

Ordinance No. 2000-001

AN ORDINANCE OF THE TOWN OF BUFFALO GAP, TEXAS TO PROMOTE AND PROTECT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY PROVIDING FOR THE REGULATION OF THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES, SHRUBS, AND OTHER PLANTS LOCATED ON ROADWAYS, PARKS, AND PUBLIC AREAS OWNED OR CONTROLLED BY THE TOWN OF BUFFALO GAP; AND PROVIDING FOR THE PROTECTION OF ALL TREES, PLANTS, AND SHRUBS THAT COMPRISE THE LIVE OAK FOREST WITHIN THE TOWN LIMITS OF BUFFALO GAP, TEXAS; AND PROVIDING A PENALTY FOR VIOLATIONS.

Whereas, on streets, parks, or other public places owned by the Town of Buffalo Gap, there are many large and small live oak trees, some with historical significance, that are experiencing public abuse, and/or in need of proper care and protection; and

Whereas, the entire live oak forest of hundreds of trees, possibly the northernmost and westernmost live oak forest in Texas, is in need of protection from disease, pestilence, pollution, fire, and strangulation by undergrowth, it is therefore deemed essential to the public welfare that the Town Council adopt the tree protection hereafter set forth.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BUFFALO GAP, TEXAS:

I. Authority and Power:

There is hereby created and established a Town Tree Board for the Town of Buffalo Gap, which shall consist of five members, citizens and residents of the city, who shall be appointed by the mayor with the approval of the Town Council. Members of the board shall serve without compensation.

II. Term of Office:

The term of the five members of the Tree Board, appointed by the Mayor, shall be three years, except that the term of two of the members appointed to the first board shall be for only one year, and the term of two members of the first board will be for two years. In the event that a vacancy shall occur during the term of any member, his or her successor shall be appointed for the unexpired portion of the term.

III. Applicability;

This ordinance provides full power and authority over all trees, plants and shrubs located within street rights-of-way, parks and public places of the Town, and to trees, plants and shrubs located on private property that constitute a hazard or threat as described herein.

IV. Definitions:

Damage shall include, but not be limited to: the uprooting of a tree, severance of the root system, severance of the main trunk, storage of materials or the compaction of soil around a tree, a substantial change in the natural grade above the root system or around the trunk, or the removal or pruning of more than 25% of living tissue; and the paving with impervious materials around a tree.

Public Property shall mean all grounds owned or controlled by the Town of Buffalo Gap where public access is not restricted. Utility and drainage easements on private property, and areas restricting public access shall not be included in the definition of public property as used in this document.

Shrub or Bush shall mean any woody plant having a multi-stem base and typically reaching a mature height of less than eight feet.

Tree shall mean any self-supporting woody perennial plant typically having a trunk diameter of at least three inches measured at four and a half feet above grade or having a trunk diameter of at least two inches if planted by or for the Town. This definition shall not include bushes or shrubs.

Public Tree shall mean any tree with at least two thirds of its trunk on public property.

Tree Value for applications under this ordinance shall mean the appraised value of a tree based on the latest edition of the "Guide for Plant Appraisal" by the Council of Tree and Landscape Appraisers.

Utility shall mean public utilities, businesses, or organizations in the business of supplying communications services, electrical energy, gas, heat, steam, water, or sewage disposal and treatment.

V. Licensing

It shall be unlawful for any person to engage in the professional business of planting, cutting, trimming, pruning, removing, spraying, or otherwise treating trees, shrubs, or vines belonging to the Town without first contacting the proper representative at Town Hall, paying applicable fees, and receiving the necessary license and permits.

VI. Insurance

Before any license shall be issued, each applicant shall first file evidence of possession of worker compensation and liability insurance in the minimum amounts of \$1,000,000 for bodily injury or death and \$100,000 property damage indemnifying the Town or any person injured or damaged resulting from the pursuit of such endeavor as herein described.

VII. Landscaping

In new subdivisions or when the development of commercial property occurs, the Town Tree Board shall review landscaping plans and may require street trees to be planted in any of the streets, parking lots, parks, and other public places abutting lands henceforth developed and/or subdivided.

VIII. Tree Planting, Maintenance, and Removal

Tree Species The Town Tree Board develops and maintains a list of desirable trees for planting along streets in three size classes: small, medium, and large.

Spacing The spacing of street trees will be in accordance with the three species size classes listed in this ordinance, and no trees may be planted closer together than the following: small trees, 30 feet; medium trees, 40 feet; and large trees, 50 feet; except in special plantings designed or approved by a landscape architect. This does not apply to trees that existed prior to the date of this ordinance.

Utilities Street Trees may not be planted under or within 10 lateral feet of any overhead utility wire, or over or within 5 lateral feet of any underground water line, sewer line, transmission line, or other utility.

Pruning and other Tree Work Standards for pruning and other tree work on Town trees, shrubs, and bushes are the same as those established by the National Arborist Association.

Topping It shall be unlawful as a normal practice for any person, firm, or city department to top any street tree, park tree, or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs within the trees crown to such a degree so as to remove the normal canopy and disfigure the tree. Trees severely damaged by storms or other causes, or certain trees under utility wires or other obstructions where other pruning practices are impractical may be exempted from this ordinance at the determination of the Tree Board.

IX. Adjacent landowner responsibility

No person shall plant, remove, cut above the ground, or disturb, mark, or otherwise disfigure any tree on any street, park, or other public place without first filing an application and procuring a permit from the Town Tree Board. The person receiving a permit shall abide by the standards set forth in this ordinance.

X. Tree Protection

A. Upon the discovery of any destructive or communicable disease or other pestilence which endangers the growth or health of trees, threatens to spread disease or insect infestations, or constitutes a fire hazard, the Town Tree board shall at once cause written notice to be served upon the owner of the property upon which such diseased or infested tree(s) is/are situated, and the notice shall require such property owner to eradicate, remove, or otherwise control such condition within a reasonable time to be specified in such notice.

B. The Town Tree Board shall have as one of its responsibilities, the location, selection, and identification of any trees that qualify as "Landmark Trees". A tree may qualify as a Landmark tree if it meets one or more of the following criteria: Species Rarity; Old Age; Association with a historical event or person; abnormality; scenic enhancement.

XI. Private Trees

The Town Tree Board or its official designee has the authority to enter onto private property whereon there is located a tree, shrub, plant or plant part(s) that is suspected to be a public nuisance and to order its/their removal, if necessary. A public nuisance may be defined as a tree, shrub, plant, or plant part with an infectious disease or insect problem; dead or dying trees; tree or limb(s), brush, or undergrowth that obstruct street signs, traffic signs, the free passage of pedestrians or vehicles on a public thoroughfare, or is determined to be a fire hazard. When, in the judgment of the Town Tree Board, a private property in the Town of Buffalo Gap contains one or more public nuisances, the Town Tree Board, or its official designee, will notify the owner(s) of said private property, and, with the cooperation of the property owner(s) determine the course of action to solve the public nuisance. If the property owner refuses to cooperate, the Town Tree Board will cause official written notice to be served on said property owner as outlined in Article XA of this document and officially inform the Town Council, at a Town Council Meeting, of the property owner's lack of cooperation. The property owner(s) will be encouraged to inform the Town Council of the reason(s) for refusal to cooperate. If the Town Council, the Tree Board, and the property owner(s) are unable to agree on a course of action to solve the public nuisance, and if it is still deemed to be a public nuisance by a majority vote of the Town Council, the Town Council may direct the Town Tree Board to proceed with action as outlined in Article XA and Article XIV of this document.

XII. Permits

Only the Town Tree Board, its representative or agent, or a Town contractor approved by the Town Tree Board may perform tree planting, maintenance, or removal on public land without first obtaining the necessary written permit from Town Hall.

XIII. Enforcement

The Town Tree Board, or its official designee, shall have the power to promulgate and enforce rules, regulations, and specifications concerning the trimming, spraying, removal, planting,

pruning and protection of trees, shrubs, vines, hedges and other plants upon the right-of-way of any street, alley, sidewalk, or other public place in the city as outlined in this ordinance. Additional rules, regulations, and specifications must be submitted, in writing, to the Town Council for approval.

XIV. Penalties, Claims, and Appeals

Violations – A person, or persons, who violates any provision of this ordinance or who fails to comply with any notice issued pursuant to provision of the ordinance, upon being found guilty of the violation, shall be subject to a fine not to exceed \$500, plus court costs, for each separate offense. Each day during which any violation of the provisions of this ordinance shall occur or continue shall be a separate offense. If as the result of the violation of any provision of this ordinance, the injury, mutilation, or death of a tree, shrub, or other plant located on city-owned property is caused, the cost of repair or replacement, or the appraised dollar value of such tree, shrub, or other plant, shall be borne by the party in violation. The value of trees and shrubs shall be determined in accordance with the latest revision of “A guide to the Professional Evaluation of Landscape Trees, Specimen Shrubs, and Evergreens”, as published by the International Society of Arboriculture.

Assessment of Claim – In the event that a nuisance is not abated by the date specified in the notice, the Town Tree Board is authorized to cause the abatement of such nuisance. The reasonable cost of such abatement shall be filed as a lien against the property on which the nuisance was located. In addition, the owner of the property upon which the nuisance was located shall be subject to prosecution.

Appeals – In accordance with The State of Texas Local Government Code Chapter 54.002, The governing body of a Type B general-law municipality may prescribe the fine for the violation of a municipal bylaw or ordinance, and
If a defendant of a Type B general-law municipality demands a jury trial, the fine may be imposed only on the verdict of a jury.
Compliance may be further sought through injunctive relief in District Court.

PASSED AND APPROVED this _____ day of _____, 20____

/s/ _____
Mayor

ATTEST:

/s/ _____
City Secretary