

CITY OF LAKEWAY CODE OF ORDINANCES

The following article is the Diseased Tree Ordinance as copied directly from the Lakeway Code of Ordinances. The Lakeway City Charter, Code of Ordinances and recent amendments can be viewed by visiting www.lakeway-tx.gov and clicking on central menu item “City Charter and Code of Ordinances.” The Franklin Legal Publishing link leads to a searchable document that includes all city codes, including the Diseased Tree Ordinance.

The Diseased Tree Ordinance is found under Title I, Chapter 14, Article 14.06. Article 14.06 (Diseased Trees) includes exactly the same information and wording as the Diseased Tree Ordinance passed in 2006. The Diseased Tree Ordinance may change in the future, so periodically check the City of Lakeway website for ordinance amendments.

ARTICLE 14.06 DISEASED TREES

Sec. 14.06.001 Title

This article shall be known and may be cited as the diseased tree ordinance. (Ordinance 2006-12-18-1, sec. 1, adopted 12/18/06)

Sec. 14.06.002 Purpose

The provisions of this article are deemed to be necessary to promote the health, safety, property and general welfare of the residents of the city. (Ordinance 2006-12-18-1, sec. 2, adopted 12/18/06)

Sec. 14.06.003 Definitions

Words used in this article and not defined in this article shall have their ordinarily accepted meaning. For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section:

Diseased trees. Oaks infected by the fungus *Ceratocystis fagacearum*.

Firewood. Wood larger than two inches in diameter cut from diseased oaks; also wood 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*).

Nuisance. Any tree infected by oak wilt or any firewood and woody debris from a tree suspected to have died from oak wilt, as determined by an approved laboratory analysis or from field diagnosis as performed by the city forester or state forest service staff forester, are hereby declared to be a public nuisance.

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.

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. Oaks in which more than 90 percent of the previously healthy branches have died due to oak wilt infection.

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 2 inches in diameter cut from diseased trees.

(Ordinance 2006-12-18-1, sec. 3, adopted 12/18/06)

Sec. 14.06.004 Penalty

It shall be unlawful for any person, firm or corporation to violate the provisions of this article. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any provision of this article is committed, continued, or permitted, and upon the conviction of any such violation such offense shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) per day.

(Ordinance 2006-12-18-1, sec. 10, adopted 12/18/06)

Sec. 14.06.005 Abatement required; preventive measures

(a) 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 their condition, may serve as a breeding place for any carrier of said disease, are hereby declared to be public nuisances.

(b) Upon receipt of written notice by the city as described in [section 14.06.008](#), 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 herein, 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.

(c) 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.

(d) Red oaks that are dead or dying of oak wilt as determined by the city staff or the state 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 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.

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

(Ordinance 2006-12-18-1, sec. 4, adopted 12/18/06)

(g) 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.

(h) Pruning or cutting of oaks is permitted from July through January.

(Ordinance 2009-1-20-1 adopted 1/20/09)

(i) 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 within 10 minutes of creation of the wound is an unlawful violation of this article. (Ordinance 2006-12-18-1, sec. 4, adopted 12/18/06)

Sec. 14.06.006 Enforcement

The city is charged with the enforcement of the provisions of this article. (Ordinance 2006-12-18-1, sec. 5, adopted 12/18/06)

Sec. 14.06.007 Inspections

(a) The city and the state forest service and its 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 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 nuisance and to obtain such specimens of trees as are required for the purposes of analysis to determine whether the same are infected.

(Ordinance 2006-12-18-1, sec. 6, adopted 12/18/06)

Sec. 14.06.008 Notice

(a) If, on laboratory analysis of specimens removed from any oak tree, it is determined that such tree is a public nuisance, as provided herein, or if the forester determines that any dead or substantially dead oak trees, or dead oak wood, are a public nuisance as provided herein, and if the forester determines that the tree should be removed, the city may 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 oak 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 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.

(Ordinance 2006-12-18-1, sec. 7, adopted 12/18/06)

Sec. 14.06.009 Payment of costs of preventive measures, treatment or removal

- (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 has entered into a cooperative oak wilt suppression cost-sharing project with the state forest service. Providing funds are available, the state will reimburse the city for a limited portion of the cost absorbed in conducting some aspects of oak wilt suppression.
- (d) The city may enter into an agreement with the property owner(s) for cost-sharing of trenching or removal of dead red oaks.
- (e) Fungicide treatment for non-symptomatic or slightly symptomatic trees or removal of infected or dead trees shall be the responsibility of the landowner.

(Ordinance 2006-12-18-1, sec. 8, adopted 12/18/06)

Sec. 14.06.010 Administrative policies for city-funded trench installation projects

Additional administrative policies for city-funded oak wilt trench installation projects are in a separate document not included in this article. This document and revisions are subject to formal approval by the city council. A copy of the most current version may be acquired from the city forester or at the planning, development and code enforcement office. (Ordinance 2006-12-18-1, sec. 9, adopted 12/18/06)