CITY OF PLANO
COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY ☐ Consent ☐ Regular ☐ Statutory	
Council Meeting Date:	February 22, 2010
Department:	Property Standards
Department Head	Cynthia O'Banner
Agenda Coordinator (include phone #):	**Gloria Carter x 5150**

CAPTION

An Ordinance of the City of Plano, Texas amending Subsection 302.4 Weeds and Landscaping of Sec. 6-52 Deletions, additions and amendments to Chapter 3 of the International Property Maintenance Code, Division 2 Amendments, Article III Property Maintenance Code of Chapter 6 Buildings and Building Regulations of the Code of Ordinances of the City of Plano and Sec. 14-3 Weeds, rubbish or unsanitary matter, Article I In General of Chapter 14 Offenses-Miscellaneous of the Code of Ordinances of the City of Plano by revising the administrative fee assessed, updating definitions, clarifying designated personnel authorized to enforce the provisions, providing a repealer clause, a severability clause, a savings clause, a penalty clause, a publication clause and an effective date.

FINANCIAL SUMMARY

☐ NOT APPLICABLE ☐ OPERATING EXPENSE ☒ REVENUE ☐ CIP

FISCAL YEAR: **2009-10**	**Prior Year (CIP Only)**	**Current Year**	**Future Years**	**TOTALS**
Budget	0	0	0	**0**
Encumbered/Expended Amount	0	0	0	**0**
This Item	0	8,750	30,000	**38,750**
BALANCE	0	8,750	30,000	**38,750**

FUND(S): GENERAL FUND

COMMENTS: This item will add additional revenue to the 2009-10 Property Standards Budget as well as future year Budgets due to changes to the Property Standards administrative fee. Projected supplemental revenue of $8,750 is anticipated for the remainder of 2009-10 and approximately $30,000 per year in future years. This revenue increase is a mid-year change and will be in addition to the 2009-10 budgeted revenues.

STRATEGIC PLAN GOAL: Modification of the Property Standards administrative fee relates to the City's Goal of Financially Strong City with Service Excellence.

SUMMARY OF ITEM

This ordinance amendment will update administrative fees assessed by the Property Standards Department to reflect the increased costs of processing reimbursement requests and liens associated with abating high grass and weeds, overhanging tree limbs, accumulated trash and other violations. Updating the department and personnel designated to enforce the provisions of the ordinance will provide clarification and consistency.

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List of Supporting Documents:	Other Departments, Boards, Commissions or Agencies
Memo Ordinance Markup	

MEMORANDUM

To: Tom Muehlenbeck, City Manager

From: Cynthia O'Banner, Property Standards Director

Thru: Mark Israelson, Assistant City Manager

Re: Administrative Fees – Abatement Services

Date: February 9, 2010

As stipulated in the Texas Health and Safety Code Sec. 342.006, a municipality may "pay for the work done or improvements made and charge the expenses to the owner of the property". In order to have the "work done or improvements made", various steps must be followed. In doing so, costs are incurred by the city in its extended efforts to provide owners and/or other responsible parties with due process. Reasonable and prudent administrative fees to recoup these costs or charges are authorized by state and local codes and are structured based on the costs of the municipality to administer the terms of the adopted code abatement sections.

In 1989, Texas State Statue provided authority to charge and recover expenses and interest for abatement of certain nuisance violations. Sections 342.005 and 342.007 of the Texas Health and Safety Code authorizes the governing body of a municipality to punish an owner or occupant of property in violation of an adopted ordinance and assess expenses incurred and accruing interest against the real estate on which the work is done or improvement made by filing a statement of expenses with the county clerk. On September 28, 1992, the City of Plano adopted a provision for an administrative fee to recover related property abatement costs incurred by the City.

The initiation of actions to abate violations utilizing contractor's services is required for specific violations that continue to exist after effecting notices to correct. Extended staff time, mandated certified mailing, increased photo processing, posting and other document reproduction costs are incurred by the City during this process and are assessed as an administrative fee. These costs are in addition to expenses charged by the contractor to complete the abatement service.

The City of Plano has not increased the $150.00 administrative fee assessment since implementation of the fee in 1992. To adequately recover incurred costs, an increase in the administrative fee is needed. A recent analysis of costs incurred by the City to recoup related expenditures shows an increase of $47.44. Based on a survey of cities within the metropolitan area, increasing the administrative fee to $200.00 would place the fee comparable to administrative fees charged by other nearby municipalities.

Please advise of any questions or concerns.

/co'b

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WHEREAS, on September 27, 2004 and September 28, 1992, the City Council of the City of Plano duly passed Ordinance No. 2004-9-30 and Ordinance No. 92-9-34 which adopted administrative fees for the cost to administer the terms of Section 6-52 and Section 14-3 respectively.

WHEREAS, the City Council recognizes that certain adjustments to fees are necessary to cover increased administrative costs for providing specific services; and

WHEREAS, generation of resources through fees needed to administer the programs and services of the City of Plano is of vital concern to all citizens and must be considered for each year in concurrence with the annual budget for the City; and

WHEREAS, the definition of "Code Official" is added to provide clarity and consistency to other sections of the Code of Ordinances of the City of Plano; and

WHEREAS, the City Council, based upon staff recommendations and review and consideration of these matters, and in concurrence with the adoption of the annual budget for the City of Plano, has determined that it is in the best interest of the City of Plano, Texas, to revise the fees and definitions hereinafter set forth, and that they are proper and should be approved and adopted.

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

Section I. Subsection 302.4 Weeds and Landscaping of Sec. 6-52 Deletions, additions and amendments to Chapter 3 of the International Property Maintenance Code, Division 2 Amendments, Article III Property Maintenance Code of Chapter 6 Buildings and Building Regulations of the Code of Ordinances of the City of Plano is hereby amended to read in its entirety as follows:

"Subsection 302.4, Weeds and Landscaping

All premises and exterior property shall be maintained free from weeds or plant growth in excess of twelve inches (12") in height. All noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Damaged or dead trees, shrubs, or ground cover must be promptly removed. Landscaping shall be maintained to minimize property damage and public safety hazards.

Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice violation or after allowing, permitting or causing the same or similar violation to occur within a one year anniversary of service of a notice of violation, they shall be subject to prosecution in accordance with Section 1-4 (b) of the City Code of Ordinances for each offense. Upon failure to comply with the notice of violation, any duly authorized employee of the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs incurred for such removal shall be paid by the owner or agent responsible for the property. The charges to be collected by the city under this section shall include, in addition to the costs and expenses of mowing or correcting a condition upon a tract of land, the sum of ~~one hundred fifty dollars ($150.00)~~ two hundred dollars ($200.00) per lot or tract of land, which sum is hereby found to be the cost to the City of administering the terms of this section."

Section II. Sec. 14-3(a) Weeds, rubbish or unsanitary matter, Article I In General of Chapter 14 Offenses-Miscellaneous of the Code of Ordinances of the City of Plano is hereby amended to add to Definitions:

"*Code Official* shall mean the official who is charged with the administration and enforcement of this code, their designee or any City employee or employees designated by the City Manager to perform activities related this section."

Section III. Sec. 14-3(e-i), Weeds, rubbish or unsanitary matter, Article I In General of Chapter 14 Offenses-Miscellaneous of the Code of Ordinances of the City of Plano is hereby amended to read in its entirety as follows:

"(e) In the event that any person violates the provisions of this section, the ~~chief building official ("official"), or his designee~~ Code Official, shall give notice to such person setting forth the noncompliance with this section. Such notice shall be given in any one of the following ways:

(1) Personally to the owner in writing;

(2) By letter addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; or

(3) If personal service cannot be obtained:

a. By publication at least once;

b. By posting the notice on or near the front door of each building on the property to which the violation relates; or

c. 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 buildings.

If the notice to a property owner 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 delivered.

If such person fails or refuses to comply with the demand for compliance in the notice within seven (7) days of such notice or publication, the city may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be a charge to and personally liability of such person (called "charges").

The charges to be collected by the city under this section shall include, in addition to the costs and expenses of mowing or correcting a condition upon a tract of land, the sum of ~~one hundred fifty dollars ($150.00)~~ two hundred dollars ($200.00) per lot or tract of land, which sum is hereby found to be the cost to the city of administering the terms of this section.

If a notice as provided herein is delivered to the owner of such real property, and he fails or refuses to comply with the demand for compliance within the applicable time period as herein provided, the aforementioned costs, charges, and expenses shall be, in addition to a charge to and personal liability of the owner, a privileged lien upon and against such real property, including all fixtures and improvements thereon. In order to perfect such lien, the ~~official, or his designee,~~ Code Official shall first give such owner written notice of demand for payment of such charges. Such written notice may be given by any one (1) of the methods provided for the initial notice requiring compliance. If the owner fails or refuses to make complete payment of the charges within twenty (20) days of such notice, the ~~official, or his designee,~~ Code Official shall file a written statement of such charges with the county clerk of the county in which the real property is located, for filing in the county land records. The statement shall be sufficient if it contains the following:

(1) The name of the owner;

(2) A description of the real property;

(3) The amount of the charges, including interest thereon;

(4) A statement that all prerequisites required by this section for the imposition of the charges and the affixing of the lien have been met;

(5) A statement signed by the ~~official, or his designee,~~ Code Official under oath, that the statements made therein are true and correct.

The statement may also contain such other information deemed appropriate by the ~~official, or his designee,~~ Code Official.

All charges shall bear interest at the rate of ten (10) percent per annum from the date the city incurs the expense. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The statement, as provided herein, or certified copy thereof, shall be prima facie evidence of the city's

claim for charges or right to foreclose the lien. The owner or any other person responsible as provided herein, shall be jointly and severally liable for the charges.

(f) In the event that a property owner permits or allows weeds to grow on the premises to a height greater than forty-eight (48) inches and such weeds are deemed by the ~~city's chief building official ("official"), or his designee,~~ Code Official to be an immediate danger to the health, life, or safety of any person, the building official, or his designee, without notice to the property owner, may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be assessed to the property owner. Not later than the tenth day after the date upon which the weeds were abated under this section, notice shall be given to the property owner of the abatement. Such notice shall be sufficient if it contains the following:

(1) An identification of the property, which is not required to be a legal description;

(2) A description of the violations that occurred on the property;

(3) A statement that the city abated the weeds;

(4) The amount of the charges, including interest thereon; and

(5) An explanation of the property owner's right to request an administrative hearing about the city's abatement of the weeds.

(g) If, not later than the thirtieth day after the date of the abatement of the weeds, the property owner files a written request for a hearing with the ~~chief building official~~ Code Official, the official~~, or his designee,~~ shall conduct an administrative hearing on the abatement of weeds under this section. The administrative hearing shall be conducted not later than the twentieth day after the date the request for a hearing is filed. The property owner may testify or present any witnesses or written information relating to the city's abatement of the weeds.

(h) The city may inform the property owner by regular mail and a posting on the property 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 correct the violation at the owner's expense and assess the expense against the property. If a violation covered by a notice under this subsection occurs within the one-year period, and the city has not been informed in writing by the owner of an ownership change, then the city, without notice, may take any action permitted to bring the real property into compliance with this section and assess the costs, charges, and expenses incurred in such action to the owner.

(i) The provisions of this section shall be enforced by representatives of the city's ~~building inspections~~ property standards department. Notwithstanding

any provisions of this section to the contrary, the ~~official, his designee, or any property standards specialist~~ Code Official has authority to issue immediate citations to persons violating any provision of this section in the presence of said official. It shall be unlawful for any person to interfere with the official, ~~his designee, or a property standards specialist~~ in the exercise of their duties under this section."

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. It is the intention of the City Council that this Ordinance, and every provision thereof, 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 VI. The repeal of any ordinance or part of ordinances affectuated 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 VII. Any person, firm or corporation violating any term or provision of this Ordinance shall be subject to a fine in accordance with Section 1.4(b) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section VIII. This Ordinance shall become effective from and after its passage and publication as required by law.

DULY PASSED AND APPROVED this 22nd day of February, 2010.

_____
Phil Dyer, MAYOR

ATTEST:

_____
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

_____
Diane C. Wetherbee, CITY ATTORNEY

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(5) A statement signed by the Code Official under oath, that the statements made therein are true and correct.

The statement may also contain such other information deemed appropriate by the Code Official.

All charges shall bear interest at the rate of ten (10) percent per annum from the date the city incurs the expense. The city may bring suit to collect the charges, institute foreclosure proceedings, or both. The statement, as provided herein, or certified copy thereof, shall be prima facie evidence of the city's claim for charges or right to foreclose the lien. The owner or any other person

responsible as provided herein, shall be jointly and severally liable for the charges.

(f) In the event that a property owner permits or allows weeds to grow on the premises to a height greater than forty-eight (48) inches and such weeds are deemed by the Code Official to be an immediate danger to the health, life, or safety of any person, the building official, or his designee, without notice to the property owner, may do such work or cause such work to be done to bring the real property into compliance with this section. The costs, charges, and expenses incurred in doing or having such work done or improvements made to the real property shall be assessed to the property owner. Not later than the tenth day after the date upon which the weeds were abated under this section, notice shall be given to the property owner of the abatement. Such notice shall be sufficient if it contains the following:

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(i) The provisions of this section shall be enforced by representatives of the city's property standards department. Notwithstanding any provisions of this section to the contrary, the Code Official has authority to issue immediate citations to persons violating any provision of this section in the presence of

said official. It shall be unlawful for any person to interfere with the official in the exercise of their duties under this section."

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.

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