

ORDINANCE NO. 3913

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 10 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTIONS 10-127, 10-128 AND SECTIONS 10-130 THROUGH 10-133 IN THEIR ENTIRETY AND ADDING NEW SECTIONS 10-127, 10-128 AND SECTIONS 10-130 THROUGH 10-133 THEREBY AMENDING CERTAIN REGULATIONS AND NOTICE PROVISIONS RELATING TO THE CONDITION OF PREMISES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED TWO THOUSAND (\$2,000.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

SECTION 1. That Chapter 10 of the Code of the City of Mesquite, Texas, is hereby amended by deleting Sections 10-127, 10-128 and Sections 10-130 through 10-133 in their entirety and adding new Sections 10-127, 10-128 and Sections 10-130 through 10-133 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

- (1) *Sections 10-127 and 10-128.* Amend by deleting the sections in their entirety and adding new Sections 10-127 and 10-128 to read as follows:

**Sec. 10-127. Objectionable or unsightly matter growing within 150 feet of property line, between property line and curb line, etc. – Unlawful.**

- (a) It shall be unlawful for any person owning, claiming, occupying and having supervision and control of any real property to intentionally, knowingly, recklessly or with criminal negligence, permit weeds, grass, brush or other unsightly matter to grow to a height of greater than eight (8) inches upon such real property within 150 feet of any property line or between such property and the curb line of a street for a distance of 30 feet; or, if there be no curb line, the obligation to cut and remove weeds, grass and brush and other unsightly matter shall extend to the paved portion of street; and between said real property and the paved portion of an alley and to the centerline of an unpaved alley or utility easement; and further provided, that in instances where an alley abuts public property on the opposite side from the real property and there is no private property owner with an obligation to cut and remove weeds, grass, brush and other unsightly matter, the obligation of the private real property owner on the one side of the alley shall extend to both sides of the alley; provided, however, that the obligation of the private real property owner in no case shall extend to a distance of more than 30 feet from the property line of real property by reason of such ownership, occupancy and control thereof.
- (b) It shall be a defense hereunder if the public property abutting private real property and within 30 feet thereof is of such a nature that mowing thereof is rendered

impossible or unreasonably difficult by reason of rough terrain, steep slopes or being situated across a drainage ditch.

- (c) All vegetation not regularly cultivated and which exceeds eight (8) inches in height shall be presumed to be objectionable and unsightly, except that regularly cultivated crops shall not be allowed to grow within the right-of-way of any public street or easement, but shall be kept mowed the same as provided above. All vegetation not regularly cultivated and which exceeds eight (8) inches in height, excluding trees and shrubs and domesticated flowers, shall be prima facie deemed to be objectionable and unsightly, subject to rebuttal as in other cases.
- (d) Regularly cultivated crops shall not be allowed to grow within the right-of-way of any public street but shall be mowed as provided herein.
- (e) It shall be the obligation of each person having the right of control over any real property within the City to inspect same, together with those adjacent areas set forth herein, for weeds, grass, brush and other unsightly matter at least every 30 days and failure to do so shall be deemed, for the purpose of the required mental state, to constitute criminal negligence absent circumstances of an unusual nature justifying such failure, and which circumstances it shall be the burden of the defendant to demonstrate to the satisfaction of the court.
- (f) "Right of control," for the purposes of this section, means the right to possession or use of the private real property, jointly or singly, and the public property being adjacent to such private real property and designed for enjoyment of the occupant of such private property, whether said private real property is actually occupied or not. Multi-tenant real property shall be presumed to be controlled as follows, absent evidence to the contrary: Area enclosed with the premises actually occupied by a tenant such as a private patio area – by the occupant; common areas subject to use of tenants in separate units and those adjacent public areas – by the owner. Owner shall include the owner of any degree of fee title, whether through heirship, partnership or community property interest, joint venture or other circumstances, but shall not include a lien holder that has not reduced such right of title. Single-family units together with adjacent public areas shall be deemed within the control of the occupant.

**Sec. 10-128. Same – Duty of property owner to cut or remove.**

It shall be the duty of any person owning, claiming, occupying or having supervision or control of any real property, as provided in Section 10-127, to cut and remove all such weeds, brush and other objectionable or unsightly matter as often as may be necessary to comply with Section 10-127.

- (2) *Sections 10-130 through 10-133.* Amend by deleting the sections in their entirety and adding new Sections 10-130 through 10-133 to read as follows:

**Sec. 10-130. Same – Notice to owner to remove, etc.; removal by City upon failure of owner to do so.**

- (a) If any person owning, claiming, occupying or having supervision or control of any real property occupied or unoccupied within the City fails to comply with the provisions of Sections 10-127 through 10-129 within seven (7) days of notice of a violation, the City may go upon such property and do or cause to be done the work necessary to obtain compliance with this chapter and article, and may assess the expenses incurred in doing or in having done to the owners of such property and against the real estate on which the work is done or improvements made and may place a lien on such property as provided in V.T.C.A., Health and Safety Code, Section 342.001 et seq.
- (b) The notice required in this section must be given:
  - (1) Personally to the owner in writing; or
  - (2) By letter or card addressed to the owner at the owner's address as recorded in the records of the Dallas Central Appraisal District; or
  - (3) If personal service cannot be obtained as provided in subsections (b)(1) or (b)(2):
    - a. By publication at least once;
    - b. By posting notice on or near the front door of each building on the property to which the violation relates; or
    - c. By posting 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.
- (c) If the notice mailed to the property owner in accordance with subsection (b) 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 as delivered.
- (d) In a notice provided under this section the Director of Community Development or designee may inform the owner, in the manner prescribed by law, that if another violation of the same kind or nature that poses a danger to the public health and safety is committed by the owner on or before the first anniversary of the date of the notice, the City may without further notice correct the violation at the owner's expense and assess the expenses against the property. 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, the municipality may without notice take any action permitted by subsection (a) and assess its expenses as provided therein.
- (e) If a property manager has been assigned responsibility for maintenance of the property and the Director of Code Compliance or designee has been notified in writing of this assignment, with regard to notices provided under this section to the owner of the property, the City will additionally notify the property manager by letter addressed to the property manager at the address provided.

**Sec. 10-131. Same – Charges when work done by City.**

(a) The expenses incurred by the City pursuant to the correcting of conditions as set forth in this chapter shall be charged to and become a lien on the real estate or lot or lots upon which such expense is incurred. Such charges to be levied shall include special expenses and fees to defer all expense incurred by the City and shall be as follows:

- (1) Single residential lot (with/without dwelling), per lot.. \$ 50.00
- (2) Five or more adjacent lots (without dwelling), per lot.. \$ 10.00\*
- (3) Nonresidential property (five acres or less)..... \$150.00
- (4) Nonresidential property (greater than five acres)..... \$250.00\*\*

\* Lots without dwellings that can be contracted by the acres shall be charged the *nonresidential* fee.

\*\* An additional \$100.00 shall be charged for every additional 10 acres.

(b) In the event that there are obstructions such as rocks, trees, shrubs, bushes, excavations, foundations of demolished structures or other impediments, an additional charge can be levied, assessed and collected against such premises for the actual cost resulting from the additional expenses incurred therefrom.

(c) In the event that it becomes necessary for the City to go upon real property and do or cause to be done the work necessary to seek compliance with Section 10-127 through 10-129, the actual expenses incurred plus fees shall be charged, levied, assessed and collected against such property.

**Sec. 10-132. Same – To become lien on property.**

The charges provided for in this article shall be levied, assessed and collected by the Director of Finance of the City. In the event the owner of such premises upon which work was done and charges incurred fails or refuses to pay such charges and expenses within 30 days after the first day of the month following the one in which the work was done, the Director of Finance shall file with the County Clerk, a statement by the Mayor, City Health Officer or other City official designated by the Mayor, setting out the expenses that the City has incurred pursuant to the provisions of this article, and the City shall thereby perfect a privileged lien on the property involved, second only to tax liens and liens for street improvements, to secure the expenses incurred; together with 10 percent interest from the date of such payment. For any such expenditures and interest, as aforesaid, suit may be instituted and foreclosure had in the name of the City; and the statement so made, as aforesaid, or a certified copy thereof; shall be prima facie proof of the amount expended for any such work or improvements.

**Sec. 10-133. Cutting, removing grass, weeds, brush or unsightly matter from tract of land which is unfenced or adjacent to improved property; extension of obligation to cut and remove.**

- (a) In addition to the provisions contained in this article, any person required hereunder to cut and remove grass and weeds, brush and other unsightly matter, shall be required to cut and remove same on all of any tract of land not exceeding five acres where such tract is unfenced or is adjacent to improved property. Provided, however, that lands dedicated to agricultural use and actually so used shall not be subject to the requirement of cutting and removal of vegetation.
- (b) The obligation to cut and remove grass, weeds, brush and other unsightly matter shall extend to the rear property inclusive of utility easements and from the property line to the edge of pavement of alleys. In the event an alley is unpaved, the obligation shall extend to the center of the alley.

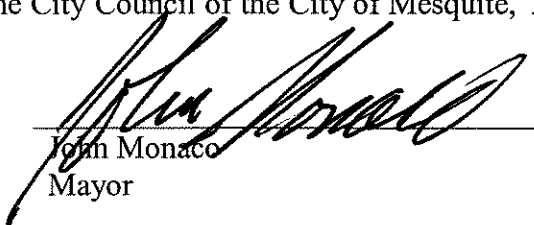
SECTION 2. That all ordinances, or portions thereof, of the City of Mesquite in conflict with the provisions of this ordinance, to the extent of such conflict are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

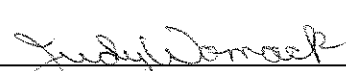
SECTION 4. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Two Thousand (\$2,000.00) Dollars for each offense.

SECTION 5. That the present ordinances of the City of Mesquite are inadequate to provide for the proper regulation of the condition of premises creates an urgency and an emergency for the preservation of the public health, safety, and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of November, 2007.

  
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John Monaco  
Mayor

ATTEST:

  
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Judy Womack  
City Secretary

APPROVED:

  
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B. J. Smith  
City Attorney