

## **ORDINANCE NO. O: 2022-001**

### **AN ORDINANCE ESTABLISHING A TREE PRESERVATION AND UPDATING THE TREE MAINTENANCE ORDINANCE AND TO SUBMIT A TREE CITY APPLICATION TO TREE CITY USA TO REQUEST A TREE CITY DESIGNATION**

**WHEREAS,** The Tree City USA program was founded in 1976 to celebrate towns and cities committed to growing their urban canopy. Led by the Arbor Day Foundation, with partners at USDA Forest Service and National Association of State Foresters, it provides the foundational framework necessary for communities to manage and expand their tree cover; and

**WHEREAS,** the benefits of becoming a Tree City designation are that the city would gain national recognition for our commitment to environmental stewardship, create a cleaner, healthier, and more beautiful urban landscape and will receive flags, signs, and other materials to proudly display our award in these areas, and the city will continue to educate residents about the value of trees and green space; and

**WHEREAS,** The Tree City USA program has helped more than 3,600 communities across the country build out their urban forests; and

**WHEREAS,** the City Council recognizes preserving trees and proper maintenance of trees promotes the health, safety, and welfare of the public by creating an urban environment that is aesthetically pleasing that promotes economic development and a better quality of life for the City of Del Rio and its citizens; and

**WHEREAS,** the City of Del Rio recognizes that trees are a valuable asset to the environmental character of all city properties and will submit an application to be eligible to receive a Tree City Designation from the Tree City USA Program.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEL RIO, TEXAS THAT:**

**SECTION 1- CHAPTER 25, ARTICLE V -TREES AND SHRUBBERY is amended to read as follows:**

#### **Section 25-77**

##### **Purpose.**

To enhance the quality of life and the present and future health, safety, and welfare of all residents, to enhance property values, and to ensure proper planting and care of trees on public property, the City Council herein delegates the authority and responsibility for managing public trees, establishes practices governing the planting and care of trees on public property, and makes provision for the emergency removal of trees on private property under certain conditions.

#### **REPEAL- Section 25-78**

#### **(New) Section 25-78. Definitions.**

As used in this Article, the following words and phrases shall have the meanings indicated:

**Damage** – any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part of the root system or main trunk; storage of material on or compaction of surrounding soil;



a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

**Nuisance** – any tree, or limb thereof, that has an infectious disease or insect; is dead or dying; obstructs the view of traffic signs or the free passage of pedestrians or vehicles; or threatens public health, safety, and welfare.

**Parkway** – the area along a public street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley. Public property – all grounds and rights-of-way (ROWS) owned or maintained by the City.

**Public tree** – any tree or woody vegetation on city-owned or city-maintained property or rights-of-way.

**Top or Topping** – the non-standard practice of cutting back of limbs to stubs within a tree's crown to such a degree so as to remove the normal canopy and disfigure the tree.

## **SECTION 2. CHAPTER 25, ARTICLE V- TREES AND SHRUBBERY- ADD NEW SECTIONS AS FOLLOWS:**

### **Section 25-79. Authority and power.**

(a) Delegation of authority and responsibility. The Director of the Parks Department and/or their designee, hereinafter referred to as the "Director", shall have full authority and responsibility to plant, prune, maintain and remove trees and woody plants growing in or upon all municipal streets, rights-of- ways, city parks, and other public property. This shall include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other pest disease.

(b) Coordination among city departments. All city departments will coordinate as necessary with the Director and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements, and other public properties not under direct jurisdiction of the Director.

(c) Interference. No person shall hinder, prevent, delay, or interfere with the Director or his agents while engaged in carrying out the execution or enforcement of this Ordinance.

### **Section 25-80. Maintenance/Pruning to Prevent Obstructions**

#### ***(a) Duty of owner and/or occupier of property.***

(1) It shall be the duty of the person owning or occupying real property which borders a public street, alley, or sidewalk to prune the trees located on said property in such a manner that they will not:

- a. Obstruct or shade the streetlights,
- b. Obstruct the passage of pedestrians or public transportation including but not limited to automobiles and bicycles,
- c. Obstruct vision of traffic, directional or wayfinding signs,



- d. Obstruct the view of any street, sidewalk or alley intersection, or
- e. Overhang into any public thoroughfare.

(b) *Process and procedures.*

(1) *Notice to prune.* Should any person required herein to prune or maintain trees fail to prune trees as herein provided, Code Compliance shall notify such person in writing that they are not in compliance with this section and require that such person comply with this section within ten (10) days after receipt of the written notice.

(2) *Notice served.* The notice required herein shall be served by personal hand delivery to the owner or occupant or by mailing by certified mail a copy of the notice to the last-known address of the owner or occupant.

(3) *Failure to comply.* When a person to whom notice is given fails to comply with this section within the specified time, it shall be lawful for the city to prune the obstructing trees, and the exact cost thereof shall be billed to and become a personal liability of such person.

(4) *Emergency.* In any location in the City where an overhanging tree or trees have not been pruned as required herein and are obstructing the view of a stop sign or other traffic-control device or obstructing visibility at an intersection, the City may, without notice to the person owning or occupying the property on which the tree or trees are located, prune such trees so as to eliminate the obstruction. In such case, the City shall assume the cost of the pruning or maintenance.

**Section 25-81. Tree planting and care standards.**

(a) Standards. All planting and maintenance of public trees shall conform to the American National Standards Institute (ANSI) A-300 "Standards for Tree Care Operations" and shall follow all tree care Best Management Practices (BMPs) published by the International Society of Arboriculture.

(b) Requirements of franchise utility companies. The maintenance of public trees for utility clearance shall conform to all applicable utility industry standards or as noted in this Code of Ordinances

(c) Preferred species list. The Director shall maintain an official list of desirable tree species for planting on public property in two size classes: Ornamental (20 feet or less in height at maturity) and Shade (greater than 20 feet at maturity). Trees from this approved list may be planted without special permission; other species may be planted with written approval from the Director. For a comprehensive list of Drought Resistant Plants, refer to Municode, City of Del Rio Code of Ordinances, Chapter 8- Article X Landscaping, Section 8.465 Enforcement, Appendix A.

(d) Planting distances. The Director shall develop and maintain an official set of spacing requirements for the planting of trees on public property. No tree may be planted within the visibility triangle of a street intersection or within 10 feet of a fire hydrant.

(e) Planting trees under electric utility lines. Only trees listed as Ornamental trees on the official city tree species list may be planted under or within 15 lateral feet of any overhead utility wire.

**Section 25-82. Prohibition against harming public trees.**



(a) It shall be unlawful for any person, firm, or corporation to damage, remove, or cause the damage or removal of a tree on public property without written permission from the Director.

(b) It shall be unlawful for any person, firm, or corporation to attach any cable, wire, sign, or any other object to public tree.

(c) It shall be unlawful for any person, firm, or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination and approval of the Director.

(d) Any person, firm, corporation, or city department performing construction near any public tree(s) shall consult with the Director and shall employ appropriate measures to protect the tree(s), according to procedures contained in the Best Management Practices (BMPs) for "Managing Trees During Construction" published by the International Society of Arboriculture.

**Section 25-83. Adjacent owner responsibility.**

(a) The owner of land adjacent to any city street or highway, when acting within the provisions of this Ordinance, may plant and maintain trees in the adjacent parkway area.

(b) No property owner shall allow a tree, or other plant growing on his or her property to obstruct or interfere with pedestrians, public thoroughfare, the view of drivers, thereby creating a hazard. If an obstruction persists, the Director shall notify the property owner to prune or remove the tree or plant as noted in Section 25-78.

**Section 25-84. Certain trees declared a nuisance.**

(a) Any tree, or limb thereof, on private property determined by the Director to have contracted a lethal, communicable disease or insect; to be dead or dying; to obstruct the view of traffic signs or the free passage of pedestrians, public thoroughfare, or vehicles; or that threatens public health, safety, and welfare is declared a nuisance and the City may require its treatment or removal.

(b) Private property owners have the duty, at their own expense, to remove or treat nuisance trees on their property, which includes a lot or parcel of land, easement or public way to the curb or placement when no curb is present and to the centerline of adjacent alleys, including any structures thereon. The City may remove such trees at the owner's expense if the owner does not comply with treatment and/or removal as specified by the Director within the written notification period.

**Section 25-85. Violations and penalty.**

Any person, firm or corporation violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine not to exceed five hundred dollars (\$500.00) for each offense.

**Section 25-86. Appeals.**

Appeals to decisions by the Director regarding the interpretation of this ordinance shall be heard by City Manager or designee appointed by the City Manager. Any person, firm or corporation cannot appeal penalties to City Manager if it is a citation.

**SECTION 5.-** The City Manager or his designee is hereby authorized to submit an application for Tree City USA Program.

**SECTION 6.** - The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as part of the judgment and finding of the City Council.

**SECTION 7.-** All Ordinances, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

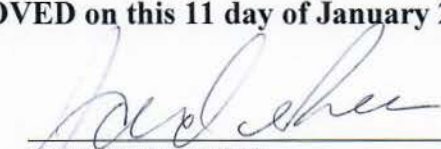
**SECTION 8.-** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 9.-** If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 10.-** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, Texas Government Code, as amended.

**SECTION 11.-** This Ordinance shall be in force and effect from and after its final passage and publication as required by law.

**PASSED AND APPROVED on this 11 day of January 2022**

  
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**JAMES DeREUS**  
Mayor Pro Tem

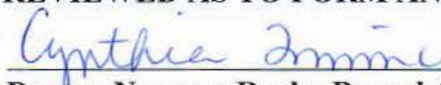
**ATTEST:**

  
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**MARIA C. ACOSTA**  
Deputy City Secretary

**REVIEWED FOR ADMINISTRATION:**

  
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**JOHN A. SHEEDY IV**  
City Manager

**REVIEWED AS TO FORM AND LEGALITY:**

  
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**Denton Navarro Rocha Bernal & Zech, P.C.**  
Interim City Attorney