

**ORDINANCE NO. 107-092016**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE AMENDING ORDINANCE NO. 107-032012 ESTABLISHING ADDITIONAL MEASURES FOR REGULATING OVERHANGING TREES, BRUSH AND SHRUBS TO AVOID INTERFERENCE WITH PUBLIC USE OF CITY RIGHT-OF-WAYS AND EASEMENTS; PROHIBITING NUISANCES; PROVIDING FOR NOTICE AND ABATEMENT; PROVIDING FOR COST RECOVERY; AMENDING PENALTIES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Garden Ridge is authorized to regulate overhanging trees, brush and shrubs to avoid interference with public use of City right-of-ways and easements pursuant to the general authority granted to the City under Chapters 51 and 54 of the Texas Local Government Code and regulate nuisances pursuant to Chapter 54 and 217 of the Texas Local Government Code; and

**WHEREAS**, the City Council of the City of Garden Ridge has determined that due to increasing overhanging trees, brush and shrubs on City streets and rights-of-ways and easements within the City limits of the City, such conditions pose a risk to the health, safety and general welfare of the public, necessitating municipal regulation and the passage of this ordinance; and

**WHEREAS**, the City Council has determined that the existence of overhanging trees, brush and shrubs can create hazardous situations by obstructing traffic, obstructing the view of street intersections and traffic signals, and interfering with power lines and other utility services and create a nuisance;

**WHEREAS**, the City Council finds that many lot owners in the City of Garden Ridge, Texas have invested substantial time and effort in the landscaping of their property. Such landscaping includes, but is not limited to trees, planters, flower boxes, mulch beds, shrubbery, ground covers, hedges, etc. Much of this landscaping is located between the designated edges of the public right- of-way and the edging of the paved area of the street way. The application of this ordinance is not intended to require property owners to remove such landscaping as might be located in City of Garden Ridge right-of-ways; and

**WHEREAS**, the City Council finds that such rights-of-ways exist for the purpose of maintaining city facilities, roadways and infrastructure. As such, the City of Garden Ridge has no duty and assumes no responsibility through this ordinance to repair or replace privately owned landscaping located in city right-of-ways in the event such landscaping becomes damaged or must be removed to facilitate maintenance or capital projects. Lot owners placing landscaping in city rights-of-ways do so at their own risk and shall have no cause for action against the City of Garden Ridge for such use; and

**WHEREAS**, the City Council finds that the City of Garden Ridge shall not be responsible for the replacement of any irrigation system or related appurtenances located in City right-of-ways as stated in Ordinance 19, Amendment No. 2.

**WHEREAS**, the City Council finds that additional regulations are needed and that the following provisions are necessary to protect the public health, safety, and welfare.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS:**

Section 1. Findings. The findings set out herein are found to be true and correct and are hereby adopted by the City Council and made a part of this Ordinance for all purposes.

Section 2. Repealing Prior Ordinances. The City of Garden Ridge, Texas, Ordinance 107-032012 dated, March 7, 2012, and all amendments thereto, are hereby superseded.

Section 3. Regulations. It shall be unlawful for any person owning, occupying or having supervision or control of any lot, tract, parcel of land or portion thereof, occupied, improved or unimproved, within the incorporated area of the City of Garden Ridge, to permit the protrusion or overhang of trees, bushes, shrubs and structures:

- a. over a public street or city easement used for vehicular access from the surface up to a height of fifteen (15) feet in that space located between the curbs or, in the event no curbing exists, in that space located over the paved surface of the roadway;
- b. over a public right-of-way other than a public street or city easement used for vehicular access and in locations where a public right-of-way exists adjacent to a curbed or paved area of a public street (e.g. sidewalks or other pedestrian areas), from the surface up to a height of eight (8) feet between the designated edges of the public right-of-way.
- c. in such a manner that obstructs traffic, the view of intersection or traffic signals, or interferes with utility lines in such a manner as to constitute an immediate threat to public health or safety. A public nuisance may be declared for trees, bushes, and shrubs which create a threat to public health or safety.

Section 4. Notice. Whenever any condition described in Section 3 - Regulations, of this Ordinance is found to exist in the City, the City Administrator or designated representative shall notify the owner, agent or occupant of the lot, parcel or premises from which the protruding or overhanging trees, bushes, shrubs or structures extend to remove or remedy the condition(s) within fifteen (15) days after the date of the notice. Such removal or remedy shall be consistent with Ordinance 71-032014 procedures to ensure that the spread of oak wilt is prevented. Such notice shall be in writing and shall be served on the owner, agent or occupant in person or via the United States Postal Service to the last known address of the owner, agent or occupant. In the event personal service cannot be had and the address is not known, such notice shall be published no less than one time in a newspaper that has general circulation within the City of Garden Ridge, Texas.

Section 5. Compliance Extension. At the sole discretion of the City Administrator or designated representative, an extension of time, not to exceed thirty (30) days, may be granted. The responsible party must submit a written request for extension of time detailing the measures taken to remedy the violation and the expected compliance date.

Section 6. Remediation. The City shall have the option but not the duty to take measure to remediate a property that is not in compliance with this Ordinance. If the City determines that remediation is necessary the following procedures apply:

- a. In the event that a property is declared a nuisance or in the event the owner, tenant, lessee, agent or occupant of any lot, parcel or premises fails to remove or remedy any condition described in Section 3 - Regulations of this Ordinance within fifteen (15) days after notice has been given, the City may do whatever is deemed necessary to remove or remedy the condition, or cause the same to be done, and charge the expense incurred thereby to the owner, tenant, agent, lessee or occupant of the lot, parcel or premises and such expense shall be assessed against the subject property upon which the work is done.
- b. Upon completion of the remediation of the property, a statement of the expense incurred will be certified by the City Secretary and sent to the violator of this Ordinance. Any person receiving a notice for payment of the remedial expenses shall pay the City the billed amount within fifteen (15) days, the amount of such unpaid expenses shall bear ten percent (10%) per annum interest from the date certified by the City Secretary as being the date of the statement.
- c. Should the property owner fail to pay the City within thirty (30) days from the date of invoicing the City may, at its discretion, file a lien against the property in the amount of all costs incurred by the City, plus interest. The assessment of expenses and lien shall follow the procedures established in Chapter 342, Tex. Health & Safety Code.
- d. Failure to pay the invoiced amount is a violation of this Ordinance and may result in additional citations being issued. Remediation of the property by the City is not a defense to prosecution pursuant to this ordinance.

Section 7. Definitions. For the purpose of this Ordinance, the term "structure" as used in this Ordinance shall not include mail boxes constructed and placed in accordance with the provisions of Ordinance Number 13, Section 5.1.8.1. "Person" means anyone who holds an interest in the legal title of the property or who has the legal right of possession. All other terms have their usual meaning.

Section 8. Limitations. The City of Garden Ridge assumes no responsibility to maintain, repair or replace privately owned landscaping, irrigation systems or related appurtenances, located in city right-of-way. In the event such landscaping becomes damaged or must be removed to facilitate maintenance or capital projects, the City's use shall be superior to any person in possession of the property, including the fee owner. Lot owners or others in possession of the property placing landscaping in city right-of-way do so at their own risk and shall have no cause

for action against the City of Garden Ridge for any such use. (See Ordinance 19, Amendment No. 2 regarding irrigation systems in City right-of-ways).

Section 9. Penalty. Any person or entity violating any provision of this Ordinance within the City limits of the City of Garden Ridge, Texas shall be guilty of a misdemeanor, and upon conviction shall be fined an amount not less than one hundred dollars (\$100.00), and not to exceed five hundred dollars (\$500.00). However in the event that a nuisance is declared, the fine may be increased in an amount not to exceed two thousand dollars (\$2,000.00). Each day that such violation continues or recurs shall be deemed a separate offense and be punishable as such. Prosecution or convictions under this section shall never be a bar to other remedies of relief for violations of this or other laws. A culpable mental state is not required for conviction pursuant to this Ordinance.

Section 10. Other Remedies. In addition to any other remedies or penalties contained herein, the City may enforce the provisions of this section pursuant to the applicable provisions of Chapter 54 of the Texas Local Government Code, which chapter provides for the enforcement of municipal ordinances.

Section 11. Cumulative and Savings. This Ordinance shall be cumulative of all provisions of ordinances relating to the overhang of trees, bushes or shrubs as it pertains to city streets, right-of-ways or nuisance declaration of overhanging trees of the City of Garden Ridge, Texas, except where the provisions of the ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. Any and all previous versions of this Ordinance to the extent that they are in conflict herewith are repealed.

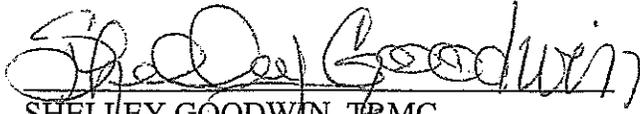
Section 12. Severability. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph, or section.

Section 13. Effective Date. This Ordinance shall be in full force and effect from and after its final passage and any publication required by law.

PASSED AND APPROVED, the 7<sup>th</sup> day of September, 2016.

  
NADINE L. KNAUS  
MAYOR

ATTEST:

  
SHELLEY GOODWIN, TRMC  
CITY SECRETARY

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