

Ordinance No. 2005.11
Village of Salado
County of Bell
State of Texas
July 21, 2005

AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS, ESTABLISHING REGULATIONS REGARDING TREES, SHRUBS AND OTHER PLANT MATERIALS LOCATED IN AND ON PUBLIC AND PRIVATE PROPERTY; PROVIDING THAT THE VILLAGE HAS JURISDICTION OVER TREES AND PLANT MATERIALS ON PUBLIC PROPERTY; ESTABLISHING MINIMUM CLEARANCE FOR TREES AND SHRUBS ADJACENT TO AND OVERHANGING PUBLIC STREETS AND SIDEWALKS; AUTHORIZING REMOVAL OR OTHER ACTION AS TO DANGEROUS TREES, SHRUBS AND HEDGES THAT CONSTITUTE A NUISANCE; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; PURPOSE; JURISDICTION; EFFECTIVE DATE; PENALTIES INCLUDING A FINE NOT TO EXCEED \$1,000.00 AND A CIVIL PENALTY NOT TO EXCEED \$500.00 PER OFFENSE AND INJUNCTIVE RELIEF; REPEALER; SEVERABILITY; AND PROPER NOTICE AND MEETING.

WHEREAS, the Board of Aldermen of the Village of Salado (“Board of Aldermen”) seeks to provide for the safe and orderly travel of pedestrian and vehicular traffic within its corporate limits; and

WHEREAS, the Board of Aldermen seeks to deter poor property maintenance and to preserve property values; and

WHEREAS, the Board of Aldermen finds that certain trees or shrubs that are not properly trimmed, pruned and otherwise maintained may be dangerous in that they may obstruct traffic or interfere with curbs, gutters, sewers, sidewalks, streets, public utilities, pedestrian traffic or vehicular traffic; and

WHEREAS, the Board of Aldermen finds that certain trees or shrubs that are not properly trimmed, pruned and otherwise maintained may constitute a nuisance and a threat to the public health, safety and general welfare; and

WHEREAS, pursuant to Texas Transportation Code section 311.002, the Village of Salado (“Village”) has exclusive control over the highways, streets and alleys of the Village; and

WHEREAS, pursuant to Texas Transportation Code section 311.002, the Village may abate or remove an encroachment or obstruction on a highway, street or alley; prevent the

obstruction of a drain or sewer; and protect a drain or sewer from encroachment or damage; and

WHEREAS, pursuant to Texas Health and Safety Code Chapter 342, the Village may regulate the cleaning of a building, establishment or ground from filth, carrion, or other impure or unwholesome matter and abate the same at the expense of the owner of the property;

WHEREAS, pursuant to Texas Health and Safety Code Chapter 342, the Village may require the owner of a lot to keep the lot free from weeds, rubbish, brush and other objectionable, unsightly or unsanitary matter and abate the same at the expense of the owner of the property; and

WHEREAS, pursuant to Texas Local Government Code Chapter 217, the Board of Aldermen has authority to prevent nuisances within the Village and remove the same at the expense of the person who is responsible for the nuisance or who owns the property on which the nuisance exists; and

WHEREAS, pursuant to Texas Local Government Code section 51.032, the Village may adopt an ordinance the governing body considers proper for the government of the Village; and

WHEREAS, pursuant to Texas Local Government Code section 51.001, the governing body of the Village may adopt an ordinance, rule or police regulation that is for the good government, peace or order of the Village or the trade and commerce of the Village; and

WHEREAS, the Board of Aldermen finds that the general welfare, health, morals and safety of the citizens of the Village are promoted by the enactment of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS:

1. ENACTMENT CLAUSES

A. Popular Name

This Ordinance may be referred to as the “Tree Ordinance.”

B. Findings of Fact

All of the above premises are hereby found to be true and correct legislative and factual findings of the Board of Aldermen, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

C. Purpose

This Ordinance is adopted so that the Board of Aldermen may promote the public health, safety, and general welfare within the Village through the regulation of activities related to trimming, pruning and otherwise maintaining certain trees and shrubbery.

D. Compliance Required

It shall be unlawful for any person to violate this Ordinance.

E. Scope of Jurisdiction

The provisions of this Ordinance shall apply within the Village Limits (i.e., incorporated municipal boundary) of the Village.

F. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

2. DEFINITIONS

A. General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined below shall be given their common, ordinary meaning unless the context clearly requires otherwise. When not inconsistent with the context, words used in the present tense shall include the future tense; words in the plural number shall include the singular number (and vice versa); and words in the masculine gender shall include the feminine gender (and vice versa). The word "shall" is always mandatory, while the word "may" is merely directory. Headings and captions are for reference purposes only.

B. Specific

Board of Aldermen means: the governing body of the Village of Salado, Texas.

Curb means: a vertical or sloping member along the edge of a pavement forming part of a gutter, strengthening or protecting the pavement edge and clearly defining the pavement edge to vehicle operators.

Gutter means: the artificially surfaced and generally shallow waterway provided usually at the side of the street adjacent to, and part of, the curb for the drainage of surface water.

Hedge means: a row of shrubs, bushes or small trees planted together, often for the purpose of forming a fence or boundary.

Mayor means: the elected or appointed chief executive officer of the Village and presiding officer of the Board of Aldermen, or the mayor's designee.

Person means: a human being, his heirs, executors, administrators or assigns, and where the context permits, also includes a firm, partnership, association, corporation, or other legal entity or its successors, assigns or agents.

Plant material means: trees, shrubs, grasses, ground covers and other vegetation acceptable to the Village.

Shrub means: a woody perennial plant of low to medium height characterized by multiple stems and branches continuous from the base, usually not more than ten (10) feet in height at maturity.

Sidewalk means: the public right-of-way or area dedicated to public use and primarily designed for or used by pedestrians.

Street means: any public right-of-way or area dedicated to public use for public street purposes and includes, but is not limited to, highways, roadways, parkways, alleys and sidewalks.

Tree means:

- (1) A woody plant having one well-defined stem or multi-trunk system and more or less definitely formed crown, and usually attaining a mature height of at least eight (8) feet;
- (2) A plant listed as a tree in any of the following:
 - a. Forest Trees of Texas, by the Texas Forest Service of the Texas A&M University system;
 - b. Hortus Third: A Concise Dictionary of Plants Cultivated in the United States and Canada;
 - c. National Audubon Society Field Guide to North American Trees; or
 - d. A list of trees prepared by the Village.

Village means: the Village of Salado, an incorporated municipality located in Bell County, Texas.

Village property means: property in which the Village has an ownership or leasehold interests, including but not limited to fee simple property and public ways owned by the Village.

3. TREES ON VILLAGE PROPERTY

- A.** The Village shall have jurisdiction and supervision over all trees and plant materials planted or growing on Village property or growing in, upon or over Village property. The Village shall have authority to plant, trim, spray, treat, preserve and remove such trees and plant materials to ensure the public safety or preserve the aesthetics of Village property.
- B.** It is unlawful for any person to:
 - (1) Damage, cut, carve, transplant or remove any trees on Village property;
 - (2) Attach a rope, nail, advertising poster or other contrivance to any Village tree;
 - (3) Allow any gaseous liquid or solid substance which is harmful to trees to come into contact with Village trees; or
 - (4) Set or permit any fire to burn when such fire, or the heat from such fire, will injure any portion of a tree on Village property.

4. TREES ON PRIVATE PROPERTY

- A.** It is unlawful for any person owning or occupying real property to maintain or permit trees located on such property in such a manner that the trees will obstruct or shade the streetlights, obstruct the passage of pedestrians, obstruct vision of traffic signs or obstruct the view of any street, sidewalk or alley intersection. The minimum clearance of an overhanging portion of a tree shall be:
- (1) Eight (8) feet over sidewalks,
 - (2) Fourteen (14) feet over all streets and alleys, or
 - (3) Any such clearance as will provide an unobstructed view or passage.
- B.** It is unlawful for any person owning or occupying real property to maintain hedges and shrubbery adjacent to public sidewalks or curbs in such a manner that the hedges and/or shrubbery extend more than four (4) inches onto a public sidewalk or curb.

5. REMOVAL OF DANGEROUS PLANTS

- A.** Upon finding that any tree, shrub, hedge or part thereof constitutes a nuisance and immediate danger exists to persons, property or other vegetation as a result of such nuisance, the Village Code Official shall serve notice on the property owner to remove, trim or prune the tree, shrub or hedge.
- B.** The method of service shall be one or more of the following:
- (1) By personal delivery of the notice to the property owner; or
 - (2) By leaving the notice with a person of suitable age and discretion on the premises; or
 - (3) By mailing the notice by registered mail to the last known address of the property owner; or
 - (4) As otherwise provided under Chapter 342 of the Health and Safety Code; and
 - (5) By affixing or posting notice:
 - a. on the front door of any residential, commercial, or other structure located on the property, if the structure is occupied; or
 - b. On the tree, shrub or hedge in a manner that will not harm or destroy the tree, shrub or hedge.
- C.** The notice shall set forth the time limit for compliance, which shall depend upon the degree of danger created by the tree, shrub or hedge, but shall in no case be longer than ten (10) calendar days. In cases of extreme danger, the mayor shall have the authority to require immediate compliance.
- D.** If the owner of the property does not, within seven (7) days of notice of a violation, have the tree, shrub or hedge removed, trimmed or pruned, it shall be declared a nuisance, and the Village may go upon such property and do or cause to be done the work necessary to obtain compliance with this Ordinance.

- E.** Costs incurred by the Village in abating a nuisance under this section, shall be assessed to the property owner. Notice of the costs of abatement shall be served on the property owner. The method of service shall be one or more of the following:
- (1) By personal delivery of the notice to the property owner; or
 - (2) By leaving the notice with a person of suitable age and discretion on the premises; or
 - (3) By mailing the notice by registered mail to the last known address of the property owner; and
 - (4) By affixing or posting notice:
 - a. on the front door of any residential, commercial, or other structure located on the property, if the structure is occupied; or
 - b. on the tree, shrub or hedge in a manner that will not harm or destroy the tree, shrub or hedge.
- F.** The property owner shall have sixty (60) days after receipt of notice to remit full payment of any costs of abatement to the Village.
- G.** If the property owner or another person with an interest in the property fails to remit full payment for the costs of abatement within sixty (60) days, the Village may file a lien against the property upon which the dangerous plant is located. The lien arises and attaches to the property at the time the notice of the lien is recorded and indexed in the office of the county clerk in the county in which the property is located. The notice must contain the name and address of the owner if that information can be determined with a reasonable effort, a legal description of the real property on which the dangerous plant is located, the amount of expenses incurred by the Village, and the balance due. The lien is extinguished if the property owner or another person having an interest in the property reimburses the Village for the expenses.
- H.** A tree, shrub or hedge shall be deemed a nuisance if it or any part of it:
- (1) Appears likely to fall on or otherwise harm a pedestrian or vehicle utilizing the Village streets, alleys, or sidewalks;
 - (2) In the case of trees, is not pruned to a height of fourteen (14) feet above the street to accommodate vehicles such as garbage trucks, buses and street maintenance trucks;
 - (3) In the case of trees, is not pruned to a height of eight (8) feet above the sidewalk;
 - (4) Obstructs a curb, gutter, street or sidewalk;
 - (5) Interferes with sewers;
 - (6) Is in dangerous proximity to interfere with public utilities; or
 - (7) Obstructs or interferes with the view or movement of pedestrian or vehicular traffic.

6. ENFORCEMENT

A. Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations.

B. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding one thousand dollars (\$1,000.00). Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

C. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village’s right to bring a civil action to enforce the provisions of this Ordinance and the codes herein adopted, and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) a civil penalty up to five hundred dollars (\$500.00) a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance; and
- (3) other available relief.

7. REPEALER

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

8. SEVERABILITY

It is hereby declared to be the intention of the Board of Aldermen that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be 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 or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

9. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

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PASSED AND APPROVED on this, the 21st day of July, 2005, by a vote of 4 ayes, 0 nays, and 0 abstentions of the Board of Aldermen.

THE VILLAGE OF SALADO, TEXAS

Rick Ashe, Mayor

CERTIFICATE

THE STATE OF TEXAS
COUNTY OF BELL

I, Dianna Zulauf, being the current Village Secretary of the Village of Salado, Texas, do hereby certify that the attached is a true and correct copy of Ordinance No. _____, passed and approved by the Board of Aldermen of the Village of Salado, Texas, on the 21st day of July 2005, and such Ordinance was duly adopted at a meeting open to the public and notice of said meeting, giving the date, place and subject thereof, was posted as prescribed by Government Code 551.043.

Witness my hand and seal of office this ____ day of _____, 2005.

Dianna Zulauf
Village Secretary