (2) While engaged in the repair of a disabled vehicle;
 - (3) If under the age of eighteen (18), while engaged in or in direct route to school, church, or entertainment activities with permission of his or her parent or guardian;
 - (4) If the person remains on private business property after closing hours if the person has written permission or consent of the property owner or tenant of said property allowing the person to be at such location after closing hours.
- (G) No person shall be convicted of an offense under this section if the peace officer did not comply with (E) above, or if it appears at trial that the explanation given by the individual was true, and if believed by the peace officer at the time, would have dispelled the alarm.
- (H) Nothing in this section shall be construed or enforced in such a manner as to abridge or restrict freedom of speech, religion or association.
- (I) Not a limitation. Nothing in this section shall be construed in any way limit the present police powers of the law enforcement officers of the city to make any investigation, detention or arrest as the circumstances may warrant, in the usual course of the enforcement of the laws and the ordinances applicable to such case.[Ord 00-07, Apr 2000]

Sec. 12-19. Nitrous Oxide Offenses.

- (A) It shall be unlawful for any person to do any of the following acts:
- (1) To sell or transfer possession of nitrous oxide in any form to any person under the age of 19 years;
 - (2) To inhale any fumes, odors or gases from any form of nitrous oxide for the purpose of becoming intoxicated, dizzy, imbalance or unconscious. This does not apply to persons inhaling any form of nitrous oxide when administered by qualified medical personnel for medical or dental purposes;
 - (3) To display at any business establishment, at which persons under 19 years of age are permitted to enter, any form of nitrous oxide in such a manner that this product is unattended by personnel of such business establishment and is accessible to a potential customer of such business without the assistance of personnel of such establishment;
 - (4) To display at any business establishment, any form of nitrous oxide in such a manner that this product along with any paraphernalia suggests or promotes inhaling of any fumes, odors , or gases from any form of nitrous oxide for the purpose of becoming intoxicated, dizzy, imbalance or unconscious. This does not apply to businesses who sell any form of nitrous oxide to be administered by qualified medical personnel for medical and dental purposes.
 - (5) To sell, offer for sale, deliver or transfer possession to any person any form of nitrous oxide when he knows or has reason to believe that the person will use such for the purpose of becoming intoxicated, dizzy, imbalance or unconscious.

- (B) A person making a sale of nitrous oxide to a person may record the name, address, sex and age of the purchaser and the business establishment that person represents.
- (C) A person making a sale of nitrous oxide shall require the purchaser to present a valid pictured identification or driver's license issued by the Texas Department of Public Safety or any other state's valid driver's license or identification. A person who sells nitrous oxide to a person under the age of 19, does not commit an offense if the minor falsely represents himself to be 19 years of age or older by displaying an apparently valid driver's license or identification card issued by the Texas Department of Public Safety or any other state's licensing agency, containing a physical description consistent with his appearance for the purpose of the person to sell him the nitrous oxide.
- (D) Proof that a container was labeled as containing nitrous oxide shall constitute prima facie evidence that said container did contain nitrous oxide. [Ord 00-17]

Sec. 12-20. Possession or consumption of alcoholic beverages in the Central Business District.

- (A) It shall be unlawful for a pedestrian to possess an open container of an alcoholic beverage or to consume an alcoholic beverage in the Central Business District of the City.
- (B) The Central business District is defined as that area of the City lying between the southernmost traffic light on Highway 100 (also known as Padre Blvd)[Ed note: light in front of First National Bank] to the third traffic light located at Amber Jack Street and two hundred feet east and west of on both sides Highway 100 (also known as Padre Blvd), a map of such area being attached to this ordinance as Exhibit "A" and by reference incorporated for all purposes.
- (C) Open Container means a container that is no longer sealed which contains an alcoholic beverage.
- (D) Pedestrian shall mean any person standing, walking or traversing any public roadway, park, sidewalk or alley, including public and private parking lots located within the Central business District.
- (E) This section does not prohibit the legal possession of an open container or the consumption of alcoholic beverages in motor vehicles, buildings not owned or controlled by the City, residential structures, or licensed premises located within the Central Business District. [Ord. 00-19]

Sec. 12-21. Abatement of Graffiti

(A) Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this Section, unless the context of their usage clearly indicates a different meaning:

- (1) DEPARTMENT shall mean the Police department.
- (2) DIRECTOR shall mean the Police Chief or the designee.

(3) Graffiti shall mean any unauthorized form of painting, scratching, writing, or inscription, including without limitation, initials, slogans or drawings, regardless of the content or nature of the material that has been applied to any wall, building, fence, sign, or other structure or surface and is visible from any public property or right-of-way or is visible from the private property of another person.

(4) Owner shall mean the record owner of the lot or parcel or other person specifically authorized in writing by the record owner to authorize the placement of any painting, scratching, writing or inscription upon the owner's property.

(5) Unauthorized shall mean without the consent of the owner or without authority of law, regulation or ordinance. Unless the owner proves otherwise, lack of consent will be presumed under circumstances tending to show (i) the absence of evidence of specific authorization of the graffiti by the owner, (ii) that the graffiti is inconsistent with the design and use of the subject property, or (iii) that the person causing the graffiti was unknown to the owner.

(B) Abatement of graffiti.

(1) It shall be the duty of each owner or person having the right of possession of any property within the City to keep and maintain their properties including buildings and fences or other structures free of graffiti, and to promptly remove such graffiti from the property.

(2) It shall be unlawful for any person owning or otherwise being in control of any real property within the City to maintain, permit or allow any graffiti to remain upon any structure located on such property when the graffiti is visible from the street or other public property.

(3) (a) The Police Chief shall enforce the provisions of this division.

(b) Whenever the Police Chief determines that graffiti on any structure is visible from the street or other public property, the Police Chief may issue an abatement notice to the owner of the property.

(c) (1) Upon finding a violation, a written abatement notice may be served upon the owner in control of the affected premises, giving notice that the property is in violation of this division and that graffiti on the premises must be removed within thirty (30) days after date of the notice. Such notice shall state further that if the condition is not corrected within thirty (30) days of such notice, the City may, without further notice, abate the public nuisance by removing or painting over the graffiti, and charge the cost of expense incurred in doing such work to the owner of such property, and fix a lien thereon.

(2) Such notice shall be in writing and be delivered as follows:

(a.) By personal service to the owner of the property; or

(b.) By letter addressed to the owner at the owner's post office address according to the records on file with the tax collection department;

(c.) If personal service cannot be obtained or the owner's post office address is unknown:

1. By publication at least twice within ten (10) consecutive days; or

2. By posting the notice on or near the front door of each building on the property to which the violation relates; or

3. 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 building.

(4) The abatement notice shall be substantially in the following form:

NOTICE OF INTENT TO REMOVE GRAFFITI

Date: _____

NOTICE IS HEREBY GIVEN that you are required by law at your expense to remove or paint over the graffiti which constitutes a public nuisance located on the property commonly known as _____

_____, City of South Padre Island, Texas, within thirty (30) days after the date of this notice. If you fail to do so, City employees or private contractors employed by the City will be authorized to enter upon your property and abate the public nuisance by removal or painting over the graffiti. The costs of the abatement by the City's employees or its private contractors may be assessed upon your property and such costs shall constitute a lien upon the land until paid.

All persons having any objection to or interest in are hereby notified of their right to appeal this determination and to submit any objections or comments to the Police Chief, City of South Padre Island, Texas. All appeals must be filed in writing within ten (10) days from the date of this notice. After the expiration of thirty (30) days from the date of this notice, unless an appeal is timely made, the City may proceed with the abatement of the graffiti at your expense without further notice.

(C) **Graffiti abatement—Appeal.**

- (1) Any person having an interest in the property, shall upon written request, within ten (10) days of date of the notice to abate be given a hearing before the Police Chief to show cause as to why the order should not be enforced. The person requesting a hearing shall provide an address to which all notices of the hearing shall be mailed.
- (2) Upon notice of written request to appeal, the Police Chief shall serve on the person requesting the appeal a copy of the notice of hearing by mail at least ten (10) days before the hearing. Such notice shall be mailed to the address provided by the person requesting the hearing and service shall be completed at the time of the deposit of the notice in the United State mail, with postage fully prepaid.
- (3) The failure of any person to receive such notice of hearing shall not affect the validity of any proceedings under this section.
- (4) At the time stated in the notice, the Police Chief shall hear and consider all relevant evidence, objections, or protests and shall receive testimony from owners, witnesses, including City personnel and interested person relative to the alleged public nuisance and to the proposed removal of the graffiti.
- (5) Upon conclusion of the hearing, the Police Chief shall determine whether the premises, as maintained, constitutes a public nuisance within the meaning of this division. If there is a finding that such public nuisance does exist, the Police Chief shall determine how the graffiti is to be removed or abated and shall establish a time within which removal shall take place. In the event that the owner fails to abate the graffiti within the time prescribed, the City may proceed to cause the graffiti to be abated as provided in this division, without further notice to any person.
- (6) A copy of the determination of the Police Chief shall be served by mail upon the owner of the affected premises. Failure of the owner to receive the determination letter shall not be grounds for delaying the actions of the City.

(D) **Reserved.**

(E) **Graffiti abatement—Removal by City.**

- (1) Upon the failure of the responsible person to comply with the notice of abatement, when final, by the designated compliance date, the Police Chief is authorized to cause the graffiti to be abated and assess the costs against the property owner. In abating such graffiti, the City or its contractor is expressly authorize to enter and abate graffiti upon utility

cabinets and exterior walls and fences abutting public streets, property, or rights-of-way.

- (2) If the owner demonstrates that none of the family members residing in a homestead that is the subject of a graffiti notice is able to apply the paint because of age, physical disabilities, dependent care obligations or other limitations beyond their reasonable control, then the Police Chief shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the homestead property. The operation of this subsection is limited to any single family residential property that is occupied as a homestead.
- (3) If an owner demonstrates that (i) the property for which the owner has been given notice of graffiti hereunder has been the subject of at least two (2) prior graffiti incidents (evidenced by either notices provided pursuant to this article or bona fide police reports) during the preceding one hundred eighty (180) days, and (ii) the owner complied with the requirements of this article by abating the prior graffiti within thirty (30) days of the date of the applicable notice or police report, then the Police Chief shall cause the graffiti to be abated without cost to the owner, and no lien shall be placed on the property.

(F) **Graffiti abatement**—Private property consent forms. Property owners in the City may consent in advance to City entry onto private property for graffiti removal purposes. The City will make forms for such consent available at the *Public works Department*.

(G) **Graffiti abatement**—Public property. Where a structure is owned by a public entity other than the City, the removal of the graffiti may be authorize only after securing the consent of an authorized representative of the public entity having jurisdiction over the structure.

(H) **Graffiti abatement—Reimbursement.**

(1) After the graffiti has been abated, the Police Chief shall assess the costs of such removal against the property owner. Notice, service of which shall be as provided for in paragraph (B)(3)(c) above, stating the cost to the City or other person or entity to clean the property, including labor costs, administrative costs of inspection and re-inspection, transportation expenses and a reasonable allowance for use of equipment and materials, shall be sent in writing to the owner by the Police Chief to the finance department. The notice shall request payment to the City within thirty (30) days of receipt by the owner. The costs for removal shall constitute a lien on the property payable within such thirty-day period and thereafter bearing the then judicial approved rate of interest per annum until the debt is paid.

(2) The Police Chief shall determine the actual cost of the graffiti removal and abating the public nuisance, and declare the amount, plus the cost of recording the lien. A copy of the notice, including the statement of expenses, authenticated by the acknowledgment of the City secretary, shall be filed for record in the office of the county clerk.

REGULATION OF LIGHTING

Sec. 12-23 Definitions.

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

Full Cutoff (FCO) – describes a luminaire light distribution where 100 candela per 1000 lamp lumens (10%) may emit at all vertical angles beginning at 80 degrees up from nadir to less than 90 degrees, and zero candela per 1000 lamp lumens (0%) is allowed at 90 degrees (horizontal plane) and all angles above. This applies to all horizontal angles around the luminaire. A full cutoff luminaire is also fully shielded.

Fully shielded fixture means that fixtures are shielded in such a manner that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted.

Illumination means an alternative term for illuminance. Commonly used in a qualitative or general sense to designate the act of illuminating or the state of being illuminated.

Lamp means the component of a luminaire that produces the actual light.

Light trespass means the shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Lumen means a unit of luminous flux. One footcandle is one lumen per square foot. For the purposes of these regulations, the lumen-output values shall be the initial lumen output ratings of a lamp.

Luminaire means this is a complete lighting system, and includes a lamp or lamps and a fixture.

Outdoor lighting means the nighttime illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Sec. 12-24 Lighting and glare standards.

A) Lighting limited. Any light fixture in any zoning district shall be operated so as not to produce an obnoxious and intense glare or direct illumination across the boundary property line, and shall not be of such intensity as to create a nuisance or detract from the use or enjoyment of adjacent property. All outside lights shall be made up of a light source and reflector so selected that acting together, the light beam is controlled and not directed across any bounding property line above a height of five feet. The allowable maximum intensity measured at the adjacent property shall be one (1) foot candle.

B) Outdoor lighting used to illuminate parking spaces, driveways, maneuvering areas, or buildings shall conform to the definition for "fully shielded light fixtures" and be designed, arranged and screened so that the point light source shall not be visible from adjoining lots or streets. No portion of the bulb or direct lamp image may be visible beyond a distance equal to or greater than twice the mounting height of the fixture. For example, for a fixture with a mounting height of 12 feet, no portion of the bulb or direct lamp image may be visible from 24 feet away in any direction. Light poles or wall-mounted fixtures shall be full-cutoff fixtures only. All perimeter fixtures shall possess house-side shielding; bollards shall be louvered and utilize coated lamps.

C) Setback or shielding requirements. Outdoor lighting fixtures are allowed with no additional

"house-side" shielding in accordance with the following formula:

Height (H) $\leq 3 + (D/3)$; where D equals the distance in feet from light source to the nearest residential lot line (extended vertically). Additional "house-side" shielding shall be added in all cases where the Height (H) is greater than $3 + (D/3)$.

Sec 12-25 Residential lighting and glare standards.

Residential lighting for security and night recreation use is permitted in all districts provided the following requirements are required for residential lighting in all zoning districts, to wit:

- (1) Direct lighting over ten feet in height must be shielded from adjacent property.
- (2) Streetlights and other traffic safety lighting are exempt from this standard.
- (3) Lighting shall not directly shine on adjacent dwellings.
(Ord 12-05)

Sec. 12-26 Luminaries.

Light sources shall be of a down-light type, indirect, diffused, or shielded type luminaires installed and maintained so as to reduce glare effect and consequent interference with use of adjacent properties and boundary streets. Strings of bulbs and/or lamps above 75 watts each are prohibited. Low wattage temporary lighting used for holidays and decorative seasons is permitted.

Sec. 12-27 Special or temporary lighting-low wattage.

Bare bulbs or strings of lamps are prohibited, except during holidays. Special lighting shall be permitted for a maximum time period of 60 days for each holiday use and must be removed between holiday periods.

Sec. 12-28 Exemptions

This Ordinance [Article IV] does not apply to lighting in the public right of way that the City has caused to be installed, traffic lights or temporary emergency lighting.

Sec. 12-29 Unlawful noncompliance: Penalties for Violation.

The violation of the lighting standards provided by this Ordinance is declared a nuisance and It shall be unlawful for the owner or tenant within the city to fail to comply with the standards set forth in this Ordinance within 15 days after notice is mailed or published, directing that such standards be met and if they are not met, any person affected by a violation of this Article IV, the code compliance officer, police department or any other individual assigned such duties may, whenever a violation is found, file a complaint with the municipal court and/or issue citations; and the prosecutor of the municipal court assigned such duties shall prosecute the case, and upon conviction for violation of this Ordinance the violator shall be fined in accordance with the following:

A) Any person, firm, partnership or corporation who violates any provision of this Article IV shall be guilty of a Class "C" Misdemeanor and upon conviction thereof shall be fined an amount not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00). Each day that violation is permitted to exist shall constitute a separate offense.

B) It is hereby declared that the culpable mental state required by Chapter 6.02 of the Texas Penal Code is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense.

Regulation of Plastic Bags

Sec. 12-30. Definitions:

A. Business establishment means any commercial enterprise or establishment, including sole proprietorships, joint ventures, partnerships, corporations or any other legal entity whether for profit or not for profit and includes all employees of the business and any independent contractors associated with the business.

B. Checkout bag means a bag that is provided by a business establishment to a customer typically at the point of sale for the purpose of transporting goods after shopping.

C. "Affected retail establishment" means any retail establishment, temporary vendor and restaurants, located within the geographical limits of the City of South Padre Island.

D. "Compostable bag" means a carry out bag that is certified and labeled as meeting the current ASTM-Standard Specification for compostability by a recognized verification entity such as the Biodegradable Product Institute and which can be easily differentiated, through color coding and other markings, from non-compostable plastic carry-out bags.

E. "Plastic carryout bag" means a non-compostable plastic bag provided by a store to a customer at the point of sale for the purpose of transporting goods after shopping, and which is intended and constructed for single use.

F. "Recyclable Paper Bag" means a paper carryout bag provided by an affected retail establishment to a customer at the point of sale for purposes of transporting groceries or other goods and meets all of the following requirements:

- (1) contains no old growth fiber
- (2) is 100% recyclable
- (3) contains a minimum of 40% post-consumer recycled content, and
- (4) displays the words "Reusable" and/or "Recyclable" and/or the universal recycling symbol which is an internationally recognized symbol used to designate recyclable materials in a highly visible manner on the outside of the bag or
- (5) provide documentation to show that the point of sale bags meet or exceeds the first 3 requirements.

G. "Reusable Bag" means a bag that is specifically designed and manufactured for multiple reuse and is

- (1) made of cloth or other fabric, or
- (2) made of other durable material suitable for re-use.

Sec. 12-30.1. Prohibitions and Requirements.

(A) Affected retail establishments are prohibited from providing Plastic Carry-out Bags to their customers at the point of sale. Reusable bags, recyclable paper bags, and compostable plastic bags are allowed alternatives.

(B) No person shall distribute Plastic Carry-Out Bags at any City sponsored event, City facility or any event held on City property.

(C) Affected retail establishments are strongly encouraged to provide incentives for the use of reusable bags through the use of education and credits, rebates, or tokens for individuals who bring reusable bags.

(D) Nothing in this section shall be read to preclude affected retail establishments from making reusable, compostable, or recyclable paper bags available for sale or free to customers.

Sec. 12-30.2 Implementation of a Voluntary Ban on Plastic Checkout Bags beginning on February 1, 2011 to December 31, 2011.

The entire city will promote a voluntary ban of plastic checkout bags throughout the city in preparation for the mandatory ban of plastic checkout bags to begin on January 1, 2012.

Sec. 12-30.3 Scope and applicability

(A) Business establishments shall only provide compostable plastic and compostable paper checkout bags as of January 1, 2012. They may also provide reusable bags as checkout bags to their customers with or without charge, except as indicated in Section (B), below.

(B) The following items are exempt from this Chapter:

1. Paper bags provided by restaurants for food carry-out purposes;
2. Paper Bags provided by pharmaceutical departments of businesses. Or by veterinarians, for the purpose of containing medications or other prescriptions, or other medical necessities provided by said pharmacies or veterinarians;
3. Paper bags provided for the containment of carry-out beverages
4. Paper bags commonly provided for liquor sales;
5. Garment or laundry bags made from any material;
6. Plastic bags provided to effect food safety for a purchaser of food by preventing contamination from any cooked, chilled or frozen food purchased.