



**CITY OF PLANO
COUNCIL AGENDA ITEM**

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|--|----------------------------------|-------------------------|--|---------------|
| CITY SECRETARY'S USE ONLY | | | | |
| <input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory | | | | |
| Council Meeting Date: | | 8/23/10 | | |
| Department: | | Legal | | |
| Department Head | | Diane Wetherbee | | |
| Agenda Coordinator (include phone #): Lynne Jones - 7109 | | | | |
| CAPTION | | | | |
| <p>An Ordinance of the City of Plano, Texas, repealing Ordinances 88-1-8 and 2001-6-2 codified as section 1-4 General Penalty; continuing violations of Chapter 1, General Provisions of the Code of Ordinances of the City of Plano Texas and adopting a new section 1-4 General Penalty; continuing violations of Chapter 1, General Provisions of the Code of Ordinances of the City of Plano providing for references to the maximum penalties for specified conduct and to incorporate State requirements for establishing a culpable mental state in any prosecution filed under this Code; and providing a severability clause; a repealer clause, a savings clause; and an effective date.</p> | | | | |
| FINANCIAL SUMMARY | | | | |
| <input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP | | | | |
| FISCAL YEAR: | Prior Year (CIP Only) | Current Year | Future Years | TOTALS |
| Budget | 0 | 0 | 0 | 0 |
| Encumbered/Expended Amount | 0 | 0 | 0 | 0 |
| This Item | 0 | 0 | 0 | 0 |
| BALANCE | 0 | 0 | 0 | 0 |
| FUND(S): | | | | |
| COMMENTS: This item has no fiscal impact. | | | | |
| SUMMARY OF ITEM | | | | |
| <p>State law requires that the criminal intent be established when prosecuting an ordinance unless a city wishes to dispense with that requirement. By enacting this ordinance, no criminal intent will be required unless it is stated in the ordinance. Many of our ordinances require intent and those are unaffected by this ordinance. This will only affect ordinances where no specific intent is provided in the ordinance, but any fine imposed may not exceed \$500.00, which is the current maximum allowed by law.</p> | | | | |
| List of Supporting Documents: | | | Other Departments, Boards, Commissions or Agencies | |
| | | | | |

An Ordinance of the City of Plano, Texas, repealing Ordinances 88-1-8 and 2001-6-2 codified as section 1-4 General Penalty; continuing violations of Chapter 1, General Provisions of the Code of Ordinances of the City of Plano Texas and adopting a new section 1-4 General Penalty; continuing violations of Chapter 1, General Provisions of the Code of Ordinances of the City of Plano providing for references to the maximum penalties for specified conduct and to incorporate State requirements for establishing a culpable mental state in any prosecution filed under this Code; and providing a severability clause; a repealer clause, a savings clause; and an effective date.

WHEREAS, on January 11, 1988 the City Council of the City of Plano duly passed Ordinance No. 88-1-8 to establish maximum penalties for specified conduct and on June 4, 2001 the City Council of the City of Plano duly passed Ordinance No. 2001-6-2 amending Ordinance No. 88-1-8 codified as Chapter 1, General Provisions, of the Code of Ordinances of the City of Plano; and

WHEREAS, upon review of existing ordinances as well as state law governing the requirement of a culpable mental state, staff recommends to repeal and adopt a new section 1-4 of the Code of Ordinances to be consistent with state law; and

WHEREAS, the City Council of the City of Plano, Texas determines it is necessary to dispense with a culpable mental state and after consideration of the recommendations of staff and all matters attendant and related thereto, is of the opinion that the recommended changes are in the best interest of the City of Plano and its citizens to adhere to state law.

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

Section I. Section 1-4 General Penalty; continuing violations of Chapter 1 General Provisions of the Code of Ordinances of the City of Plano is hereby repealed and a new section 1-4 is adopted to read as follows:

“Sec. 1-4. General penalty; continuing violations.

Whenever in this Code or in any ordinance of the city an act is prohibited or is made or declared to be unlawful or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is unlawful, and no specific penalty is provided therefor, the violation of any such provision shall be punished by a maximum fine as follows:

- (a) Two thousand dollars (\$2,000.00) for violations of all such provisions that govern fire safety, zoning or public health and sanitation other than vegetation and litter violations; and
- (b) Five hundred dollars (\$500.00) for all other violations.

- (c) Unless specifically stated within the provision of this Code, any violation of this Code or any ordinance set forth herein that is punishable by a fine that does not exceed the amount authorized by section 12.23 of the Texas Penal Code does not require a culpable mental state and a culpable mental state is hereby expressly waived; however, any violation of this Code or any ordinance set forth herein that is punishable by a fine that exceeds the amount authorized by section 12.23 of the Texas Penal Code, as the same may be amended from time to time, shall require a culpable mental state of criminal negligence unless a higher culpable mental state has been provided by ordinance.

Each day a violation for this Code or any ordinance under either (a) or (b) above continues shall constitute a separate offense.”

Section II. The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue, or as affecting any rights of the municipality under any section or provisions of any ordinances at the time of passage of this ordinance.

Section III. It is the intention of the City Council that this Ordinance, and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance.

Section IV. All provisions of the ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

Section V. This ordinance shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 23rd day of August, 2010.

Phil Dyer, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY