

Office of the City Manager

City of Richland Hills, Texas

Memorandum

To: Honorable Mayor Bill Agan and members of the Richland Hills City Council
From: Eric Strong, City Manager
Date: April 15, 2014
Subject: Code Enforcement Ordinance Update 1268-14

Council Action Requested:

Consideration of Ordinance 1268-14 amending the Code of Ordinances providing for the abatement of nuisances within the City.

Background Information:

As the City Council is aware, we have been working on updating various Ordinances that our Code Enforcement Division needs to more effectively enforce various issues we come across. This was discussed at the last meeting and referred back to Staff for a few clean-up items.

This ordinance combines the provisions regarding nuisance abatement that are currently found in several places in our ordinances into one location. Also included in this ordinance is a section allowing immediate abatement within 24 hours if determined to be an immediate threat to health and safety. This new immediate abatement section is located in section 34-7 of the proposed ordinance. Also included is a form 7-day notice of violation letter for code enforcement officers to use when attempting to enforce the various nuisance ordinances located in chapter 34. Also included is a sample notice letter incorporating the necessary procedures.

Board/Citizen Input: N/A

Financial Impact: N/A

Staff Contacts: Eric Strong
City Manager
estrong@richlandhills.com

Attachments: Ordinance1268-14, Sample Letter

[city letterhead]

[date]

Owner of Property
Address
Richland Hills, Texas, Zip Code

NOTICE OF VIOLATION

Dear [name of property owner],

Pursuant to section 34-2 of the Richland Hills Code of Ordinances, the City has determined that the property located at [Address, Richland Hills, Texas, Zip Code] contains numerous violations of the City's Code of Ordinances. Specifically, the following violations have been documented:

- [description of violation(s) and a specific reference to the section number that is being violated]

You have seven (7) calendar days from the date of service of this notice to abate the above described violations. If the above violations are not abated within seven (7) calendar days, the City intends to abate such violation(s) on the property and you, as the owner of the property, will be liable for all fees and expenses incurred by the City in abating said violations.

If the City is forced to abate the above listed violations, the City will send a notice of the amount owed to the City to the above listed address. The amount indicated must be paid within ten (10) calendar days of the date listed on the notice. If the fees and expenses incurred by the City to abate the violations are not paid within ten (10) calendar days of the date of notice of such fees and expenses, the City will file a lien against your property for such fees and expenses. Thereafter, the City may foreclose on the property to recover the cost of the lien.

If you wish to contest the existence of the above listed violation(s), you must request a hearing by submitting a written request to the Municipal Court Clerk and the Code Enforcement Officer within seven (7) calendar days of the date of service of this notice. Your failure to timely request a hearing shall waive any complaints or objections that could have been raised at such hearing.

Pursuant to section 34-7 of the Code of Ordinances, you may be issued a citation and prosecuted at any time for any or all of the violations listed above. Please contact me should you have any questions.

Sincerely,

[name], Code Enforcement Officer

ORDINANCE NO. 1268-14

AN ORDINANCE OF THE CITY OF RICHLAND HILLS, TEXAS AMENDING CHAPTER 34, "ENVIRONMENT"; PROVIDING FOR THE ABATEMENT OF NUISANCES WITHIN THE CITY; PROVIDING THE AUTHORITY TO FILE A LIEN IN CERTAIN CASES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY FOR VIOLATIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Richland Hills, Texas is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council has previously adopted procedures for abatement of general nuisance violations and also for abatement of tall grass and weed abatement; and

WHEREAS, the City Council of the City of Richland Hills, Texas, desires to consolidate these provisions into one section within the Code of Ordinances; and

WHEREAS, the City Council of the City of Richland Hills, Texas, has determined that the adoption of the amendment herein to consolidate the abatement procedures is in the best interest of the public health, safety and welfare and therefore deems it advisable to enact this ordinance.

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

SECTION 1.

The Code of Ordinances, City of Richland Hills, is hereby revised by amending Article I of Chapter 34 by designating a "Division 1" to encompass Section 34-1 "Definitions" and adding Division 2 "Abatement Procedures for Violations" to read as follows:

**"DIVISION 2.
Abatement Procedures**

Section 34-2. Applicability of Division.

This Division applies to violations of Article II and Article III of this Chapter.

Section 34-3. Authority of City to Abate Nuisance Violation.

- (a) The city manager or the city manager's designee is hereby authorized to enter upon property within the City and abate any violation of this chapter. Except as provided otherwise in sections 34-5, 34-6, or 34-7, prior to such abatement, the city manager or the city manager's designee shall give notice to the owner and any known lienholder of any property upon which a violation of this chapter exists that the owner is in violation of this chapter, and provide an opportunity to abate such violation.
- (b) Such notice shall conform to the following provisions:
 - (1) A description of the property on which the violations are to be abated, which method of description may include any of the following: (i) a legal description of the property by lot and block or by metes and bounds, as applicable; (ii) a physical mailing address of the property; or (iii) any other description which is reasonably calculated to inform the owner of the property of the location of the property;
 - (2) A description of each violation on the property, including a reference to the specific section(s) of this Code which is being violated;
 - (3) A statement that if the violation is not abated within seven days of service of the notice, the city intends to abate such violation on the property and that the owner will be liable for all fees and expenses incurred by the city in abating the violation;
 - (4) A statement that if the city is required to abate the violation, and if the fees and expenses incurred by the city are not paid within ten days of the date of notice of such fees and expenses, the city will file a lien against the property for such fees and expenses, and that the city may thereafter foreclose on the property;
 - (5) A statement that if the owner or lienholder wishes to contest the existence of the violation or other matter pertaining to the violation or property, the owner or lienholder must request a hearing by submitting a written request for such hearing to both the municipal court clerk and the city code enforcement officer within seven days of service of the notice; and
 - (6) A statement that if any owner or lienholder fails to timely request a hearing, such owner or lienholder shall be deemed to have waived any complaints or objections that could have been raised at such hearing.
- (c) The notice required by this section must be in writing and served on the owner and any known lienholder of the property on which the violation exists. It may be served in any manner permitted by applicable law, including but not limited to the following:

- (1) Personally served;
- (2) Mailed to the owner at the owner's address as recorded in the records of the Tarrant Appraisal District, by regular and certified mail, return receipt requested, and to any known lienholder at the lienholder's last known mailing address, by regular and certified mail, return receipt requested; or
- (3) If personal service as described above cannot be obtained, by one or more of the following methods:
 - a. By publication at least once;
 - b. By posting the notice on or as near as practicable to the front door of each building on the property on which the violation exists; or
 - c. If there are no buildings on the property on which the violation exists, by posting the notice on a placard attached to a stake driven into the ground on the property at a location visible from a public street or right-of-way or other principal means of access to the property.
- (d) The address as recorded in the records of the Tarrant Appraisal District shall be deemed sufficient and correct, and notice served by mail at such address in accordance with this section shall be deemed sufficient, regardless of whether such notice is actually received, and regardless of whether such notice is returned marked "refused" or "unclaimed" or other notation indicating that it was not actually delivered.
- (e) Notice served by mail shall be deemed served on the third day following mailing, regardless of when actual delivery is shown to have occurred. Notice served by publication is deemed served on the date of publication. Notice served by posting on the property is deemed served on the day of posting.
- (f) If any owner or lienholder requests a hearing within seven days of service of the notice to such owner or lienholder, the municipal court shall conduct a hearing. Such request must be in writing and must be received by both the municipal court clerk and the city code enforcement officer prior to the expiration of seven days from the date of service of such notice. If two or more property owners or lienholders request a hearing, the municipal court shall combine such matters into one proceeding, and shall hold one hearing.
- (g) At a hearing under this article, both the person requesting the hearing and the city may offer testimony, present any witnesses, and offer other evidence relevant to any of the following issues:
 - (1) The existence of the violation; and
 - (2) Any other matter determined by the municipal court to be relevant to the city's authority to abate the violation and which has not been waived.

- (h) The failure to serve any owner or lienholder with notice shall not constitute a defense under this article for any other owner or lienholder.
- (i) Any owner or lienholder who is properly served with notice as provided in this section who fails to timely request a hearing available under this section shall be deemed to have waived any complaints or objections that could have been raised at such hearing, even if any other owner or lienholder of the property timely requests a hearing. Any owner or lienholder who was not properly served with notice as provided in this section but who appears and is permitted by the municipal court to participate in a hearing requested by another owner or lienholder, shall be deemed to have waived any objection to any defect in notice.

Section 34-4. Failure to Comply with Abatement Notice.

If the owner of the property does not comply with a notice to abate a violation of this chapter issued by the city manager or the city manager's designee within seven days after the date the notice is served, the city manager or the city manager's designee may enter the property and abate or correct the violation or retain a private commercial contractor or another public entity to do so.

Section 34-5. Abatement of Subsequent Violations of Like Kind or Nature.

- (a) In a notice provided for in section 34-3, the city manager or the city manager's designee may inform the owner and any known lienholders 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 enter the property and correct or abate the violation or retain a private commercial contractor or another public entity to do so. Such notice shall be served by any of the following methods:
 - (1) By all of the following:
 - a. Certified mail, return receipt requested;
 - b. Regular mail; and
 - c. Posting the notice on the property; or
 - (2) By personally delivering the notice.
- (b) If a violation covered by a notice under this section occurs on or before the first anniversary of the date of such notice, then the city manager or the city manager's designee may enter upon such property without notice and abate or correct the violation. In the event that the city manager or the city manager's designee abates a violation pursuant to this section, the city manager or the city manager's designee may seek

recovery of its fees and expenses incurred in abating the violation as provided in section 34-8.

Section 34-6. Abatement of Weeds or Grass in Excess of 48 Inches.

- (a) The city manager or the city manager's designee may abate, without notice, weeds or grass that:
 - (1) Have grown higher than 48 inches; and
 - (2) Are a danger to the public health or safety.
- (b) In the event that the city manager or the city manager's designee abates a violation pursuant to this section, the city manager or the city manager's designee may seek recovery of its fees and expenses incurred in abating the violation as provided in section 34-8.

Section 34-7. Immediate Abatement Authorized in Certain Circumstances.

Nothing in this chapter shall prohibit the requirement for abatement of any nuisance within twenty-four (24) hours when a nuisance has been declared an immediate threat to health and safety by any enforcement personnel.

Section 34-8. Assessment of Expenses and Lien.

- (a) All fees and expenses incurred by the city to abate or correct violations of this chapter shall be charged to the owner of the property. Such charge for fees and expenses may include all of the following that are applicable:
 - (1) All expenses incurred by the city to retain a private contractor to abate the violation or to rent equipment used to abate the violation;
 - (2) An administrative fee or charge as provided in the city fee schedule contained in appendix A of this Code;
 - (3) A reasonable fee for the use of any equipment owned by the city used in abating the violation, calculated by a survey, sampling, or estimate of what a private commercial vendor would charge for leasing or renting such equipment; and
 - (4) Charges for time incurred by city personnel, calculated at either: (i) the hourly cost to the city for employing such personnel, including all payroll taxes, insurance and other benefits multiplied by the number of hours spent on such abatement, including preparation and travel time; or (ii) a reasonable charge, based upon a survey, sampling, or estimate of what a reasonable private commercial contractors would have charged to perform such work.

- (b) The city manager or the city manager's designee shall serve the owner of any property upon which the city has abated a violation of this article notice, that the City abated the violation and that the owner is liable for all fees and expenses incurred by the city, and that it is the city's intent to file a lien against the property if the amount shown in such notice is not paid within ten days of the date of such notice. The city manager or the city manager's designee shall also serve a copy of such notice to any known lienholder. Such notice must be in writing and shall include the following:
- (1) A statement that the city abated such violations on the property;
 - (2) A description of the property on which the violation was abated, which method of description may include any of the following: (i) a legal description of the property by lot and block or by metes and bounds, as applicable; (ii) a physical mailing address of the property; or (iii) any other description which is reasonably calculated to inform the owner of the property of the location of the property;
 - (3) A description of the violation on the property which was abated, including a reference to the section of this Code violated;
 - (4) A statement that due to the abatement and the provisions of this Code, the owner owes the charges;
 - (5) An itemized statement of the fees and expenses, including the total amount of such fees and expenses;
 - (6) A statement that if such fees and expenses are not paid, the city will file a lien against the property, and that the city may thereafter foreclose on the property;
 - (7) A statement that if the owner or any lienholder of the property wishes to contest the city's entitlement to the fees and expenses, the reasonableness or correctness of the fees and expenses stated, the city's entitlement to file a lien on the property, or other matter relating to the abatement, the owner or lienholder must request a hearing by submitting a written request for such hearing to both the municipal court clerk and the city code enforcement officer within ten days of service of the notice of the fees and expenses due; and
 - (8) A statement that if any owner or lienholder fails to timely request a hearing, such owner or lienholder shall be deemed to have waived any complaints or objections that could have been raised at such hearing.
- (c) The notice described herein may be served in any manner permitted by applicable law, including but not limited to the following:

- (1) Personally served;
- (2) Mailed to the owner at the owner's address as recorded in the records of the Tarrant Appraisal District, by regular and certified mail, return receipt requested, and to any known lienholder at the lienholder's last known mailing address, by regular and certified mail, return receipt requested; or
- (3) If personal service as described above cannot be obtained, by one or more of the following methods:
 - a. By publication at least once; or
 - b. By posting the notice on or as near as practicable to the front door of each building on the property on which the violation exists; or
 - c. If there are no buildings on the property on which the violation exists, by posting the notice on a placard attached to a stake driven into the ground on the property at a location visible from a public street or right-of-way or other principal means of access to the property.
- (d) The address as recorded in the records of the Tarrant Appraisal District shall be deemed sufficient and correct, and notice served by mail at such address in accordance with this section shall be deemed sufficient, regardless of whether such notice is actually received, and regardless of whether such notice is returned marked "refused" or "unclaimed" or other notation indicating that it was not actually delivered.
- (e) Notice served by mail shall be deemed served on the third day following mailing, regardless of when actual delivery is shown to have occurred. Notice served by publication is deemed served on the date of publication. Notice served by posting on the property is deemed served on the day of posting.
- (f) If any owner or lienholder requests a hearing within seven days of service of the notice to such owner or lienholder, the municipal court shall conduct a hearing. Such request must be in writing, and be received by both the municipal court clerk and the city code enforcement officer prior to the expiration of ten (10) days from the date of service of such notice. If two or more property owners or lienholders request a hearing, the municipal court shall combine such matters into one proceeding, and hold one hearing.
- (g) At a hearing under this Article, both the person requesting the hearing and the city may offer testimony, present any witnesses, and offer other evidence relevant to any of the following issues:
 - (1) The sufficiency of any required notice of the existence of the violations and the city's intent to abate such violations;

- (2) The correctness of the amount of the charges assessed by the city to abate the violations, or the reasonableness thereof;
 - (3) If, and only if, the person requesting the hearing was not properly served with notice prior to the abatement, the existence of the violations; and
 - (4) Any other matter determined by the municipal court to be relevant to the city's entitlement to file a lien against the property and which has not been waived.
- (h) The failure to serve any owner or lienholder with notice shall not constitute a defense under this article for any other owner or lienholder.
- (i) Any owner or lienholder who was properly served with notice as provided in this section who fails to timely request a hearing available under this section shall be deemed to have waived any complaints or objections that could have been raised at such hearing, even if any other owner or lienholder did timely request a hearing. Any owner or lienholder who was not properly served with notice as provided in this section but who has actual knowledge of the contents of the notice, or who appears and participates in a hearing requested by another owner or lienholder, shall be deemed to have waived any objection to any defect in notice.
- (j) If no hearing is timely requested and if the property owner and lienholders fail to pay the charges incurred, the mayor or the mayor's designee may file a statement of such expenses containing the name of the owner (if known), the legal description of the property on which the violation was abated, and the amount of fees and expenses unpaid, with the Tarrant County Clerk, and such statement shall constitute a lien against the property on which the violations were abated. If a hearing is timely requested, the lien statement may not be filed against the property unless authorized to do so by order from the municipal court.
- (k) The lien shall accrue interest at the highest rate allowed by law for such liens from the date of filing until paid, and shall be security for the fees and expenditures stated therein, plus accrued interest.
- (l) Unless otherwise provided by law, the lien shall be inferior only to:
- (1) Tax liens; and
 - (2) Liens for street improvements.

Section 34-9. Issuance of Citation.

The provision of notice in sections 34-3 through 34-8 is not a condition precedent to the prosecution of an offense alleged to have occurred under sections 34-31 or 34-81 through 34-93. Failure to provide the notice specified shall not be a defense to the prosecution of an offense alleged to have occurred under sections 34-31 or 34-81 though 34-93.

Sections 34-10—34-30. Reserved.”

SECTION 2.

The Code of Ordinances, City of Richland Hills, is hereby revised by repealing and reserving sections 34-51 through 34-56 of Division II, “Abatement Procedure”, of Article II, “Grass and Weeds”, of Chapter 34.

SECTION 3.

The Code of Ordinances, City of Richland Hills, is hereby revised by repealing and reserving sections 34-106 through 34-110 of Division II, “Abatement Procedure”, of Article II, “Unhealthy, Unsightly, and Unsanitary Conditions”, of Chapter 34.

SECTION 4.

This Ordinance shall be cumulative of all provisions of ordinances of the City of Richland Hills, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

SECTION 5.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining, phrase, clauses, sentences, paragraphs or sections of this Ordinance since the same would have been enacted by the City Council without incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 6.

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than Two Thousand Dollars (\$2,000.00) for all violations involving zoning, fire safety or public health and sanitation, including dumping or refuse, and shall be fined not more than Five Hundred Dollars (\$500.00) for all other violations of this Ordinance. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 7.

All rights and remedies of the City of Richland Hills, Texas, are expressly saved as to any and all violations of the provisions of any ordinances of the City of Richland Hills 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.

The City Secretary of the City of Richland Hills is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

SECTION 9.

The City Secretary of the City of Richland Hills is directed to publish the caption and penalty clause of this Ordinance in the official newspaper of the City of Richland Hills, Texas, as required by Section 52.011 of the Texas Local Government Code.

SECTION 10.

This Ordinance shall be in full force and effect from and after its passage and publication as provided by law, and it is so ordained.

PASSED AND APPROVED _____ DAY OF _____, 2014.

THE HONORABLE BILL AGAN, MAYOR

ATTEST:

LINDA CANTU, CITY SECRETARY

EFFECTIVE DATE: _____

APPROVED AS TO FORM AND LEGALITY:

BESTY ELAM, CITY ATTORNEY