

ORDINANCE NO. CLXXXV (185)

AN ORDINANCE TO AMEND CHAPTER 18, "STREETS AND SIDEWALKS", OF THE CODE OF ORDINANCES OF THE CITY OF NEW BUFFALO, MICHIGAN, BY REPEALING SECTION 18-6, "TREES AND SHRUBS – TRIMMING BRANCHES OVERHANGING STREETS, ETC." AND SECTION 18-7.0 "SAME – PERMIT REQUIRED FOR PLANTING OR REMOVING", AND CREATING A NEW SECTION 18-6, "TREES AND SHRUBS", TO ENACT A NEW POLICY FOR THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES AND SHRUBS"; AND,

THE CITY OF NEW BUFFALO ORDAINS:

SECTION I. The Code of Ordinances of the City of New Buffalo, Section 18-6, "Trees and shrubs – Trimming Branches Overhanging Streets" and Section 18-7.0 "Same – Permit required for planting or removing" are hereby repealed, and the following new Section 18-6 "Trees and shrubs" is put in their place.

Section 18-6. Trees and shrubs.

- A. **Trees on personal property overhanging a right-of way - danger of falling:** The owner of any lot or parcel of property within the City shall be responsible for all trees upon their property, and shall remove, or cause to be removed, any tree or limb which, due to age, illness, or other damage, poses a distinct threat of falling or collapsing onto an improved right-of-way. The City Manager or designated personnel shall make the final determination as to whether or not any tree poses such a threat.
- B. **Trees and shrubs on personal property overhanging a right-of way - obstruction:** The owner of any lot or parcel of property fronting any improved right-of-way within the City shall trim, or cause to be trimmed, the branches from all trees and shrubs upon their property overhanging the street and sidewalk so as to leave a clear height of eight (8) feet above surface of the sidewalk and surface of the street unobstructed by branches of such trees and shrubs.
- C. **Elective planting and removing trees and shrubs in a right-of-way:** It shall be unlawful for any party to plant or remove any tree or shrub in a right-of-way except in compliance with this Ordinance.
 - 1. The City, or a contractor performing work approved by the City, may plant or remove trees and shrubs in the right-of-way at the discretion of the City Manager or designated personnel, in accordance with the "Tree and Shrub Removal and Planting Policy", which may be established from time to time by the City Council.
 - 2. No person shall plant or remove any tree or shrub in the right-of-way without written permission to do so. Such permit shall be issued by the City Manager or designated personnel. The planting and removing of trees and shrubs in the right-of-way shall be in accordance with the "Tree and Shrub Removal and Planting Policy", which may be established from time to time by the City Council. The cost of said planting or removing shall be borne by the person who obtained the permit.

D. **Responsibility for disposal of debris from private tree and shrub removal:**

1. The owner of any lot or parcel of property within the City shall remove or cause to be removed debris from a tree or shrub when the tree or shrub from said lot or parcel is being removed in-whole, or a substantial part thereof. It is not the intention of this Ordinance that the City serve as a tree service to dispose of tree debris relating to the removal of trees and shrubs from private property.
2. Debris from a tree or shrub left on a right-of-way from a tree or shrub which is being removed in-whole, or a substantial part thereof, shall not be in conformance with the "Yard Waste Collection Policy" of the City.

E. **Penalties.** The owner (as shown on the assessor's records) of private property subject to this chapter is responsible for compliance. Each violation of this chapter shall be a civil infraction punishable by a civil fine as provided in Section 1-6 of the City Code of Ordinances, plus costs and all other remedies available pursuant to the City Code of Ordinances or by statute. Each day of violation shall be a separate violation. Subject to the provisions of Chapter 2 of the City Code of Ordinances, failure to timely pay the civil fine as provided herein shall result in a civil action by the City in a court of competent jurisdiction. Should the City receive a judgment and should the judgment not be satisfied within sixty (60) days of service upon the defendant, the City may, upon thirty (30) days written notice, submit a copy of said judgment to both the City Treasurer and County Treasurer for said costs to be added to the tax bill of the defendant. The cost of enforcement and prosecution shall be the actual amount of attorney fees and costs of enforcement. An itemized bill of fees and costs given under oath shall be prima facie evidence of the attorney fees and costs.

SECTION II. This ordinance was adopted on the 16th day of June, 2009, and shall become effective on the 7th day of July, 2009, which date is 20 days following publication in the New Buffalo Times, a newspaper of general circulation within the City of New Buffalo.

CITY OF NEW BUFFALO, BERRIEN COUNTY, MICHIGAN

William Geisler, Mayor

Sandra K. White, City Clerk