

**Ordinance No. 2018-04**

**AN ORDINANCE OF THE VILLAGE OF THE HILLS REPEALING ORDINANCE 2018-02; PROVIDING DEFINITIONS; DECLARING OAK WILT TO BE A PUBLIC NUISANCE; PROVIDING FOR INSPECTION AND NOTICE; REQUIRING THE OWNER OF PROPERTY TO ABATE THE NUISANCE WITHIN THIRTY DAYS AFTER NOTICE; PROVIDING FOR ENFORCEMENT; PROVIDING REGULATIONS FOR THE TRIMMING OF OAK TREES; PROVIDING FOR LIABILITY FOR FAILING TO REMOVE DEAD OR DISEASED RED OAK TREES; AND PROVIDING FOR RELATED MATTERS.**

**Whereas**, oak wilt damages and kills trees that are valuable resources and community assets, both to the owners of property, the value of property, and the environment;

**Whereas**, the owner of land that suffers or permits dead red oak trees to remain on the land is maintaining a public nuisance that will result in the spread of oak wilt to other property within the Village of The Hills (the “City”);

**Whereas**, there are a great number of trees within the city that are subject to damage and destruction if the owner of any one lot, tract or parcel of land suffers or permits dead red oak trees or red oak trees diseased or infected with the fungus that causes oak wilt disease to remain on the property owned or controlled by them; and

**Whereas**, the City does not have the resources required to enable the expenditure of public funds to the extent required to remove trees from property owned by or under the control of private citizens, or to enforce the duties of such owners by fine and judicial proceedings; and

**Whereas**, the City desires to adopt an ordinance addressing the damage and destruction possible with oak wilt.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF THE HILLS, TEXAS, THAT:**

**Section 1.**     **Findings.** The above and foregoing recitals are hereby found to be true and correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

**Section 2.**     **Purpose.** The purpose of this Ordinance is to provide for public health and general welfare, the efficient and effective provision of City services and the protection of the environment and natural resources of the community. From and after the passage of this ordinance all occupancies and uses within the City shall conform to the following rules and regulations.

**Section 3.**     **Authority.** This Ordinance is adopted pursuant to the police powers and authority given general law cities by the constitution, codes and general laws of the State of Texas, including

but not limited to Chapters. 51 and 217, Tex. Loc. Gov't. Code.

**Section 4. Oak Wilt Regulations Adopted.** The City Council hereby adopts Oak Wilt Regulations for the health, sanitation and regulation of nuisances within the Village of The Hills to read as set forth in Exhibit A, entitled "Oak Wilt – Public Nuisance", attached to and incorporated in this Ordinance as though fully transcribed herein for all purposes.

**Section 5. Amendment and Repeal of Conflicting Ordinances.** All parts of ordinances in conflict herewith are hereby amended and repealed to the extent of such conflict only.

**Section 6. Effective Date.** This Ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

**Section 7. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**Section 8. Open Meetings.** It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act.

**Section 9. Effective Date.** This Ordinance shall be in force and effect from and after its passage on the date shown below.

ADOPTED this 12<sup>th</sup> day of June, 2018.

ATTEST:

  
Linda Lunney, City Secretary

Village of The Hills

  
Eric B. Ovlen, Mayor



## OAK WILT – PUBLIC NUISANCE

**Section 1. Definitions.** Words used and not defined in this article shall have their ordinarily accepted meaning. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“*Forester*” shall mean a Certified Arborist or any individual qualified in the area of Urban Forestry, Botany or Horticulture employed or engaged by the City including but not limited to representatives from the Texas A&M Forest Service, Travis County or other agency. Preference shall be given to ISA Oak Wilt Qualified, Certified Arborists.

“*Infected or Diseased Oak*” - means:

- (1) A diseased red oak, or the wood therefrom, infected with the fungus which causes oak wilt disease (*Bretzilla fagacearum*) as determined by the City inspector with the cooperation of the forester or through laboratory analysis; or
- (2) A red oak, or the wood therefrom, which is dead or substantially dead and to which the bark is still attached, which, because of its condition, may serve as a source of inoculum for the disease.

**Section 2. Public Nuisance.** An Infected or Diseased Oak, that is located on property within the city, is found and declared to be a public nuisance.

### **Section 3. Notice to Owner.**

If a tree or firewood is determined to be an Infected or Diseased Oak, and the City inspector, in cooperation with the Forester, determines that the tree or wood is a public nuisance, the City will deliver written notice to the property owner, advising the owner of the determination and requiring the owner to comply with this article. This notice will be served upon the owner of record, the Property Owner’s Association, and upon all lienholders of the lot or parcel of land on which the Infected or Diseased Oak is located a written notice requiring such owner to comply with the provisions of this article.

(b) Service of notice provided for in this article shall be by certified mail to the owner’s address as listed on the Travis County Appraisal District’s tax roll. Notice to a lienholder or its agent may be made by personal service or by certified mail.

**Section 4. Abatement of Nuisance by Owner of Property.** It shall be unlawful for an owner of any lot, tract or parcel of land within the City to permit or maintain on such lot, tract or parcel any Infected or Diseased Oak which is a public nuisance. It shall be the duty of the owner of such lot, tract or parcel, within thirty (30) calendar days after notification of the presence of oak wilt disease as determined by the forester or by laboratory analysis, to remove and properly dispose of the

entire Infected or Diseased Oak in a licensed landfill and submit a copy of the landfill receipt to the City inspector's office. If Owner desires to appeal the determination of a public nuisance, Owner must submit the appeal in writing to the City within ten (10) days.

**Section 5. Payment of costs of testing, tree removal**

(a) Laboratory analysis. The property owner must pay for the cost of any laboratory analysis necessary to determine the presence of disease.

(b) Removal and disposal. The cost of removing and disposing of any tree or wood determined to be a public nuisance will be borne by the property owner.

**Section 6. Enforcement.** The City inspector, in cooperation with the Forester responsible for Travis County, is charged with the enforcement of this article, and shall perform the duties as set forth herein. The City may work with the Property Owners Association to assist with any and all enforcement duties set out herein.

**Section 7. Inspections.** Permission of the owner, occupant, or person in control of the premises shall be sought prior to entry. If such entry is refused and the City inspector has probable cause to believe that there exists on the premises a public nuisance, the City inspector may go before a justice of the peace and seek to obtain a search warrant. The purpose of the warrant is to determine the presence of a nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected.

**Section 8. Time to Trim and Sealing of Cuts.** The trimming or cutting of oak species for purposes other than protecting public safety is permitted between July 1st and January 31st and is prohibited between February 1st and June 30th. The resulting cut shall be treated immediately with paint to cover the exposed surface from contamination. Use of aerosol can is the preferred method of application for covering cuts. Any wounds, whether made by trimming, construction or accident, shall be treated immediately with paint to cover the surface from contamination. The City inspector may conduct unannounced inspections to ensure compliance with all provisions of this article.

**Section 9. Disinfection of Equipment.** Equipment used for trimming or cutting of red oak species in public projects will be disinfected after each tree is completely cut and before proceeding to the next tree. A solution of nine parts water to one part bleach is recommended for disinfection of all trimming equipment. This disinfection procedure is highly recommended for private projects. Disinfectant spray may be used as an alternative.

Section 10. Firewood. Red 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.

It shall be unlawful to stack firewood taken from live oaks known to be infected or suspected of being infected by the oak wilt fungus around or near healthy oaks unless the entire stack is

completely wrapped in clear plastic with the ends buried, tucked under, or completely secured with weights for a period of one year.

It shall be unlawful for any person to transport or sell oak firewood within the city that was taken from trees known or suspected to be infected by the oak wilt fungus, unless the trees are known to have been dead for at least one year.

**Section 10. Owner Liability.** The owner of a lot, tract or parcel of land within the City that suffers or permits a public nuisance to remain on such lot, tract or parcel for more than thirty (30) days after notice from the inspector may be liable to the owner of any neighboring lots, tracts or parcels of land for damages caused by oak wilt on the neighboring lot, tract or parcel of land. If the owner of a neighboring lot, tract or parcel of land shows and establishes the trees on the his or her land were infected by oak wilt as a result of the neighboring owner not timely abating the public nuisance, the owner that failed to timely abate and remove the public nuisance shall be liable for the damage to the property of such neighboring owner.

**Section 11. Governmental Immunity.** This ordinance does not waive governmental immunity or any defense available to the City at law or in equity, and nothing in this ordinance shall be deemed to waive, modify or amend any legal defenses available at law or in equity to the City or to any officers or employees of the City, nor create any legal rights or claim against the City, its officers and employees on behalf of any party.