

ORDINANCE NO. 05-92A

AN ORDINANCE ESTABLISHING PROCEDURES FOR CONTROL AND DISPOSITION OF DISEASED TREES WITHIN THE CITY; PROVIDING FOR A PERMITTING PROCESS, KEEPING OF PROPERTY FREE FROM DISEASED TREES; REGULATING REMOVAL AND DISPOSAL; PROHIBITING NUISANCES; PROVIDING FOR NOTICE AND ABATEMENT; PROVIDING FOR COST RECOVERY; DEFINING TERMS; PROVIDING PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY AND OTHER MATTERS.

WHEREAS, the City of Woodcreek is forested with various trees which provide natural beauty within the City, with oaks being the most numerous; and

WHEREAS, oak wilt, a vascular-tree disease that is fatal to most oaks, has been discovered within the City; and

WHEREAS, oak wilt is spread by a sap-feeding nitidulid beetle that migrates from an infected carrying spores to an open wound on other oak trees, including live-oak trees which then spread the disease to nearby healthy trees through interconnected root masses of the infected and healthy trees; and

WHEREAS, oak trees that are infected with the fungus oak wilt are a public nuisance and serious threat to property values in the City; and

WHEREAS, the City Council has determined that abatement of such nuisance is for the benefit of the public health, safety and general welfare;

WHEREAS, the Texas Forest Service has recommended measures to combat the spread of oak wilt.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOODCREEK, TEXAS that the City's Oak Wilt Ordinance 94-45 is repealed and replaced in its entirety with Ordinance 05-92.

SECTION 1. TREE-TRIMMING PERMIT REQUIRED

No person, individual, firm, corporation, contractor, landscape contractor, tree trimmer, builder, utility service or any other type of business entity shall trim, prune or remove any tree within the City without having first obtained a permit from the City Administrator. Permits shall be issued without charge. Permits shall be effective for thirty (30) days from the date of issuance and shall apply only to the lot or parcel of land for which it is issued. The permit shall be posted

in a place where it can be seen from the nearest street while the work is in process.

Tree-trimming permits will only be issued if the following conditions are met:

1. PAINTING OF OAK TREE WOUNDS

Any person, individual, firm, corporation, contractor, landscape contractor, tree trimmer, builder, utility service or any other type of business entity which causes a wound to an oak tree, whether from ground- maintenance equipment, trimming, cutting or pruning shall paint the wound immediately after the cutting, trimming, pruning or wounding of the tree with opaque paint to prevent contact with contaminated nitidulid beetles. Painting of oak roots is required by contractors making underground utility cuts and excavations where there are live oak roots larger than the size of a dime.

2. OAK TREE TRIMMING DATES

No oak tree trimming will be allowed between January and May each year.

SECTION 2. OAK WILT REPORTING

Any person who discovers or suspects the presence of oak wilt infestation or an infected oak wilt tree shall report that information to the City Administrator by the next business day.

SECTION 3. DISEASED OAKS DECLARED A PUBLIC NUISANCE.

1. Oak trees that are infected with oak wilt, dead oak tress and wood from oak trees that are infected with oak wilt, and all other trees and wood with oak-wilt disease are hereby declared and determined to be a public nuisance.
2. If an oak tree is diagnosed with oak wilt, the owner of the property upon which the oak tree is located shall remove the infected tree immediately from the property and dispose of it as recommended by the Texas Forest Service.

3. INSPECTIONS

Save and except as provided herein, permission of the owner, occupant, or person in control of any premises shall be necessary for entry onto the subject premises by City personnel or the Texas Forest Service pursuant to this Ordinance. If such entry is requested and refused, and the City or Texas Forest Service has probable cause to believe there exists on the subject premises a public nuisance, the City or Texas Forest Service shall go before a Municipal Court Judge of the City and request a search warrant. The purpose of that warrant shall be to determine the presence of a public nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected with oak wilt.

4. NOTICE TO OWNER

If, upon inspection it is determined that a tree or oak wood is infected with oak wilt and if the City or Texas Forest Service determines that such tree or any wood thereof is a public nuisance as provided herein, the City shall serve or cause to be served upon the owner of record of the lot or parcel of land on which that diseased tree is located, a written notice requiring such owner to comply with the provisions of this Ordinance including but not limited to the removal and destruction of any diseased tree.

Such service of notice shall be by personal service or certified mail, return receipt requested if the owner of the lot or parcel of land on which the diseased tree is located is a resident of the City. If the owner is temporarily absent from his residence or an owner is determined to be a non-resident, written notice shall be served by certified mail addressed to the named person at the address indicated on the most recent tax appraisal records and by posting notice of the violation on the property at the point of ingress. Certified mail returned as "unclaimed" or "refused" shall be deemed delivered.

5. CITY TO CAUSE REMOVAL AND DESTRUCTION OF DISEASED TREES

Should the property owner fail to abate the public nuisance within fourteen (14) days following the receipt of notification, the City shall have the right to cause the removal and destruction of the diseased trees. The full cost of such removal and destruction shall be assessed to the property owner. Should the property owner fail to pay the City within thirty (30) days from the date of invoicing the City may, at its discretion, file a lien against the property in the amount of all costs incurred by the City plus interest. The assessment of expenses and lien shall follow the procedures established in Chapter 342, Tex. Health & Safety Code.

SECTION 6. DEFINITIONS

Words used and not defined in this Ordinance shall have their ordinarily accepted meaning. For the purpose of this Ordinance, the following words and phrases shall have the meaning respectively ascribed to them by this section:

(a) "Public Nuisance" means: Red and live-oak trees or wood that are determined, upon laboratory analysis by the Texas Agriculture Experiment Station or other entity approved by the City, to be infected with the fungus which causes oak-wilt disease (*Ceratocystis Fagacearum*) ; a dead red-oak tree or wood from a red-oak tree, that was or is, infected with oak-wilt disease; and diseased trees and wood as defined below. Pursuant to Chapter 342, Tex. Health & Safety Code, diseased trees are deemed a public nuisance.

(b) "Diseased trees" mean live-oak and red-oak trees or wood there from that are infected with oak-wilt disease; and a red-oak tree or wood from a red-oak tree, which is dead or partially alive, but infected with such disease.

SECTION 7. PENALTIES

It shall be unlawful for any person, firm or corporation to violate any of the provisions of this Ordinance. Any person violating any provision hereof shall be deemed guilty of a misdemeanor, and each person shall be deemed guilty of a separate offense for each and every such violation and for each and every day or portion thereof during which any such violation continues or occurs. Upon the conviction of such violation, such offense shall be punishable by fine which shall not exceed Five Hundred Dollars (\$500.00).

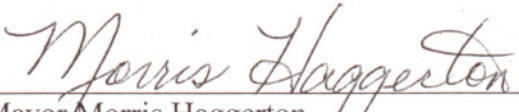
SECTION 8. SEVERABILITY

If any portion of this Ordinance is held invalid or unenforceable the validity or enforceability of the remainder of this Ordinance shall not be affected.

SECTION 9. EFFECTIVE DATE

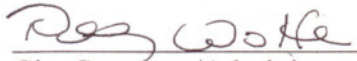
This Ordinance shall be effective from and after its passage at a City Council meeting and publication as required by the Local Government Code.

PASSED AND APPROVED this first day of August 2005.



Mayor Morris Haggerton

ATTEST:



City Secretary/Administrator Peg Wolfe

Amendment 05-92 passed September 14, 2005