

**An Ordinance of the City of Plano, Texas, amending Article I, Chapter 14, Sec. 14-3 Weeds, refuse, unsanitary conditions and stagnant water; providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date.**

**WHEREAS**, the City Council adopted Ordinance No. 65-9-1 on September 13, 1965, Ordinance No. 71-3-9 on March 22, 1971, Ordinance No. 74-4-5 on April 8, 1974, Ordinance No. 87-2-6 on February 9, 1987, Ordinance No. 92-9-34 on September 28, 1992, Ordinance No. 99-11-11 on November 8, 1999, Ordinance No. 2010-2-16 on February 22, 2010, Ordinance No. 2016-6-10 on June 13, 2016, and Ordinance 2018-8-15 on August 27, 2018 to implement regulations regarding weeds, refuse, unsanitary conditions and stagnant water; and

**WHEREAS**, overgrown weeds, refuse, unsanitary conditions, and stagnant water can create public health and safety hazards; and

**WHEREAS**, state law in the Texas Health and Safety Code identifies unsanitary conditions, sewage, human excreta, wastewater, garbage, spoiled or diseased meats, harborage of rodents and collections of water in which mosquitoes are breeding as public health nuisance; and

**WHEREAS**, overgrown weeds, accumulations of refuse and unsanitary conditions can create harborage for rodents and other pests such as snakes, mosquitoes and other harmful insects; and

**WHEREAS**, overgrown weeds can create pedestrian obstructions and motorist visibility obstructions that create a risk to public safety; and

**WHEREAS**, staff recommend changes to sections of Article 1, Chapter 14, Sec. 14-3 Weeds, refuse, unsanitary conditions and stagnant water, of the Code of Ordinances of the City of Plano; and

**WHEREAS**, staff recommends repealing in its entirety Section 14-3, Weeds, refuse, unsanitary conditions and stagnant water in Article 1, Chapter 14, Offenses – Miscellaneous, of the Code of Ordinances of the City of Plano, and recommends replacing it with a new Section 14-3, Weeds, refuse, unsanitary conditions and stagnant water; and

**WHEREAS**, after consideration of the recommendations of staff and all matters attendant and related thereto, the City Council is of the opinion that it is in the best interest of the City and its citizens and to promote health, safety and welfare of the citizens of Plano and the general public to amend various sections of Article 1, Chapter 14, Sec. 14-3 Weeds, refuse, unsanitary conditions and stagnant water, as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** Section 14-3 Weeds, refuse, unsanitary conditions and stagnant water, of Article I, Chapter 14 of the City of Plano Code of Ordinances is hereby amended in its entirety to read as follows:

“ARTICLE I. - IN GENERAL

Sec. 14-3. – Weeds, Refuse, Unsanitary Conditions and Stagnant Water

- (a) Definitions. For purposes of Section 14-3, any word not defined herein shall be construed in the context used, by ordinary interpretation and not as a term of art. The terms used in Section 14-3 shall have the following meanings:

*Carriion* shall mean the dead flesh of an animal, fowl or fish.

*Crop* shall mean a plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty, including but not limited to a shrub, vine, tree, seedling, shoot, or slip.

*Cultivate* shall mean to prepare land and plant seeds or vegetation.

*Cultivated Land* shall mean land that has been cleared of its natural vegetation and is presently planted with a crop.

*Owner* shall mean a person having ownership in or care, custody or control over real property.

*Person* shall mean an individual, firm, partnership, association, business, corporation or other entity.

*Premises* shall mean real property, easement areas on real property, areas between the property line of real property and the beginning of the paved surface of a street or highway, and areas between the property line of real property and a stream, creek, river, open channel, drainage course, or drainage of a floodway easement protecting a drainage course. The terms includes, but is not limited to: the area between a sidewalk adjacent to real property and a curb adjacent to a street or highway; the area between a fence, wall or barrier on real property and a curb, street or highway; and the area between a fence, wall or barrier on real property and a stream, creek, river, open channel, drainage course or drainage of a floodway easement.

*Refuse* shall mean an object, matter or material that is worn out, used up, broken, discarded, decaying, rotting or of little value or use, including, but not limited to, clothing, plastic, rubber, paper, wood, cardboard, iron, metal, glass, stone, cord, rope, fragments of building materials, furniture, food, vegetation and other waste.

*Stagnant water* shall mean water that is not moving or flowing, contains mosquito larva or is reasonably likely to become a breeding place for mosquitoes.

*Unsanitary condition* shall mean a condition that results in or is reasonably likely to result in injury, death, illness or disease to human beings.

*Water buffer* shall mean a vegetated area next to a water resource that protects the water resource from nonpoint source pollution or provides bank stabilization or wildlife habitat.

*Weeds* shall mean vegetation, including but not limited to grass, but excluding:

- (1) Shrubs, bushes and trees;

- (2) Cultivated flowers;
  - (3) Crops on cultivated land;
  - (4) Linear parks, as defined in Chapter 16 of the City of Plano Code of Ordinances;
  - (5) Unimproved land owned by the City of Plano for future use as a park;
  - (6) Water buffers;
  - (7) Re-forestation grow zones and conservation buffer zones in parkland as designated by City of Plano signage;
  - (8) Pollinator areas designated by City of Plano signage;
  - (9) Wildflower areas designated by City of Plano signage;
  - (10) Oak Point Park and Nature Preserve;
  - (11) Arbor Hills Nature Preserve; and
  - (12) Pecan Hollow Golf Course.
- (b) Offenses. It shall be an offense for an owner of premises to do any of the following:
- (1) Cause or allow carrion, refuse or an unsanitary condition to accumulate or remain on premises;
  - (2) Allow weeds to grow to a height greater than twelve (12) inches
    - (i) On premises; or
    - (ii) On premises used by an agricultural operation as defined by Texas Agriculture Code § 251.002, as amended
      - a. Within thirty (30) feet from property line of adjacent property under different ownership; or
      - b. Within thirty (30) feet from the paved edge of a street, highway or alley; or
      - c. On cultivated land where there is less than thirty (30) feet between the crop and property line of adjacent property under different ownership, between such crop and property line; or
      - d. On cultivated land where there is less than thirty (30) feet between the crop and the paved edge of a street, highway or alley, between such crop and paved edge;
  - (3) Allow stagnant water that has not been effectively treated to prevent the breeding of mosquitoes to accumulate or remain on premises.
- (c) Criminal Penalty.
- (1) It shall be an offense to intentionally or knowingly fail to comply with any provision of this section. Any person intentionally or knowingly violating a provision of Section 14-3 of this chapter shall be punished by a fine not to exceed \$2,000.00. Each day a violation occurs shall constitute a separate offense.
  - (2) Repeat and Habitual Offenders.

- (i) If it is shown on the trial of an offense under Section 14-3 that the defendant has previously been finally convicted of an offense under Section 14-3, on conviction the person shall be punished by a fine of not less than \$500.00 and not to exceed \$2,000.00.
- (ii) If it is shown on the trial of an offense under Section 14-3 that the defendant has previously been finally convicted of two or more offenses under Section 14-3, on conviction the person shall be punished by a fine of not less than \$1,000.00 and not to exceed \$2,000.00.
- (iii) This subsection for Repeat and Habitual Offenders applies only to a person finally convicted of a second or subsequent offense within four years of the date on which the most recent preceding offense was committed.

(d) Affirmative Defense

- (1) It shall be an affirmative defense to criminal prosecution under Sec. 14-3(b)(2)(ii)(a) or (b) if the defendant proves by a preponderance of the evidence that at the time of the prohibited conduct, it occurred on cultivated land in compliance with Sec. 14-3(b)(2)(ii)(c) and (d).

(e) Public Nuisance.

- (1) Conditions and places described in Section 14-3(b) of this Code of Ordinances constitute public health nuisances.
- (2) Conditions and places described in Section 341.011, Texas Health and Safety Code, as amended, constitute public health nuisances.
- (3) Abatement of Public Nuisance with Notice.

- (i) The city may abate a public nuisance under Section 14-3 of this Code of Ordinances or the Texas Health and Safety Code, as amended, with notice to the owner of the property, in accordance with Section 342.006, Texas Health and Safety Code, as amended.
- (ii) The city may assess expenses incurred in abatement under Section 342.006, Texas Health and Safety Code, as amended, and obtain a lien against the real estate on which the work is done or improvement is made, in accordance with Section 342.007, Texas Health and Safety Code, as amended.
- (iii) The expenses to be collected by the city under this section shall include, in addition to the costs and expenses of mowing or correcting a condition upon a tract of land, the sum of two hundred dollars (\$200.00) per lot or tract of land, which sum is hereby found to be the cost to the city of administering the terms of this section.

(4) Abatement of Public Nuisance without Notice.

- (i) Abatement of Dangerous Weeds. Notwithstanding Section 14-3(e)(3), the city may abate without notice, weeds, in accordance with Section 342.008, Texas Health and Safety Code, as amended.

- (ii) Mosquito Control on Uninhabited Residential Property. Notwithstanding Section 14-3(e)(3) and any other law, the city may abate, without notice, a public health nuisance under Section 341.011(7) of the Texas Health and Safety Code, as amended, in accordance with Section 341.019 of the Texas Health and Safety Code, as amended.
- (5) All expenses assessed under Section 14-3(e)(3) or 14-3(e)(4) shall bear interest at the rate of ten (10) percent per annum from the date the city incurs the expense. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The statement, as provided herein, or certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner or any other person responsible as provided herein, shall be jointly and severally liable for the charges.
- (f) In addition to the criminal offenses and penalties prescribed in 14-3(b) and (c), the City may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits.
- (g) Authority for Criminal Enforcement and Abatement. The city manager or his designee shall have authority for enforcement of criminal offenses and for abatement, assessment of expenses, and obtaining liens pursuant to Section 14-3.”

**Section II.** All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

**Section III.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

**Section IV.** The repeal of any Ordinance or part of Ordinances effectuated by the enactment of this Ordinance shall not be construed as abandoning any action now pending under or by virtue of such Ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions at the time of passage of this ordinance.

**Section V.** Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) and 14-3(c) of the City of Plano Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

**Section VI.** This ordinance shall become effective immediately upon its passage and publication as required by law.

**DULY PASSED AND APPROVED** this the 25th day of July, 2022.

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John B. Muns, MAYOR

ATTEST:

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Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

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Paige Mims, CITY ATTORNEY