

ARTICLE 24.04 OAK WILT DISEASED TREES

Sec. 24.04.001 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:

Public nuisance.

(1) Diseased red and live oaks infected with the fungus which causes oak wilt disease (*Ceratocystis Fagacearum*) as determined by the city inspector in cooperation with the state forest service through laboratory analysis by the state agriculture experiment station or other facilities approved by the city; or

(2) A red oak 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.

(1996 Code, sec. 90-46)

Sec. 24.04.002 Purpose

The provisions of this article are deemed to be necessary to promote the health, safety, and general welfare of the residents of the city. (1996 Code, sec. 90-47)

Sec. 24.04.003 Abatement of nuisance by owner of property

It shall be unlawful for an owner of any lot or parcel of land within the city to permit or maintain on such lot or parcel any dead red oak wood or oak wilt diseased red oak tree which is a public nuisance. It shall be the duty of the owner, within seven calendar days after notification of the presence of oak wilt disease as determined by laboratory analysis, to remove and properly dispose of the entire diseased red oak wood or red oak tree in a licensed landfill and bring a copy of the landfill receipt to the city inspector's office. (1996 Code, sec. 90-48)

Sec. 24.04.004 Enforcement

The city inspector, in cooperation with the state forest service forester responsible for the county, is charged with the enforcement of this article, and shall perform the duties as set forth herein. (1996 Code, sec. 90-49)

Sec. 24.04.005 Inspections

Permission of the owner, occupant, or person in control of the premises is necessary for 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 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 nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected. (1996 Code, sec. 90-50)

Sec. 24.04.006 Notice to owner

(a) If, on laboratory analysis, or upon confirmation of substantial, clear oak wilt symptoms, as determined by the state forest service or city arborist, it is determined that a tree is infected with oak wilt, the city inspector, in cooperation with the state forest service, determines that such tree or wood is a public nuisance as provided herein, he shall serve or cause to be served 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, a written notice requiring such owner to comply with the provisions of this article.

(b) Service of notice provided for in this section shall be by personal service if the owner of the lot or parcel of land on which the infected oak tree is located is a resident of the city. If the owner cannot be found, written notice shall be served by certified mail to the owner's last known address and by publication, at least twice, within ten consecutive days in a newspaper of general circulation within the city. Notice to lienholders may be made by personal service upon the lienholder or his agent, or by certified mail.

(1996 Code, sec. 90-51)

Sec. 24.04.007 Payment of cost

(a) Primary treatment. The city agrees to pay 60 percent of the cost for trenching performed in accordance with a plan approved in advance by the city and state forest service (TFS), provided that TFS agrees to initiate and pay the other 40 percent on a cost share basis.

(b) Secondary treatment.

(1) The city will pay its share of the cost of a suppression project based upon the then-current state forest service cost share policy.

(2) The city will provide the pump units for the injection of Alamo on a loan basis to the property owner.

(3) The city agrees to match the state forest service share of the cost for tree removal on a 60/40 basis.

(1996 Code, sec. 90-52)

Sec. 24.04.008 Tree trimming personnel

(a) A governmental entity, private utility company or public works contractor shall hire a person to supervise the trim or cut operation of red oak or live oak tree species which have the trunk

and/or limbs in the public right-of-way, who is a registered, certified or licensed urban forester or arborist familiar with the identification and control of oak wilt disease. The trimming and cutting of red oak or live oak trees shall be conducted in accordance with the provisions of this article. The name, address, and telephone number of the above described person will be given to the city administrative section for record-keeping purposes. The city inspector shall determine when an urban forester or arborist is required for tree cut or trim operation. Factors to be used in this determination are:

- (1) Site location in relation to known areas of oak wilt;
- (2) Scope or size of trim or cut project, numbers of affected trees;
- (3) Economic, safety or aesthetic welfare of owner;
- (4) Time of year, dormant versus growing seasons;
- (5) Current land usage at site; and
- (6) Urgency or justified deadline to complete the project.

(b) Residential property owners or renters are exempted from the requirement to utilize an urban forester or arborist in the trim or cut operation on their land. However, they are encouraged to utilize the above six factors when contemplating the trimming of red oak or live oak trees. When in doubt, contact the city inspector for guidance.

(c) Power or chain saws shall only be used for removal of large limbs or entire trees. The use of hand saws or nippers is encouraged for all other trimming operations.

(1996 Code, sec. 90-53)

Sec. 24.04.009 Time to trim and sealing of cuts

The trimming or cutting of red oak and live oak species for purposes other than protecting public safety shall be conducted during the dormant seasons of December 20 through February 1 and June 20 through August 20. The resulting cut shall be treated immediately with commercial pruning paint to seal the exposed surface from contamination. Use of aerosol can is the preferred method of application for sealing cuts. Any wounds, whether made by trimming, construction or accident, shall be treated immediately with commercial pruning paint to seal the surface from contamination. The city inspector may conduct unannounced inspections to ensure compliance with all provisions of this article. (1996 Code, sec. 90-54)

Sec. 24.04.010 Disinfection of equipment

Equipment used for trimming or cutting of red oak and live 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. (1996 Code, sec. 90-55)

Sec. 24.04.011 Penalties for violation

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor. Upon the conviction of any such violation, such offense shall be punishable by a fine of not more than \$500.00. (1996 Code, sec. 90-56)