

ORDINANCE NO. 2017-03-02

AN ORDINANCE OF THE CITY OF ALVORD, WISE COUNTY, TEXAS, REGULATING THE PLANTING, PRESERVING, REMOVAL OR OTHER ACTIONS REGARDING PLANTS ON OR OVERHANGING PUBLIC PROPERTY PROVIDING FOR A PENALTY CLAUSE (\$500.00); PROVIDING A REPEALER CLAUSE FOR CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS this Ordinance is adopted to promote the health, safety and welfare of the residents of Alvord by providing regulations on plants within or overhanging public property, such as streets, alleys, sidewalks and any other public property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALVORD, WISE COUNTY, TEXAS:

Sec. 1. - Planting, preserving, removing, etc.—On public property.

(a)

The code inspector shall have the authority to plant, preserve, spray, trim, cable or remove any tree, shrub or plant on any street, alley, public ground or easement belonging to or being under the jurisdiction of the city. If any tree, shrub or plant or any part thereof is in an unsafe condition, is injurious to the common good or to sewer pipes, public utility lines, drainage facilities, pavements, improvements, or is infested and dangerous to other trees, shrubs or plant, authority is hereby given to the code inspector to remove or order removed said tree, shrub or plant or parts thereof or order to be sprayed said tree, shrub or plant.

(b)

It is unlawful to plant or remove, or permit or cause to be planted or removed any tree, shrub or plant on any public street, area, park or other municipal property without the written approval of the code inspector. This prohibition shall not apply to trees, shrubs or other landscaping planted in the parkway area adjacent to residential streets. In any event, no tree, shrub or other landscaping shall interfere with the free passage of vehicles on the street or of pedestrians on the sidewalk or obscure the view of motor vehicle operators of any traffic-control device or street sign, visibility triangle, or otherwise create a traffic hazard and shall at all times comply with city rules, regulations and ordinances. The parkway area is that area lying between the street right-of-way line of any public street and/or alley, and the curb line of the street and/or alley; or if there is no curb line, the paved portion of the street and/or alley. Generally, the parkway area is the area between the edge of the road/curb and the farthest edge of the sidewalk.

(c)

It is unlawful for each person owning property adjacent to the parkway area to fail to prune, trim and maintain the trees, shrubs and landscaping in the parkway area adjacent to their property. The city, without incurring liability, reserves the right to prune, trim or

remove any tree, shrub or landscaping located in the parkway area. City costs incurred for pruning, trimming, or removing trees, shrubs and landscaping in the parkway area shall remain the responsibility of the adjacent property owner.

(d)

Firms contracted with any city department to construct new or additional roadways, utilities or facilities may be exempt from these regulations as may be allowed by said department's approval of construction plans and specifications identifying such construction.

Sec. 2. - Obstruction of streets, alleys, sidewalks, areas, or public grounds.

(a)

It shall be unlawful for any person to obstruct or encumber, entirely or in part, any portion of any public street, alley, sidewalk, parkway area, or public property in the city with any item, whether temporary or permanent, including, but not limited to, lumber, boxes, firewood, posts, fences, and vehicles, unless expressly authorized by city ordinance. Exempt from this prohibition are trees, shrubs, landscaping and mailboxes located in the parkway area that are maintained in compliance with other city ordinances, rules and regulations. The parkway area is that area lying between the street right-of-way line of any public street and/or alley, and the curb line of the street and/or alley; or if there is no curb line, the paved portion of the street and/or alley.

Sec. 3 - Obstructing ditches and drains.

It shall be unlawful for any person to obstruct or to assist in obstructing any ditch or drain within the limits of the city with boxes, barrels, wood, rocks or anything whatever.

Sec. 4. Nuisance and notice

(a)

A person owning, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, within the city limits, and outside the city limits for a distance of one half mile, commits an offense if said person permits or allows any stagnant or unwholesome water, sinks, filth, carrion, weeds, rubbish, brush, refuse, junk or garbage, 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 condition or conditions are hereby defined as public nuisances.

(b)

A person, owner, tenant, agent or person responsible for any premises within the city, occupied or unoccupied, commits an offense if said person permits or allows weeds to grow on the premises to a greater height than twelve (12) inches. Said premises shall

include, but not be limited to, the parkway between sidewalk and the curb; the right-of-way between any fence, wall or barrier and the curb or pavement if such exists or the center line of said right-of-way; or 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.

(c)

With respect to uncultivated agricultural properties, a person, owner, tenant, agent or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than twelve (12) inches within one hundred fifty (150) feet from any adjacent property under different ownership or any street right-of-way. However, on cultivated agricultural properties where the distance between the growing crop and abutting property under different ownership or street right-of-way is less than one hundred fifty (150) feet, the person, owner, tenant, agent or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than twelve (12) inches between such growing crop and such property or street right-of-way, so long as no traffic visibility obstruction will exist.

(d)

In the event that any person violates the provisions of this section, the code official, shall give notice to such person setting forth the noncompliance with this section. Such notice shall be given in any one (1) of the following ways:

(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; or

(3)

If personal service cannot be obtained:

a.

By publication at least 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, if the property contains no buildings.

If the notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered delivered.

If such person fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication, the city may do such work or cause such work to be done to bring the real property into compliance with this section. The costs,

charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be a charge to and personally liability of such person (called "charges").

The charges 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 per 10,000 square feet of a tract of land, which sum is hereby found to be the cost to the city of administering the terms of this section.

Sec. 14-3. - Weeds, rubbish or unsanitary matter.

(a)

Definitions: For purposes of this section, the terms used herein shall have the following meanings:

Brush shall mean scrub vegetation or dense undergrowth.

Carrion shall mean the dead and putrefying flesh of any animal, fowl or fish.

Code official shall mean the official who is charged with the administration and enforcement of this code, their designee or any city employee or employees designated by the mayor to perform activities related this section.

Filth shall mean any matter in a putrescent state.

Garbage shall mean all decayable wastes.

Junk shall mean all worn out, worthless, or discarded material, including, but not limited to, odds and ends, old iron or other metal, glass, and cordage.

Impure or unwholesome matter shall mean an putrescible or nonputrescible condition, object or matter which tends, may, or could produce injury, death, or disease to human beings.

Objectionable, unsightly or unsanitary matter shall mean any matter, condition, or object which is or should be objectionable, unsightly, or unsanitary to a person of ordinary sensitivities.

Owner shall mean a person having title to real property.

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

Refuse shall mean a heterogeneous accumulation of worn out, used up, broken, rejected or worthless materials and includes garbage, rubbish, paper or litter and other decayable or nondecayable waste.

Rubbish shall mean trash, debris, rubble, stone, useless fragments of building materials, or other miscellaneous useless waste or rejected matter.

Weeds shall mean vegetation, including grass, that because of its height is objectionable, unsightly or unsanitary, but excluding:

- (1) Shrubs, bushes, and trees;
- (2) Cultivated flowers; and
- (3) Cultivated crops.

Any word not defined herein shall be construed in the context used and by ordinary interpretation; not as a word of art.

- (b) A person owning, claiming, occupying, or having supervision or control of any real property, occupied or unoccupied, within the city limits, and outside the city limits for a distance of five thousand (5,000) feet, commits an offense if said person permits or allows any stagnant or unwholesome water, sinks, filth, carrion, weeds, rubbish, brush, refuse, junk or garbage, 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 condition or conditions are hereby defined as public nuisances.
- (c) A person, owner, tenant, agent or person responsible for any premises within the city, occupied or unoccupied, commits an offense if said person permits or allows weeds to grow on the premises to a greater height than twelve (12) inches. Said premises shall include, but not be limited to, the parkway between sidewalk and the curb; the right-of-way between any fence, wall or barrier and the curb or pavement if such exists or the center line of said right-of-way; or 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.
- (d) With respect to uncultivated agricultural properties, a person, owner, tenant, agent or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than twelve (12) inches within one hundred fifty (150) feet from any adjacent property under different ownership or any street right-of-way. However, on cultivated agricultural properties where the distance between the growing crop and abutting property under different ownership or street right-of-way is less than one hundred fifty (150) feet, the person, owner, tenant, agent or person responsible for such property commits an offense if said person permits or allows weeds to grow to a greater height than twelve (12) inches between such growing crop and such property or street right-of-way, so long as no traffic visibility obstruction will exist.

(e)

In the event that any person violates the provisions of this section, the code official, shall give notice to such person setting forth the noncompliance with this section. Such notice shall be given in any one (1) of the following ways:

(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; or

(3)

If personal service cannot be obtained:

a.

By publication at least 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, if the property contains no buildings.

If the notice to a property owner is returned by the United States Postal Service as "refused" or "unclaimed", the validity of the notice is not affected, and the notice is considered delivered.

If such person fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication, the city may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be a charge to and personal liability of such person (called "charges").

The charges 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.

If a notice as provided herein is delivered to the owner of such real property, and he fails or refuses to comply with the demand for compliance within the applicable time period as herein provided, the aforementioned costs, charges, and expenses shall be, in addition to a charge to and personal liability of the owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the code official shall first give such owner written notice of demand for payment of such charges. Such written notice may be given by any one (1) of the methods provided for the initial notice requiring compliance. If the owner fails or refuses to make complete payment of the charges within twenty (20) days of such notice, the code official shall file a written statement of such

charges with the county clerk of the county in which the real property is located, for filing in the county land records. The statement shall be sufficient if it contains the following:

- (1) The name of the owner;
- (2) A description of the real property;
- (3) The amount of the charges, including interest thereon;
- (4) A statement that all prerequisites required by this section for the imposition of the charges and the affixing of the lien have been met;
- (5) A statement signed by the code official under oath, that the statements made therein are true and correct.

The statement may also contain such other information deemed appropriate by the code official.

All charges 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 the event that a property owner permits or allows weeds to grow on the premises to a height greater than forty-eight (48) inches and such weeds are deemed by the code official to be an immediate danger to the health, life, or safety of any person, the code official, or their designee, without notice to the property owner, may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be assessed to the property owner. Not later than the tenth day after the date upon which the weeds were abated under this section, notice shall be given to the property owner of the abatement. Such notice shall be sufficient if it contains the following:

- (1) An identification of the property, which is not required to be a legal description;
- (2) A description of the violations that occurred on the property;
- (3) A statement that the city abated the weeds;
- (4) The amount of the charges, including interest thereon; and

(5)

An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.

(g)

If, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files a written request for a hearing with the code official, the official shall conduct an administrative hearing on the abatement of weeds under this section. The administrative hearing shall be conducted not later than the twentieth day after the date the request for a hearing is filed. The property owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.

(h)

The city may inform the property owner by regular mail and a posting on the property 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. If a violation covered by a notice under this subsection 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 any action permitted to bring the real property into compliance with this section and assess the costs, charges, and expenses incurred in such action to the owner.

(i)

The provisions of this section shall be enforced by representatives of the city's neighborhood services department. Notwithstanding any provisions of this section to the contrary, the code official has authority to issue immediate citations to persons violating any provision of this section in the presence of said official. It shall be unlawful for any person to interfere with the official in the exercise of their duties under this section.

(b)

Any person, firm, or corporation violating any of the provisions or terms of this section shall, upon conviction thereof, be fined a sum not exceeding five hundred dollars (\$500.00) for each offense, and each and every day such violation shall be deemed to constitute a separate offense.

(c)

In addition to the penalty provided above, in the event that any person violates the provisions of this section, the city has the right to remove any such obstruction or encumbrance. The costs, charges, and expenses incurred by the city in the removal, storage, or disposal of the obstruction or encumbrance ("the charges") shall be a charge to and personal liability of the violator.

SECTION 4. Penalty. Any person who shall violate any provision of this Ordinance shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not

to exceed five hundred dollars (\$500.00) for each offense, or the maximum amount permissible under state law. Each day of violation shall constitute a separate offense.

SECTION 5. Repealer Clause. All provisions of the ordinances of the City of Alvord in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of Alvord not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 6. Severability Clause. Should any sentence, paragraph, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION 7. Effective Date. This Ordinance shall take effect immediately from and after its passage and the publication of caption, as the law provides.

DULY PASSED AND APPROVED by the City Council of the City of Alvord, Wise County, Texas, on this the 16th day of March, 2017.

APPROVED:

Roy E. King

Roy King, Mayor

ATTEST:

Pamela Gregg

Pamela Gregg, City Secretary



APPROVED AS TO FORM:

James E. Shepherd

James E. Shepherd, City Attorney