

**CITY OF LAVON, TEXAS**

**ORDINANCE NO. 2008-07-02**

**AN ORDINANCE OF THE CITY OF LAVON, TEXAS, PROVIDING FOR PUBLIC NUISANCES, COMMUNITY APPEARANCE TO PROTECT PROPERTY VALUES, QUALITY OF LIFE AND PUBLIC HEALTH AND SAFETY, AND TO PROVIDE FOR THE CONTROL OF OPEN BURNING; PROVIDING FOR DEFINITIONS; PROVIDING FOR PROPERTY OWNER'S DUTY TO MAINTAIN PROPERTY BY KEEPING PROPERTY FREE AND CLEAR OF NUISANCES INCLUDING WEEDS, BRUSH AND UNSIGHTLY MATTER; DUTY TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE; PROVIDING FOR ENFORCEMENT; PROVIDING FOR NOTICE OF VIOLATION; PROVIDING FOR CITY ABATEMENT; PROVIDING FOR ADMINISTRATIVE FEES; PROVIDING FOR OFFENSES, PENALTIES AND LIENS; PROVIDING A CUMULATIVE REPEALER; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Lavon, Texas ("City"), is a Type A General-law Municipality located in Collin County, Texas, created in accordance with provisions of the Texas Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

**WHEREAS**, the City Council of the City of Lavon, Texas, in order to provide for the general health, safety and welfare of the citizens of this City is permitted to enact certain rules and regulations; and

**WHEREAS**, the City Council of the City of Lavon, Texas, hereby desires to repeal Ordinance No. 99-11-02 and Ordinance 98-06-02; and

**WHEREAS**, the City Council of the City of Lavon, Texas, adopts the Texas Health and Safety Code, Chapter 342, Subchapter A, as amended and supplemented by the terms of this ordinance.

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

**SECTION 1**

**DEFINITIONS**

1. "Brush" shall mean lawn trimmings, tree trimmings or other miscellaneous harvested vegetation.

2. "Contractor" shall mean any person(s), firm, corporation or other entity that has been hired by an owner, as defined herein, to perform any new construction, remodel or repair of said property within the corporate limits of the City of Lavon. If the owner is also the builder/developer/contractor, as defined herein, then the owner is held to the limitations of a Contractor as specified in this ordinance.
3. "Nuisance" The following items are hereby declared a nuisance:
  - a) Anything that is dangerous to human life or health; or
  - b) Anything that renders the ground, the water, the air or the food a hazard or injurious to human life or health; or
  - c) Anything that gives off an offensive odor; or
  - d) Anything that is detrimental to the public health.
4. "Owner" shall mean any person(s) or entities owning, claiming, occupying or having supervision or control of any lot, tract, parcel of land, occupied or unoccupied, improved or unimproved, within the corporate limits of the City of Lavon.
5. "Rubbish" shall mean trash, debris, rubble, concrete, cement, stone, excess or useless fragments of construction materials, or other miscellaneous useless waste or rejected matter.
6. "Vehicle Owner" shall mean any person(s) or entities owning, claiming, occupying or having supervision or control of any vehicle within the corporate limits of the City of Lavon.
7. "Weeds and Vegetation" shall mean vegetation, including grass, that because of its height is objectionable, unsightly or unsanitary, but excluding shrubs, bushes, trees, cultivated flowers, and cultivated crops.

## SECTION 2

### **DUTY TO MAINTAIN PROPERTY**

1. It shall be unlawful for any Owner to allow any weeds and vegetation, as defined in Section 1 herein, to grow to a height greater than twelve (12) inches upon any real property within the City.
2. Paragraph 1 of this section shall not apply to real property which is legally zoned for agricultural by the City and where crops are planted and or present.
3. It is the responsibility of the property owner to maintain the property to include the area up to any City street bounding the property in accordance with this ordinance.

4. It shall also be unlawful for any Contractor to allow any rubbish or brush to accumulate or be present in public view upon any real property within the City for more than ten (10) days, unless such nuisance is in a container designed for such purposes.
5. It shall be unlawful for any Owner to allow a pile of rubbish or brush in excess of six (6) feet wide by six (6) feet tall by six (6) feet deep, as defined in Section 1 herein, to accumulate or be present in public view upon any real property within the City in excess of ten (10) days.
  - a) It shall be an exception to paragraph 5 of this section to store logs during a burn ban or for the purpose of use in a fireplace or similar device.
6. It shall be unlawful for any Owner to allow a Nuisance, as defined in Section 1 herein, to exist upon any real property with in the City.
7. It shall be the duty of any Owner to maintain his or her property in a reasonable, neat and orderly fashion. Therefore,
  - a) Storage, within public view, of auto parts, appliances and building materials or any items that fall within the definition of "nuisance" as defined in Section 1 herein, is strictly prohibited; and
  - b) If a building permit is current, it shall be reasonable to temporarily store, within public view, such building materials as needed to complete the permitted construction.
8. A violation of this section is subject to notice and penalties as described herein.

### **SECTION 3**

#### **DUTY TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE**

1. The parking of large vehicles on residential streets presents a hazard to drivers and can limit emergency access. In order to provide for public safety, all boats, campers, trailers, recreational vehicles and vehicles with three (3) or more axles must be parked:
  - a) On an improved surface contiguous with the driveway within the boundaries of the owner's property and in front of the front building line; or
  - b) On an improved or unimproved surface within the boundaries of the owner's property and behind the front building line; and
  - c) Must comply with all applicable City ordinances.
2. It shall be unlawful to park boats, campers, trailers, recreational vehicles or vehicles with three (3) or more axles on City streets for a period of three (3) or more hours.
3. It shall be unlawful to park any vehicles upon any street, roadway, right of way or other public property, in a manner that impedes or could impede traffic or emergency access.

4. It shall be unlawful to place any item, including equipment, dirt, rubbish or brush upon any street, roadway, right of way or other public property, in a manner that impedes or could impede traffic or emergency access.

5. It shall be a direct violation of this ordinance for any vehicle to be parked on a City easement.

a) It shall be the responsibility of the Owner to have knowledge of the City's easements as it relates to the owner's property.

b) Any violation of this section may be enforced without notice and at the expense of the owner.

6. The City shall not be required to give notice to an Owner for failure to comply with the provisions of this Section.

7. Any law enforcement officer of the City, at their discretion, shall have the authority to immediately tow, remove, and/or store any vehicle or item found to in violation of this section, at the Owner's expense, in the interest of public health, safety and welfare.

8. Any law enforcement officer of the City, at their discretion, may issue a citation or summons to appear in municipal court to the property owner or vehicle owner for any violation of this section.

#### **SECTION 4**

#### **RESPONSIBILITY FOR ENFORCEMENT**

1. Enforcement of this ordinance shall be the responsibility of the proper State, County and City authorities, the Lavon Marshal's Office, the Lavon Police Department and/or the duly appointed code enforcement official of the City.

#### **SECTION 5**

#### **NOTICE OF VIOLATION**

1. In the event that any Owner fails to comply with the provisions of Section 2 of this ordinance, upon receiving a written complaint, or based on a complaint by an authorized person or entity pursuant to Section 4, the City shall give ten (10)-days written notice to such Owner by personal delivery, or by certified mail, return receipt requested, addressed to such Owner at Owner's last known mailing address, demanding compliance with this ordinance. If such registered card or letter is returned unclaimed, or if personal service has not been had or if the Owner's address is not known, the notice shall be published two (2) times within ten (10) consecutive days in any newspaper in general circulation in the area or by posting the notice on

or near the front door of each building on the property to which the violation relates; or 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 building. Failure of the Owner to abate the nuisance within the ten (10) day time period after any such notice will constitute prima facie evidence of a violation of this ordinance.

2 Pursuant to the Texas Health and Safety Code, Section 342.006, such notice shall be the only notice that will be given for the subsequent twelve (12) month period. If, within the subsequent twelve (12) month period, the same violation(s) occurs again, the City, without notice, may take the appropriate actions to bring the property into compliance and assess its expenses as provided by Section 6 herein.

## **SECTION 6**

### **ABATEMENT BY CITY**

1. If an Owner fails or refuses to comply with the City's demand for compliance in accordance with Section 2 of this ordinance within ten (10) days of the notice provided pursuant to Section 5 herein, the City may go upon the property, and do such work or cause the work to be done to bring the property into compliance with this ordinance.

2. The expense incurred in correcting any condition of a property in violation of Section 2 or Section 3, including the cost for publishing the notice in the newspaper, shall be paid by the City and charged to the Owner of such property. A statement of expenses incurred by the City shall be mailed to the Owner. Such statement shall be paid by the Owner within thirty (30) days of the date of the mailing thereof. In the event that the statement of expenses has not been paid within the thirty (30)-day period, the City may pursue and exhaust any and all remedies available under this ordinance and state law.

## **SECTION 7**

### **ADMINISTRATIVE FEE**

1. In addition to collecting the costs and expenses incurred for correcting any violation(s) involving abatement by the City, the City shall charge the minimum of \$100.00 not to exceed a maximum of \$500.00 per occurrence, which sum is hereby found to be the administrative cost to the City for administering the terms of this ordinance.

2. The administrative fee for the first occurrence within a twelve (12) month period shall be \$100.00.

3. The administrative fee for the second and subsequent occurrence within a twelve (12) month period shall be \$500.00.

## SECTION 8

### OFFENSES, PENALTIES, AND LIENS

1. Any Owner, as defined herein, violating any of the provisions of this ordinance, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$2,000.00 for each offense. Each day a violation of any provision of this ordinance shall continue shall constitute a separate offense.

2. Any Vehicle Owner, as defined herein, violating any of the provisions of section 3 of this ordinance, shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$2,000.00 for each offense. Each day a violation shall continue shall constitute a separate offense.

3. After any required notice has been sent to the Owner, the Owner's failure or refusal to comply with any demand for compliance within the applicable time period shall be deemed as maintaining a public nuisance, and the Mayor, Mayor Pro-Tem, City Council or City Secretary may file a lien upon and against such real property to include all costs, City administrative fees, filing fees, charges and expenses.

4. The Owner's failure to comply with this ordinance may result in the City securing a lien against the property. In such event, the City will file with the County Clerk a statement of expenses incurred in correcting the condition of the property. The City shall have a privileged lien on the property second only to tax liens and liens for street improvements, together with ten percent (10%) interest on the delinquent amount from the date such payment was due. The City may bring suit for foreclosure of the lien in the name of the City to recover the expenditure and interest due, and in said suit, the statement of costs and expenses, or a certified copy of the statement, shall be prima facie proof of the expenses incurred by the City in doing the work or making the improvements.

## SECTION 9

### AUTHORITY TO EXECUTE AND RELEASE LIENS

1. The Mayor or his designee is hereby authorized to execute release of liens on behalf of the City of all liens created under the provisions of this article.

2. The Mayor or his designee shall have no right to execute such releases until he has satisfied himself that the debt or portion thereof secured by the lien and for which a release is

requested has been paid in full to the City, and such lien shall be released only insofar as it affects the property for which the debt secured thereby has been paid in full.

## **SECTION 10**

### **CUMULATIVE REPEALER**

1. This ordinance shall repeal Ordinance No. 99-11-02 and Ordinance 98-06-02
2. Except as stated above, this ordinance shall be cumulative of all other ordinances and shall not repeal any of the provisions of said ordinances except those instances where there are direct conflicts with the provisions of this ordinance.
3. Ordinances or parts thereof in force at the time this ordinance shall take effect and those that are inconsistent with this ordinance are hereby repealed to the extent that they are inconsistent with this ordinance. Provided, however, that any complaint, action, claim or lawsuit that has been initiated or has arisen under or pursuant to any of the ordinances or sections thereof that have been specifically repealed on the date of the adoption of this ordinance shall continue to be governed by the provisions of such ordinance or section thereof and for that purpose the ordinance or section thereof shall remain in full force and effect.

## **SECTION 11**

### **SEVERABILITY**

1. The sections, paragraphs, sentences, phrases, clauses and words of this ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this ordinance or application thereof to any person or circumstances is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council hereby declares that it would have passed such remaining portions of this ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

## **SECTION 12**

### **SAVINGS CLAUSE**

1. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting and 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 13**

**PUBLICATION**

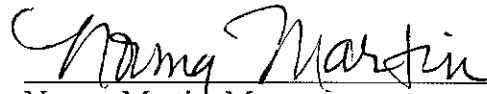
1. The City Secretary is hereby directed to publish a notice of this ordinance in the official newspaper in and for the City according to law.

**SECTION 14**

**EFFECTIVE DATE**

1. This Ordinance shall be in full force and effect from and after its date of passage and publication as provided by law.

**PASSED AND APPROVED** by the City Council of the City of Lavon, Texas, this 15<sup>th</sup> day of July, 2008.

  
Norma Martin, Mayor

**ATTEST:**



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Linda Ardis, City Secretary