



ORDINANCE 2016-06

AN ORDINANCE REGULATING THE ENFORCEMENT OF TALL GRASS AND WEEDS REGULATIONS INSIDE THE TERRITORIAL CITY LIMITS OF TOM BEAN, GRAYSON COUNTY, TEXAS; REPEALING ORDINANCE NO. 103 OF THE CITY OF TOM BEAN AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

Whereas: The City Council of the City of Tom Bean, Grayson County, Texas has investigated and determined that it would be advantageous and beneficial to the citizens of the City of Tom Bean, Grayson County, Texas to adopt this Ordinance regulating the enforcement of tall grass and weeds regulations within the territorial city limits of Tom Bean.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOM BEAN, GRAYSON COUNTY, TEXAS:

Section 1: Purpose and Intent; it is the purpose of this Ordinance to put in place such regulations as are necessary to;

- a. Preserve, promote and protect the public health, safety, and welfare of the citizens of Tom Bean, Texas.
- b. Preserve, promote and protect private and public property.
- c. Protect all citizens and personal and private property from dangerous weeds, rubbish, brush or tall grass and carrion, stagnant water, filth and unsanitary or unwholesome matter by specifying such preventative and control measures as may be necessary.
- d. Provide security to all citizens from disturbances, annoyances, intimidation, and injury from all unkempt and unclean property.

Section 2: Definitions; when used in this article, the following words and terms, unless the context indicates a different meaning, shall be interpreted as follows:

Owner. Any person or entity that is shown as the property owner on the latest property tax assessment rolls or any person having or claiming to have any legal or equitable interest in the property, including any agent who is responsible for managing, leasing or operating the property and including any tenant within the territorial city limits of Tom Bean.

Property. All privately owned occupied or unoccupied property, including vacant land, and/or buildings designed or used for residential, commercial, business, industrial or religious purposes. The term “property” shall also include a yard, ground, wall, driveway, fence, steps, or other structure appurtenant to the property.

Brush. Unsightly scrub vegetation of low or no economic value or unsightly or unwanted undergrowth vegetation; plants or grass clippings, leaves or tree trimmings.

Carrion. The dead and putrefying flesh of an animal or any flesh that is unfit for food.

Abate. Eliminate by removal, repair, rehabilitation, or demolition.

Matter. That of which any physical object is composed.

Dangerous weeds. Weeds or brushes that have grown higher than ten inches; and are an immediate danger to the health, life or safety of any person.

Filth, unwholesome or unsanitary matter. Rotten, foul, diseased or unhealthy matter; or matter that is detrimental to physical, mental or moral well-being.

Rubbish. Miscellaneous waste, trash, garbage, debris or rejected or used matter, including, but not limited to, feathers, ashes, aluminum cans, papers, boxes, glass, tires, crates, construction scraps and used or rejected building materials.

Stagnant water. A body of standing, motionless water, which has remained standing or motionless for a period of greater than ten days, that may allow for the growth of rotten, foul, diseased or unhealthy matter.

Tall grass. Grass that is longer than twelve (12) inches from the soil or ground.

Vegetative growth. Any grass, weeds, shrubs, trees, brush, bushes or vines.

Weeds. Vegetation of low economic value that tends to grow freely and by its presence to exclude or retard grass or more valuable vegetation; or vegetation of exuberant growth and injurious effect; or vegetation of low economic value and unsightly appearance.

Serious bodily injury. Means an injury characterized by severe bite wounds or severe ripping and tearing of muscle that would cause a reasonably prudent person to seek treatment from a medical professional and would require hospitalization without regard to whether the person actually sought medical treatment.

Ordinance Officer. Shall be any Health Authority, Police Officer, Chief of Police or an Ordinance Control Officer acting for the City of Tom Bean, Grayson County, and State of Texas.

ETJ. Extra Territorial Jurisdictions.

Section 3: Enforcement of Tall Weeds and Grass Regulations;

The Ordinance Officer of the City of Tom Bean shall have primary responsibility and authority to enforce any tall weeds and grass regulations contained herein. Nothing in this article shall prevent the Ordinance Officer from having the authority to obtain voluntary compliance by way of warning or education.

Section 4: Violation; Defense to prosecution;

- a. It shall be a violation of this article for the owner or occupant of any property or premises in the city to allow or permit weeds, tall grass, rubbish, brush, stagnant water, carrion, filth or unsanitary or unwholesome matter of whatever nature to grow, accumulate or remain on such property or premises. All weeds, tall grass and brush in excess of twelve (12) inches in height are prohibited under this section. For purposes of this article, the lot or premises includes, but is not limited to, the property between the curb if curbs (or if no curb, then the edge of the road surface) and to the edge of the alley (or the back property line if there is no alley). All vegetation, not regularly cultivated, and which exceeds twelve (12) inches in height, shall be presumed to be objectionable and unsightly matter.
- b. For purposes of determining whether a violation of this article has occurred, the term "tall grass" shall not include hay or crops grown and harvested for animal or human consumption on a lot or premises that is ten (10) acres or larger in size, has an agricultural exemption approved by the county for ad valorem tax purposes, or is owned by a governmental entity. It shall be an affirmative defense to prosecution if any of the three criteria in this section is met.
- c. It shall be unlawful for any owner or occupant of any property within the city to suffer or permit tree limbs, brush and any other vegetation existing above a public street or alley to hang lower than twelve (12) feet above the alley or public street pavement or seven (7) feet above the sidewalk and other rights-of-way.
- d. It shall be unlawful for any owner or occupant of any property within the city to suffer or permit tree limbs, brush or unsightly vegetation to grow within one (1) foot of the public street.
- e. With respect to lots, tracts, or parcels of land of five (5) or more acres under single ownership, the provisions of this section shall not apply to any area greater than one hundred (100) feet from any open public street or thoroughfare, as measured from the right-of-way line of such street or thoroughfare, and greater than one hundred (100) feet from any adjacent property under different ownership and on which any building is located or on which any improvements exists, as measured from the property line.
- f. Property designated as and/ or required by an ordinance to be maintained in its natural state shall be exempt from the provisions of this section.

- g. Property included as part of a conservation easement shall be exempt from these provisions.
- h. Property that is part of a designated floodplain shall be exempt from these provisions.

Section 5: Notice of violation and opportunity for hearing;

- a. If the city determines that a property owner is in violation of this article, the city shall provide written notice to the property owner and any occupant of the premises.
- b. The notice shall be given:
 - 1. Personally to the owner or occupant in writing; or
 - 2. By letter sent certified, first class mail, return receipt requested and 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.
- c. If personal service of notice cannot be obtained by the methods described above, the following methods may be used:
 - 1. By posting the notice on or near the front door of each building on the property to which the violation relates; or
 - 2. 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.
- d. If the city mails a notice to a property owner in accordance with subsection (c) of this section and the United States Postal Service returns the notice as "refused" or "unclaimed," the validity of the notice is not affected, and the notice is considered as delivered.
- e. The notice shall provide the following information:
 - 1. A general identification of the property in question, which is not required to be a legal description;
 - 2. The name and address of the owner of the property, if known;
 - 3. A brief description of the nature of the violations;
 - 4. A notice stating that if the owner or occupant of the property in question fails to abate the violation described in the notice within fourteen (14) days of the date the notice was delivered, posted or published in the manner provided for in this article, the city may do the work or make the improvements required to bring the property into compliance with this article and pay for the work done or improvements made and charge the expenses to the owner of the property;

5. A notice that if the owner or occupant is aggrieved by any aspect of the notice of violation or the findings as set forth in said notice of violation, that the owner or occupant may request, in writing to the city clerk within fourteen (14) days of the date the notice was delivered, posted or published in the manner provided for in this article, that a hearing take place wherein the city council may address said grievances and render a final determination; and
6. A notice that any such written request for a hearing must give a specific description of all grievances that the owner or occupant of property wishes to have reviewed by the city council, and that the owner or occupant may have present an attorney or agent to represent the owner or occupant and may present witnesses or other evidence for consideration by the city council.
 - i. In the notice described in this section, the city may, if it chooses, include a warning that if the owner or occupant 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. If the city chooses to include this warning in the notice described in this section, then, in addition to mailing the notice to the owner, the city shall post the notice in accordance with subsection (c)(2) or (c)(3) of this section.

Section 6: Abatement by City;

If the owner or occupant of the property in question fails to abate the violations described in the notice and fails to request in writing to the city clerk a hearing within fourteen (14) days after the date the notice was delivered, sent, posted or published, the city may do the work or make the improvements required to abate the violations and pay for the work done or improvements made and charge the expenses to the owner of the property.

Section 7: Public Hearing;

- a. If the owner or occupant of the property in question requests a hearing in writing to the city clerk, the city council shall conduct, within a reasonable amount of time, a public hearing to address any grievances that the owner or occupant of the property in question has described in his written request for hearing.
- b. Upon conclusion of the hearing, the city council shall make a final determination regarding the grievances brought before it. The city council may vacate, modify or uphold the notice of violation, or take any other appropriate action not in conflict with this article to address the grievances brought before it.

Section 8: Assessment of Expenses; Lien on Property; Lien Statement;

- a. If the city incurs any expenses in bringing the property in question into compliance with this article, the mayor or his designee may send an invoice to the property owner for reimbursement to the city of said expenses or file in the official public records of real property in Grayson County a lien statement against the property whereon the violation was abated. The lien is a privileged lien subordinate only to tax liens and liens for street improvements.
- b. The lien statement shall state the following:
 1. The name of the owner, if known;
 2. A legal description of the property;
 3. The amount of the expenses incurred by the city; and
 4. The balance owed.
- c. The lien is extinguished to the extent that a property owner or another person having an interest in the legal title to the property reimburses the city for its expenses.
- d. The lien is security for the expenditures made and interest accruing at the rate of ten percent simple interest per annum or as otherwise permitted by law, on the amount due from the date of payment by the municipality.
- e. The city council may direct the mayor or his designee to bring a suit for foreclosure in the name of the city to recover the expenditures and interest due.

Section 9: Additional Authority to Abate Dangerous weeds;

- a. The city may abate, without notice, weeds that:
 1. Have grown higher than 48 inches; and
 2. Are an immediate danger to the health, life or safety of any person or property.
- b. Not later than the tenth (10th) day after the date the city abates weeds under this section, the city shall give notice to the property owner in the manner required by section 7.
- c. The notice shall contain:
 1. An identification, which is not required to be a legal description, of the property;
 2. A description of the violations of this article that occurred on the property;
 3. A statement that the city abated the weeds; and
 4. An explanation of the property owner's right to request, in writing, an administrative hearing regarding the city's abatement of the weeds.

- d. The city shall conduct an administrative hearing on the abatement of the weeds under this section if, not later than the thirtieth (30th) day after the date of the abatement of the weeds, the property owner files with the city a written request for a hearing.
- e. An administrative hearing conducted under this section shall be conducted not later than the twentieth (20th) day after the date a request for a hearing is filed. At the hearing, the owner may testify or present witnesses or written information relating to the city's abatement of the weeds.
- f. The city may assess expenses and create a lien under this section as it assesses expenses and creates liens under section 8. A lien created under this section is subject to the same conditions as a lien created under section 8 .
- j. The authority granted a city by this section is in addition to the authority granted by section 6.

Section 10: Penalty for failure to comply;

A violation of this article shall be punishable by a fine not to exceed \$2,000.00. With respect to violations of this article that are continuous with respect to time, each day the violation continues is a separate offense. Further, violations of this article that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief or civil or quasi-judicial enforcement of a violation of this article.

Section 11: Removal of Orders or Notices Posted Under this article;

Any person who removes any notice or order posted as required in this article shall be guilty of a Class C misdemeanor with a fine not to exceed \$200.00.

Section 12: Appeal;

Any owner of record of property aggrieved by an action of the city pursuant to this article may file in the district court a verified petition setting forth that the action is illegal, in whole or in part, and specifying the grounds of the illegality. The petition must be filed by an owner within 30 calendar days after the date that notice of the assessment of removal or abatement expenses is mailed to the owner by certified mail, return receipt requested, or the city's action shall become final upon the expiration of each such 30 calendar day period.

Section 13: Liability of City Officer and/ or Employees for Action under the Article;

No officer, agent or employee of the city shall be personally liable for damages incurred or alleged to be incurred as a result of any act required, permitted or authorized to be done or

performed in the discharge of his duties under this article, or in performing any necessary act preliminary to or incidental to such work, or authorized or directed pursuant thereto.

Section 14: Notice of Violation;

- a. An Ordinance Officer who has probable cause to believe that an owner is violating any section of this Ordinance shall provide the owner with a written statement of that fact. The statement must be signed by the officer and plainly state the date and time at which the statement was provided to the owner. The statement must provide, name, address, contact number of owner if known, the nature of the violations, and the place the violation occurred.
- b. A person commits an offence if that person fails to comply within fourteen (14) days from the date noted the owner is provided the statement of violation.

Section 15: Penalty for Violations;

(1st Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than twenty-five and NO/100 (\$25.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(2nd Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than Fifty and NO/100 (\$50.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

(3rd Violation) Any person who violates any provisions or part of these rules or does not comply with the requirements of these regulations shall be guilty of a Class C Misdemeanor and shall be fined no less than One Hundred and NO/100 (\$100.00) dollars, court cost fees, and restitution fees in accordance with the general penalty per violation; each day of violation constitutes a separate offense.

It is the intention of the city council of Tom Bean, that each separate provision in this ordinance shall be deemed independent of all other provisions herein and it is further the intention of the city council that, if any provisions of this article are declared invalid or unconstitutional, all other provisions thereof shall remain valid, enforceable and constitutional.

Section 16: Repeal of Conflicting Ordinances;

All existing ordinances of the City of Torn Bean, Grayson County, Texas are hereby repealed insofar as they may be inconsistent with the provisions of this ordinance.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF TOM BEAN, TEXAS THIS 13
DAY OF June, 2016.

Attest:

Cathy Pugh
Cathy Pugh, City Secretary

Sherry E. Howard
Sherry E. Howard, Mayor