

ORDINANCE NO. 2024-06-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, BY AMENDING CHAPTER 70, "OFFENSES AND MISCELLANEOUS PROVISIONS," THROUGH THE AMENDMENT OF ARTICLE III, "CLEANLINESS OF PREMISES," BY AMENDING SECTION 70-54, "DEFINITIONS," TO ADD A DEFINITION FOR "AGRICULTURAL OPERATIONS," BY DELETING SECTION 70-56, "WEEDS, BRUSH, AND OTHER OBJECTIONABLE OR UNSIGHTLY MATTER, ETC.," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 70-56 ALSO ENTITLED "WEEDS, BRUSH, AND OTHER OBJECTIONABLE OR UNSIGHTLY MATTER, ETC." TO READ AS SET FORTH HEREINBELOW, and BY DELETING SECTION 70-60, "ADDITIONAL AUTHORITY TO ABATE NUISANCE," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 70-60 ALSO ENTITLED "ADDITIONAL AUTHORITY TO ABATE NUISANCE" TO READ AS SET FORTH HEREINBELOW; PROVIDING FOR ENFORCEMENT; PROVIDING A PENALTY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR PUBLICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of McKinney, Texas (the "City") is a Home-Rule City possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

WHEREAS, the City adopted the Code of Ordinances, City of McKinney, Texas ("McKinney Code"), for the protection of the public health and general welfare of the people of the City; and

WHEREAS, the Texas Legislature adopted Texas Agriculture Code Section 251.0055 during the 2023 Legislative Session restricting a city's authority to regulate land situated within a city's corporate limits that is used for "agricultural operations" including among other things the abatement of high weeds and grass except as particularly allowed by such legislation absent the performance of a qualifying report identifying health hazards related to "agricultural operations"; and

WHEREAS, the City Council finds and determines that it is in the best interest of the public health, safety, and general welfare of the citizens of McKinney, Texas, to amend certain provisions of Chapter 70, entitled "Offenses and Miscellaneous Provisions," and particularly Sections 70-54 and 70-56 of the McKinney Code as provided herein below.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT;

Section 1. FINDINGS

All of the above premises are hereby found to be true and correct and are hereby approved and incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. AMENDING CHAPTER 70, "OFFENSES AND MISCELLANEOUS PROVISIONS," THROUGH THE AMENDMENT OF ARTICLE III, "CLEANLINESS OF PREMISES," BY AMENDING SECTION 70-54, "DEFINITIONS," TO ADD A DEFINITION FOR "AGRICULTURAL OPERATIONS," TO READ AS SET FORTH HEREINBELOW

From and after the effective date of this Ordinance, Chapter 70, "Offenses and Miscellaneous Provisions," of the McKinney Code, as amended, is hereby amended through the amendment of Article III, "Cleanliness of Premises," by amending section 70-54, "Definitions," to add a definition for "Agricultural Operation" into the list of definitions in alphabetical order, to read as follows:

"Agricultural operation includes the following activities:

- (a) cultivating the soil;
- (b) producing crops or growing vegetation for human food, animal feed, livestock forage, forage for wildlife management, planting seed, or fiber;
- (c) aquaculture;
- (d) floriculture;
- (e) horticulture;
- (f) silviculture;
- (g) viticulture;
- (h) wildlife management;
- (i) raising or keeping livestock or poultry, including veterinary services;
- (j) planting cover crops or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; and
- (k) the commercial sale of animals, as defined by Section 252.001 of the Texas Agriculture Code

Section 3. **AMENDING CHAPTER 70, "OFFENSES AND MISCELLANEOUS PROVISIONS," THROUGH THE AMENDMENT OF ARTICLE III, "CLEANLINESS OF PREMISES," BY DELETING SECTION 70-56, "WEEDS, BRUSH, AND OTHER OBJECTIONABLE OR UNSIGHTLY MATTER, ETC.," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 70-56 ALSO ENTITLED "WEEDS, BRUSH, AND OTHER OBJECTIONABLE OR UNSIGHTLY MATTER, ETC." TO READ AS SET FORTH HEREINBELOW**

From and after the effective date of this Ordinance, Chapter 70, "Offenses and Miscellaneous Provisions," of the McKinney Code, as amended, is hereby amended through the amendment of Article III, "Cleanliness of Premises," by deleting Section 70-56, "Weeds, Brush, and Other Objectionable or Unsightly Matter, etc.," in its entirety and replacing said section with a new Section 70-56 also entitled "Weeds, Brush, and Other Objectionable or Unsightly Matter, etc." to read as follows:

"Sec. 70-56. - Weeds, brush, and other objectionable or unsightly matter, etc.

- (a) In General.
 - (1) Except as outlined in subsection (b) below, it shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city to permit

weeds, brush, or any objectionable or unsightly matter to grow to a greater height than 12 inches upon such real property within 150 feet of any property line which abuts street rights-of-way, alleys, utility easements, subdivided additions, developed property or any buildings or other structures. It shall be the duty of such person to keep the area from the line of his property to the curblin e next adjacent to it, if there is a curblin e, and, if not, then to the centerline of the adjacent unpaved street, or to the edge of the pavement, cleared of the matter referred to above. All vegetation (including hay unless the hay is cultivated on property which has been granted an agricultural property tax exemption on the most recent tax roll as certified by the county appraisal district), except regularly cultivated row crops, and which exceed 12 inches in height, shall be presumed to be objectionable and unsightly matter; provided further that regularly cultivated row crops shall not be allowed to grow within the right-of-way of any public street or easement nor shall they be allowed to obstruct the necessary view to and from adjacent rights-of-way, but shall be kept mowed as provided herein.

- (2) All trees or vegetation on or over a public right-of-way shall be maintained by the adjacent property owner and limbed to meet the following clear heights:
 - i. Sidewalks and intersection visibility: minimum seven feet;
 - ii. Signs: minimum one foot above and around the sign; and
 - iii. Roadway, driveways, and drive aisles: minimum 14 feet.
- (3) With respect to lots, tracts or parcels of land of five or more acres, the provisions of this section shall not apply to any area greater than 150 feet from any open public street or thoroughfare, as measured from the right-of-way line of said street or thoroughfare, and greater than 150 feet from any adjacent property under different ownership and on which any building is located or on which any improvement exists, as measured from the property line.

(b) Agricultural Operations; Alternative for Vegetation More Than 12” in Height.

- (1) It shall be unlawful for any person owning, claiming, occupying or having supervision or control of any real property, occupied or unoccupied, within the corporate limits of the city to permit vegetation to grow to a greater height than 12 inches upon those portions of real property used for agricultural operations situated within 10 feet of any property boundary or property line thereof that is adjacent to:
 - i. a public sidewalk, street, or highway; or
 - ii. a property that:
 1. is owned by a person other than the owner of the agricultural operation; and
 2. has a structure that is inhabited located upon said adjacent property.

- (2) In addition to the enforcement of Section 70-56(b)(1), above, the City may in its sole discretion also enforce each of the requirements of Section 70-56(a), above, against agricultural operations after satisfying the requirements established in Texas Agriculture Code 251.0055.

Section 4. **AMENDING CHAPTER 70, “OFFENSES AND MISCELLANEOUS PROVISIONS,” THROUGH THE AMENDMENT OF ARTICLE III, “CLEANLINESS OF PREMISES,” BY DELETING SECTION 70-60, “ADDITIONAL AUTHORITY TO ABATE NUISANCE,” IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 70-60 ALSO ENTITLED “ADDITIONAL AUTHORITY TO ABATE NUISANCE” TO READ AS SET FORTH HEREINBELOW**

From and after the effective date of this Ordinance, Chapter 70, “Offenses and Miscellaneous Provisions,” of the McKinney Code, as amended, is hereby amended through the amendment of Article III, “Cleanliness of Premises,” by deleting Section 70-60, “Additional Authority to Abate Nuisance,” in its entirety and replacing said section with a new Section 70-60 also entitled “Additional Authority to Abate Nuisance” to read as follows:

Sec. 70-60. - Additional authority to abate nuisance.

- (a) In General.
 - (1) Except as outlined in subsection (b) below, the City may abate, without notice, weeds that:
 - i. Have grown higher than 48 inches; and
 - ii. 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 abates weeds under this Section, the City shall give notice to the property owner in the manner required by Section 70-58. The notice shall contain:
 - i. An identification, which is not required to be a legal description, of the property;
 - ii. A description of the violations of the ordinance that occurred on the property;
 - iii. A statement that the City abated the weeds; and
 - iv. An explanation of the property owner's right to request an administrative hearing about the City's abatement of the weeds.
 - (3) The City shall conduct an administrative hearing before the Building and Standards Commission on the abatement of weeds 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. An administrative hearing conducted under this Section shall be conducted not later than the 20th 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.
 - (4) The City may assess expenses and create liens under this Section as it assesses expenses and creates liens

under Section 70-61. A lien created under this Section is subject to the same conditions as a lien created under Section 70-61. The authority granted the City by this Section is in addition to the authority granted by Section 70-61.

- (b) *Agricultural Operations.* The City may in its sole discretion also enforce each of the requirements of Section 70-60(a), above, against agricultural operations after satisfying the requirements established in Texas Agriculture Code 251.0055.

Section 5. PROVIDING A PENALTY

Any person, firm or corporation violating or failing to comply with any of the provisions of this Ordinance shall be subject to the penalty provisions set forth in Section 1-18 of the City's Code of Ordinances; and each and every day such violation or failure to comply shall continue shall be deemed to constitute a separate offense.

Section 6. REPEALER CLAUSE

All ordinances, orders, or resolutions heretofore passed and adopted by the City Council of the City of McKinney, Texas, are hereby repealed to the extent that said ordinances, orders, or resolutions, or parts thereof, conflict with this Ordinance.

Section 7. SAVINGS CLAUSE

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any ordinances 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 8. PUBLICATION OF CAPTION

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.

Section 9. SEVERABILITY CLAUSE

If any section, subsection, clause, phrase or provision of this Ordinance is for any reason held unconstitutional or void by a court of competent jurisdiction, such holding shall not affect any valid portion of this or any other ordinance of the City of McKinney, Texas.

Section 10. EFFECTIVE DATE

This Ordinance shall take effect and be in full force from and after its passage and publication, in accordance with law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE ___ DAY OF JUNE 2024.

CITY OF MCKINNEY, TEXAS

GEORGE C. FULLER

Mayor

CORRECTLY ENROLLED:

EMPRESS DRANE
City Secretary
TENITRUS BETHEL
Deputy City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney