

**ORDINANCE NO. O-2017-30**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, AMENDING TYLER CITY CODE CHAPTER 18, "CODE ENFORCEMENT", ARTICLE II., "WEEDS AND DEBRIS", BY AMENDING THE ACCUMULATION PROHIBITIONS RELATED TO WEEDS, GRASSES AND OTHER UNCULTIVATED VEGETATION BY ADDING A DEFINITION OF, AND AN EXCEPTION FOR, ORNAMENTAL GRASSES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, it is the intent of the City Council to protect the public health, safety and welfare; and

**WHEREAS**, municipalities may, under their police powers, enact reasonable regulations to promote the health, safety and general welfare of citizens; and

**WHEREAS**, the City of Tyler is a home-rule municipality acting under its Charter adopted by the electorate pursuant to Article 11, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

**WHEREAS**, Texas Local Government Code Section 51.072(a) states that a home-rule municipality has full power of self-government; and

**WHEREAS**, Texas Local Government Code Section 51.072(b) provides that the grant of powers to a municipality under the Texas Local Government Code does not prevent by implication or otherwise, the municipality from exercising the authority incident to self-government; and

**WHEREAS**, Texas Local Government Code Section 51.001(1) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is for good government, peace, or order of the municipality; and

**WHEREAS**, Texas Local Government Code Section 51.001(2) provides that the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule or police regulation that is necessary or proper for carrying out a power granted by law to the municipality or to an office or department of the municipality; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make any and all rules and regulations by ordinances and resolutions; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City may license and regulate persons, corporations, and associations engaged in any business, occupation, profession or trade; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City may define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City; and

**WHEREAS**, Section 1 of the Tyler City Charter states that the City of Tyler may make and enforce local police, sanitary, and other regulations, and may pass such ordinances as may be

expedient for maintaining and promoting the peace, good government and welfare of the City, and for the performance of the functions thereof; and

**WHEREAS**, Section 1 of the Tyler City Charter provides that the City shall have all powers that now are, or hereafter may be granted to municipalities by the constitution or laws of Texas, and that all such powers, whether express or implied, shall be exercised and enforced, in the manner prescribed by the Charter, and when not prescribed by the Charter, in such manner as shall be provided by ordinances and resolutions of the City Council; and

**WHEREAS**, Section 2 of the Tyler City Charter states that the enumeration of particular powers by the Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated in the Charter, the City shall have, and may exercise all other powers which, under the constitution and laws of Texas, it would be competent for the Charter specifically to enumerate; and

**WHEREAS**, Section 6 of the Tyler City Charter states that pursuant to the provisions of and subject only to the limitations imposed by State law and the Charter, all powers of the City shall be vested in an elective Council, which shall, among other duties, enact legislation; and

**WHEREAS**, Texas Local Government Code Section 217.042(a) provides that a home rule municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet thereof; and

**WHEREAS**, Texas Local Government Code Section 217.042(b) provides that a home-rule municipality may enforce all ordinances necessary to prevent the summarily abate and remove a nuisance; and

**WHEREAS**, Texas Health and Safety Code Section 342.004 provides that the governing body of a municipality may require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter; and

**WHEREAS**, weed and debris prohibitions have been established in Tyler City Code Chapter 18, Article IV.; and

**WHEREAS**, Tyler City Code Section 18-20.b. currently makes it unlawful to, with criminal negligence, allow uncultivated vegetation to grow to a height of 12 inches or more; and

**WHEREAS**, City Code Section 18-20.b. contains certain exceptions to the accumulation prohibitions; and

**WHEREAS**, the definition of "Weeds or Grasses" in the Unified Development Code, Chapter 10, Article XIII., Division A., means weeds and/or grasses or other uncultivated plants on any premises or right-of-way, which grow in such rank profusion as to harbor reptiles or rodents, or create a fire hazard; and weeds and/or grasses, excluding ornamental grasses, or other uncultivated plants on any premises which are permitted to, or do attain a height greater than 18 inches excludes ornamental grasses; and

**WHEREAS**, there is potential conflict between the weed prohibitions in City Code Section 18-20 and the definition of Weeds or Grasses in the UDC, which excludes ornamental grasses; and

**WHEREAS**, it is important to amend City Code Section 18-20.b. by adding a definition of, and an exception for, ornamental grasses;

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

**PART 1:** That Tyler City Code Chapter 18, "Code Enforcement", Article V., "Weeds and Debris", is hereby amended by amending Section 18-20 to read as follows:

**Sec. 18-20. Prohibited accumulations; public nuisances.**

- a. Definitions. For purposes of this Article, the following definitions are applicable:
  1. Uncultivated vegetation means weeds, grass (excluding ornamental grasses) or other vegetation that are not regularly or systematically cut, mowed, pruned, fertilized, or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth. (Ord. No. 0-2017-30 3/22/17)
  2. Improved lot, tract or parcel of land means a lot, tract or parcel of land that has been cleared of trees and/or brush, or made ready for use, or made more desirable, valuable or profitable, or not left in the wild or natural state.
  3. Vacant lot, tract or parcel of land means a lot, tract, parcel of land without a building, structure, or portion thereof on the premises.
  4. Ornamental grasses means families of grass-like plants that are typically marketed as ornamental plants, including but not limited to pampas, sedges, rushes, restios and cat-tails. (Ord. No. 0-2017-30; 3/22/17)
- b. Weeds, grass, and other accumulations of uncultivated vegetation. It is unlawful for any person, firm, corporation, partnership, association of persons, owner, agent, occupant, or anyone having supervision or control of any improved lot, tract, parcel of land or portion thereof, occupied or unoccupied, within the City limits or within five thousand (5,000) feet thereof, to with criminal negligence allow uncultivated vegetation to grow to a height greater than twelve (12) inches on such tract.

However, these restrictions shall not apply to trees. It is a defense to prosecution under subsection b. if:

1. the lot, tract, or parcel of land is a natural or nature park areas so designated by the City Council, or
2. the accumulation or vegetation on the lot, tract, or parcel of land is flowers and shrubs that are either regularly or systematically pruned or otherwise attended or nurtured so as to induce or maintain a controlled pattern of growth; or
3. the lot, tract, or parcel of land is improved and vacant, and weeds, grass, and other vegetation thereon are continuously maintained at or below a height of twelve (12) inches at all points on the premises within 100 feet


- of its perimeters at all points on the premises, provided such vegetation does not cause, abet or encourage a health or safety hazard; or
4. the accumulation or vegetation consists of ornamental grasses as defined in subsection a. (Ord. No. 0-2017-30; 3/22/17)

c. through i. No changes...

**PART 2:** That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.


**PART 3:** That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-4 of the Tyler Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this ordinance has a penalty for violation, it shall not become effective until after its publication in the newspaper as provided by Section 85 of the Charter of the City of Tyler, Texas, which date is expected to be Friday, March 24, 2017.


**PASSED AND APPROVED** this the 22nd day of March, A.D., 2017.

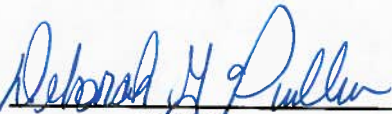
  
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MARTIN HEINES, MAYOR  
OF THE CITY OF TYLER, TEXAS

ATTEST:

APPROVED:

  
\_\_\_\_\_  
CASSANDRA BRAGER, CITY CLERK



  
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DEBORAH G. PULLUM,  
CITY ATTORNEY