

ORDINANCE 71-102016

AN ORDINANCE AMENDING ORDINANCE NUMBER 71 DATED MARCH 5, 2014 IDENTIFYING A POTENTIALLY SEVERE PROBLEM IN THE MAINTENANCE OF HEALTH AMONG THE THOUSANDS OF OAK TREES WITHIN THE CITY OF GARDEN RIDGE, TEXAS; IDENTIFYING THE DISEASE OF THREAT TO THOSE TREES AS OAK WILT; ESTABLISHING PROCEDURES FOR CONTROL AND DISPOSITION OF DISEASED TREES WITHIN THE CITY; KEEPING OF PROPERTY FREE FROM DISEASED TREES; REGULATING REMOVAL AND DISPOSAL; PROHIBITING NUISANCES; PROVIDING FOR NOTICE AND ABATEMENT; PROVIDING FOR COST RECOVERY; DEFINING TERMS; PROVIDING PENALTIES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTIES FOR THIS ORDINANCE; AND PROVIDING FOR SEVERABILITY AND PUBLICATION

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

Whereas, the forests, copses and individually cultivated and maintained trees of the city are essential to the economic, environmental and aesthetic welfare of the citizens of Garden Ridge and;

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

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

Whereas, the City Council has determined that diseased trees and parts thereof are a public nuisance and are dangerous to persons and property and are a serious threat to property values and;

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

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

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE, TEXAS;

SECTION 1 – OAK TREE-TRIMMING REGULATIONS

1.01 – DEFINITIONS

Oak Tree: A deciduous tree of the genus *Quercus* which bears acorns as fruit, and lobed leaves, including but not limited to live oaks, red oaks, and white oaks.

## 1.02 – PROHIBITIONS

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

## 1.03 - PERMITTING

No person, individual, firm, corporation, contractor, landscape contractor, tree trimmer, builder, utility service or any type of business entity shall trim, prune or remove any oak tree within the City between February 1 and July 1 of each year

## 1.04 – EXCEPTIONS

It is not a violation of section 1.02 to:

Completely remove damaged or dead oak trees from a property.

To immediately trim an oak tree because of an act of God or an accident which has caused damage to the tree and immediate trimming is necessary to protect an individual's safety or property.

To comply with Garden Ridge Ordinance 107 to maintain clearance of roadways, right-of-ways, to clear obstructions of traffic control devices and visibility.

## SECTION 2 – DISEASED OAK TREES AS NUISANCE

### 2.01 – NUISANCE DEFINED

Any oak tree or part thereof which is infected by a lethal communicable disease that is likely to spread to other trees, including but not limited to oak wilt, dead oak trees, oak firewood and other wood from oak trees that are infected with oak wilt are hereby declared a public nuisance, pursuant to Chapter 342 of the Texas Health and Safety Code.

### 2.02 – OAK WILT

The disease of greatest concern to this city, *Ceratocystis Fagacearum* (Oak Wilt), is a fungus which attacks live oak trees. It being the duty of all citizens to safeguard personal and public properties, all are enjoined to learn to identify and report to the City Administrator any sightings of oak wilt disease. To learn more about the prevention of Oak Wilt please visit the Texas Forest Service's website <http://texasforests.tamu.edu/>.

a. Transmission

1. Spores of the fungi are carried by insects and may invade recently wounded branches or tree trunks at the point of exposure.
2. All oak firewood imported to the city may carry the fungi which may, when placed in the vicinity of living oak trees, create an infection center capable of spreading the disease to surrounding healthy oak trees.
3. The disease may move in live oaks from one tree to another where trees are close enough to one another that their root systems are interconnected by underground grafting.
4. The spores may be carried from diseased trees to healthy trees by sap beetles.

b. Symptoms

1. Live Oak

- (a) limb flagging
- (b) light brown leaves (Spring)
- (c) dead leaf margins (Summer)
- (d) dead veins (Fall)
- (e) leaf drop
- (f) tree dies quickly (weeks or months) and may often involve large areas
- (g) trees do not respond to water
- (h) 1 tree or clump at a time

2. Red Oak

- (a) wilted leaves
- (b) leaves die from tips inward
- (c) tree dies within days
- (d) no leaf drop

SECTION 3 – ABATEMENT OF NUISANCE

3.01 – ABATEMENT OF NUISANCE BY OWNER OR OCCUPANT

It shall be unlawful for any person, owner or occupant having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limit of the city to permit or maintain on any such lot, tract or parcel, any oak tree or part thereof which is a nuisance and it shall be the duty of such person, owner or occupant to promptly remove, eradicate or otherwise control such condition and dispose of it as recommended by the Texas Forest Service.

Upon discovery of an infected oak tree the owner or occupant having supervision or control of the property shall:

- a. Flag trees affected to facilitate locating
- b. Report finding to City Administrator
- c. Act immediately to treat or remove affected oak tree(s).

3.02 – ABATEMENT OF NUISANCE BY CITY

- a. Inspections:

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

- b. **Notice:**  
Whenever any condition described in this Ordinance is found to exist in the City, the City Administrator or designated representative shall serve or cause to be served notice to the owner, agent or occupant of the lot, parcel or premises on which the nuisance exists to remove or remedy the condition(s) within ten (10) working days from the date of the notice. Such service of notice shall be by personal service or certified mail, return receipt requested. Written notice served by certified mail must be addressed to the owner at the owner's address as recorded in the appraisal district records of the appraisal district in which the property is located; additionally notice of the violation should be posted on a placard attached to a stake driven into the ground on the property to which the violation relates. Certified mail returned as "unclaimed" or "refused" shall be deemed delivered. The owner of the premises for purposes of this article means a person who has title to the property, possession of the property, whether lawful or not or a greater right to possession of the property than all but the titled owner. Failure of the owner to correct the violation within the specified time shall constitute a misdemeanor.
- c. **Appeal:**  
The owner served with notice as described in Section 3.02(b), shall have the right to appeal the order to the City Council. Notice that such owner desires to appeal shall be submitted in writing to the City Administrator within the time specified for abatement in the notice. Upon receipt of notice of appeal, the City Administrator shall schedule a meeting with the City Council as soon as practicable to consider such appeal.
- d. **City to Cause Removal and Disposal of Nuisance:**  
Should the property owner fail to abate the public nuisance or appeal the notice of nuisance within ten (10) days following the receipt of notification, the City shall have the right to cause the removal and disposal of the diseased trees or parts thereof. The full cost of such removal and disposal shall be assessed to the property owner. Should the property owner fail to pay the City within thirty (30) days from the date of invoicing the City may, at its discretion, file a lien against the property in the amount of all costs incurred by the City, plus interest. The assessment of expenses and lien shall follow the procedures established in Chapter 342, Tex. Health & Safety Code.

SECTION 4 – PENALTY FOR VIOLATIONS

It shall be unlawful for any person, company, corporation or conglomerate to do any act forbidden by this Ordinance or fail to perform any act or operation required by this Ordinance. Violations of this Ordinance are punishable with a fine of up to, but not to exceed one thousand (1,000) dollars, with each day after notification of violation persists being considered a new and separate offense.

SECTION 5 – SEVERABILITY CLAUSE

If any section, paragraph, sub-division, clause or phrase of this Ordinance shall be adjudged invalid, illegal or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of any provision thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION 6 – EFFECTIVE DATE

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

Passed and Approved on this 5<sup>th</sup> day of October, 2016.

  
John McCaw  
Mayor Pro Tem

ATTEST:

  
Shelley Goodwin, City Secretary

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