

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 10, (WEEDS, BRUSH, RUBBISH, ETC.) OF THE ORDINANCES OF THE CITY OF SOUTHLAKE, TEXAS, REGARDING THE MOWING OF GRASS, WEEDS AND VEGETATION AND THE REMOVAL OF RUBBISH, BRUSH OR ANY OTHER UNSIGHTLY OR UNSANITARY MATTER FROM PROPERTIES; PROVIDING EXCEPTIONS; AMENDING NOTICE AND ABATEMENT PROCEDURES; AMENDING THE PROCEDURES FOR THE PLACEMENT OF A LIEN ON PROPERTIES FOR COSTS INCURRED TO ABATE NUISANCES; 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 Southlake, 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 has determined the minimum administrative costs to the city to abate violations of this Ordinance; and;

WHEREAS, pursuant to the provisions of the Texas Health and Safety Code, the City Council wishes to amend Article IV of Chapter 10 of the Code of Ordinances of the City of Southlake, which requires owners of lots within the city to keep the lots free of weeds, brush, and high grass, to insure the public health, safety and general welfare of the citizens of the City.

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

SECTION 1.

Article IV, (Condition of Premises) of Chapter 10 of the Code of Ordinances of the City of Southlake is hereby amended to read as follows:

ARTICLE IV. CONDITION OF PREMISES

Sec. 10-126. Definitions.

The following words, 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 as established in the current fee schedule of the City that shall be assessed when the city abates or causes to be abated a nuisance. This 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.

Code Enforcement Officer shall mean the Code Enforcement Official of the City of Southlake, Texas or his/her designee.

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 rubbish, junk, 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.

Landscape Administrator shall mean the Landscape Administrator of the City of Southlake, Texas or his/her designee.

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.

Nature Area shall mean those areas designated on a landscape plan approved by the Landscape Administrator as an area to be generally left in its natural state for the purposes of providing a natural scenic area or for the harboring of birds and local wildlife. Such area must have clearly delineated perimeter boundaries with a buffered mowed area of ten feet (10') or more adjacent to the nature area, and shall be maintained along such boundaries.

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.

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.

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

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

Wildflower shall mean seasonal flowering vegetation native and adaptive to Texas and that grow wild and bloom during the Spring Season and of a concentration high enough to provide seasonal beauty to an area as determined applicable and as approved by the Landscape Administrator or his designee. The specific flowers are limited to Beach Morning Glory, Black-eyed Susan, Blackfoot Daisy, Bluebelle, Bluebonnet, Butterfly, Buttercups, Daisy, Dogwood, Indian Paint Brush, Indian Blanket, Lantana, Lemonmint, Mexican Hat, Mountain Pink, Pink Evening Primrose, and any other flowering vegetation specifically approved by the Landscape Administrator or his designee.

Sec. 10-127. Overgrown Vegetation, Rubbish, and Other Unsanitary Matter Prohibited.

It is an offense for any person owning, leasing, claiming, occupying, or having supervision or control of any real property within the city, to suffer, permit, or allow:

(a) Grass, weeds, brush, or any plant which is not cultivated to grow to a height greater than 12 inches on average as determined by the Code Enforcement Official upon such premises, including easements and rights-of-ways and the areas 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; or

(b) Rubbish, junk, trash, garbage, discarded items, filth, or any other unsightly or unsanitary matter which would offend to a person of ordinary sensitivities to accumulate or remain upon the premises.

Sec. 10-128. 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 within the city to cut or cause to be cut, grass, weeds and brush, and to remove or cause to be removed, rubbish, junk, garbage, filth, or other 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. 10-129. Nuisance Declared.

(a) All grass, weeds, vegetation, or brush not regularly cultivated and which exceed 12 inches in height on average as determined by the Code Enforcement Official shall be presumed to be objectionable, unsightly, and unsanitary, and are hereby declared a public nuisance.

- (b) The accumulation of rubbish, junk, trash, garbage, filth, or other unsightly or unsanitary matter shall be presumed to be unsanitary and constitute a public nuisance.
- (c) Exception for Wildflower Areas, Nature Areas, and Terrain Obstructed Areas. Wildflower areas, when approved as such by the Landscape Administrator or his designee, during the blooming period for such wildflowers, and areas that are designated as a Nature Area on a landscape plan approved by the Landscape Administrator, shall be excepted from this section, provided that such areas are not otherwise required to be abated as a result of an immediate hazard as determined by the Fire Marshal set forth below. Any person requesting exemption based upon a wildflower area shall make such request in writing to the Landscape Administrator annually to request an inspection of the site. The Landscape Administrator shall maintain a list of those approved areas. Areas which are deemed reasonably inaccessible because of terrain or obstructions requiring specialized equipment may be exempted when in the opinion of the Fire Marshal there is no reasonable fire hazard. Such request for exemption shall be made in writing by the property owner to the Fire Marshal annually to request an inspection of the site. In the event of extreme drought or other hazardous conditions, the Fire Marshal may require any previously designated wildflower area, natural area, or terrain obstructed area to be mowed when the area is of such size or proximity to structures that in the opinion of the Fire Marshal it creates a potential fire hazard.

Sec. 10-130. Notice of Violation Prior to Abatement by City.

(a) **Notice required.** If the owner of land fails to comply with the requirements of Section 10-127 or Section 10-128, a city official may cause the property owner to be notified to cut the grass, weeds, or brush or to remove the rubbish, brush, or other unsanitary or unsightly matter within 7 days of the date of the notice.

(b) **Method of notice.** The notice shall 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 Tarrant Appraisal District; or

(3) if personal service cannot be obtained:

(A) by publication in the city's official newspaper once;

(B) by posting the notice on or near the front door of each building on the property to which the violation relates; or

(C) if the property contains no buildings, by posting the notice on a placard attached to a stake driven into the ground on the property to which the violation relates.

(c) **Unclaimed Notice.** If notice is mailed to a property owner in accordance with subsection (b) above, and the United States Postal Service returns the notice as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered delivered.

(d) **Work to be performed.** If the owner does not cut the weeds, grass, or plants, or remove the rubbish within 7 days of the notice, the city may go on such property or authorize another to go on such property, and do or cause the work to be done and charge the expenses incurred to the owner of the property and assess the expenses against the real estate on which the work is done. The remedy provided in this Section is in addition to any criminal penalties or other remedies authorized by this Article or other law.

(e) **Additional violations.** Although it is not required, in a notice provided under this section, the city may:

(1) inform the owner by regular mail and a posting on the property, or by personally delivering the notice, that if the owner commits another violation of the same kind (failure to mow weeds or high grass) on or before the first anniversary of date of the notice, the city without further notice may correct the violation at the owner's expense and assess the expenses against the property; and

(2) if a violation 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 corrective action and assess the expenses against the owner and the property.

(f) **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 7 days, the city will complete the work and charge the expenses to the owner; and

(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.

Sec. 10-131. Assessment of Expenses; Lien; Appeal.

(a) **Notice.** In assessing the expenses incurred pursuant to Section 10-130(c) against the property on which the work is done or improvements made, the city shall send the owner of the property upon which the work was done a notice which shall include:

(1) 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 10 days of the date of the letter; and

(6) a statement that if the owner fails or refuses to pay the expenses within 30 days of the date of the notice, the City Manager 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.

(b) **Method.** The notice shall be sent in the same manner as provided in Section 10-130(b).

(c) **Hearing.** The city manager or his designated representative will conduct a hearing if the property owner submits a written request within 10 days of the date of the notice. 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 the city 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 expenses were incurred to abate the violation.

(3) At the close of the hearing, the city manager or his representative may find, based upon a preponderance of the evidence, that the expenses are valid, or that they are erroneous or he may adjust them.

(d) **Placement of lien.** If no hearing is requested, or a hearing is held and the expenses are determined to be valid or are otherwise appropriately adjusted, and the owner fails or refuses to pay the expenses within 30 days after written notification to pay, the City Manager 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.

(e) **Security.** The lien is security for the expenses and interest accruing at the rate of 10% per annum from the date the work was performed or the expenses were incurred by the city.

(f) **Filing.** When the statement is filed, the city shall have a privileged lien on that property, second only to tax liens and liens for street improvements.

(g) **Suit.** The city may institute suit to recover the expenses, with interest, and may foreclose on the property. The original or a certified copy of the statement of expenses is prima facie proof of the expenses incurred by the city in doing the work or making the improvements.

Sec. 10-132. Additional Authority to Abate Dangerous Weeds Without Prior Notice.

(a) **Abatement.** The city may abate, without prior notice, weeds that have grown higher than 48 inches, and are an immediate danger to the health, life, or safety of any person.

(b) **Notice.** 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 10-131(a) of this Ordinance.

(c) **Hearing.** The city manager or his designated representative shall conduct an administrative hearing under this section if, not later than the 30th day after the date of the abatement of the weeds, the property owner files with the city 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 the city 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 Section, and expenses incurred to abate the violation were reasonable.

(3) The city manager or his designated representative may approve the expenses, deny the expenses, or adjust the amount of the expenses and approve them as adjusted.”

**SECTION 2.
AMENDMENT OF FEE SCHEDULE TO INCLUDE ADMINISTRATIVE FEE**

The Fee Schedule for the City of Southlake is hereby amended to provide that the administrative fee to be assessed against a property owner for abatement of a violation of Article IV, Chapter 10 shall be \$200.00 for each violation abated.

**SECTION 3.
ORDINANCE CUMULATIVE**

This Ordinance shall be cumulative of all provisions of ordinances of the city of Southlake, 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 4.
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 5.
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 6.
SAVINGS**

All rights and remedies of the City of Southlake are expressly saved as to any and all violations of the provisions of Article IV of Chapter 10 of the Southlake 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 or lien imposed under this Ordinance.

**SECTION 7.
PUBLICATION REQUIREMENTS**

The City Secretary of the City of Southlake is hereby directed to publish the proposed ordinance or its caption and penalty together with a notice setting out the time and place for a public hearing thereon at least ten 10 days before the second reading of this ordinance, and if this ordinance provides for the imposition of any penalty, fine or forfeiture for any violation of any of its provisions, then the City Secretary shall additionally publish this ordinance or its caption and penalty in the official city newspaper one time within ten days after passage of this ordinance, as required by Section 3.13 of the Charter of the City of Southlake.

**SECTION 8.
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 ON THIS 30 DAY OF March, 2004.



THE HONORABLE ANDY WAMBSGANSS, MAYOR

ATTEST:


LORI FARWELL, CITY SECRETARY

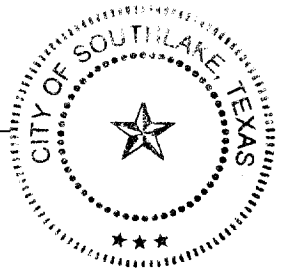


PASSED AND APPROVED ON SECOND READING ON THIS 6th DAY OF April, 2004.




THE HONORABLE ANDY WAMBSGANSS, MAYOR

ATTEST:


LORI FARWELL, CITY SECRETARY

EFFECTIVE: April 9, 2004

APPROVED AS TO FORM AND LEGALITY:


City Attorney