ORDINANCE NO.

AN**ORDINANCE AMENDING** THE "HEALTH **AND** SANITATION" CHAPTER OF THE CODE OF ORDINANCES OF THE CITY OF GRAND PRAIRIE, TEXAS BY THE ADDITION OF ARTICLE XXI RELATING TO THE REGULATION ASBESTOS: LISTING SURVEY REQUIREMENTS: PROVIDING FOR PUNISHMENT FOR VIOLATION; PROVIDING FOR INJUNCTIONS; PROVIDING FOR ABATEMENT; PROVIDING **INSPECTIONS AND** WARRANTS; MAKING **ORDINANCE CUMULATIVE**; CONTAINING A **SAVINGS CLAUSE**; **PROVIDING SEVERABILITY CLAUSE**: CONTAINING A PENALTY CLAUSE; AND TO BECOME **EFFECTIVE UPON** ITS PASSAGE, APPROVAL AND **PUBLICATION**

WHEREAS, asbestos containing materials have been shown to be a threat to human health; and

WHEREAS, the State of Texas has established stringent regulations for the safe handling of asbestos containing materials; and

WHEREAS, the State of Texas has established stringent regulations concerning the types of materials that can be disposed of at the city's landfill; and

WHEREAS, local regulations are necessary to ensure proper disposal of asbestos containing materials from building renovations and demolitions

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

SECTION 1: That Chapter 13 of the official code of the City of Grand Prairie, Texas is hereby amended to add Article XXI to read as follows:

ARTICLE XXI. ASBESTOS SURVEY REGULATIONS

Sec. 13-570. Definitions.

The following words, terms and phrases, are defined for purposes of this article as follows:

Asbestos survey shall mean an inspection of a building or facility to determine the location, quantity, and condition of asbestos containing material (ACM) as required to be performed by the state regulatory authority.

Commercial building shall mean all buildings, including, but not limited to, institutional, public, and industrial structures which are not otherwise defined herein as residential buildings; however, the term specifically excludes:

- (a) A state or federal building or installation (civilian or military);
- (b) A private residence;
- (c) An apartment building or residential complex with no more than four (4) dwelling units; or
- (d) A building, facility, or any portion thereof which has been determined to be structurally unsound and in danger of imminent collapse by a professional engineer, registered architect, or a city, county, or state government official.

Demolition shall mean operations in which load-bearing structural members of a building are wrecked or removed.

Multiunit residential complex shall mean an apartment, condominium, hotel/motel or other complex or facility used, intended, or capable of being used for domestic occupation; including temporary or transient lodging, which complex possesses five (5) or more units.

Person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns.

Regulatory Authority shall mean the city manager or duly authorized representative of the city manager.

Renovation shall means additions to or alterations beneath the exterior/interior surfaces of a commercial building or multiunit residential complex for purposes of repair or restoration by removal, repairing, and/or rebuilding, or other activity intended to or likely to disturb or dislodge asbestos present in a structure. This activity may include alterations to a fire sprinkler system.

Residential building shall mean a single family dwelling, or a residential complex or apartment complex with four (4) or less units used or capable of being used for human habitation, all being categories of structures excluded from provisions of this article.

State regulatory agency means the department or state official that has been appointed by the State of Texas to enforce the Asbestos Abatement Program.

Sec. 13-571. Applicability.

Prior to the issuance of a building permit to any person for the renovation or demolition of any commercial building or multiunit residential complex within the city limits of the City of Grand Prairie, an asbestos survey shall be conducted of the areas to be renovated or demolished. If the survey for a project indicates the presence of asbestos, a copy of a completed state asbestos notification form must be submitted to the regulatory authority.

Alternatively, a licensed engineer or architect may certify in writing that they have reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted. This certification must state that in the professional opinion of the licensed engineer or architect, all parts of the building affected by the planned renovation or demolition do not contain asbestos and shall be sealed by such professional.

For a demolition project, a copy of a completed state asbestos notification form must be submitted to the regulatory authority, even if the asbestos survey or the certification review indicates that no asbestos is present.

A copy of any asbestos survey shall be submitted for review if requested by the regulatory authority. The regulatory authority may prescribe that any certifications required by this article be submitted on forms provided by the regulatory authority.

Sec. 13-572. Previous survey; imminent danger.

An asbestos survey shall not be required under section 13-571 if the commercial or residential building to be demolished, renovated, sold, or leased has been previously surveyed and satisfactory evidence of such survey is provided to the regulatory authority. Additionally, an asbestos survey shall not be required if the building is determined to be in imminent danger of collapse or structurally unsafe to enter as prescribed by the City's Code of Ordinances, or under the city's summary abatement authority. Unless an emergency public health threat is present, requirements of this article shall not be waived.

Sec. 13-573. Licensed surveyor.

Any asbestos survey required herein shall be conducted by an individual licensed by the state regulatory authority to perform an asbestos survey. The responsibility for accomplishment of the asbestos survey shall be upon the person seeking a permit and upon the owner of the property when the permit seeker is an agent or contractor.

Sec. 13-574. Criminal offense; public nuisance; penalties.

No permit for demolition or renovation shall be issued without an asbestos survey as required herein as pertains to commercial and public buildings meeting the applicable definition requirements of this article. Commission of renovation or demolition in violation of this article, without benefit of an asbestos survey, is hereby declared to be commission of a public nuisance, deemed to pose a threat to the public health, safety, and

welfare, and is prohibited as unlawful. It is also an offense for an owner, occupant, or other person having control of a building or structure to fail to cease or fail to cause to cease acts of demolition or renovation occurring, or threatening to occur, in violation of this article.

- (a) Any person, firm, or corporation who violates any provision of this article is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation.
- (b) Any person, firm, or corporation who obstructs, impedes, or interferes with a representative of the City, with a representative of a City department, with surveillance equipment, or with a person who has been ordered to abate a situation pursuant to this article and who is lawfully engaged in such abatement is guilty of a misdemeanor and upon conviction is punishable by a fine as provided in section 1-8 of the Code of Ordinances of the City of Grand Prairie, or any amendment thereto or renumbering thereof, for violations of public health for each act of violation and for each day of violation.
- (c) In addition to proceeding under authority of subsections (a) and (b) of this section, the City is entitled to pursue all criminal and civil remedies to which it is entitled under authority of statutes or other ordinances against a person, firm, or corporation that remains in violation of this article.

Sec. 13-575. Referral to state department of health.

Any violation or apparent violation of this article shall be noticed to the state regulatory authority.

Sec. 13-576. Right of Entry: Inspection and Sampling.

The Regulatory Authority or their designated representative shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this ordinance or order issued hereunder. Users shall allow inspecting personnel ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(a) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the Regulatory Authority will be permitted to enter without delay for the purposes of performing specific responsibilities.

- (b) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected shall be promptly removed by the user at the written or verbal request of the Regulatory Authority and shall not be replaced. The costs of clearing such access shall be born by the user.
- (c) Unreasonable delays in allowing the inspecting or sampling personnel access to the user's premises shall be a violation of this ordinance.

Sec. 13-577. Search Warrants.

If the Regulatory Authority has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection program of the city designed to verify compliance with this ordinance or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Regulatory Authority may seek issuance of a search warrant from the appropriate court.

Sec. 13-578. Abatement by city.

- In the event that an owner shall fail to comply with this article, the (a) environmental services director or designee may notify such owner by letter addressed to such owner at such owner's post office address, or by publication as many as two (2) times within ten (10) consecutive days in a local newspaper, if personal service may not be had on the owner, or the owner's address is not known. The notification shall contain in brief terms the condition or conditions which exist on such owner's premises which fail to comply with this article. At the expiration of ten (10) days after issuance and receipt of the notification, or at the end of ten (10) days after the final date of publication, the city may enter upon such premises and may do such work as necessary, or cause the same to be done, to abate the unlawful condition of the premises in order that the premises may comply with the requirements of this article. A statement of the cost incurred by the city to abate such condition shall be mailed to the owner of the premises and such statement shall be paid within thirty (30) days of the date of the mailing of the statement of costs.
- (b) In the event that an owner shall have an emergency condition, the fire chief, the housing & neighborhood services director, the director of planning & development, the environmental services director, or their designees, may enter upon such premises and may do such work as necessary, or cause the same to be done, to abate the condition in order that the premises may comply with the requirements of this article. For the purposes of this section, "emergency condition" shall be defined as any condition or conditions which are or reasonably could be an immediate threat to the health, safety or welfare of the citizens of the city, to the

environment, or to employees involved in the renovation or demolition. A statement of the cost incurred by the city to abate such condition shall be mailed to the owner of the premises and such statement shall be paid within thirty (30) days of the date of the mailing of the statement of costs.

(c) Any person found to be guilty of violating provisions of this article shall become liable to the city for any expense, loss, or damage occasioned by the city for reason of appropriate cleanup and proper disposal of said waste materials. Additionally, an administrative fee equal to one-half (1/2) of assessed cleanup costs shall be levied by the city against the guilty party.

Sec. 13-579. Administrative liability.

No officer, agent, or employee of the city shall be personally liable for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such person's duties under this article. Any suit brought against any officer, agent, or employee of the city as a result of any act required or permitted in this discharge of such duties under this article shall be defended by the city attorney until the final determination of the proceedings therein.

SECTION 2: That if any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect validity of the remaining portions thereof.

SECTION 3: That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4: All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Grand Prairie, Texas, in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of said duties.

SECTION 5: That this ordinance shall be in full force and effect from and after its passage and approval and publication.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF GRAND PRAIRIE, TEXAS, THIS THE $14^{\rm th}$ DAY OF AUGUST, 2007.

APPROVED:

	Mayor
ATTEST:	APPROVED AS TO FORM:
City Secretary	City Attorney