

ORDINANCE 2020-22

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH AMENDING THE CODE OF ORDINANCES, CHAPTER 1 GENERAL PROVISIONS, ARTICLE 1.07 TREES AND SHRUBS, DIVISION 2 OAK WILT CONTROL; PROVIDING FOR SEVERABILITY AND REPEAL CLAUSES; PROVIDING FOR A CIVIL PENALTY NOT EXCEEDING \$200; AND PROVIDING FOR AN EFFECTIVE DATE OF NOVEMBER 1, 2020.

WHEREAS, the City Council desires to protect the trees of the City and control the spread of oak wilt; and

WHEREAS, the City Council desires to preserve the natural beauty of the City; and

WHEREAS, the City Council hereby finds and deems it necessary to amend Chapter 1, Article 1.07, Division 2 of the Code of Ordinances to provide provisions relative to tree maintenance and oak wilt control.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

PART 1. Chapter 1 "General Provisions" Article 1.07 "Trees and Shrubs" Division 2 "Oak Wilt Control" is hereby amended as set forth in the attached Exhibit "A".

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

PART 3. It is hereby declared to be the intention of the City Council 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 invalid by judgment or decree of any court of competent jurisdiction, such invalidity 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.

PART 4. That 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, as amended, Texas Government Code.

PART 5. A penalty provision section is established in section 1.07.039 of the attached Exhibit "A."

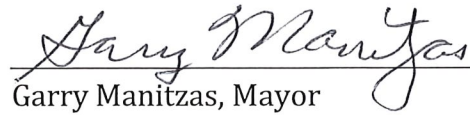
PART 6. This Ordinance shall take effect on November 1, 2020 and after passage and publication as may be required by governing law.

PART 7. The repeal or amendment of 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 of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this Ordinance.


PART 8. The provisions of this Ordinance shall be cumulative of all ordinances not repealed by this Ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED and APPROVED on first reading this the 3rd day of September, 2020.

PASSED, APPROVED and ADOPTED on second reading this the 17th day of September, 2020.


Garry Manitzas, Mayor

ATTEST:


Christina Picioccio, City Secretary

APPROVED AS TO FORM:

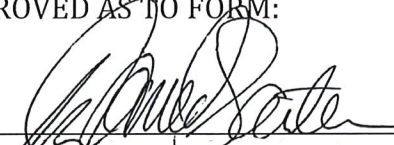

Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

Exhibit A

Chapter 1 "General Provisions" Article 1.07 "Trees and Shrubs" Division 2 "Oak Wilt Control" is hereby amended as follows:

DELETE:

~~Division 2. Oak Wilt Control~~

~~Sec. 1.07.031 Purpose~~

~~The city council must act to impose certain restrictions and to educate the community in preventing and controlling the spread of the oak wilt infection in oak trees.~~

~~Sec. 1.07.032 Penalty~~

~~Any person, firm, corporation, utility or business entity that violates the provisions of this division shall, upon conviction, be fined as provided in section 1.01.009 of this chapter for each day of violation.~~

~~Sec. 1.07.033 Investigation; treatment; preventive measures~~

- ~~(a) The city has taken the lead in investigation and infestation treatment procedures. Any suspected infestation of oak wilt shall be reported immediately to the city. The city will initiate investigation procedures through state agencies and private contractors.~~
- ~~(b) Immediate treatment is essential should oak wilt infestation be diagnosed. The city will assist property owners and will administratively process treatment requests through appropriate state agencies for possible monetary assistance.~~
- ~~(c) The most effective preventive measure that can be taken is to immediately treat any cuts or wounds (including pruning) to any oak tree with an appropriate wound paint. This shall be done within thirty minutes to minimize contact with nitidulid beetles.~~
- ~~(d) Tree pruning should be accomplished during winter or summer months. As a rule of thumb, pruning should be avoided mid-February through mid-June. However, the variability of south Texas weather makes the predictability of the beetle presence very uncertain. Therefore, it is essential that wounds be painted at any time pruning occurs or a wound is observed.~~
- ~~(e) Notification of this division and its provisions will be provided by the city to all who seek building permits as well as developers, utility companies and business entities in the city.~~
- ~~(f) It is the responsibility of property owners to inform landscape contractors, tree services and yard maintenance crews of the provisions of this division.~~
- ~~(g) It is recommended that only seasoned firewood, aged approximately one year since cutting, be purchased for use in the city. Also, it is suggested that existing firewood be utilized within one year.~~

- ~~(h) If a red oak tree is diagnosed with oak wilt, the property owner shall remove the infected tree immediately from the property and properly dispose of the tree.~~
- ~~(i) Because the red oak tree is a continuing conduit for spread of oak wilt even after death, no person shall plant new red oak trees on their property within the city without obtaining certification from the tree seller that the tree is disease-free.~~

ADD:

Division 2. Tree Maintenance

Sec. 1.07.031 Purpose

- (a) Protect the trees of Fair Oaks Ranch and control the spread of oak wilt; and
- (c) Preserve the natural beauty of Fair Oaks Ranch.

Sec. 1.07.032 Definitions

For the purposes of this Ordinance, the following definitions shall apply unless the context of their usage clearly indicates otherwise:

Oak wilt. A vascular wilt disease of oak trees caused by a fungus, *Bretziella fagacearum*, which invades the water-conducting tissues of roots, trunks, and limbs; and as further defined by the Texas A&M Forest Service.

Oak wilt center. A site where the oak wilt fungus is spreading through the roots of diseased trees to infect healthy oaks, creating an area of sick, dead and dying oaks.

Tree. A self-supporting woody perennial plant, excluding a bush or shrub.

Sec. 1.07.033 Preventative Measures for Oak Wilt

- (a) Maintenance of oak trees on private property, including, but not limited to, cutting, trimming, pruning and removal, shall be limited to a designated time frame of July 1st through January 31st when fungal spore formation and nitidulid beetle activity are lowest. The only exceptions for maintaining oak trees outside the designated time frame is for clearing branches posing a danger to life or property; purposes of residential or commercial development; and maintenance performed by utility, phone, and cable services. In the event of an exception, all preventative measures required in this subsection must be applied.
- (b) All wounds to the trunk, limbs, and root system of oak trees in the City, regardless of the time of year, shall be painted immediately after trimming, cutting, or pruning using black paint (latex, oil-based, spray-on, brush-on or wound dressing). Such painting of oak trees is to prevent contact with contaminated nitidulid beetles.
- (c) All contractors engaged in trenching (i.e. irrigators, plumbers, etc.) are required to paint exposed roots using black paint (latex, oil-based, spray-on, brush-on or wound dressing). This is required whether the subjected roots were previously uncovered or the roots were exposed during the process of the contractor's work.

- (d) All contractors engaged in oak tree maintenance are required to sterilize all equipment used in the trimming, cutting, pruning or removal of oak trees after each tree is completely cut and before proceeding to the next tree. A 10% bleach or 80% alcohol solution is recommended for equipment sterilization.

Sec. 1.07.034 Tree Contractor Registration

- (a) Any person or entity engaged in the business of tree maintenance shall not trim, cut, prune or remove any tree within the City without first registering with the City for this purpose.
- (b) All those who register with the City as a tree contractor shall provide the following items:
 - (1) Registration fee as established in the City's Master Fee Schedule, found in Appendix A of the City's Code of Ordinances;
 - (2) State of Texas Sales Tax ID No.;
 - (3) Proof of a general liability insurance policy;
 - (4) Copies of any current certifications or licenses related to tree activities; and
 - (5) Signed acknowledgement of receipt and review of the City's tree maintenance guidelines.
- (c) Registration is valid for one (1) year from the date of issuance.
- (d) Registration applies to all contractors hired by builders, general contractors and homeowners/property owners.
- (e) The City will maintain a current list of registered tree contractors, which will be made available upon request.
- (f) Unless instructed by the property owner, all limbs, branches and other cuttings from tree services shall be removed from the project site by the permitted contractor at the end of each business day.
- (g) The City's Environmental Compliance Manager or his/her designee shall have the opportunity to visit the project site(s) of a registered contractor to ensure all preventative measures, as set forth in Section 1.07.033, are being applied. Those operating without current registration will completely cease to work and obtain registration prior to re-commencing work. Registered tree contractors must also quickly produce painting tools at the request of the Environmental Compliance Manager or his/her designee. If tools are not presently available or if the tools are incapable of reaching all wounds, the contractor must stop work immediately and acquire the necessary tools.

Sec. 1.07.035 Tree Maintenance Performed by Property Owners

A property owner, as opposed to a professional independent contractor, may perform tree maintenance on his/her own property without permit and/or registration. All preventative measures as set forth in Section 1.07.033 must be applied.

Sec. 1.07.036 Oak Wilt Treatment

- (a) No person, firm, corporation or any type of business entity or any agent for such entity, shall provide treatment for oak wilt within the City without first providing notification to the City's Environmental Compliance Manager.
- (b) Notifications of oak wilt treatment shall include the following items:
 - (1) Proof of a current Texas Department of Agriculture License;
 - (2) Texas Oak Wilt Qualified No.; and
 - (3) A copy of the treatment proposal with the date(s) of service.
- (c) Those operating without prior notification shall provide the City the necessary items immediately upon request.

Sec. 1.07.037 Prohibited Trees

Members of the red oak group (*Quercus* section *Lobatae*) shall not be newly planted in the City due to their high susceptibility to oak wilt. This includes, but is not limited to, Texas red oak or Spanish oak (*Quercus buckleyi*); Shumard oak (*Quercus shumardii*); and Blackjack oak (*Quercus marilandica*). Information on recommended tree plantings can be found on the City of Fair Oaks Ranch website.

Sec. 1.07.038 Oak Wilt Map

Any update to the City's Oak Wilt Map shall be completed by the Public Works Department with assistance from a Texas Oak Wilt Qualified ISA Certified Arborist or the Texas A&M Forest Service, and can be found on the City of Fair Oaks Ranch website.

Sec. 1.07.039 Schedule of Penalties

- (a) Civil penalty.
 - (1) Any contractor violating any of the provisions of this Ordinance shall be subject to a \$50 civil penalty for the first violation, a \$100 civil penalty for the second violation, and a \$200 civil penalty for the third violation. Continuous violations may result in revocation of contractor registration.
 - (2) Any property owner violating any of the applicable provisions of this Ordinance shall be subject to a written warning for the first violation, a \$50 civil penalty for the second violation, and a \$100 civil penalty for the third violation.
 - (3) Notice of violations and assessments of penalties made pursuant to this article shall be sent to the property owner or contractor informing them of the violation and assessment of penalties. Notices provided herein shall be deemed delivered within five (5) business days after their placement with the United States Postal Service, hand delivery, or courier.

(b) Civil penalty appeal.

- (1) An aggrieved person may request an appeal hearing before a hearing officer(s) appointed by the City Manager within fifteen (15) business days after the date on the notice provided in compliance with article. The hearing officer(s) shall evaluate all information offered by the aggrieved person at the hearing. The aggrieved person shall bear the burden of proof to show why, by preponderance of the evidence, the administrative fee should not be assessed. The hearing officer(s) shall render a decision in writing within five (5) business days of the conclusion of the hearing. Receipt of the decision of the hearing officer(s) by the aggrieved person is deemed delivered within five (5) business days after their placement with the United States Postal Service, hand delivery, or courier.
- (2) The aggrieved person may appeal the decision from the hearing officer(s) in writing to the City Manager within ten (10) business days from the date the City mails the decision of the hearing officer(s) to the aggrieved person. In the written appeal, the aggrieved person shall provide the factual basis for the appeal and describe why the decision of the hearing officer(s) is not supported by the evidence. The City Manager shall promptly review the appeal. The decision by the City Manager is final.