

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF AURORA, TEXAS, ESTABLISHING PROCEDURES FOR THE ABATEMENT OF NUISANCES AND WEEDS; PROVIDING PROCEDURES FOR THE ABATEMENT OF NUISANCES AND THE RECOVERY OF COSTS THEREOF; PROVIDING DEFINITIONS; DECLARING NUISANCES; PROHIBITING THE GROWING OF GRASS, BRUSH AND WEEDS TO A HEIGHT GREATER THAN TEN INCHES; PROVIDING FOR CERTAIN EXCEPTIONS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; 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 Aurora, Texas is a Type A general-law municipality located in Wise County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, the City Council has determined it should adopt this ordinance 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 and litter within the City; and

**WHEREAS**, the City Council has found and determined that to properly implement this Ordinance and abate violations thereof, it is necessary to investigate complaints, determine the property owner's name and address, prepare and send out appropriate notices, file certain notices and liens with the county clerk, and supervise the conduct of the work; and

**WHEREAS**, the City Council has determined the minimum administrative cost to the City to abate a violation of this Ordinance; and

**WHEREAS**, pursuant to Texas Health and Safety Code §342.004, the City Council wishes to establish regulations requiring owners of lots within the City to keep the lots free of rubbish, weeds, brush, and high grass;

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

## **SECTION 1. NUISANCE GENERALLY**

(A) Whatever is dangerous to human life or health, whatever renders the ground, the water, the air or food a hazard or injury to human life or health or that is offensive to the senses, or that is or threatens to become detrimental to the public health, is declared to be a nuisance, and the specific acts, conditions and things set forth in this chapter are, among others, each and all of them declared to be nuisances and prohibited and made unlawful.

(B) The enumeration of specific nuisances provided in this chapter shall not be deemed or interpreted to limit the scope of this definition to those items specifically enumerated, but shall be taken as specific examples only.

## **SECTION 2. DEFINITIONS**

As used in this Ordinance:

**ACTIVE USE** shall mean land that has been for the past 18 months, and is currently, under cultivation or used for the production of livestock.

**ADMINISTRATIVE FEE** shall refer to the City's minimum administrative fee of \$100.00 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, but the administrative cost to the City of processing the abatement. Without amending this Ordinance, the City may impose an administrative fee of more than \$100.00 if the City's cost of implementing this Ordinance is greater than \$100.00.

**BRUSH** shall mean scrub vegetation or dense undergrowth.

**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.

**CODE ENFORCEMENT OFFICER** means the person designated by the Mayor to enforce ordinances of the City.

**CULTIVATED** shall mean vegetation that is deliberately grown and currently and continuously maintained by the owner, occupant, or agent of the property.

**DEVELOPED** means a tract of land upon which a structure is situated.

**EXPENSES** shall mean the total of the Administrative Fee and Costs incurred by the City in abating or causing to be abated a nuisance.

**GARBAGE** means and includes every accumulation of both animal and vegetable matter, liquid or otherwise, that is received from kitchens and also all decayable waste.

**HEARING OFFICER** means the Mayor or the Mayor's designated representative.

**JUNK** meant all worn out or discarded material, including but not limited to old iron or other metal, glass and cordage, plastic, machinery of any kind, tractors, refrigerators, stoves, any other household appliances, furniture, or old boats.

**LITTER** means discarded paper, wrapping material, glass or aluminum containers, or other decayable or non-decayable waste.

**MAINTAINED** means 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.

**MAYOR** means the Mayor or his designated representative.

**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.

**OCCUPANT** means any person, firm or corporation, both public and private, claiming or having possessory control of any property.

**OWNER** means any person, firm or corporation, both public and private, claiming title of any property.

**PERSON** shall include a firm, association, organization, partnership, trust, company, or corporation, as well as an individual.

**REFUSE** means an accumulation of worn out, used, broken, or rejected materials and includes garbage, litter, rubbish, yard waste and other decayable or nondecayable waste. It includes, but is not limited to, old barrels, old tires, tree and brush and grass trimmings and unused household items and appliances.

**RUBBISH** means all loose and decayed material and dirt-like substances that attends use or decay, or which accumulates from buildings, storing or cleaning, trash, debris, rubble, stone or fragments of building materials.

**VEGETATION** shall mean any grass, weeds, shrubs, 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.

**YARD WASTE** means grass and brush trimmings, trees or tree limbs, hedge or shrub cuttings, leaves, weeds, vines or other decayable waste which is generated by maintaining a yard.

**SECTION 3.  
NUISANCES DEFINED - PROHIBITED GENERALLY**

No owner or occupant of any real property, occupied or unoccupied, within the City shall permit or allow any stagnant or unwholesome water, filth, carrion, rubbish, refuse, yard waste, junk or garbage, litter or impure or unwholesome matter of any kind, or objectionable, unsightly matter of whatever nature to accumulate or remain on such real property or within any easement area on such real property or upon any adjacent right-of-way for streets and alleys between the property line of such real property and where the paved surface of the street or alley begins. Such conditions are hereby defined as nuisances.

**SECTION 4.  
ACCUMULATION OF WASTE AND REFUSE**

The accumulation upon the property of refuse, rubbish, or garbage that creates an unsanitary condition likely to attract or harbor mosquitos, rodents, vermin or disease-carrying pests constitutes a nuisance.

**SECTION 5.  
UNCLEAN POND OR POOL--MOSQUITO NUISANCE**

Any lot or piece of ground within the corporate limits of the City on which there is a pond, pool or container of unwholesome, impure or offensive water, or is conducive to the breeding of mosquitoes constitutes a nuisance.

**SECTION 6.  
OVERGRON VEGETATION AND WEEDS PROHIBITED**

(A) Except as provided in subsection (D) 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 uncultivated grass, weeds, or brush, to grow to a height greater than 10 inches on average upon such premises, including 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.

(B) 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, as often as necessary to comply with the requirements of this ordinance.

(C) Except as provided in subsection (D), all grass, weeds, vegetation, or brush not regularly cultivated and which exceed 10 inches in height shall be presumed to be objectionable, unsightly, and unsanitary, and are hereby declared a public nuisance.

(D) For tracts of land in excess of five acres, or that are in active use for production of livestock or cultivation, this section shall not apply, unless the property is deemed to be a fire or health hazard by the Mayor or his designee.

## **SECTION 7. ORDER TO ABATE NUISANCE, AND ENFORCEMENT OPTIONS**

Every person owning or possessing any place in or on which there exists a nuisance as described in this Ordinance shall, as soon as its existence comes to his knowledge, proceed at once to abate the nuisance. In the event that any person fails to comply with the provisions of this Ordinance, the Code Enforcement Officer may at his discretion:

- (A) Issue a warning notice;
- (B) Issue one or more court citations for violation of the Ordinance without prior notice;
- (C) Commence abatement action and proceed with abatement of the nuisance;
- (D) Request the City Attorney to institute suit for civil remedies as provided by this Code and state law.

## **SECTION 8. NOTICE OF VIOLATION AND ORDER TO ABATE PRIOR TO ABATEMENT BY CITY**

(A) ***Notice required for abatement action by the City.*** If the owner of land fails to comply with the requirements of this Ordinance, a city official may cause the property owner to be notified and ordered to cut the grass, weeds, or brush, remove rubbish, garbage, refuse or brush or otherwise clean up the property as required within 7 days of the date of the notice. Prior notice shall not be required to issue a citation for violation of this Ordinance, or in accordance with Section 11 of this Ordinance.

- (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 Appraisal District in which the property is located;
  - (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) 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) **Additional violations.** Although it is not required, the city may:

(1) inform the owner by regular or certified mail and a posting on the property that if the owner commits another violation of the same kind (failure to mow weeds or high grass or remove rubbish, refuse or garbage) 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.

(E) **Contents of Notice:** The notice may contain a statement in accordance with Section 8(D) above and 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.

**SECTION 9.  
NONCOMPLIANCE - WORK TO BE PERFORMED BY THE CITY**

If the owner does not cut the weeds, grass, or plants, or remove rubbish, garbage, refuse or brush or otherwise clean up the property within 7 days of the notice required by Section 8, 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 ordinance or other law.

**SECTION 10.  
HEARING - RIGHT TO EXTENSION**

Whenever an order has been given to abate or remove any nuisance that may exist upon any lot or premises under the provisions of Section 8 of this chapter, the owner thereof shall have the right, within the period of time given in the order for abatement to appear before the Mayor to show cause why such order should not or cannot be complied with. The Mayor, at his discretion, give such reasonable extension of time for the abatement or removal of such nuisance as may be necessary; provided, there is no immediate danger to the public health.

**SECTION 11.  
AUTHORITY IN CASE OF PUBLIC EPIDEMIC OR IMMEDIATE DANGER**

In case of any public epidemic or immediate danger, the Mayor shall have authority and is directed to employ any sanitary measure deemed necessary for the control of such epidemic and to prevent its spread or to take any other action authorized by law to abate the nuisance.

**SECTION 12.  
ASSESSMENT OF EXPENSES; LIEN; APPEAL**

(A) ***Lien Assessed.*** The City does hereby assess the expenses incurred pursuant to Section 9 against the real estate on which the work is done or improvements made, and charge the owner of the property.

(B) ***Notice.*** In assessing the expenses incurred 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) 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 about the abatement of the nuisance 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 mayor or his designee shall place a lien against the property by filing with the county clerk of the county in which the property is located a notice of lien and statement of expenses incurred.

(C) **Method.** The notice shall be sent in the same manner as provided in Section 8.

(D) **Hearing.** The Mayor 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. 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 Ordinance existed, notice was given in substantial compliance with this Ordinance, and expenses were incurred to abate the violation.

(3) At the close of the hearing, the Mayor 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.

(E) **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 the written notification to pay, the mayor or his designated representative shall place a lien against the property by filing with the county clerk of the county in which the property is located a notice of lien and statement of expenses incurred. The lien shall state the name of the property owner if known, and contain the legal description of the property.

(F) **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.

(G) **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.

(H) **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.

**SECTION 13.**  
**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 12 of this ordinance.

(C) **Hearing.** The Mayor 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 Mayor or his designated representative not later than the 20<sup>th</sup> 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 Ordinance existed, notice was given in substantial compliance with this section, and expenses incurred to abate the violation were reasonable.

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

(D) **Placement of Lien.** If no hearing is required, or a hearing is held and the expenses are determined to be valid or otherwise appropriately adjusted and the owner refuses to pay the expenses within 30 days after written notification to pay, the mayor or his designated representative shall place a lien against the property by filing with the county clerk of the county in which the property is located a notice of lien and statement of expenses incurred. The lien shall state the name of the property owner if known, and contain the legal description of the property.

**SECTION 14.  
RIGHT OF ENTRY**

Whenever necessary to make an inspection to enforce any of the provisions of this chapter or whenever the Code Enforcement Officer has reasonable cause to believe that there exists in any building or upon any premises any condition or violation which makes such building or premises unsafe, dangerous or hazardous, the Code Enforcement Officer may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Code Enforcement Officer by this chapter. If such building or premises is occupied, he shall first present proper credentials and request entry, and if such building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the Mayor shall have recourse to every remedy provided by law to secure entry.

**SECTION 15.  
PARKWAY MAINTENANCE**

A person who owns, any lot, tract or parcel of land or portion thereof, within the City shall not permit grass, weeds, brush, or any plant that is not cultivated to grow to a height greater than ten inches on an average, in, along, upon, or across the sidewalk or street adjacent to the same in the area between the property line and the curb line or within the area 10 feet beyond the property line. In areas where the property is separated from the right of way by a screening device, the property owner shall maintain both sides of the right-of-way up to the screening device.

**SECTION 16.**

This ordinance shall be cumulative of all provisions of ordinances of the City of Aurora, 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 17.**

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 18.**

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 19.**

All rights and remedies of the City of Aurora are expressly saved as to any other ordinances affecting nuisances 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.

**SECTION 20.**

The city secretary of the City of Aurora is hereby directed to publish in the official newspaper of the City of Aurora, the caption, penalty clause, publication clause and effective date clause of this ordinance two (2) days as authorized by Section 52.011 of the Local Government Code.

**SECTION 21.**

This ordinance shall be in full force and effect after its passage and publication as provided by law and it is as ordained.

**PASSED AND APPROVED ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2004.**

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY SECRETARY

EFFECTIVE: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
CITY ATTORNEY