

ORDINANCE NO. O-2010-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 18, "CODE ENFORCEMENT", ARTICLE II., "WEEDS AND DEBRIS", SECTION 18-20., "PROHIBITED ACCUMULATIONS", BY ADDING DEFINITIONS, AMENDING AND ADDING DEFENSES TO PROSECUTION FOR IMPROVED AND VACANT LOTS AND ADDING A CULPABLE MENTAL STATE FOR VIOLATIONS OF ARTICLE II., "WEEDS AND DEBRIS"; AMENDING SECTION 18-22., "CONTENTS OF NOTICE WHEN CITY SEEKS TO ASSESS EXPENSES" BY AMENDING HEIGHT RESTRICTIONS CITED IN THE NOTICE CONTENTS REQUIREMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare; and

WHEREAS, the laws of the State of Texas, including those found in Chapter 51 of the Texas Local Government Code provide the City authority to adopt ordinances for the good government, peace, order, and welfare of the municipality; and

WHEREAS, Texas Local Government Code Section 54.004 provides that a home-rule municipality may enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and

WHEREAS, Texas Health and Safety Code Section 342.004 provides that the governing body of a municipality may require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter.

WHEREAS, Texas Local Government Code Section 217.042 (a) and (b) provide that a municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits, and that a municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance; and

WHEREAS, the City Council has determined that various revisions to City Code provisions allowing for restrictions on high weeds and grass and other accumulations of vegetation to apply to specified areas inside the perimeters of certain improved and vacant lots will not affect the enforcement of public nuisances and violations that tend to reduce the value of private property.

WHEREAS, in February 2009, the weed and debris provisions of Chapter 18 were amended to lower the height restrictions from 18 inches to 12 inches, therefore the City Council seeks to amend the weed and debris notice provisions to conform to current weed and debris height restrictions.

WHEREAS, an amendment to the Texas Penal Code enacted by the 79th Texas Legislature requires the inclusion of a culpable mental state for certain offenses defined by municipal ordinance having a fine that exceeds the amount authorized by Texas Penal Code Section 12.23, therefore the City Council seeks to add a culpable mental state for violations of the weed and debris provisions of Chapter 18 which have a fine that exceeds such authorized amount.

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

PART 1: That Chapter 18, "Code Enforcement", Article II., "Weeds and Debris" be amended to read as follows:

ARTICLE II. WEEDS AND DEBRIS

Sec. 18-20. Prohibited accumulations.

a. Definitions. For purposes of this Article, the following definitions are applicable:

1. *Uncultivated vegetation* means weeds, grass or other vegetation that are not regularly or systematically cut, mowed, pruned, fertilized, or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth.

2. *Improved lot, tract or parcel of land* means a lot, tract or parcel of land that has been cleared of trees and/or brush, or made ready for use, or made more desirable, valuable or profitable, or not left in the wild or natural state.

3. *Vacant lot, tract or parcel of land* means a lot, tract, parcel of land without a building, structure, or portion thereof on the premises.

b. Weeds, grass, and other accumulations of uncultivated vegetation. It is unlawful for any person, firm, corporation, partnership, association of persons, owner, agent, occupant, or anyone having supervision or control of any improved lot, tract, parcel of land or portion thereof, occupied or unoccupied, within the City limits or within five thousand (5,000) feet thereof, to with criminal negligence allow uncultivated vegetation to grow to a height greater than twelve (12) inches on such tract. However, these restrictions shall not apply to trees. It is a defense to prosecution under subsection (a) if:

1. the lot, tract, or parcel of land is a natural or nature park areas so designated by the City Council, or

2. the accumulation or vegetation on the lot, tract, or parcel of land is flowers and shrubs that are either regularly or systematically pruned or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth; or

3. the lot, tract, or parcel of land is improved and vacant, and weeds, grass, and other vegetation thereon are continuously maintained at or below a height of twelve (12) inches at all points on the premises within 100 feet of its perimeters at all points on the premises, provided such vegetation does not cause, abet or encourage a health or safety hazard.

c. Other accumulations of vegetation. It is unlawful for any owner, occupant, agent, or other person in control of any improved lot, tract, parcel of land or portion thereof, occupied or unoccupied, within the City limits or within five thousand (5,000) feet thereof, to with criminal negligence allow fallen trees, fallen tree limbs or fallen branches, brush, or underbrush growth to accumulate upon such premises. It is a defense to prosecution under subsection (b) if:

1. the lot, tract, or parcel of land is a natural or nature park so designated by the City Council, or

2. the lot, tract, parcel of land is improved and vacant, and is continuously maintained such that fallen trees, fallen tree limbs or fallen branches, brush, or underbrush growth are not allowed to accumulate on the premises at all points within 150 feet of its perimeters, provided said accumulations of limbs, branches or underbrush do not cause, abet or encourage a health or safety hazard.

d. Subsections b, and c. above shall not apply to unimproved properties provided the premises are maintained such that any weeds, grass, other uncultivated vegetation, or other accumulations of vegetation thereon do not cause, abet or encourage a health or safety hazard.

e. Other accumulations. It is unlawful for any owner, occupant, agent, or other person in control of premises within the City limits or within five thousand (5,000) feet thereof, to allow rubbish, including newspapers, refrigerators, stoves, furniture, tires, cans and appliances, trash, garbage, refuse, junk, or debris to collect upon such premises.

f. Nuisance declared. Any prohibited accumulation or collection of vegetation or debris in violation of subsections b., c., d., or e. above is a public nuisance and is unlawful.

g. Any owner of record, person who has contractual responsibility for or the legal right of possession to tangible property, which includes a right-of-way, or which property abuts a right-of-way and such person enjoys the use of the right-of-way:

1. shall be responsible for the maintenance of such right-of-way, and

2. shall not maintain or allow in the right-of-way any prohibited accumulation or collection of vegetation or debris in violation of subsections b., c., d., or e. above. Any violation of this subsection is unlawful.

h. Enforcement. Employees of the Code Enforcement Department, Peace Officers and Public Service Officers of the Tyler Police Department, or other persons designated by the Solid Waste Director are authorized to enforce the provisions of this Article. In making any inspection under this Article, the Code Enforcement Department employee or other authorized persons may enter, examine, take photographs, tag, and survey any premises to verify compliance with this Article. Whenever a violation of this Article occurs within five thousand (5,000) feet of the City limits, the Solid Waste Director shall have discretion as to whether inspection and/or enforcement shall occur. (Ord. No. 0-2003-17, 5/14/03) (Ord. 0-2008-15, 2/25/09) (Ord. 0-2010-25, 3/24/10)

Sec. 18-21. Notice to property owners required when City seeks to assess expenses; future violations within one year.

No changes.

Sec. 18-22. Contents of notice when City seeks to assess expenses.

The notice of violation given pursuant to Section 18-21 shall contain:

1. Violator is required to maintain property so as to keep weeds, grass, and other specified vegetation at a height of less than twelve (12) inches, or is required to keep the property free from rubbish or other specified matter; and

2. If violator fails to do so, City will enter upon property and will mow or do the work or make improvements required, or will pay for the mowing or work done or improvements made; and

3. Violator has ten (10) days from date of receipt of notice to correct the violation. (Ord. No. 0-97-54, 11/5/97) (Ord. No. 0-2001-57, 11/28/2001) (Ord. No. 0-2005-30, 4/27/05) (Ord. 0-2010-25, 3/24/10)

Sec. 18-23. Abatement.

No changes.

Sec. 18-24. Assessment of City's expenses; billing; lien.

No changes.


Secs. 18-25. - 18-29. Reserved.

No changes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

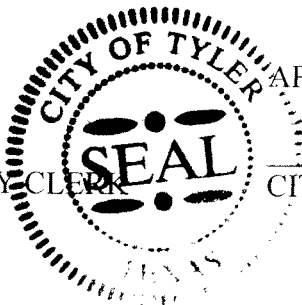
PART 3: That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall be published in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be March 26, 2010.

PASSED AND APPROVED this the 24th day of March, 2010.



BARBARA BASS, MAYOR
OF THE CITY OF TYLER, TEXAS

ATTEST:


CASSANDRA BRAGER, CITY CLERK



APPROVED:


GARY C. LANDERS, CITY ATTORNEY