

ORDINANCE NO. 680
"No Deer Feeding Ordinance"

AN ORDINANCE OF THE CITY OF GRANITE SHOALS, TEXAS, AMENDING CHAPTER 4 (ANIMALS) OF THE CITY OF GRANITE SHOALS CODE OF ORDINANCES TO CREATE A NEW SECTION 4-15 ET SEQ. RELATING TO THE PROHIBITION AGAINST FEEDING DEER IN THE CITY LIMITS; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT, SAVINGS, SEVERABILITY, REPEALER, EFFECTIVE DATE, AND PROPER NOTICE AND MEETING

WHEREAS, the City Council of the City of Granite Shoals, Burnet County, Texas ("Council") seeks to provide for the public health, safety and welfare of its citizens; and

WHEREAS, on or about March 11, 2014, the Council established a Wildlife Committee to study the desirability and feasibility of managing the wildlife populations, with emphasis on white-tailed deer, within the City consistent with the laws and regulations of the State of Texas; and

WHEREAS, the Wildlife Committee has worked diligently and continues to work diligently to accomplish its purposes; and

WHEREAS, the Wildlife Committee has conducted a citizen survey, held a town hall meeting, reviewed data, and worked closely with the Texas Parks and Wildlife Commission to formulate recommendations regarding wildlife management within the City; and

WHEREAS, the Wildlife Committee has recommended that the Council adopt a regulation prohibiting the feeding of deer within the city limits; and

WHEREAS, the Council finds that it is in the best interest of the public to impose reasonable regulations on the feeding of deer; and

WHEREAS, the Council finds that reasonable regulations on the feeding of deer are necessary and appropriate animal control measures, which protect the public health and safety by reducing the number of deer on roads and in residential areas; and

WHEREAS, as authorized under law, and in the best interest of the citizens of Granite Shoals, Texas, the Council deems it expedient and necessary to establish the following rules and policies prohibiting the feeding of deer within the city limits;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANITE SHOALS, TEXAS:

**SECTION I
FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Granite Shoals and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**SECTION II
AMENDMENT**

Chapter 4 (Animals) of the City of Granite Shoals Code of Ordinances is hereby amended to create a new Section 4-15 (Policy Statement Regarding Feeding of Deer), *et seq.* as follows:

“Sec. 4-15. Policy Statement Regarding Feeding of Deer.

It is the city’s policy that prohibiting the feeding of deer in the city limits is necessary and appropriate to protect the public health and safety by reducing the number of deer in residential areas as one component of a comprehensive deer management program. The city shall endeavor to enforce these regulations first through education, then through warnings, then through the imposition of civil penalties, and then through the initiation of criminal proceedings should all of the previous methods prove ineffective.

Sec. 4-16. Feeding of Deer Prohibited.

- (a) No person shall purposely feed or provide food (as described in subsection (c) below), through a ground-feeding station, salt lick or by other means, to wild deer in the city on any public or private land.
- (b) For the purpose of this section, all deer shall be deemed to be wild.
- (c) A person shall be deemed to have purposely fed or caused deer to be fed if the person places wheat, pelleted livestock food, corn in any form, fruit, vegetables, hay or alfalfa, human food scraps, any form of commercially sold wildlife feed, birdseed or livestock feed, or any other edible matter that deer will consume (not including live vegetation such as ornamental landscaping or flowers) on the ground, or within reach of deer (not including birdseed in a bird feeder). This prohibition shall not apply to edible matter located either in an enclosed building or stored in a securely sealed package.

- (d) The prohibition of this section shall not apply to any peace officer, animal control officer, or other agent of the city acting pursuant to a deer control program approved by the City Council.
- (e) Penalties. A person who violates the proscription set forth in the No Deer Feeding Ordinance commits a Class C misdemeanor punishable under the General Penalty provision, Section 1-10 of the City of Granite Shoals Code of Ordinances, or by an administrative penalty imposed by this ordinance.

Sec. 4-17. Imposition of civil penalty for violations.

- (a) A person who unlawfully feeds a deer is liable for a civil penalty.
- (b) The civil penalty for which the person or property owner is liable shall be \$0 for the first offense in any 12-month period, \$50.00 for a second offense in any 12-month period, and \$200.00 for the third through fifth offenses in any 12-month period. For a sixth or subsequent offense in any 12-month period, the amount of the penalty shall be \$1,000.00.

Sec. 4-18. Enforcement; procedures.

- (a) The Code ^{Compliance} Enforcement Department (the "Department") is responsible for the enforcement and administration of this ordinance, in cooperation with the Granite Shoals Police Department.
- (b) In order to impose a civil penalty under this article, the Department shall mail a notice of violation to the individual or property owner liable for the civil penalty not later than the 30th day after the date the violation is alleged to have occurred.
- (c) A notice of violation under this article shall contain the following:
 - (1) a description of the violation alleged;
 - (2) the location where the violation occurred;
 - (3) the date of the violation;
 - (4) the amount of the civil penalty to be imposed for the violation;
 - (5) the date by which the civil penalty must be paid; and
 - (6) information that informs the person named in the notice of violation:
 - (A) of the person's right to contest the imposition of the civil penalty against the person in and administrative adjudication;

- (B) of the manner and time in which imposition of the civil penalty may be contested;
- (C) that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability and that failure to appear at an administrative adjudication hearing after having requested a hearing is an admission of liability; and
- (D) that failure to pay the civil penalty within the time allowed shall result in the imposition of a late-payment fee of \$25.00.
- (d) A notice of violation under this article is presumed to have been received on the third day after the date the notice of violation is mailed.
- (e) In lieu of issuing a notice of violation, the Department may mail a warning notice to the owner that, in addition to any other information contained in the warning notice, must contain the information required by subsection (c).

Sec. 4-19. Administrative adjudication hearing.

- (a) A person who receives a notice of violation under this article may contest the imposition of the civil penalty by requesting in writing an administrative adjudication of the civil penalty within the time provided in the notice (which period shall not be less than 15 days following the mailing of the notice). Upon receipt of the request, the Department shall notify the person of the date and time of the hearing on the administrative adjudication. The administrative adjudication hearing shall be held before a hearing officer appointed by the City Manager.
- (b) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under Sec. 4-18(k).
- (c) Failure to appear at an administrative hearing after having requested a hearing is an admission of liability for the full amount of the civil penalty assessed in the notice of violation and constitutes a waiver of the right to appeal under Sec. 4-18(k).
- (d) A person who fails to pay a civil penalty within the time allowed by this article shall be additionally liable for a late-payment penalty in the amount of \$25.00.
- (e) The civil penalty shall not be assessed if, after a hearing, the hearing officer enters a finding of no liability.
- (f) A person who is found liable after an administrative adjudication hearing or who requests an administrative adjudication hearing and thereafter fails to appear at the time and place of the hearing is liable for administrative hearing costs in the amount of \$50.00 in

addition to the amount of the civil penalty assessed for the violation. A person who is found liable for a civil penalty after an administrative adjudication hearing shall pay the civil penalty and costs within ten (10) days of the hearing.

- (g) In an administrative adjudication hearing, the issues must be proved at the hearing by a preponderance of the evidence.
- (h) Notwithstanding anything in this article to the contrary, a person who fails to pay the amount of a civil penalty or to contest liability in a timely manner is entitled to an administrative adjudication hearing on the violation if:
- (1) the person files an affidavit with the City Manager stating the date on which the person received the notice of violation that was mailed to the person and that the date that the person received the notice was more than three days after the date on the notice; and
 - (2) within the same period required by Sec. 4-18(a) for a hearing to be timely requested but measured from the date the mailed notice was received as stated in the affidavit filed under Subdivision (1), the person requests an administrative adjudication hearing.
- (i) A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the Municipal Court by filing a notice of appeal with the clerk of the Municipal Court. The notice of appeal must be filed not later than the 31st day after the date on which the administrative adjudication hearing officer entered the finding of liability and shall be accompanied by the payment of an appellate filing fee of \$50.00. Unless the person, on or before the filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be determined by the Municipal Court by trial de novo, and the issues must be proved by a preponderance of the evidence.

Sec. 4-20. Order.

- (a) The hearing officer at any administrative adjudication hearing under this division shall issue an order stating:
- (1) Whether the person charged with the violation is liable for the violation; and
 - (2) The amount of any civil penalty, late penalty, and administrative adjudication cost assessed against the person.
- (b) The orders issued under subsection (a) may be filed with the City Secretary.

Sec. 4-21. Effect of liability; exclusion of civil remedy.

- (a) The imposition of a civil penalty under this division is not a criminal conviction for any purpose.

- (b) A civil penalty may not be imposed under this ordinance if the individual or property owner was arrested or was issued a municipal court summons for the same violation pursuant to this ordinance.
- (c) An individual or property owner who fails to pay the civil penalty or to timely contest liability for the penalty is considered to admit liability for the full amount of the civil penalty stated in the notice of violation mailed to the person.
- (d) The city attorney is authorized to file suit to enforce collection of a civil penalty imposed under this article.”

SECTION III SAVINGS

Any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

SECTION IV SEVERABILITY

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Granite Shoals in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

SECTION V REPEALER

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance.

**SECTION VI
EFFECTIVE DATE**

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

Penalties will not be assessed pursuant to this ordinance until two months after the effective date.

**SECTION VII
PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was open to the public 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.

READ, PASSED, AND ADOPTED THIS 12th DAY OF JULY, 2016.

By: Carl Brugger
Carl Brugger, Mayor

ATTEST:

Elaine Simpson
Elaine Simpson, City Secretary

APPROVED AS TO FORM:

Brad Young, City Attorney

p. 3 - Sec. 4-18. Enforcement; procedures
Word corrected from "Enforcement"
to "Compliance". Correction made
administratively this date
7-14-16. Elaine Simpson
City Secretary