ORDINANCE NO. 2022-08-12-01

CITY OF WOODCREEK, TEXAS

AMENDMENT TO TITLE IX GENERAL REGULATIONS OF THE CODE OF ORDINANCES

AN ORDINANCE AMENDING THE CITY OF WOODCREEK CODE OF ORDINANCES AT TITLE IX ("GENERAL REGULATIONS"), CHAPTER 91 ("TREES") PROVIDING FOR ENACTMENT, REPEALER, SEVERABILITY, CODIFICATION, AND EFFECTIVE DATE, AND FINDING PROPER NOTICE AND MEETING.

WHEREAS, pursuant to Texas Local Government Code Section 51.001, the City has general authority to create an ordinance that is for good government and order of the City; and

WHEREAS, the City Council finds that the preservation of tree inventory is environmentally beneficial and contributes to the overall aesthetics and natural beauty of the City; and

WHEREAS, the City Council recognizes that trees, if properly cared for, are assets that enhance property values but can quickly become liabilities if they are not monitored and protected; and

WHEREAS, the City Council recognizes that a single tree's lifespan is greater than any one property owner, and so therefore the City has a duty to protect the trees of the community for generations to come by enacting reasonable regulations for the care and protection of trees under the City's jurisdiction; and

WHEREAS, The City Council finds that the potential for development to negatively impact the City of Woodcreek's tree inventory, including the largest and most significant trees, requires reasonable regulations; and

WHEREAS, the City Councils finds the creation of this ordinance aligns with the best interests of its citizens and is for good government and order of the City.

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

1. FINDINGS OF FACT

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

2. ENACTMENT

The Code of Ordinances of the City of Woodcreek is amended at Title IX ("General Regulations"), Chapter 91 ("Trees") so as to read in accordance with Attachment A 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resolutions, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.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 Title IX, Chapter 91, as written by this Ordinance, in the City's Code of Ordinances.

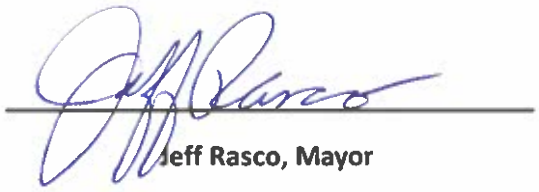
6. EFFECTIVE DATE

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

7. PROPER NOTICE & MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was 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. 27

PASSED & APPROVED this, the 22__day of August 2022, by a vote of 3 (ayes) to 2 (nays) and 0 (abstentions) of the City Council of Woodcreek, Texas.



Jeff Rasco, Mayor

Suzanne Mac Kenzie, City Secretary

Attachment "A"

City of Woodcreek

CODE OF ORDINANCES

TITLE IX: GENERAL REGULATIONS

CHAPTER 91: TREE PROTECTIONS

SCHEDULE 1: TREES WITHIN CITY LIMITS

SCHEDULE II: TREES IN THE EXTRATERRITORIAL JURISDICTION

91.01 TITLE

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

91.02 INTENT AND PURPOSE

(A) The tree code regulations protect the health, safety, and general welfare of the citizens of Woodcreek.

(B) The appearance of the city is enhanced, property values are protected, and the important ecological, cultural, and economic resources are preserved for the benefit of the city's residents, businesses, and visitors by implementing protections for trees within the jurisdiction of the city.

(C) The sections within this chapter address trees in both development and non-development situations and seek to enhance the quality of the tree canopy, optimize the benefits that trees provide, and avoid unnecessary reductions in the tree inventory of the community.

(D) For new development situations, additional requirements are designated to promote tree preservation and protect existing trees throughout the construction process.

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 the chapter and not defined herein shall have their ordinarily accepted meaning.

ACCREDITED, CERTIFIED, AND/OR LISCENSED ABORIST is a tree care professional who has tested and received an accreditation through the Internal Society of Arboriculture (ISA) and is recognized for good practice with the Tree Care Industry Association (TCIA). This is not to be confused with an Oak Wilt specialist which is a separate qualification process.

CEDAR (Juniperus) STAND A group of cedars where 65% are over ten (10) feet tall and range over an area at least ten (10) feet wide.

CRITICAL ROOT ZONE An area of land surrounding the trunk of the tree for which the roots extend underground. It is typically measured as 1 inch in radius per 1 inch in diameter of the tree.

DEVELOPER A person, contractor, corporation, or other legal entity with legal control over a property for the purpose of making improvements upon the land such as clearing, installation of utilities, or the building of a structure who may or may not occupy or live upon the property in question.

DBH (diameter at breast height). The tree trunk diameter of an existing tree measured in inches at a height of 4.5 feet above the ground. If a tree splits into multiple trunks below 4.5 feet, the trunk is measured at its narrowest point beneath the split.

DIAMETER Is circumference divided by Pi (3.14)

DISEASED TREES Oaks infected by the fungus Ceratocystis fagacearum. Other trees infected by any disease rendering them unsustainable.

ESCROW A deposit of a cash bond with the city in accordance with this article.

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

HERITAGE TREE A tree that has a trunk of twenty-four (24) inches in diameter or greater measured at DBH; or a multi-trunked hardwood tree having a total trunk DBH of thirty (30) inches or more (not counting trunks that are eight (8) inches or less in diameter); And is one of the following species:

Ash, Texas

Cypress, Bald

Elm, American

Elm, Cedar

Madrone, Bigtooth

All Oaks

Pecan

Walnut, Arizona

Walnut, Eastern Black

This list of eligible heritage tree species may be supplemented, but not reduced, as prescribed by rule.

LION TAILING A pruning method where all the interior branches are removed, leaving only tufts of leaves and small branches at the ends of the large limbs. It damages the health and structural stability of the tree.

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

NATURAL AREA An area where the naturally grown landscaping is left primarily undisturbed, except for removal of poison ivy, greenbrier, and similar vegetation, invasive species, oak wilt removal and/or prevention measures, and allowing for maintenance of the trees to maintain vigorous growth.

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.

OAK WILT SPECIALIST a tree care professional that has received special training and qualification to identify, diagnose, and treat Oak Wilt through the International Society of Arboriculture (ISA).

RESIDENT A person with legal control over the property in question, to include lessees, owners, and all other occupants who may make alterations to the landscape of the property or hire someone to do the same.

PREVENTATIVE 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 diseased oak.

PROTECTED TREE A tree with a diameter of nineteen (19) inches in diameter or greater measured at DBH. Or, Cedar Stands as defined in this ordinance.

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*). These trees are highly susceptible to Oak Wilt, and can spread it naturally.

REMOVAL Means an act that causes or may be reasonably expected to cause a tree to die, including uprooting, severing the main trunk; damaging the root system; and/or excessive pruning.

SUBSTANTIALLY DEAD TREE Tress in which 90% or more of the previously healthy branches have died due to any cause, or which have been certified by an arborist as substantially dead.

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 oak.

TOPPING The practice of removing the top of a central stem, or leader, on a tree and the upper main branches. It damages the health and structural stability of the tree.

TREE BOARD The City of Woodcreek Tree Board.

TRENCHING Short for OAK WILT SUPPRESSION TRENCHING INSTALLATION, a method used to isolate the infected area between healthy and diseased trees. Trenching equipment is used to cut connecting roots so that 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 **TREE FUND**

(A) A fund is hereby created in which any/all cash-in-lieu paid to the City pursuant to the mandates of this chapter shall be deposited.

(B) The Fund will be administered by the City Council who may designate this responsibility to the Tree Board and may be drawn upon to implement landscaping improvements on city parks, city-controlled public right-of-way greenspaces, and other public land.

SCHEDULE I: TREES WITHIN CITY LIMITS

91.05 **JURISDICTION**

Under the authority of sections 212.002 and 212.003 of the Local Government Code, Chapter 91: Trees Protections, is applicable to:

(1) City Limits of Woodcreek.

(2) All residential and commercial properties.

(3) New development including but not limited to planned development districts, planned unit districts, municipal utility districts, subdivisions, and all other residential, commercial, and nonresidential lot improvements.

(4) Existing residences and commercial properties.

(5) Clearing of any land regardless of zoning with, or without, a primary structure.

(6) Industrial zoning and development should it occur

(7) Agriculture lands

(8) Recreational properties not owned by the city or designated as public parks, greenspaces, or other public lands.

91.06 **TREE TRIMMING PERMIT REQUIRED**

(A) No property owner, resident, person, individual, firm, corporation, contractor, landscape contractor, developer, 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 the appropriate permit from the city.

(B) Permits shall be issued based on the current fee schedule.

(C) 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.

(D) Pruning in excess of 25% of the canopy of trees under 19 inches in diameter is discouraged. Pruning in excess of 25% of the canopy of Protected and Heritage Trees is prohibited at all times.

(E) 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 to protect the safety of people and property or the health of the tree. A permit from the City must be secured prior to pruning or cutting in this situation.

(F) Pruning or cutting of oaks is permitted from July through January. Pruning apparatus should be disinfected between trees.

(G) 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, to discourage potential insect/disease contamination. Failure to seal any wound immediately upon creation is an unlawful violation of this chapter. This includes trunks of any oak trees fully removed where the trunk portion is left behind. A $500 fee will be charged for each tree placed at risk should a responsible party be caught not immediately applying black tree wound dressing to live cuts and other wounds.

(H) The permit shall be posted in a place where it can be seen from the nearest street while the work is in process.

(I) Residents are encouraged to seek professional services from a licensed arborist for all tree-trimming and/or removals for all trees, but a certified arborist is required for the trimming of all trees designated as Heritage and all Protected Oak trees.

(J) It is the responsibility of the property owner to secure the proper permits.

(K) The practices of "lion tailing" and "topping," as described in the definitions in section 91.04 of this chapter, are prohibited for all protected and heritage trees. Use of these practices by a resident or developer or conducted by hired help under the supervision and employment of the resident or developer may result in fines up to $250 per Protected Tree and $500 for each Heritage Trees harmed with these prohibited practices.

(L) There will be a separate permit process (91.08) for tree removal for all existing and new development within the city limits to establish the species of a tree and if it is a Protected or Heritage or nuisance tree. See section 91.07 of this chapter for more information on Protected and Heritage Trees, section 91.10 for nuisance trees, and section 91.11 for diseases and infestations other than Oak Wilt.

(M) The following trees may require a permit but do not require mitigation to meet the objectives of invasive species management efforts of the City of Woodcreek.

Chinaberry *(Melia azedararach)*

Chinese parasol tree *(Firmiana simplex)*

Chinese pistache *(Pistache chinensis)*

Chinese tallow *(Sapium sebiferum)*

Golden Rain Tree *(Koelreuteria paniculata)*

Ligustrum, wax leaf *(Ligustrum japonicum)*

Ligustrum, Japanese *(Ligustrum lucidum)*

Lilac chaste *(Vitex agnus-castus)*

Mimosa, non-native *(Albizzia julibrissin)*

Mulberry, paper *(Broussonetia papyrifera)*

Mulberry, white *(Morus alba)*

Nandina *(Nandina domestica)*

Photinia, Chinese *(Photinia, spp.)*

Privet, common *(Ligustrum sinense, Ligustrum vulgare)*

Pyracantha *(Pyracantha spp.)*

Russian olive *(Elaeagnus angustifloria)*

Siberian Elm *(Ulmus pumila)*

Tamarisk, salt cedar *(Tamarix spp.)*

Tree of Heaven *(Ailanthus altissima)*

(N) As a result of a storm or fire, a person may, without a permit, trim, prune or remove a storm damaged tree that is an imminent hazard to life or property if the tree is removed within seven days of being damaged by the event.

(1) Photos of the damaged tree and a written explanation showing the imminent hazard will be provided to the city within fifteen days of the event.

(2) If imminent hazard is not shown to have existed, the city may impose fines or fees for the removal of said damaged tree without having first obtained a permit.

(3) The city manager or their designee may extend these deadlines for widespread and extensive storm damage.

(4) This exception is extended to cover Protected and Heritage Trees should a storm damage them significantly and they pose a serious immediate hazard to persons or property. No fee will be assessed nor replacements required for Protected and Heritage trees that have been damaged in a natural event for which full removal is suggested or

required. If the tree is designated as Protected or Heritage and was removed, and it is determined that full removal was not necessary by city officials and a certified arborist, then the appropriate replacement costs will be imposed.

(O) Every owner of any tree overhanging any street or right-of-way within the City shall prune the branches so that such branches shall not obstruct view of any street intersection and so that there shall be a clear space of eight feet (8') at the property line, above a public walkway, or in the City right-of-way easements. The City shall maintain right-of-way clearance overhanging the public rights-of-way at a minimum of fourteen feet (14'), trimming at a minimum of sixteen feet (16') when the work occurs.

(1) Said owners shall remove all dead, diseased, or dangerous trees, or broken or decayed limbs which constitute a menace to the safety of the public.

(2) The City shall have the right to prune any tree or shrub on private property when it interferes with the visibility of any traffic control device or sign.

(3) The City will notify citizens of intent to prune trees or shrubs at least seven (7) days in advance of commencing this work.

(4) This work shall follow Oak Wilt guidelines as described in this chapter and the City will follow proper procurement procedures for all contracted workers utilized for right-of-way clearance.

(P) Any tools used for pruning on trees should be cleaned between each use and between separate trees during use to prevent the spread of disease and infestation.

91.07 **PROTECTED AND HERITAGE TREES**

(A) **Protected Trees** as defined in this chapter are trees with a trunk diameter of 19 inches and greater and they are not listed as invasive in section 91.06 (M) of this chapter.

(1) Trees designated as protected are considered to be highly desirable, and private landowners and developers are encouraged to preserve these trees though proper care and maintenance.

(2) A certified arborist is recommended but not required for trimming on protected trees except all Oak species. Protected size trees of the Oak species will require a certified arborist for trimming. Trimming in excess of 25% of the canopy of a Protected Tree is prohibited at all times.

(3) If removal of a protected tree is desired, then the landowner or responsible party of existing lots and/or new development must request a permit for removal and they must provide replacement tree at a ratio of 1:1, or cash-in-lieu may be paid to the City Tree Fund in the amount equal to the cost of nursery stock required to replace the diameter amounts lost and the cost of installation on a per unit basis, not to exceed one hundred dollars ($100.00) per diameter inch lost or 20% of the current value of the property, not including any structures built upon the lot, as assessed in the most current county appraisals.

(4) Homeowners may offset costs by 100% with a tree replacement, non-resident developers may offset costs by 50% with a tree replacement but are subject to pay the

remaining fee, and commercial developers allowed 40% offset with planting and then are subject to pay the remaining fees.

(B) **Heritage Trees** as defined in this chapter are trees with a trunk of twenty-four (24) inches in diameter or greater measured at DBH; or a multi-trunked hardwood tree having a total trunk DBH of thirty (30) inches or more (not counting trunks that are eight (8) inches or less in diameter); And is one of the species listed in section 91.04 under the Heritage Tree definition.

(1) Trees designated as heritage are hereby prohibited from removal.

(2) A certified arborist is required for all trimming on Heritage Trees. Trimming in excess of 25% of the canopy of a Heritage Tree is prohibited at all times.

(3) Property owners, residents, and developers who wish to remove a Heritage Tree must request a variance. They must show proof that there is substantial reason to remove a Heritage Tree and placement of a desired structure is not considered to be reason enough to remove a Heritage Tree.

(4) If a removal variance is granted, a replacement must be provided at a ratio of 1:1, or cash-in-lieu may be paid to the City Tree Fund in the amount equal to the cost of nursery stock required to replace the diameter amounts lost and the cost of installation on a per unit basis, not to exceed one hundred dollars ($100.00) per diameter inch lost or 20% of the current value of the property, not including any structures built upon the lot, as assessed in the most current county appraisals.

(5) Homeowners may offset costs by 100% with a tree replacement, non-resident developers may offset costs by 50% with a tree replacement but are subject to pay the remaining fee, and commercial developers allowed 40% offset with planting and then are subject to pay the remaining fees.

(C) **Prohibited and Harmful Trimming Practices on Protected and Heritage Trees** such as "lion tailing" and "topping," as described in the definitions in section 91.03 of this chapter, may result in fines up to $250 per Protected Tree and $500 for each Heritage Trees harmed with these prohibited practices.

(D) **Diagnosed Oak Wilt in Protected and Heritage Trees** may result in their removal. If Oak Wilt is detected and it is substantial enough to warrant removal or has caused significant structure damage or death of large portions of the tree, as diagnosed by a certified arborist, these trees are exempt from replacement requirements and removal fees imposed by the City. Residents are still encouraged to replace trees and the City offers financial assistance for replacement of trees lost due to Oak Wilt in section 91.09 (E).

91.08 **TREE REMOVAL**

(A) All tree removals must go through a permit process separate from the tree trimming process. This is to determine the species, Protected or Heritage tree status, or if there is a public hazard or nuisance.

(B) Removal of Protected Trees should be avoided. In the case of bug infestation or disease, besides Oak Wilt, treatments should be pursued before removal if possible. Protected trees should be replaced following the procedures outlined in section 91.07 (A).

(C) Removal of Heritage Trees is prohibited. A variance must be requested, significant proof is needed for approval to remove beyond placement of a desired structure alone, and the replacement procedures outlined in section 91.07 (B) apply.

(D) Removal of trees listed in 91.06 (M) is permitted and no replacement procedure is required. The permit in this case is simply to establish the tree type.

(E) Residents are highly encouraged to use a licensed and insured tree care professional for all removals as they can pose a serious risk to life and property.

91.09 **OAK WILT**

(A) 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/Administrator within ten (10) business days.

(B) Inspections and Notice to Owner

(1) The City of Woodcreek is authorized and empowered to send a representative from city staff, the Tree Board, Texas A&M Forest Service, or a certified arborist to enter upon any lot or parcel of land in the city or its ETJ at any reasonable hour for the purpose of inspecting any oak tree(s) or dead oak wood situated thereon.

(2) Every reasonable effort shall be made to contact the owner, resident, or other persons who may have charge or control of the lot or parcel in advance to notify them of the inspection and to request entry.

(3) If there is a living structure on premise, or it is established by observation that the parcel or lot is occupied at the time of the inspection, the aforementioned personnel shall first present credentials, alert the occupant of their intention to enter the property for inspection purposes, and request entry.

(4) Owners and occupants shall provide reasonable cooperation for the entry and inspection of their property for the purpose of dealing with this public nuisance. While permission from the resident, owner, or occupant 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 such as oak wilt, the city shall go before the Municipal Court Judge to seek and obtain a search warrant. The purpose of this warrant is to determine the presence of oak wilt and to obtain samples.

(C) Confirmation of Oak Wilt and Notice to Owner:

(1) If, on laboratory analysis of specimens removed from any red oak tree, it is determined that such tree is infected with Oak Wilt, or if it is determined that any dead or substantially dead red oak tree, is infected with Oak Wilt then it must be fully removed and all wood taken from the property and disposed of properly. Tools used

should be cleaned immediately and shall not be used on other trees until they have been properly sanitized.

(2) If, on laboratory analysis of specimens removed from any species of oak tree other than red oak, it is determined that such tree is infected with Oak Wilt, and it is determined that the tree should be removed by a certified arborist because abatement measures to contain the Oak Wilt and/or prolong the tree's lifespan are determined to be insufficient or cost prohibitive for the owner, or it is determined the structural damage to the tree is significant enough to make it a public health hazard then it must be fully removed and all wood taken from the property and disposed of properly.

(3) It is determined that any such tree, dead or alive, infected with Oak Wilt 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.

(4) Diagnosis will be obtained via laboratory verification by the Texas A&M Forest Service or through a field survey by trained personnel.

(5) 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.

(6) If, on laboratory analysis of specimens removed from any species of oak tree other than red oak, it is determined that such tree is infected with Oak Wilt, and it is determined that the tree could benefit from abatement and treatment efforts and that these efforts could effectively contain the Oak Wilt and prolong the tree's life as diagnosed by a certified arborist with a specialization in Oak Wilt, then the owner may take these preventive measures at their own expense.

(D) Abatement or Removal Required:

(1) Upon receipt of written notice by the city as described in 91.09 (C) it shall be unlawful for any owner of any lot or parcel of land within the jurisdiction of the City of Woodcreek 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.

(2) Should the property owner fail to abate the public nuisance within sixty (60) 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 Tex. Health and Safety Code Ch. 342.

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

(4) It shall be unlawful for any person to sell firewood within the city that was taken from oak trees known or suspected to be infected by the oak wilt fungus.

(5) 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 to protect the safety of people and property or the health of the tree. A permit from the City must be secured prior to pruning or cutting in this situation.

(6) Pruning or cutting of oaks is permitted from July through January. Pruning apparatus should be disinfected between trees.

(7) 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, to discourage potential insect/disease contamination. Failure to seal any wound immediately upon creation is an unlawful violation of this chapter. This includes trunks of any diseased oak trees fully removed where the trunk portion is left behind. Residents are encouraged to fully remove the stump of diseased oak trees as they can still spread oak wilt.

(8) If any owner, resident, or responsible party including the City fails to address Oak Wilt once confirmed by laboratory specimen and it can be reasonably proven that the Oak Wilt has since spread to other nearby properties as a result of this negligence, as determined by a certified arborist specializing in Oak Wilt, the property owner or responsible party of the Oak Wilt center may be liable for the damages to surrounding properties and subject to no less than half of the fees associated with removal, containment, abatement, and/or replacement of the trees on property surrounding the Oak Wilt Center.

(a) These are not fees due to the City for permitting purposes, as there are none in the case of Oak Wilt. These are the fees incurred by other surrounding private land holders adjacent to the Oak Wilt center for the purpose of hiring professionals to contain, remove, and replace the diseased trees.

(b) For liability purposes, reasonable proof must exist that the owner was notified of confirmed Oak Wilt and that no action was taken to contain and/or remove the diseased trees. If action was taken, and Oak Wilt still spread as diagnosed by a certified arborist specializing in Oak Wilt, then the property owner for which the Oak Wilt center was located is not liable for any spreading that may occur after reasonable efforts have been made to contain and/or remove the Oak Wilt from the property.

(E) City Sponsored Replacement Program and Oak Wilt Abatement and Prevention Efforts:

(1) The City shall appropriate funds as deemed appropriate by the City Council for oak wilt suppression on private and public lands within the city limits. Funds for this effort will come from the Oak Wilt Containment budget.

(2) The City has no obligation to pay for preventive measures on any private property. However, 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.

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

(4) The City may enter into an agreement with the property owner(s) for cost-sharing of replacement trees for Protected and Heritage trees lost to Oak Wilt. Residents are encouraged, but not required, to replace trees lost by Oak Wilt.

(a) The City will offer to cover 50% of the cost of the replacement tree, or up to $600 in matching funds, to replace any protected or heritage tree that has died or must be removed due to Oak Wilt as diagnosed by a certified arborist and confirmed by the City.

(b) Trees smaller in diameter and younger in age than a designated protected or heritage tree but afflicted by Oak Wilt as diagnosed by a certified arborist and confirmed by the City, will be grouped into sets of 5 to determine a funding match from the City; for every five smaller trees a resident may receive $600 and for every three smaller trees a resident may receive half value at $300 in matching funds.

(c) The resident will be reimbursed upon the confirmed planting of the replacement tree. Trees must be planted in the fall, not during a drought, and the resident must provide an exact match of funds from the city to purchase a tree of advanced age and suitable durability to survive transplantation.

(d) The City will not cover costs to plant the tree and no portion of the match funds may be used for planting services. The match funds shall be solely used for the purchase of the tree.

(e) Trees selected for planting may not be susceptible to Oak Wilt and residents should reference the Texas A&M Forrest Service guidelines for appropriate trees to plant to in this area that Oak Wilt cannot infect.

(f) Residents that show proof the replacement tree planted has survived after three years will receive an additional $100 per tree. This must be documented via photos and the tree must still be alive and thriving at the time the City sends out a representative to confirm in person.

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

(G) If an owner of any private land, regardless of zoning or development status, fails to remove, trench, and treat confirmed Oak Wilt then the City may remove the trees at the owner or responsible person(s) expense and may impose additional fines as described in this chapter.

(H) ~~During the months of July to January if any tree worker, landscaper, property owner, developer or otherwise authorized responsible party is caught not properly cleaning and sanitizing tools between their use on different trees they will be subject to a $500 fine per tree placed at risk by these actions. Spraying live Oak cuts are year-round practices required on all oak species and are subject to a $500 fine per tree placed at risk by not doing so.~~

91.10 **CERTAIN TREES DECLARED A PUBLIC NUISANCE AND NOT SUBJECT TO REPLACEMENT REQUIREMENTS AND/OR REMOVAL FEES**

(A) Any tree which is in an unsafe condition or which by reason of its nature or growth is injurious to sewers, power lines, gas lines, water lines or other public improvements and measures to save the tree while eliminating the public risk would be cost prohibitive or unlikely to be effective as assessed by a certified arborist may be removed and is not subject to replace requirements or removal fees to be paid to the City.

(B) Residents and property owners must submit a permit for removal request. In the event of an emergency, and it is unreasonable for a property owner to wait for permit approval, they shall follow the process outline in section 91.06 (M) for submitting required information to the City after removal.

(C) All red oak diseased trees, alive, dead or substantially dead, and all wood from red oak trees to which any bark is still attached.

(D) All species and varieties of diseased oak 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.

(E) Any diseased tree that is dead or substantially dead.

(F) Any tree with substantial bug infestation which has resulted in significant structural damage, as determined by a certified arborist, and treatment would be unable to safe or preserve the tree and thus the tree constitutes as a hazard to the public if not immediately removed.

(G) A living, dying, or dead tree or limb or shrub on a right-of-way, or adjacent to a right-of-way but on private property, if it obstructs streetlights, traffic signs, or the free and safe passage of pedestrians and vehicles, or poses a hazard to life or property. A representative of the City may meet with the property owner to discuss such a tree, and the city may give notice to the property owner to remedy such nuisance at the owner's expense.

(H) A living, dying, or dead tree or limb or shrub on a right-of-way, or anywhere on private property, that harbors an infestation or fungus or disease which a certified arborist determines is a contagious communicable threat to other trees within the city. Owners are encouraged to report such nuisances to the city. A representative of the City may meet with the property owner to discuss such a nuisance. The city may give notice to the property owner that it intends to remediate such nuisance for the owner at the owner's expense and proceed to do so. The

owner shall cooperate with the city's remediation. Remediation may include various measures as determined by a certified arborist, such as spraying, injecting, trimming, or removing.

91.11 **GUIDELINES FOR DISEASED OR INFESTED TREES OTHER THAN FROM OAK WILT**

(A) Inspections for all trees

(1) Homeowners, residents, and all others in charge of or care over any property within the city limits of Woodcreek or its ETJ are encouraged to conduct annual tree inspections of their property. If Oak Wilt is suspected, please contact the City immediately to receive assistance in properly diagnosing diseased trees.

(2) Additional inspections to consider would be for bug infestations, diseases other than oak wilt, excess ball moss growth, girdling, buried root crowns, blight, and erosion. The City encourages residents, property owners, and developers to seek regular inspections and to pursue proper tree care but will not provide compensation outside of the programs listed in this chapter or any other official city sponsored events that may occur.

(3) It is the financial responsibility of private landowners and residents to properly inspect and care for their trees per the guidelines in this chapter to ensure the trees located within their property lines are safe and healthy, thus protecting residents' assets and property values.

(4) If there is a suspected contagious disease or bug infestation, the City may send a city representative, member of the Tree Board, or other licensed professional to inspect and diagnose trees in question or determined at risk pursuant to the guidelines as described in section 91.09 (B).

(B) Notice to owner for diseased and infested trees

(1) If, on laboratory analysis of specimens or upon the diagnosis by a certified arborist, that any species of tree under the city's jurisdiction 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 wood is located, requiring such owner to comply with the provisions of this chapter.

(2) Diagnosis may be obtained via laboratory verification by the Texas A&M Forest Service or through a field survey by trained personnel.

(3) 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.

(4) Once notice has been issued, action must be taken to treat or remove the public nuisance

(C) Costs for treatment, removal, and replacement

(1) The City shall appropriate funds as deemed appropriate by the City Council for suppression of infectious diseases or bug infestations that pose a threat to the greater community.

(2) 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.

(3) The City may enter into an agreement with the property owner(s) for cost-sharing of treatments deemed necessary by a certified arborist.

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

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

(6) Owners who neglect to contain, remove, or treat contagious disease or spreadable infestation may be liable for costs incurred by the City or other private landowners for mitigation purposes.

91.12 **TREE PROTECTION REQUIREMENTS FOR NEW DEVELOPMENT OR NEW CONSTRUCTION ON EXISTING DEVELOPMENT WITHING CITY LIMITS**

(A) A "Grading and Tree Survey" shall be submitted with all new commercial and residential building and/or subdivision development site plans within the city's jurisdiction. This includes development or building on lots with existing structures.

(1) The Tree Survey shall include all existing, live, healthy trees with a fourteen (14) inch or larger DBH in diameter. The Survey shall indicate the size (DBH) and species of tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles using the formula of one (1) foot of radius diameter for everyone (1) inch of trunk diameter. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed (including trees identified to be distressed).

(2) Healthy designated Protected Trees that require removal to accommodate the development shall be replaced at a ratio of 1:1, or cash-in-lieu may be paid to the City Tree Fund in the amount equal to the cost of nursery stock required to replace the diameter amounts lost and the cost of installation on a per unit basis, not to exceed one hundred dollars ($100.00) per diameter inch lost for the entire Site, or 20% of the current value of the entire property without the value of any structures on the land as assessed by the most current county appraisal records (before subdivision, if being

divided). Non-resident developers may offset costs by 50% with a tree replacement but are subject to pay the remaining fee, and commercial developers allowed 40% offset with planting and then are subject to pay the remaining fees. Trees identified as diseased, infested, containing Oak Wilt, or with substantial structure failure as diagnosed by a certified arborist may be exempt from replacement requirements if it is determined the tree would not naturally survive without extensive and cost-prohibitive intervention.

(3) Healthy designated Heritage Trees are prohibited from removal. A variance for removal must be requested from the City and proof that there is substantial reason to remove a Heritage Tree is required. Placement of a desired structure alone is not considered to be reason enough to remove a Heritage Tree. If the variance to remove a Heritage Tree is granted, then a replacement tree must be planted at a ratio of 1:1, or cash-in-lieu may be paid to the City Tree Fund in the amount equal to the cost of nursery stock required to replace the diameter amounts lost and the cost of installation on a per unit basis, not to exceed one hundred dollars ($100.00) per diameter inch lost for the entire Site, or 20% of the current value of the entire property without the value of any structures on the land as assessed by the most current county appraisal records (before subdivision, if being divided). Non-resident developers may offset costs by 50% with a tree replacement but are subject to pay the remaining fee, and commercial developers allowed 40% offset with planting and then are subject to pay the remaining fees. Trees identified as diseased, infested, containing Oak Wilt, or with substantial structure failure as diagnosed by a certified arborist may be exempt from the variance and replacement requirements if it is determined that the tree could not first be preserved through treatment and mitigation.

(4) Pre- and post-construction fertilization is required for existing trees that will be, or have been, disturbed by construction activities, including disturbance of the critical root zone. All fertilizers must be phosphate-free. Receipts from this treatment must be provided to the City Manager, or their designee, prior to a certificate of occupancy issuance.

(5) The planting, preserving and maintaining of trees, which are contagiously diseased trees, or the storage of cut oak, unless first determined by a certified arborist to be devoid of oak wilt or properly treated, shall be deemed to be a Public Nuisance and is prohibited.

(6) During construction, measures must be taken to protect all trees; including, but not limited to: rigid fencing, shielding, and signage, as necessary. The level of protection for each tree shall be subject to determination by the City Manager or their designee prior to acceptance and approval of the grading and tree survey.

> (a) Factors considered in this determination include, but are not limited to: proximity to construction, construction design plans, size of tree, route of construction vehicles on and off property, parking during construction, and utility line access.

(b) If it is determined rigid fencing is needed to protect the critical root zone of a tree, it shall be placed with a radius of ½ ft per 1 inch in diameter from the trunk unless property lines or other features prohibit a complete radius. Rigid fencing should be not less than four (4) feet high and the material shall be sufficient to deter damage to the tree or compaction of its root system. Trees under 19 inches in diameter may be exempt from fencing.

(c) All Protected and Heritage Trees must be protected with rigid fencing per the guidelines for placement listed above. Development and construction inside the critical root zone of Protected and Heritage Trees shall be avoided. Variances may be requested and are subject to approval after assessment by a certified arborist is performed and it is determined there is no significant risk to the tree by proposed construction designs.

(d) The City Manager or Designee shall inspect and approve installed tree protection before the issuance of any permit to commence with any construction activity.

(e) Tree protection shall remain in place until final landscaping installation is approved by the City Manager or designee.

(f) The parking or storage of vehicles, equipment or materials within the critical root zone of Protected and Heritage Trees is prohibited.

(7) Any trenching that must occur during or post construction around Protected and Heritage Trees must have the plan reviewed by a certified arborist. If it is determined the trenching will occur in a critical root zone, then the work must be conducted by a certified arborist.

(8) Proposed pruning in excess of 25% of the canopy on Protected and Heritage Trees is prohibited. In trees under 19 inches in diameter, pruning in excess of 25% of the canopy must be reported in the "Grading and Tree Survey" and measures should be taken to avoid whenever possible.

(9) A minimum of 50% of the critical root zone of all Protected and Heritage Trees must be preserved at natural grade with natural ground cover. No cut or fill greater than 4 inches allowed withing ½ of the critical root zone. No Impact is allowed withing ¼ of the critical root zone.

(B) For all new commercial and residential developments or subdivisions or new construction on existing development, during extreme drought classifications for this region as determined by the National Drought Mitigation Center, the City Manager, or designee, may:

(1) Accept a fiscal deposit in the amount equal to the cost of purchasing and installing the trees, and other required landscaping, into the City's Tree Fund in lieu of the installation of trees, and other required landscaping, required by this chapter for the issuance of a Certificate of Occupancy Permit; OR

(2) The City Manager, or designee, may accept an escrow equal to the cost of purchasing and installing the trees, and other required landscaping. The City shall only accept the Fiscal Deposit or Escrow if an Erosion Control Plan has been reviewed and accepted by the City Manager, or Designee. Failure to maintain and adhere to an approved Erosion Control Plan during periods of an extreme drought classification shall be deemed a violation. Such a violation will result in fines and penalties being applied.

(3) The escrow may be drawn upon by the City to implement tree requirements for the depositing property owner, or the funds shall be released to the depositing property owner to implement tree requirements within thirty (30) days when after the Drought Mitigation Center determines that this region is no longer in an extreme drought condition or higher classification. Failure to implement the tree requirements within thirty (30) days of the release of the fiscal deposit to the depositing property owner shall be deemed a violation and the fines and penalties of this article shall apply.

(C) Fiscal deposit or cash accepted in lieu of replacement of trees

(1) Persons requesting that the City accept an in lieu Fiscal Deposit to the Tree Fund shall provide the City with written documentation from an entity that sells trees providing the estimated cost of purchasing and installing the trees and other landscaping required by this chapter.

(2) If no estimated cost for the installation of the trees required by this chapter is provided to the City, the City shall require a sixty-six (66) percent of the cost of the tree to be paid as the installation cost in addition to the cost to purchase the tree.

(3) Any fiscal deposits for trees paid to the City pursuant to this section shall be held in the Tree Fund and used as designated in section 91.04 of this chapter.

(4) Replacement fees for Protected and Heritage Trees are outlined in section 91.07 of this chapter.

SCHEDULE II: TREES IN THE EXTRATERRITORIAL JURISDICTION (ETJ)

91.13 **JURISDICTION**

Under the authority of sections 212 Government Code, Chapter 91: Tree Protections, is applicable to the following:

(1) Subdivision and plating for residential, commercial, agricultural, and industrial properties

(2) New development including but not limited to planned development districts, planned unit districts, municipal utility districts, subdivisions, and all other residential, commercial, and nonresidential lot improvements.

(3) Clearing of any land regardless of zoning with, or without, a primary structure prior to development plans submitted to the City of Woodcreek.

91.14 **TREE PROTECTION REQUIREMENTS FOR NEW DEVELOPMENT OR NEW CONSTRUCTION ON EXISTING DEVELOPMENT IN THE ETJ**

(A) Land owners and developers shall follow the development regulations as outlined in section 91.12 of this ordinance.

(B) These requirements apply to land clearing prior to the submission of development plans to the City of Woodcreek and are applicable to all circumstances listed in 91.13 as under the jurisdiction of the City within the ETJ.

(C) These requirements will be enforced for the purposes of protection of water quality, pollution abatement and flooding mitigation as described in the Water Code § 26.177.

91.15 **PROTECTED AND HERITAGE TREES IN THE ETJ**

(A) Removal of Protected Trees is regulated and removal of Heritage Trees is prohibited with guidelines outlined in section 91.12 (numbers 2 and 3) of this ordinance. Removal of a Heritage Tree would require the variance process and a public hearing.

(B) Trimming of canopies of Protected and Heritage Trees in excess of 25% is prohibited at all times.

91.16 **OAK WILT IN THE ETJ**

(A) Oak Wilt reporting is not required, but is encouraged in the ETJ. Property owners are encouraged to utilize the guidance on Oak Wilt procedures outlined in section 91.09 (D) Abatement and Removal. There is no official City sponsored program for Oak Wilt in the ETJ.

91.17 **ENFORCEMENT OF SCHEDULES I AND II**

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

91.18 **PENALTY FOR SCHEDULES I AND II**

It shall be unlawful for any person, firm or corporation to violate the provisions of this chapter. Any person violating any provision hereof shall be deemed guilty of a misdemeanor, and each such 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 $500 for each separate offense.

(A) Compliance. Violators of this article will be required to come into compliance within sixty (60) days, unless a variance has been approved by the city. Compliance with this article may be grounds for withholding of other related pending permits for the project by the city.

(B) Enforcement. The city shall have the power to administer and enforce the provisions of this article as may be required by governing law. Any person violating any provision of this article is subject to a stop work order, suit for injunctive relief, and/or prosecution for criminal violations. Any violation of this article is hereby declared to be a nuisance. Any violation of this article may serve as grounds to withhold or delay issuance of other permits and revocation of a certificate of occupancy.

(C) Civil remedies. Nothing in this article shall be construed as a waiver of the city's right to bring a civil action to enforce the provisions of this article and to seek remedies as allowed by law, including but not limited to the following:

(1) Injunctive relief. Injunctive relief to prevent specific conduct that violates this article or to require specific conduct that is necessary for compliance with this article;

(2) Civil penalty. A civil penalty up to five hundred dollars ($500.00) a day to be deposited in the City Tree Fund, when it is shown that the defendant was notified of the provisions of this article and after receiving notice committed acts in violation of this article or failed to take action necessary for compliance with this article, and other available relief; and

(3) Stop work order. In the event work is not being performed in accordance with this article, the city shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.