

ORDINANCE NO. B-685

AN ORDINANCE OF THE CITY OF BURLESON, TEXAS, BY AMENDING SECTIONS 7-23 THROUGH 7-29 OF THE CITY OF BURLESON CODE OF ORDINANCES REGARDING REQUIREMENTS FOR THE MOWING OF WEEDS, GRASS, AND UNCULTIVATED PLANTS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, 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, pursuant to Texas Health and Safety Code §342.004, the City Council desires to amend Sections 7-23 through 7-29 of Chapter 7 of the City of Burleson Code of Ordinances as set forth below.

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

SECTION 1.

Sections 7-23 through 7-29 of Chapter 7 of the City of Burleson Code of Ordinances are hereby amended as set forth below:

Sec. 7-23. Weeds, grass and uncultivated plants.

(a) Definition of terms.

Parkway means the portion of any street between the pavement and the private property line.

(b) Prohibition.

(1) Permitting or allowing weeds, grass or any uncultivated plant to grow to a height in excess of 12 inches upon any property within the corporate limits of the City of Burleson or to leave weeds, grass or uncultivated

- plants in excess of 12 inches on such premises after they have been cut is hereby declared to be a nuisance.
- (2) A person commits an offense if the person owns, occupies or controls any property within the corporate limits of the City of Burleson upon which weeds, grass or any uncultivated plant exceed 12 inches in height or if weeds, grass or uncultivated plants in excess of 12 inches are allowed to remain on such premises after they have been cut.
 - (3) A person commits an offense if the person owns, occupies or controls any property within the corporate limits of the City of Burleson and fails to maintain the parkway adjacent to the property free of weeds, grass or uncultivated plants that exceed 12 inches in height or if weeds, grass or uncultivated plants in excess of 12 inches are allowed to remain on such premises after they have been cut.
 - (4) In the case of agricultural tracts of five acres or larger, this section will be satisfied if the hay or grass or vegetation is kept mowed to a height no greater than 12 inches for a distance of 100 feet around the entire perimeter of the tract and all remaining weeds, grass and uncultivated plants do not exceed forty eight (48) inches in height in accordance with Section 7-24(c).

Sec. 7-24. Abatement.

(a) Notice.

- (1) The city manager or his designee is hereby authorized to give notice to the owner of any property which is in violation of the provisions of section 7-23(b), instructing the owner to abate the nuisance.
- (2) If the owner of the property does not comply with the provisions of an abatement notice issued by the city manager or his designee within ten days after the date the notice is received, the city manager or his designee may:
 - a. Enter the property and do or cause to be done the work required to abate the nuisance; and
 - b. Pay for the work done and charge the expenses to the owner of the property and assess the owner a weed mowing administrative fee and weed mowing notification fee in accordance with the adopted City of Burleson fee schedule.
- (3) The notice must be given:
 - a. Personally to the owner in writing; or
 - b. By letter addressed to the owner at the owner's last known address as shown on the city tax rolls; or

- c. If personal service cannot be obtained and the owner's post office address is unknown:
 1. By publication at least once; 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.
 - (4) Notice will be deemed to have been received:
 - a. For personal service, as of the date the notice was given personally to the owner;
 - b. For mailed notice, three days after date of postmark;
 - c. For notice by publication, on the date that the last notice was published in the official newspaper; or
 - d. For notice by posting, ten days after the notice was posted.
 - (5) In the notice of a violation, the city manager or his designee may inform the owner that if the owner commits another violation of the same kind or nature that poses a danger to the public health and safety 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.
 - (6) If a violation covered by a notice under section 7-24(a)(5) occurs within the one-year period, and the city manager or his designee has not been informed in writing by the owner of an ownership change, then the city without notice may take any action permitted by section (a)(2) and assess the expenses as provided by section 7-25.
- (b) Property under development.
- (1) Before any application for change of zoning, platting or replatting is accepted, all liens and charges arising under the terms of section 7-24(a)(2) shall be satisfied and no concerned property shall be in violation of section 7-23(b) hereof.
 - (2) If the city has issued a permit and the property for which such permit was issued is in violation of section 7-23(b) hereof, the city manager or his designee may revoke the permit until such nuisance has been abated.
 - (3) Such actions shall not defer any other remedies or penalties which may be applicable under this section.
- (c) Abatement of weeds or grass in excess of forty-eight (48) inches.
- (1) The City Manager or his designee may abate, without notice, weeds or grass that:

- (a) Have grown higher than forty-eight (48) inches; and
 - (b) Are an immediate danger to the health, life, or safety of any person.
- (2) Not later than the tenth day after the date the City Manager or his designee abates weeds or grass under this section, the City Manager or his designee shall give notice to the property owner in the manner required by section 7-24(a)(3). This notice shall contain:
- (a) An identification, which is not required to be legal description, of the property;
 - (b) A description of the violations that occurred on the property;
 - (c) A statement that the city abated the weeds or grass; and
 - (d) An explanation of the property owner's right to request an administrative hearing about the city's abatement of weeds or grass.
- (3) The City Manager or his designee shall conduct an administrative hearing on the abatement of weeds or grass under this section if, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files with the City Manager or designee a written request for a hearing.
- (4) An administrative hearing conducted under this section shall be conducted not later than the twentieth day after the date a request for a hearing is filed. The owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.
- (5) The City Manger or his designee may assess expenses and create liens under this section in accordance with section 7-25.

Sec. 7-25. Assessment of expenses; Lien.

- (1) All expenses incurred by the city to abate high weeds, grass or uncultivated plants, including the cost of giving notice as required, shall initially be paid by the city and charged to the owner of the property. If the charge is not paid to the city within 30 days after billing, it will become a charge against the property and the city may file a lien upon the property.
- (2) To obtain a lien upon the property, the city manager or his designee shall file a statement of expenses with the county clerk for the county in which the property is located. The lien statement shall state the name of the owner, if known, and the legal description of the property. The lien attaches upon the filing of the lien statement with the county clerk.

- (3) The lien shall be security for the expenditures made and interest accruing at the rate of ten percent per annum on the amount due from the date of payment by the city.
- (4) The lien is inferior only to:
 - a. Tax liens; and
 - b. Liens for street improvements.
- (5) The city may bring a suit for foreclosure of the lien in the name of the city to recover the expenditures and interest due and in said suit the statement of expenses or a certified copy of the statement shall be prima facie proof for the expenses incurred by the municipality in doing the work or making the improvements.

Sec. 7-26. Penalty.

An offense as defined under this Article is a misdemeanor punishable by a fine not to exceed \$2,000.00. Each separate occurrence of a violation or each day that a violation continues shall constitute a separate offense.

Sec. 7-27 --- 7-29. Reserved.

SECTION 2.

Cumulative Clause

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

SECTION 3.

Severability Clause

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.

Savings Clause

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of the Burleson City Code or any other ordinances regulating weeds, grass, and uncultivated plants that 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.

SECTION 5.
Newspaper Publication Clause

The City Secretary of the City of Burleson is hereby directed to publish the proposed ordinance or its caption and penalty in the official City newspaper twice within fourteen days after the final passage of this ordinance, as required by Section 36 (d) of the Charter of the City of Burleson.

SECTION 6.
Effective Date Clause

This ordinance shall be in full force and effect August 15, 2002, after its passage and publication as required by law, and it is so ordained.

PASSED AND APPROVED THIS _____ DAY OF _____,
2002.

MAYOR

ATTEST:

CITY SECRETARY

First reading: _____