

ORDINANCE NO. O-2018-022-01

AN ORDINANCE AMENDING CHAPTER 42, ARTICLE II, WEEDS, BRUSH, RUBBISH, OF THE HALTOM CITY CODE (1998), AS AMENDED, BY PROVIDING REQUIREMENTS FOR THE MOWING OF GRASS, WEEDS AND VEGETATION AND THE REMOVAL OF RUBBISH, BRUSH, OR ANY OTHER OBJECTIONABLE, UNSIGHTLY, OR UNSANITARY MATTER FROM PROPERTIES; PROVIDING NOTICE AND ABATEMENT PROCEDURES; PROVIDING FOR THE PLACEMENT OF A LIEN ON PROPERTIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Haltom City, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the city council has previously adopted ordinances and regulations prohibiting the growth of grass, weeds, and other vegetation in an uncultivated manner and the accumulation of rubbish, brush, or any other objectionable, unsightly, and unsanitary matter within the City; and

WHEREAS, the city council finds that the health, safety, and welfare of all its citizens are positively impacted when weeds, grass, rubbish or other unsanitary materials are either controlled or removed in a timely manner; and

WHEREAS, the city council desires to promote and enhance the quality of life of all its citizens through effective government action when necessary; and

WHEREAS, the city council has found and determined that to properly implement this Ordinance and abate violations thereof, it is necessary to investigate complaints,

determine the property owners' name and address, prepare and send out appropriate notices, file certain notices and liens with the county clerk, and supervise the conduct of the work;

WHEREAS, the city council has determined that the minimum administrative cost to the City to abate a violation of this Ordinance is \$250; and

WHEREAS, the city council now deems it necessary to amend the previous ordinances and regulations applicable to said conditions and to provide additional procedures for the giving of notice and opportunity for hearings to persons who are found to be in violation of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HALTOM CITY, TEXAS:

SECTION 1.

Chapter 42, Article II, Weeds, Brush, Rubbish, etc., of the Haltom City Code is hereby amended to read as follows:

“ARTICLE II. WEEDS, BRUSH, RUBBISH, ETC.

Sec. 42-56. 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:

Administrative Fee shall refer to the City's administrative fee, adopted from time to time in the City's fee schedule, that shall be assessed to cover the administrative costs incurred by the City when the City abates or causes to be abated a nuisance. Such fee shall not include the actual costs incurred in abating or causing to be abated a nuisance.

Brush shall mean scrub vegetation or dense undergrowth.

Carrion shall mean the dead and putrefying flesh of any animal, fowl, or fish.

Costs shall mean the actual cost the City incurs in abating or causing to be abated a nuisance, including without limitation, the cost of mowing, weeding, removing objectionable, unsightly, or unsanitary matter, etc.

Cultivated shall mean vegetation that is deliberately grown and currently and continuously maintained by the owner, occupant, or agent of the property.

Expenses shall mean the total of the Administrative Fee and Costs incurred by the City in abating or causing to be abated a nuisance.

Filth shall mean any matter in a putrescent state.

Garbage shall mean all decayable waste.

Impure or unwholesome matter shall mean any putrescible or nonputrescible condition, object, or matter which tends to, may, or could produce injury, death, or disease to human beings.

Junk shall mean all worn out, useless, worthless, discarded, or scrap material, including, but not limited to, odds and ends, old metal, scrap lumber, building debris or old building materials, used tires, vehicle parts, and other items no longer used in the manner in which they were intended, including, but not limited to, upholstered furniture, working and non-working appliances, and machinery and parts thereof.

Maintained shall mean watered, pruned, trimmed, treated, and controlled in such a manner as to enhance the use or enjoyment of one's property, without interfering with the enjoyment or use of neighboring property or public access.

Nuisance shall mean anything which is injurious to the health or morals, or indecent or

offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

Objectionable, unsightly, or unsanitary matter shall mean any matter, condition, or object which is or should be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities.

Owner shall mean a person having title to real property.

Person shall include a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

Refuse shall mean a heterogeneous accumulation of worn out, used, broken, rejected, or worthless materials, including garbage, rubbish, or litter, and other decayable or nondecayable waste.

Rubbish shall mean both garbage and trash and shall include all animal, vegetable and inorganic matter subject to discard that is generated from within a household, residence, or business, such as, but not limited to, coffee grounds, tin cans, paper bags, boxes, glass, and food articles. It shall also include all animal, vegetable, and inorganic matter subject to discard that is not typically generated from within a household, residence, or business, such as, but not limited to, shrubbery, grass clippings, brush, yard cleaning materials, leaves, tree trimmings, stoves, refrigerators, iceboxes, pieces of metal scrap, feathers, furniture, dead animals, rocks, shingles, building materials, junk, trash, refuse, and other worn-out, wrecked or dismantled machinery, tractors, automobiles, and other similar wastes.

Trash shall mean all non-decayable waste.

Undeveloped land shall mean tracts of land or lots upon which no structure exists.

Vegetation shall mean any grass, weeds, shrubs, trees, brush, bushes, or vines.

Weeds shall mean vegetation that is objectionable, unsightly or unsanitary, but excluding cultivated crops, shrubs, bushes, trees, flowers, and vines.

Sec. 42-57. Overgrown Vegetation, Rubbish, and Other Unsanitary Conditions Prohibited.

(a) It shall be unlawful for any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate limits of the City, to suffer, permit, or allow:

(1) Uncultivated grass, weeds, or brush to grow greater than ten (10) inches upon such premises; including along the sidewalk or street adjacent to the premises between the property line and the curb or, if there is no curb, between the property line and the driving surface;

(2) Uncultivated grass, weeds, or brush to grow greater than ten (10) inches upon the parkway adjacent to such premises;

(3) Refuse, rubbish, junk, litter, trash, debris (vegetation, building or other), garbage, discarded items, carrion, filth, animal or human feces, or any other unsightly or unsanitary matter to accumulate or remain upon such premises, including along the sidewalk or street adjacent to the premises between the property line and the curb or, if there is no curb, between the property line and the driving surface.

(b) The prohibition in subsection (a)(1) does not apply to a lot, tract, or parcel of undeveloped land if:

(1) the lot, tract, or parcel is two or more acres under common ownership and the high grass or weeds are at least fifty (50) feet away from any adjacent street and any

structure or other improvement on adjacent property owned by another person;

(c) A person commits an offense if the person owns, occupies, or controls any real property within the corporate limits of the City and maintains the property in a condition that is prohibited by subsection (a).

Sec. 42-58. Duty to Comply with Ordinance.

It shall be the duty of any person owning, leasing, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, improved or unimproved, developed or undeveloped, within the corporate limits of the City to cut, or cause to be cut, grass, weeds, and brush, and to remove, or cause to be removed, rubbish and other objectionable, unsightly, or unsanitary matter as often as necessary to comply with the requirements of this Article, and to otherwise maintain that property in full compliance with this Article.

Sec. 42-59. Nuisance Declared.

All grass, weeds, vegetation, or brush not regularly cultivated and which exceed ten (10) inches, as prohibited by Sec. 42-58, and all rubbish are objectionable, unsightly, and unsanitary, are hereby deemed to be a threat to the public health and safety of persons in the City, and are hereby declared a public nuisance.

Sec. 42-60. Enforcement.

It shall be unlawful for any person, firm, or corporation to maintain any property within the City in violation of this chapter. When a violation of this chapter is discovered, the City may, simultaneously and without limitation, pursue one or more of the following remedies;

(1) Work with the owner of the property to resolve the matter;

- (2) Issue a citation before or after taking measures or providing notice to abate the violation; or
- (3) Pursue the abatement of the violation by following the procedures set forth in this chapter.

Sec. 42-61. Abatement of Prohibited Conditions by City.

(a) ***Notice required.*** Except as provided by Section 42-63 of this Article, if the owner of property fails to comply with the requirements of Sections 42-57 and 42-58, the City may give notice to the property owner to remove the violation on the property within 10 days of the date of the notice.

(b) ***Where notice given.*** The notice must be given:

- (1) personally to the owner in writing;
- (2) by letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or
- (3) if personal service cannot be obtained or the owner's address cannot be determined:
 - (A) by publication in the city's official newspaper at least twice within 10 days;
 - (B) by posting the notice on or near the front door of each building on the property to which the violation relates; or
 - (C) by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) ***Contents of notice.*** The notice shall contain:

- (1) The name and address of the record owner;

- (2) An identification, which is not required to be a legal description, of the property upon which the violation is located;
- (3) A statement describing the violation and the work necessary to correct the violation;
- (4) A statement advising the owner that if the work is not completed within ten (10) days, the City will complete the work and charge the expenses, including an administrative fee, to the owner;
- (5) A statement that if the City performs the work and the owner fails to pay the expenses, a priority lien may be placed on the property;
- (6) A statement that the City may, at any time, file a criminal misdemeanor complaint in municipal court with a maximum fine of \$2,000.00 for each day the violation exists, in addition to or in lieu of any other remedy provided by law.

(d) Additional notice and authority to abate.

- (1) In a notice provided under this section, if the notice is sent by certified mail and posted on the property, the City may inform the owner that if the owner commits another violation of this Article of the same kind or nature 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.
- (2) If a violation covered by a notice under this subsection occurs within the one-year period and the City has not been informed in writing by the owner of an ownership change, then the City without notice may take any action permitted by Subsection (f) and assess its expenses as provided by Sec. 42-62.

(e) Notice filed with county clerk. If notice is provided to the owner as permitted

by subsection (d) of this section, the City Manager or his designee shall cause a copy of the entire notice to be filed with the county clerk.

(f) ***Consequence of failure to abate nuisance.*** If the owner does not remove the violation on the property within 10 days of receipt of the notice, the City may go on such property or authorize another to go on such property, do or cause the work to be done, pay for the work done, charge the expenses incurred, including the Administrative Fee, to the owner of the property, and assess the expenses against the property on which the work is done or improvements made. The remedy provided in this Section is in addition to any criminal penalties or other remedies authorized by this Article or other law.

Sec. 42-62. Assessment of Expenses; Lien; Appeal.

(a) The City may assess the expenses incurred under Sec. 42-61(f) against the property on which the work is done or improvements made.

(b) ***Notice.*** In assessing the expenses under Subsection (a), the City shall first send a notice of the expenses to the owner of the property upon which the work was done or improvements made. The notice must include:

- (1) an identification of the property;
- (2) a description of the violation;
- (3) a statement that the City abated the condition;
- (4) a statement of the City's expenses in abating the condition;
- (5) an explanation of the property owner's right to request a hearing within ten (10) days of the date of the letter; and
- (6) a statement that if the owner fails or refuses to pay the expenses within thirty (30) days of the date of the notice, the mayor or his designee shall place a lien against the

property by filing with the county clerk of Tarrant County a notice of lien and statement of expenses incurred.

(c) ***Where notice given.*** The notice shall be sent in the same manner as provided in Section 42-61(b).

(d) ***Right to a hearing.*** The owner of the property shall be entitled to a hearing before the city manager or his designee to review the validity of the expenses if the owner requests a hearing by filing a written request with the city manager within ten (10) days of the owner's receipt of the notice.

(e) ***Hearing.*** If the owner of the property timely requests a hearing, the city manager or his designee shall conduct a hearing within ten (10) days of receipt of the request. At the hearing:

(1) The owner of the property, City staff, and any other person that the city manager or his designee determines may have testimony that will assist in reviewing the validity of the fees may testify or present witnesses or written information related to the City's abatement of the nuisance.

(2) The City has the burden to show that a violation of this Article existed, notice was given in substantial compliance with this Article, and the expenses incurred to abate the violation were reasonable.

(3) At the close of the hearing, the city manager or his designee may approve the expenses, deny the expenses, or adjust the amount of the expenses and approve them as adjusted.

(f) ***Lien on property.*** If no hearing is requested, the owner of the property shall pay the expenses within thirty (30) days of the notice under this section. If a hearing is held and the

expenses are determined to be valid and are approved, the owner of the property shall pay the expenses within thirty (30) days of the order approving the expenses. If the owner fails or refuses to pay the expenses within the timeframe described above, the mayor or his designee shall place a lien against the property by filing with the county clerk of Tarrant County a notice of lien and statement of expenses. The lien attaches to the property upon the filing of the notice of lien and statement of expenses with the county clerk. A notice of lien and statement of expenses must state the name of the owner, if known, and the legal description of the property. A signature on a notice of lien and statement of expenses may be a facsimile signature as defined in Section 618.002, Texas Government Code.

(g) ***Security provided by lien.*** The lien obtained by the City is security for the expenses and interest accruing at the rate of 10% on the amount due from the date of payment by the City. The lien obtained by the City is inferior only to tax liens and liens for street improvements.

(h) ***Suit for foreclosure to recover expenses.*** The City may bring a suit for foreclosure in the name of the City to recover the expenses and interest due. The original or a certified copy of the notice of lien and statement of expenses is *prima facie* proof of the expenses incurred by the City in doing the work or making the improvements.

(i) ***Cumulative remedies.*** The assessment of expenses and enforcement of a lien under this section is in addition to the City's remedy of issuing a citation or prosecuting for an offense under Sec. 42-60.

(j) ***Enforcement in tax suits.*** The City may foreclose a lien on property under this section in a proceeding relating to the property brought under Subchapter E, Chapter 33, Texas Tax Code, pursuant to Section 342.007, Texas Health and Safety Code.

Sec. 42-63. Additional Authority to Abate Dangerous Weeds Without Prior Notice.

(a) ***Authority to abate dangerous weeds.*** The City may immediately abate, without prior notice, weeds that:

- (1) have grown higher than 48 inches, and
- (2) are an immediate danger to the health, life, or safety of any person.

(b) ***Notice of abatement.*** Not later than the 10th day after the date the City abates weeds under this section, the City shall give notice to the property owner in the same manner provided in Section 42-61(b) of this Ordinance.

(c) ***Contents of notice.*** The notice shall contain:

- (1) an identification, which is not required to be a legal description, of the property;
- (2) a description of the violation of the ordinance that occurred on the property;
- (3) a statement that the city 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) ***Right to a hearing.*** The owner of the property shall be entitled to a hearing before the city manager or his designee to review the City's abatement of the nuisance if the owner requests a hearing by filing a written request with the city manager within thirty (30) days of the owner's receipt of the notice.

(e) ***Hearing.*** The city manager or his designee shall conduct an administrative hearing under this section if the property owner timely files a written request for a hearing. The hearing shall be conducted by the city manager or his designee not later than the 20th day after the date a request for hearing is filed. At the hearing:

- (1) The owner and City staff may testify or present witnesses or written

information related to the City's abatement of the nuisance.

(2) The City has the burden to show that a violation of this Section existed, notice was given in substantial compliance with this Section, and the expenses incurred to abate the violation were reasonable.

(3) At the close of the hearing, the city manager or his designee may approve the expenses, deny the expenses, or adjust the amount of the expenses and approve them as adjusted.

(f) ***Lien on property.*** The City may assess expenses and create liens under this section as it assesses expenses and creates liens under Sec. 42-62(f). A lien created under this section is subject to the same conditions and has the same priority as a lien created under Sec. 42-62(g). The City may foreclose a lien created under this section in the same manner as provided for in Sec. 42-62(h) & (j).

(g) ***Cumulative remedies.*** The assessment of expenses and enforcement of a lien under this section is in addition to the City's remedy of issuing a citation or prosecuting for an offense under Sec. 42-60.

Sec. 42-64. Conditions constituting fire hazard – Prohibited.

It shall be unlawful for any person, firm or corporation owning or having supervision or control of any lot, tract, parcel of land, or portion thereof, occupied or unoccupied, within the corporate limits of the city, to suffer or permit any downed timber, brush, old logs, weeds, grass or decaying vegetable matter on any such lot or premises so that such weeds, grass or other matter may by reason of fire endanger any adjoining property or may be reasonably calculated to communicate fire to any adjacent premises.

Sec. 42-65. Same – Notice to owner to remedy.

Whenever, in the opinion of the fire chief, any such downed timber, brush, old logs, weeds, grass or decaying vegetable matter constitutes a fire menace, he shall give notice to the owner of said premises in the manner provided by Section 42-59. Said condition may be abated and a lien attached to the property in the same manner as provided in Section 42.59.

Sec. 42-66. Unlawful burning.

It shall be unlawful for any person to burn weeds or grass off any lot in the city, except that the owner of any vacant lot or his agent may make an application to the fire chief for burning of weeds and grass off any vacant lot and, if such permit is granted, such person may so burn weeds and grass off the vacant lot which is the subject of the application under the terms and conditions set out herein. Such burning after issuance of the permit shall be burned by the property owner only at a time specified by the fire chief and at a time when the fire department of the city is in attendance when the fire is set by the owner.

Sec. 42-67. Obstruction of street or alley unlawful.

It shall be unlawful for any person to willfully obstruct or injure or cause to be obstructed or injured or maintain an obstruction in any manner whatsoever upon any street or alley adjacent to any premises owned or controlled by such person within the corporate limits of the city.

Sec. 42-68. Penalty for violation of article.

It shall be unlawful for any person to violate any provision of this Article or fail to perform any action required by this Article. A violation under this section is an offense. Each day or portion of a day during which a violation is committed, permitted, or continued is a separate offense. An offense under this section is a Class C misdemeanor, punishable by a fine of up to \$2,000 for each offense.

Sec. 42-69—42-90. – Reserved.”

SECTION 2.
ORDINANCE CUMULATIVE

This Ordinance shall be cumulative of all provisions of ordinances of the City of Haltom City, Texas, except where the provisions of this Ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 3.
SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

SECTION 4.
PENALTY

Notwithstanding any notice provisions contained in this Ordinance, any person, firm, or corporation who violates, disobeys, omits, neglects, or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined not more than Two Thousand Dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.

SAVINGS

All rights and remedies of the City of Haltom City are expressly saved as to any and all violations of the provisions of Article II of Chapter 42 of the Haltom City Code of Ordinances, as amended, or any other ordinances affecting public health and sanitation, including dumping or refuse, which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts, provided the procedures actually used fully comply with applicable state and federal statutory and constitutional requirements. Failure to follow any procedures set forth in this Ordinance will not invalidate the City's right to enforce any assessment and/or lien imposed under this Ordinance.

SECTION 6. PUBLICATION REQUIREMENTS

The City Secretary is directed to publish in the official newspaper of the City of Haltom City the caption, penalty clause, publication clause, and effective date clause of this Ordinance one (1) time within ten (10) days after the first reading of this Ordinance as required by Section 10.01 of the Charter of the City of Haltom City.

SECTION 7. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed and approved on first reading the _____ day of _____, 2017.

Passed and approved on second and final reading on the _____ day of _____, 2017.

DAVID AVERITT, MAYOR

ATTEST:

ARTURO CAMACHO, CITY SECRETARY

Effective: _____

APPROVED AS TO FORM AND LEGALITY:

CITY ATTORNEY