

ORDINANCE # \_\_\_\_\_

**AN ORDINANCE REPEALING SECTIONS 26-44 and 26-45 OF CHAPTER 26 OF THE CODE OF ORDINANCES OF THE CITY OF HILL COUNTRY VILLAGE AND ADOPTING NEW SECTIONS 26-44 THROUGH 26-46 OF CHAPTER 26 OF THE CITY OF HILL COUNTRY VILLAGE IN REGARD TO OAK WILT PREVENTION INCLUDING GENERAL REGULATIONS, AN OAK WILT MANAGEMENT PROGRAM, AND A PENALTY OF A FINE OF NOT MORE THAN \$500.00 PER VIOLATION FOR VIOLATIONS**

Whereas, oak wilt, one of the most destructive tree diseases in the United States, is killing oak trees in central Texas at epidemic proportions; and

Whereas, oak wilt is an infectious disease caused by the fungus *Ceratocystis fagacearum*, which invades and disables the water-conducting system in susceptible trees; and

Whereas, all oaks (*Quercus* spp.) are susceptible to oak wilt to some degree, but some species are affected more than others; and

Whereas, the successful management of oak wilt depends on correct diagnosis, an understanding of how the pathogen spreads between different oak species, and preventing the spread of oak wilt; and

Whereas, foliar symptoms, patterns of tree mortality, and the presence of fungal mats can be used as indicators of oak wilt; and

Whereas, after oak wilt affects an area, the devastation can be enormous, not only in loss of the trees themselves, but in landscape and property values as well; and

Whereas, the City Council of the City of Hill Country Village believes that the City will better potentially limit the occurrence or spread of oak wilt in the City by repeal of Sections 26-44 and 26-45 of Chapter 26 of the Code of Ordinances and by the adoption of new Sections 26-44 through 26-46 of Chapter 26 of the Code of Ordinances.

NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF HILL COUNTRY VILLAGE, that:

Section 1. Sections 26-44 and 26-45 of Chapter 26 of the Code of Ordinances of the City are repealed.

Section 2. New Sections 26-44 through 26-46 of Chapter 26 of the Code of Ordinances are hereby adopted to read as follows:

**Sec. 26-44. General restrictions.**

(a) Except as set out in subsection (b) hereof, oak trees of any type that are growing within the corporate limits of the City may only be trimmed from July 1 through the following January 31, when fungal spore formation and beetle activity are lowest.

(b) Notwithstanding the terms of subsection (a) hereof, oak trees may be trimmed between February 1 and June 30 for (i) clearing branches lower than seven feet above ground level and branches posing a danger to life or property and (ii) for construction of improvements (each only after issuance of a special permit approved by the City Administrator).

(c) All wounds to oak trees shall be painted immediately, but no later than within thirty (30) minutes of cutting, trimming or other wound of the tree to prevent contact with contaminated nitidulid beetles. This includes freshly cut stumps, damaged surface roots, and any wounds to susceptible oaks during planting. This also includes wounds resulting from ground maintenance equipment and trimming and breakage of green wood. Any type of paint (latex, oil-based, spray-on, brush-on, or wound dressing) will suffice.

(d) No person, firm, corporation or any type of business entity or any agent for such entity, shall trim oak trees within the City without first obtaining a permit for this purpose from the City. The application for a permit must contain a certification that the applicant has read the City regulations pertaining to oak tree trimming and that the applicant will abide by all City regulations, including without limitation properly sterilizing or sanitizing cutting equipment before use in the City.

(e) The owner of a residence in the City doing his or her own trimming must obtain a Residential Owner Permit. A Residential Owner Permit will be valid for six (6) months from the date of issuance by the City. There will no charge for a Residential Owner Permit. Except for independent individual non-commercial tree trimmers, only the actual owner occupants of the improvements on the property for which a Residential Owner Permit is obtained are permitted to trim oak trees under a Residential Owner Permit.

(f) Except for the owner of a residence in the City who is doing trimming on his or her own property or an independent individual non-commercial tree trimmer, anyone else who trims oak trees in the City must obtain a Commercial Permit. A separate Commercial Permit must be obtained for each address in the City where the trimming of oak trees is to be done. The cost of a Commercial Permit is \$50.00. At any time, the City Council may, by ordinance, increase the fee for a Commercial Permit. A Commercial Permit will be valid for fourteen (14) days from the date of issuance. Upon written request justifying the reason, the holder of a Commercial Permit may file with the City Administrator a request an extension of the term of a Commercial Permit. The City Administrator has discretion to grant up to a seven (7) day extension of the term of a Commercial Permit.

- (g) The revenues from Commercial Permits as well as any fines collected for noncompliance with this ordinance will be placed in a designated fund to be used to assist City residents in the defraying of costs to prevent the spread of oak wilt if such an event should occur.
- (h) Each holder of a Residential Owner Permit or of a Commercial Permit shall report to the Permit Clerk the address of each tract of land and the date(s) upon which tree trimming and/or removal will take place.
- (i) The Residential Owner Permit or Commercial Permit is to be posted in a conspicuous place where it can be seen from the street whenever trees are being trimmed.
- (j) Any corporation, business, entity, firm, public utility, or person shall, upon a second violation of this ordinance be ineligible to obtain a permit to cut or trim trees within the corporate limits of the City.
- (k) The planting of Red Oaks (i.e. *Quercus texana*) is prohibited on all residential and commercial properties. Red oaks, particularly Texas (aka Spanish) oak (*Q. buckleyi*), Shumard oak (*Q. shumardii*), blackjack oak (*Q. marilandica*), and water oak (*Q. nigra*) are extremely susceptible and may play a unique role in the establishment of new oak wilt infections.
- (l) No one shall knowingly plant a tree in the City that has oak wilt infection or is from an area where oak wilt is epidemic.
- (m) No one shall knowingly bring (1) red oak firewood or (2) firewood that has not been dried for at least a full year into the City.
- (n) Firewood shall not be stacked under or close to oak trees and shall be burned within one year.
- (o) All brush resulting from the trimming of the trees by a commercial tree trimmer, corporation, or landscape company, must be removed from site within 96 hours.
- (1) In the case of dead or dying red oaks, all plant matter must be removed immediately from the City and burned, chipped or buried.
- (2) Diseased or dead red oak plant matter shall not to be used or stored for firewood.
- (p) Roofing, fencing, and construction companies which obtain a City permit for such work must also get a Commercial Permit along with their other permit, since these businesses often need to trim a branch or tree. There will be **no** fee to these companies for this Commercial Permit, but all other provisions of this Section 26-44 shall apply.

#### **Sec. 26-45. Management program.**

- (a) Any owner of property in the City who suspects or finds oak wilt infection on his or her property shall notify the City Administrator or Permit Clerk within 48 hours of such discovery so

that aid can be obtained from the Texas A&M Forest Service to confirm the diagnosis of oak wilt. If oak wilt is confirmed, the property owner shall undertake measures for control recommended by the Texas A&M Forest Service to prevent the spread of the infection. In the discretion of the City Administrator, the City may provide limited financial assistance with funds collected from permit fees and fines.

(b) Prevention, control, and eradication measures.

(1) The City recognizes and adopts the "Eight Step Program to Oak Wilt Management" designed by the Texas A&M AgriLife Extension to prevent and control oak wilt. A copy of the "Eight Step Program to Oak Wilt Management" is attached as Exhibit "A" to this ordinance and is on file at City Hall.

(2) The City will be responsible for enforcement of this ordinance and for spot-checking all tree trimming performed within the City.

#### **Sec. 26-46. Violations.**

(a) Penalty. The City Administrator shall seek voluntary compliance with the provisions of Section 26-44 or Section 26-45 to the extent feasible. If the City Administrator determines that there has been a violation of Section 26-44 or Section 26-45 and such violation is not an immediate hazard or nuisance, he or she shall notify the alleged violator in person or by certified mail, return receipt requested of the violation and the action required of the alleged violator. If the alleged violator fails to cure the violation within ten days of delivery in person or of the mailing of a notice of violation, a citation shall be issued to the alleged violator, and the violator shall be subject to a fine not to exceed \$500.00 per violation. Each day that such violation shall occur, continue or be permitted to exist shall constitute a separate offense. If the City Administrator determines that a violation of Section 26-44 or Section 26-45 constitutes an immediate hazard or nuisance, the City Administrator may refrain from issuing a notice of violation and proceed directly to the issuance of a citation in the municipal court.

(b) Injunctive relief. Any person or entity that shall fail to comply with any provision of Section 26-44 or Section 26-45, or shall commit any of the acts described by this ordinance, or be guilty of any of the omissions thereof, shall be liable to injunctive action, being subject to being enjoined and mandatorily enjoined in any court of competent jurisdiction, and shall be liable and responsible for any and all expenses that may be incurred by the city in connection with any such action, omission or other violation, including (without limitation) reasonable attorney fees and court costs.

The City Administrator shall arrange for publication of the caption of this ordinance in the official newspaper of the city.

Passed and adopted this 21<sup>st</sup> day of March, 2019, but effective \_\_\_\_\_,  
2019.

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Gabriel Durand-Hollis, Mayor

ATTEST:

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Frank Morales, Acting City Secretary