

ORDINANCE NUMBER _____

AN ORDINANCE OF THE CITY OF BALCONES HEIGHTS, TEXAS (CITY) AMENDING CHAPTER 95, SECTIONs 95.01 AND 95.02 AND ADDING SECTION 95.03 THRU 95.09 OF THE MUNICIPAL CODE OF ORDINANCES; ADDING LANGUAGE TO CLARIFY THE PROHIBITING OF CERTAIN ACTS WHICH WOULD CONSTITUTE A PUBLIC NUISANCE; DECLARING A PUBLIC PURPOSE, AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City has determined a municipal need to clarify, define and set forth acts in the municipal code of ordinances which constitute a public nuisance and are necessary to maintain the health, safety, governance and good order of the City; and

WHEREAS, the City after consultation with the municipal code enforcement officer, deliberation, and action of its governing body wishes to clarify language to a section of its municipal code in order to address a declared public need; and

WHEREAS, after publication in the manner prescribed by law the governing body of the City wishes to amend Chapter 95, Weeds; Clearing Lots of the Municipal Code of Ordinances of the City in the manner and form set forth below;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF BALCONES HEIGHTS, TEXAS THAT:

SECTION 1. AMENDMENT. Chapter 95 of the Municipal Code of Ordinances referring to Weeds; Clearing Lots of the City of Balcones Heights is amended so that Section 95.01 through 95.09 is replaced in its entirety with the following:

WEEDS; CLEARING LOTS

§ 95.01 ABATEMENT PROCEDURE.

(A) The Chief of Police, Code Enforcement Officer, or other duly appointed health officer, shall inspect the vacant lots and all other premises in the city on which stagnant water may be found, and direct cleansing of any building, establishment, lot or yard or ground from filth, carrion or other impure or unwholesome matter of any kind, and by certified return receipt mail, direct the owner or owners of any lots in the city to keep the same free from weeds or grass or both in excess of 8 inches in height, brush, rubbish, or any and all other objectionable matter, or unsightly or unsanitary matter of any nature whatsoever. If such owner fails or refuses to do so within ten days after notice in writing said officer shall order or contract directly such work to be done and charge the expenses incurred in doing or having such work done to the owner of the property and to punish any owner or occupant violating the provisions of this chapter by a fine in accordance with Section 95.09.

(B) If the said improvements be done at the expense of the city, the Chief of Police or Code Enforcement Officer shall cause the expense thereof to be assessed on the real estate or lot or lots upon which such expense is incurred by filing with the County Clerk a statement from the City Administrator of such expenses and the amount of such expenses shall be a privileged lien on said property and 10% interest shall accrue on the amount on the date of such payment.

§ 95.02 CHARGE FOR LOT CLEANING AND CLEARING WORK.

The charge for cleaning and clearing work shall be assessed to cover both administrative costs and the actual physical abatement. A minimum of four hours shall be charged and shall be collected pursuant to the terms and provisions of § 95.01 for said abatement.

§ 95.03 VEGETATION, WEEDS AND GRASS OF HEIGHT GREATER THAN 8 INCHES CONSTITUTES OFFENSE.

Vegetation not regularly maintained that exceeds eight (8) inches in height shall be presumed to be a nuisance, objectionable, unsanitary and unsightly.

(A) *Violation.* A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the City limits commits an offense by permitting or allowing weeds, grass, brush, or any vegetation to grow to a height greater than 8 inches upon any such real property. Such real property shall include, but not be limited to:

- (1) The right-of-way between any fence, wall or barrier and the curb or pavement if such exists.
- (2) The area between a fence, wall or barrier and within any abutting drainage channel easement to the top of such channel closest to the property.

§ 95.04 PROPERTIES MUST BE FREE OF PUBLIC NUISANCES.

A person, owner, tenant or agent responsible for or claiming or having supervision or control of any real property, occupied or unoccupied, within the City limits commits an offense by permitting or allowing stagnant or unwholesome water, filth, carrion, weeds, rubbish, rubble, junk or garbage, or impure or unwholesome matter of any kind, including, but not limited to, dead grass, tree limbs, tree stumps, improper composting or improper storage of landscape materials, waste paper, scrap wood or lumber, scrap metal, rags, rubber tires, plastic, metal, ceramic or glass bottles, canisters, barrels or cans, combustible materials, appliances, furniture, discarded or unused flooring material, dismantled or disassembled vehicle parts, discarded or abandoned construction materials and exposed or uncovered fill materials, or any objectionable, unsanitary or unsightly matter of whatever nature to accumulate or remain on such real property, including the improvements thereon, or within any easement area on property line for such real property and where the paved surface of the street begins.

§ 95.05 NOTICE OF VIOLATION.

(A) In the event any owner, tenant, agent or person responsible for or claiming or having supervision or control over real property (hereinafter "owner") governed by this article fails to comply with the provisions of this article, the City, by and through its code enforcement division or designee shall give notice of the violation to such owner. Such notice shall be given in any one of the following ways:

- (1) Personally to the owner or tenant in writing;
- (2) Posting notice on or near the front door of each building on the property to which the violation relates; or
- (3) By letter addressed to the owner at the owner's address as recorded in the Bexar County appraisal district records

(B) If the City mails a notice to the owner in accordance with subsection (a) of this section, and the United States Postal Service returns the notice as "refused" or "unclaimed," or if the address required by subsection (a)(2) of this section was used and the notice is returned as "not deliverable as addressed" (or an equivalent marking), the validity of the notice is not affected, and the notice is considered delivered for the purposes of enforcement.

(C) In a notice provided under this section the City may inform the owner by regular mail and a posting on the property that if the owner commits another violation of the same kind or nature on or before the 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 or issue citations. If a violation covered by a notice under this subsection occurs within one year, 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 and assess its expenses as provided herein in Section 95.07.

§ 95.06 CITATIONS; WORK OR IMPROVEMENTS BY THE CITY; CHARGES AGAINST OWNER.

If the owner fails or refuses to comply with the demand for compliance in the notice within ten days of such notice, the City may:

- (1) Issue citations; and
- (2) Do the work or abate as required, pay for the work done or improvements made and charge the expenses to the owner of the property as provided herein in Section 95.07.

If the owner commits the same offense within 12 months, the City may double the amount of the citation and charge double for the work done or improvements made on that property.

§ 95.07 ASSESSMENT OF EXPENSES; LIEN.

In the event the owner fails or refuses to pay such expenses within 15 days after the first day of the month following the month in which the work was done, a lien may be obtained against the property. To obtain a lien, the City Administrator or designee, must file a statement of the expenses incurred in correcting the condition of the real property with the Bexar County Clerk. The statement must also state the name of the owner, if known, and the legal description of the property. The lien attaches upon filing of the statement with the County Clerk.

§ 95.08 AUTHORITY TO IMMEDIATELY ABATE DANGEROUS TALL VEGETATION.

(A) Notwithstanding any of the provisions of sections 95.01 through 95.07, the City may abate, without notification, weeds, grass, brush or any unsightly vegetation that has grown higher than 24 inches (hereinafter "tall vegetation") and is an immediate danger to the health, life, or safety of any person. The City must give notice, in the manner provided in section 95.03, to the property owner no later than the tenth day after the date the City abates the tall vegetation. The notification shall contain:

- (1) Address of the property;
- (2) A description of the violation that occurred on the property;
- (3) A statement that the City abated the violation; and
- (4) An explanation of the property owner's rights to request a Court appearance regarding the City's abatement of the tall vegetation.

(B) The City, by and through its City administrator or his/her designee, shall conduct an administrative hearing not later than the 30th day after the date of the abatement of the tall vegetation, if the owner files a written request for a hearing with the City. The City shall conduct the administrative hearing not later than the 20th day after the date a request for hearing is filed. At the administrative hearing, the owner may testify or present any witnesses or written information relating to the City's abatement of the tall vegetation.

(C) The City may assess expenses and create liens under this section in the same manner and subject to the same conditions as set forth in 95.05.

§ 95.09 PENALTY PROVISION.

(A) Any owner, person, firm, corporation or business entity violating this article shall be deemed guilty of a Class C misdemeanor, and upon conviction thereof, shall be fined a sum not exceeding \$2,000 per day. Each continuing day's violation under this article shall constitute a separate offense. The penal provisions imposed under this article shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it pursuant to local, State and federal law.

(B) This article shall be cumulative of all provisions of ordinances of the City, except where the provisions of this article are in direct conflict with the provisions such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 2. SEVERABILITY CLAUSE: If any section, subsection, phrase, sentence or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be stricken from the ordinance, and such holding shall not affect the validity of the remaining portions thereof. The balance of the ordinance shall be construed as one instrument and as if the offending portion had not been included.

SECTION 3. SAVINGS CLAUSE: All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed. The balance of such ordinance is hereby saved from repeal.

SECTION 4. ENFORCEMENT: Any person violating any provision of this Ordinance shall, upon conviction, be fined as applicable and in accordance with Sections 50.99 and 93.99 of the Municipal Code of Ordinances with each day thereof constituting a separate offense.

SECTION 5. EFFECTIVE DATE: Effective immediately following the publication of this ordinance in the local newspaper as required by Section 51.052 of the Texas Local Government Code, the following sections will apply within the corporate city limits of Balcones Heights, Texas.

PASSED AND APPROVED this 13th day of May 2013.

Suzanne de Leon
Mayor

Attest:

Delia Flores, TMRS
City Secretary