

**ORDINANCE NO. 20-280**  
**CITY OF WOODCREEK, TEXAS**

**REVISING CHAPTER 91 OF THE CODE OF ORDINANCES**

**AN ORDINANCE REVISING THE CITY OF WOODCREEK CODE OF ORDINANCES CHAPTER 91 – TREES AS SHOWN IN ATTACHMENT A; TO UPDATE THE OAK WILT GUIDELINES TO BE IN COMPLIANCE WITH THE TEXAS A&M FOREST SERVICE RECOMMENDATIONS; SIMPLIFYING AND CLARIFYING TERMS, PROVIDING PENALTIES, AND PROVIDING FOR ENACTMENT, REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE, AND FINDING PROPER NOTICE AND MEETING.**

**WHEREAS**, the City Council of the City of Woodcreek (“City Council”) desires to declare the City proud of its live oaks and other trees and to be a protector of all trees;

**WHEREAS**, the City Council has general authority to adopt the regulations herein relating to protecting each and every living tree within the City limits with an overview for the benefit of ALL trees,

**WHEREAS**, the City Council believes Texas A&M Forest Service to be the best resource for the control of oak wilt,

**WHEREAS**, the City Council believes that all of the citizens benefit from a clear and simple form of ordinance language,

**WHEREAS**, the City Council being a general-law municipality, the City has exclusive control to regulate the care and responsibility of our trees within the City limits,

**NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Woodcreek:**

**1. FINDINGS OF FACTS**

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

**2. ENACTMENT**

Chapter 91: Trees of the Code of Ordinances of the City of Woodcreek is amended as to read as Attachment A, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

**3. REPEALER**

All ordinances, resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

**4. SEVERABILITY**

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

**5. CODIFICATION**

The City Secretary is hereby authorized and directed to record and publish the language of Chapter 91, as amended by this Ordinance, in the City's Code of Ordinances.

**6. EFFECTIVE DATE**

This Ordinance shall be effective immediately upon its passage and the publication of caption of this ordinance.

**7. PROPER NOTICE AND MEETING**

It is hereby officially found and determined that the meeting at which this Ordinance was passed and attended by a quorum of the City Council, 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, Texas Government Code, Chapter 551.

**PASSED & APPROVED** this, the 10th day of June, 2020, by a vote of 4 Ayes and 0 Nays and 1 Absent and not voting of the City Council of Woodcreek, Texas.

**CITY OF WOODCREEK:**



Gloria Whitehead, Mayor

**ATTEST:**



Linda Land, City Secretary

**Ordinance 20-280**  
**City of Woodcreek – Code of Ordinances**

**CHAPTER 91: TREES**

Section

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91.11	Tree-trimming permit required
91.99	Penalty

**§ 91.01 TITLE.**

This chapter shall be known and may be cited as the Tree Ordinance.

**§ 91.02 PURPOSE.**

The City of Woodcreek respects the character and beauty of the Texas Hill Country and values the importance that trees provide to our community. The provisions of this chapter are deemed to be necessary to promote the health, safety, property and general welfare of the residents.

**§ 91.03 DEFINITIONS.**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words used in this chapter and not defined herein shall have their ordinarily accepted meaning.

***DISEASED TREES.*** Oaks infected by the fungus *Ceratocystis fagacearum*.

***FIREWOOD.*** Branches and limbs larger than two inches in diameter cut from diseased oaks; also, such branches and limbs from an unknown source that may potentially harbor the oak wilt fungus.

***FUNGICIDE.*** A chemical treatment used on non-symptomatic or slightly symptomatic trees within the trench line that could be vulnerable to infection.

**LIVE OAKS.** Members of a distinct group of the genus *Quercus* characterized by leathery oval leaves that includes two Texas species: plateau live oak (*Quercus fusiformis*) and coastal live oak (*Quercus virginiana*).

**OAK WILT.** A vascular wilt disease of oaks. The fungus responsible, *Ceratocystis fagacearum*, invades the water-conducting tissues of oak roots, trunks and limbs. *Ceratocystis fagacearum* does not actively grow anywhere in nature except in oak trees. Spores of this fungus can be moved around by certain insects and by humans.

**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.

**PREVENTIVE MEASURES.** Actions that prevent the spread of oak wilt from diseased to healthy oaks, including but not limited to oak wilt suppression trench installation and the removal and destruction of diseased oaks and firewood from any diseased oak.

**RED OAKS.** Members of a distinct group of the genus *Quercus* characterized by lobed leaves tipped by small soft spines, including but not limited to Texas red oak (*Quercus texana*, also called *Quercus buckleyi*), Shumard oak (*Quercus shumardii*), Southern red oak (*Quercus falcata*), and blackjack oak (*Quercus marilandica*).

**SUBSTANTIALLY DEAD TREE.** Trees in which more than 70% of the previously healthy branches have died due to any cause.

**SUSCEPTIBLE SPECIES.** All varieties of the genus *Quercus* that may be infected and killed by *Ceratocystis fagacearum*, including live oaks and all species of red oaks.

**TRENCHING.** Short for **OAK WILT SUPPRESSION TRENCH INSTALLATION**, a method used to isolate the infected area between healthy and diseased trees. **TRENCHING** equipment is used to cut connecting roots so that the fungus cannot spread between trees.

**WOODY DEBRIS.** Branches and limbs smaller than two inches in diameter cut from diseased trees; also, such branches and limbs from an unknown source that may potentially harbor the oak wilt fungus.

#### **§ 91.04 OAK WILT REPORTING.**

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

#### **§ 91.05 CERTAIN TREES DECLARED A PUBLIC NUISANCE.**

(A) All diseased oak trees, dead or substantially dead, and all wood from diseased oak trees to which any bark is still attached, are hereby declared to be public nuisances, as is any tree of any species that is dead or substantially dead.

(B) All species and varieties of trees that are dead or substantially dead, and all dead diseased oak wood to which the bark is still attached, which, because of its condition, may serve as a breeding place for any carrier of oak wilt disease, are hereby declared to be public nuisances.

## **§ 91.06 INSPECTIONS.**

(A) The city and the Texas A&M Forest Service, and their agents are authorized and empowered to enter upon any lot or parcel of land in the city at any reasonable hour for the purpose of inspecting any oak tree(s) or dead oak wood situated thereon.

(B) If such premises are occupied, the above personnel shall first present credentials and request entry.

(C) If such premises are unoccupied, the city shall first make a reasonable effort to locate the owner or other persons who have charge or control of the premises and request cooperation for entry.

(D) Permission of the owner, occupant or person in control of the premises is necessary for entry. If such entry is refused and the city has probable cause to believe that there exists on the premises a public nuisance as defined herein, the city shall go before the Municipal Court Judge and seek to obtain a search warrant. The purpose of the warrant is 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.

## **§ 91.07 NOTICE TO OWNER.**

(A) If, on laboratory analysis of specimens removed from any oak tree, it is determined that such tree is a public nuisance, as provided in this chapter, or if it is determined that any dead or substantially dead tree, is a public nuisance, as provided herein, and if it is determined that any such tree should be removed, the city may serve or cause to be served a written notice upon the owner of record and upon all lienholders of the lot or parcel of land on which the tree or dead oak wood is located, requiring such owner to comply with the provisions of this chapter. Diagnosis may be obtained via laboratory verification by the Texas A&M Forest Service or through a field survey by trained personnel.

(B) Service of notice provided for in this chapter shall be by certified mail to the owner's address as listed on the Hays County Appraisal District's tax roll. Notice to a lienholder or its agent may be made by personal service or by certified mail. Certified mail returned as "unclaimed" or "refused" shall be deemed delivered.

## **§ 91.08 ABATEMENT REQUIRED; PREVENTIVE MEASURES; CITY MAY ABATE.**

(A) Upon receipt of written notice by the city as described in § 91.07 it shall be unlawful for any owner of any lot or parcel of land within the city to permit or maintain on any such lot or parcel any dead oak wood or oak tree which is a public nuisance as defined in this chapter, and it shall be the duty of the owner of such to promptly remove and destroy such oak tree by cutting the tree off at ground level and removing all dead oak wood and woody debris as directed by the city.

(B) Should the property owner fail to abate the public nuisance within 45 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 or enter into a payment agreement

with the city within 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 Tex. Health and Safety Code Ch. 342.

(C) Oaks known or suspected to have died of oak wilt may not be retained for firewood under any circumstances due to the high risk of fungal mat formation and insect transmission.

(D) Oaks that are dead or dying of oak wilt as determined by an oak wilt certified arborist or the Texas A&M Forest Service shall be cut at ground level, with all firewood and woody debris covered and hauled away or disposed of by burying, burning or chipping within three working days.

(E) It shall be unlawful within the city to provide, acquire, or sell firewood that was taken from trees known or suspected to be infected by the oak wilt fungus.

(F) Pruning or cutting of oak trees shall be prohibited in the spring months of February through June when fungal spore formation and beetle activity are highest unless such activities are completely unavoidable in order to protect the safety of people and property or the health of the tree.

(G) Pruning or cutting of oaks is permitted from July 1<sup>st</sup> through January 31<sup>st</sup>

(H) Regardless of the time of year that the wound occurs, black tree wound dressing must be applied immediately to all wounds of any size on susceptible oaks, including the cut surface of healthy oak stumps, pruning cuts, construction damage, or any spot where the bark has been removed to expose the wood beneath, in order to discourage potential insect/disease contamination. Failure to seal any wound immediately upon creation of the wound is an unlawful violation of this chapter.

#### **§ 91.09 ENFORCEMENT.**

The City Manager or designee is charged with the enforcement of the provisions of this chapter.

#### **§ 91.10 COSTS OF PREVENTIVE MEASURES, TREATMENT OR REMOVAL AND REPLACEMENT.**

(A) The city shall appropriate funds as deemed appropriate by the City Council for oak wilt suppression.

(B) The city has no obligation to pay for preventive measures on any private property. However, in order to encourage participation by property owners, the city may enter into written agreements with certain property owners to pay for all or part of the costs of preventive measures.

(C) The city may enter into an agreement with the property owner(s) for cost-sharing of trenching or removal of dead red oaks.

(D) The city may enter into an agreement with the property owner(s) for cost-sharing of replacement trees.

(E) Fungicide treatment for non-symptomatic or slightly symptomatic trees or removal of infected or dead trees shall be the responsibility of the landowner.

**§ 91.11 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. Permits shall be issued without charge. Permits shall be effective for 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.

**§ 91.99 PENALTY.**

It is unlawful for any person, firm, or corporation to violate the provisions of this chapter. Any person found to have violated any provision of this chapter may be assessed a fine not to exceed \$1,000 for each violation. An additional fine may be assessed for every day or portion of a day during which the violation continues.

If payment of the fine is not completed within 90 days, or if a payment plan is not reached with the City during the 90 day period, a lien may be placed by the City as provided by law.