

VILLAGE OF SAN LEANNA

ORDINANCE NO. 09-003

**AN ORDINANCE RELATING TO THE PROTECTION AND MANAGEMENT OF TREES
AND TO THE IDENTIFICATION AND CONTROL OF OAK WILT**

AN ORDINANCE REPEALING ORDINANCE NO. 09-001, ORDINANCE NO. 04-001, AND ORDINANCE NO. 08-005; ESTABLISHING REQUIREMENTS AND PROCEDURES RELATING TO THE PROTECTION AND MANAGEMENT OF TREES AND THE IDENTIFICATION AND CONTROL OF OAK WILT WITHIN THE VILLAGE; INCLUDING LEGISLATIVE AND FACTUAL FINDINGS; PURPOSE; DEFINITIONS; CREATION OF AN ADVISORY TREE COMMITTEE; REGULATIONS AND RECOMMENDATIONS FOR MAINTAINING AND PROTECTING TREES ON PUBLIC AND PRIVATE PROPERTY; PROCEDURES FOR ENTERING PRIVATE PROPERTY TO INSPECT TREES; PROCEDURES FOR INSPECTION; CONSULTATION ABOUT RECOMMENDED ACTIONS TO CONTROL OAK WILT; APPEAL PROCEDURES; RESPONSE TO EMERGENCY SITUATIONS; LISTS OF CERTIFIED ARBORISTS, FORESTERS, AND TREE TRIMMERS; VIOLATIONS, CRIMINAL FINES; CIVIL REMEDIES; SEVERABILITY; REPEAL OF CONFLICTS; PROPER NOTICE AND MEETING; AND EFFECTIVE DATE.

WHEREAS, trees enhance the economic, environmental, and aesthetic value of a community and aid in protecting the health, safety, and general welfare of the community by: purifying our air and restoring precious oxygen to the atmosphere; beautifying the environment; serving as natural homes and refuges for wildlife; preventing erosion of the land; saving scarce energy resources in the form of shade in the summer and barriers against the wind in the winter; breaking the monotony and blight of urban development; reducing noise and glare; and enhancing property values; and

WHEREAS, the Village of San Leanna (“Village”) has a large population of trees, including, but not limited to, oak trees, which are susceptible to diseases; and

WHEREAS, oak wilt, one of the most destructive tree diseases in the United States, is killing trees in Central Texas at epidemic proportions, has killed a large number of trees in the Village, and is transmittable to other oak trees; and

WHEREAS, the disease of oak wilt undermines the economic, aesthetic and environmental welfare of the Village, threatens the public safety and general welfare of the Village, and is a public nuisance; and

WHEREAS, the Board of Aldermen (Board) of the Village has determined that the adoption of an ordinance is necessary to establish requirements and procedures for the management and protection of trees in the Village and for the identification and control of the disease of oak wilt, and is in the best interest of the Village; and

WHEREAS, the requirements and procedures established by the ordinance are a valid exercise of the Village's police powers and are based on the Village's statutory and regulatory authority; and

WHEREAS, following public hearings, the Board directed that the ordinance be presented in its final form for Board consideration, and after such consideration, the Board determined that the ordinance was, in the Board's best judgment and opinion, necessary to manage and protect trees in the Village, and to identify and control the disease of oak wilt.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SAN LEANNA, TEXAS, THAT:

SECTION 1. LEGISLATIVE AND FACTUAL FINDINGS

All of the above premises are hereby found to be true and correct legislative and factual findings of the Village of San Leanna and are hereby approved and incorporated into the body of the Ordinance as if copied in their entirety.

SECTION 2. REPEAL

Ordinance No. 09-001, The Tree Ordinance, Ordinance No. 04-001, The Tree Ordinance, and Ordinance No. 08-005, the Diseased Tree Ordinance, are hereby repealed.

SECTION 3. TITLE

This ordinance shall be commonly referred to as, "An Ordinance relating to the Protection and Management of Trees and to the Identification and Control of Oak Wilt."

SECTION 4. PURPOSE OF ORDINANCE

The Ordinance is intended to promote the economic, environmental, and aesthetic welfare of the Village, to protect the public safety and general welfare of the Village, and to eliminate oak wilt as a public nuisance, by:

- (1) managing and protecting trees in the Village; and
- (2) identifying and controlling oak wilt in trees in the Village.

SECTION 5. DEFINITIONS

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

Abatement – action to reduce, lessen, or end diseases in trees, including, but not limited to, oak wilt.

Advisory Committee on Trees (also known as the Tree Committee) - a committee appointed by the Mayor of the Village of San Leanna (Village) with the approval of the Board of Aldermen (Board) to: work with the Board and the Village Arborist on improving, maintaining, and protecting Village

trees; develop, update, and recommend a tree plan to the Board; and to conduct hearings as described in Section 12 of this Ordinance.

Board – the Board of Aldermen which is the governing body of the Village of San Leanna, Travis County, Texas.

Certified Arborist – an arborist certified by the International Society of Arboriculture.

Certified Forester – a forester certified by the Society of American Foresters.

Consulting Arborist – an arborist approved by the American Society of Consulting Arborists

Criteria – guidelines which the Village uses to identify and manage oak wilt in the Village

Cured Firewood (also known as seasoned firewood) – wood cut for firewood which is typically dry with loose bark and cracked ends, and which is no longer infected with oak wilt.

Debris – loose fragments of wood or bark that have fallen from a diseased oak tree, or wood cut from a diseased oak tree which is smaller than two inches in diameter

Diseased Firewood – wood cut for firewood which is larger than two inches in diameter, has been cut from oak trees (red oak and live oak) infected with oak wilt, and which is not cured or seasoned.

Diseased Live Oak – a live oak infected with the disease of oak wilt.

Diseased oak trees – oak trees or any part thereof, including debris from the tree and firewood cut from the tree, infected with the disease of oak wilt. Cured or seasoned firewood cut from a diseased oak tree is not included in this definition.

Diseased Red Oak – a red oak infected with the disease of oak wilt.

Diseased Tree – a tree in the Village which is infected with a disease, including, but not limited to, oak wilt.

Hearing – a hearing conducted by either the Advisory Committee on Trees or the Board of Aldermen on objections by a property owner to an inspector's finding of oak wilt on the owner's property.

Inspector – a consulting arborist, certified arborist, or certified forester, who examines trees for diseases.

Live Oak – member of a distinct group of the genus *Quercus* and characterized by leathery oval leaves. A live oak includes a plateau live oak and a coastal live oak.

Mayor - Mayor of the Village of San Leanna.

Oak Tree – a deciduous tree of the genus *Quercus*, which includes both a red oak and a live oak.

Oak Wilt – an infectious disease caused by the fungus *Ceratocystis fagacearum*, which invades and disables the water conducting system in susceptible oak trees.

Oak Wilt Infection Center – a site where the oak wilt fungus spreads through the roots of a diseased oak tree to infect healthy oak trees, creating an area of diseased oak trees.

Person – a natural person (an individual), corporation, company, association, partnership, firm, political subdivision, governmental body, and any other such entity.

Property Owner – a person who owns private property in the Village, or a lessee, agent, employee, or other person acting with authorization of and on behalf of the property owner in matters relating to the private property.

Public Nuisance – a nuisance which unreasonably interferes with a right that is common to the general public.

Public Right-of-Way or Right-of-Way – the area on, below, above, or adjacent to a public roadway, highway, street, alley, water way, or utility easement, in which the Village has an interest.

Red Oak – a member of the genus *Quercus*, which is characterized by lobed leaves tipped by small soft spines. A red oak includes, but is not limited to, a Spanish oak, Shumard Oak, and a Blackjack oak.

Tree Plan – a plan which will provide an overview of the health and condition of trees in the Village of San Leanna based on a periodic professional analysis; address issues relating to Village trees; recommend a future direction for the Village to take in order to improve, maintain, and protect the Village's canopy; establish procedures to educate Village residents on how to maintain and protect existing trees, and how to plant and nurture future trees.

Tree Trimming Permit – a permit issued by the Village for a business or service to cut, trim, or prune trees on public or private property within the Village. The permit will be issued for work on public property in order to implement an agreement between the Village and the business or service; or the permit will be issued for work on private property in order to implement an agreement between a private property owner and the business or service.

Village – the Village of San Leanna, Travis County, Texas, a duly incorporated municipality.

Village Administrator – the person responsible for managing and implementing the administrative operations of the Village.

Village Arborist – a consulting arborist under contract with the Village to provide consultation and advice to the Village on how to protect and maintain its trees and how to identify and manage oak wilt.

SECTION 6. THE ADVISORY COMMITTEE ON TREES

(a) There is hereby established a three member Advisory Committee on Trees, also known as the Tree Committee. The Mayor, with Board approval, shall appoint the three members for terms of two years each. The Committee will work with the Village Arborist and the Board on improving, maintaining, and protecting Village trees; conduct hearings as described in Section 12 of this Ordinance; and develop, update, and recommend a tree plan to the Board

(b) The tree plan will provide an overview of the state of Village trees based on a periodic professional analysis; address issues relating to Village trees; recommend a future direction and action for the Village to take in order to improve, maintain, and protect the Village's canopy; and establish procedures to educate Village residents on how to maintain and protect existing trees, and how to plant and nurture future Village trees.

SECTION 7. MAINTAINING AND PROTECTING TREES ON VILLAGE RIGHTS-OF-WAY AND OTHER PUBLIC PROPERTY

In Village rights-of-way and other public property, The Board of Aldermen is responsible for the:

- (1) planting, maintaining, and removal of trees;
- (2) minimizing of disruption, damage, or alteration to existing trees;
- (3) inspection of trees for disease, including, but not limited to, oak wilt;
- (4) identification and control of oak wilt in accordance with the criteria described in Section 8. of this Ordinance; and
- (5) hiring of qualified arborists, foresters, and tree trimmers to assist in implementing the requirements of this Ordinance.

SECTION 8. MAINTAINING AND PROTECTING TREES AND IDENTIFYING AND CONTROLLING OAK WILT ON PRIVATE PROPERTY

As regards maintaining and protecting trees on private property generally, the property owner has this responsibility. An exception to this general rule concerns the maintenance and protection of oak trees on the private property.

- (1) As regards oak trees *infected* with oak wilt, the property owner shall:
 - (a). follow the criteria described in Section 8. of this Ordinance, relating to the identification and control of oak wilt on his/her property;
 - (b) immediately request the assistance of the Village Arborist and follow his/her advice in understanding and implementing the criteria of Section 8 of this Ordinance; and

(c) follow the procedures in Sections 9 through 14 of this Ordinance, relating to inspections, appeals, and hearings.

(2) As regards oak trees on private property *not infected* with oak wilt, the property owner is under no obligation to use a certified arborist or certified forester to trim, cut, or prune the trees; instead, the property owner has the option of:

(a) hiring a tree trimming business or service to cut, trim, or prune the oak trees, which business or service shall comply with the requirements for tree trimmers in Section 17 of this Ordinance and with prevention measures for oak tree diseases described in the criteria in Section 8 of this Ordinance; or

(b) cutting, trimming, or pruning the oak trees himself/herself, following the prevention measures for oak trees diseases described in Section 8 of this Ordinance, including prohibition during the months of February through June for cutting, trimming, or pruning an oak tree unless the tree is dead, is infected with oak wilt, has sustained storm damage, or a hazardous situation exists, and the Village Arborist determines that such work needs to be done on the tree.

As regards the costs involved in managing and protecting trees on his/her property, the property owner bears this responsibility except that the Village will:

(1) pay for the consulting work done by the Village Arborist regarding oak wilt; and

(2) pay for one half (1/2) the cost involved in treating and removing a red oak infected with oak wilt.

SECTION 9. CRITERIA FOR IDENTIFYING AND CONTROLLING OAK WILT IN THE VILLAGE

(a) The criteria which the Board, the Village Arborist, property owners, and hired arborists, foresters, and tree trimmers shall use to identify and control oak wilt in the Village are the guidelines contained in the publication titled, *“How to Identify and Manage Oak Wilt in Texas”*, published by the U.S.D.A Forest Service (Southern Research Station, How-To SR 1, Rev. June 2008). The publication:

(1) is hereby adopted by reference and is added to this Ordinance as “Attachment A”;

(2) contains the most recent educational materials on oak wilt identification and control; and

(3) can be found on the internet site of www.texasoakwilt.org, a leading educational resource on oak wilt, or obtained in hard copy from the Village Administrator or the Texas Forest Service.

Additional educational information on oak wilt can be found on the internet website, www.treesaregood.org, administered by the International Society of Arboriculture.

(b) The Village Arborist should be consulted by the Board and property owners in understanding and

interpreting the criteria and for additional information on the identification and control of oak wilt.

SECTION 10. PROCEDURES FOR ENTERING PRIVATE PROPERTY
TO INSPECT TREES FOR EXISTENCE OF OAK WILT

If a property owner discovers or believes that oak wilt exists on his/her property, the owner shall promptly request the Village Arborist to enter the property to inspect the trees for oak wilt. If the property owner is unaware of the existence of oak wilt on his/her property, but the Village Arborist on his/her own knowledge suspects that oak wilt exists, the Arborist must obtain permission from the property owner to enter the property in order to inspect for oak wilt. If the property owner is unavailable or cannot be located in order to give permission to enter the property, the Village Arborist will make a reasonable effort to locate the owner. If the property owner cannot be located within a reasonable time, or the property owner refuses to allow entry, and the Village Arborist has sufficient reason to believe that oak wilt exists on the property, he/she may exercise any available legal remedy to secure entry to the property.

SECTION 11. PROCEDURES FOR INSPECTION OF TREES ON PRIVATE
PROPERTY FOR EXISTENCE OF OAK WILT

- (a) If the private property is within an existing oak wilt infection center, and the Village Arborist finds that oak wilt exists on the property, the Arborist shall consult with the property owner about the findings and the action the owner needs to take to control the oak wilt. The owner may request that a Texas Forest Service (TFS) certified forester review and concur with the findings before taking necessary action.
- (b) If the private property is outside an existing oak wilt infection center, and the Village Arborist finds that oak wilt exists on the property, the Arborist shall request that a TFS certified forester review and concur with the findings. They shall consult with the property owner about the findings and the action the owner needs to take to control the oak wilt.
- (c) Whether the private property is inside or outside an oak wilt infection center, and the Village Arborist finds that oak wilt exists on a red oak, the Arborist shall promptly request a TFS certified forester to review and concur with the findings. They shall consult with the property owner about the findings and necessary action the owner needs to take
- (d) After any consultation with the property owner about the finding of oak wilt, the Village Arborist shall promptly submit a written report to the owner on a Board approved form summarizing the findings, consultation, and necessary action.

SECTION 12. APPEAL BY PROPERTY OWNER WHO OBJECTS TO
INSPECTION FINDINGS OF OAK WILT

A property owner who objects to inspection findings by the Village Arborist, or Village Arborist and Texas Forest Service Forester, has the right to appeal the findings by requesting a hearing on the objections. The property owner must submit a written request for a hearing to the Village Administrator within five (5) days after receiving the written notice of the findings; failure to do so by the owner constitutes a waiver of the right to appeal. The Village Administrator will schedule the hearing to be

held by the Village's Advisory Committee on Trees (Tree Committee) within five (5) days.

SECTION 13. PROCEDURES FOR HOLDING HEARINGS BY THE
TREE COMMITTEE ON INSPECTION FINDINGS

- (a) The Tree Committee will keep the hearing informal in that the Committee will not follow formal rules of evidence. The Committee will consider oral and written testimony submitted by the property owner and other interested parties and, after such consideration, will issue a recommendation.
- (b) The Tree Committee is only an advisory committee and shall have no independent rule-making or enforcement authority, such authority being vested in the Board. However, if the property owner accepts the Committee's recommendation, it becomes final.
- (c) If the property owner rejects the recommendation of the Tree Committee, he/she may request a hearing before the Board by submitting a written request to the Village Administrator within five (5) days after receiving the recommendation from the Tree Committee, which hearing shall be scheduled for the next available regular meeting of the Board. Failure of the owner to request a hearing before the Board shall cause the recommendation of the Tree Committee to be presumed to be final and applicable unless the same is subsequently modified or repealed by subsequent, independent action of the Board.

SECTION 14. PROCEDURES FOR HOLDING HEARINGS BY THE
BOARD OF ALDERMEN ON INSPECTION FINDINGS

The Board will keep the hearing informal in that it will not follow formal rules of evidence. The Board will consider oral and written testimony submitted by the property owner and other interested parties and, after such consideration, issue a final decision on the matter that is approved by a majority of the Board present and voting.

SECTION 15. PROCEDURES FOR HOLDINGS HEARINGS UNDER
EMERGENCY SITUATIONS ON INSPECTION FINDINGS

If the inspection findings are that the existence of oak wilt on private property constitutes an immediate and serious threat to other trees, (such as oak wilt on a red oak) and the property owner objects to the findings, the property owner may appeal directly to the Board of Aldermen for a hearing by making a written request for a hearing to the Village Administrator within 24 hours after receiving notice of the findings; failure by the property owner to request the hearing within the time limit constitutes a waiver of the objection. The Village Administrator shall schedule a hearing by the Board on the objections as expeditiously as possible as permitted by law, which hearing shall be conducted as provided in Section 13.

SECTION 16. LISTS OF ARBORISTS, FORESTERS,
AND TREE TRIMMERS .

- (a) If a property owner needs an arborist or forester experienced in the identification and management of oak wilt disease, www.texasoakwilt.org maintains an oak wilt vendor directory which links the public with such professionals. The directory includes arborists and foresters in the Austin, Texas area and statewide.

(b) If a property owner needs a local tree trimmer, the owner should check with the Village Administrator. The Administrator maintains a list of tree trimmers who have done work in the Village and who have been issued permits to do work in the Village.

SECTION 17. TREE TRIMMERS

(a) A business or service that wants to cut, trim, or prune trees on public or private property within the Village must obtain a written permit from the Village in order to do a specific job. The permit form is hereby adopted by reference and is Attachment B to this ordinance.

(b) The Village Administrator will be available for issuing permits from Monday through Friday of each week and from 8:30 a.m. until 5:00 p.m. each day unless circumstances arise which make the Administrator unavailable on these days and at these times.

(c) The fee for a permit to a business or service shall be the option of \$10.00 per job or \$50.00 annually (fees adjusted from \$5.00 or \$40.00, respectively, November 18, 2010).

(d) A business or service making application for a permit shall show that it has current certificates of insurance, establishing that it is fully insured to cover liability for personal and property damage and worker compensation.

(e) A permit will not be issued during the months of February through June for cutting, trimming, or pruning an oak tree unless the tree is dead, is infected with oak wilt, has sustained storm damage, or a hazardous situation exists, and the Village Arborist determines that such work needs to be done on the tree.

(f) The Village is responsible for hiring the tree trimmer and for ensuring that the work is done properly and in accordance with the provisions of this Ordinance for trees located on public property. The Village Arborist is available for assistance as needed.

(g) For work performed on private property by a tree trimmer required to possess a permit, the property owner is responsible for hiring the tree trimmer and for ensuring that the work is done properly and in accordance with the provisions of this Ordinance. The Village Arborist is available for assistance as needed.

(h) At a minimum, the Village, in regard to public property, and the property owner, in regard to private property, shall ensure that:

(1) the tree trimmer has a permit from the Village;

(2) the tree trimmer has current certificates of insurance covering liability for personal and property damage and worker compensation; and

(3) if the work involves trees infected with oak wilt, the tree trimmer is a certified arborist or forester.

All trimmers of oak trees, including freshly cut stumps and damaged surface roots, on public or private property within the Village shall

- (1) disinfect tree-trimming, cutting, and pruning equipment with an alcohol based disinfectant before and after doing the work; and
- (2) immediately seal a cut or wound with a latex or wound paint.

SECTION 18. VIOLATIONS, CRIMINAL PROSECUTION,
AND CIVIL REMEDIES

(a) It shall be unlawful for a person:

- (1) to permit or maintain an oak tree infected with oak wilt, which is a public nuisance or which is a threat to the public health, safety, and general welfare of the Village; and
- (2) to violate any provision of this Ordinance.

(b) Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding \$500.00. Each day that a provision of this Ordinance is violated shall constitute a separate offense. A criminal offense under this Ordinance is a Class C misdemeanor.

(c) Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including but not limited to:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance;
- (2) a civil penalty up to \$500.00 a day when it is shown that the defendant was actually notified of the provisions of the Ordinance, and after receiving such notice, committed acts in violation of the Ordinance failed to take action necessary for compliance with the Ordinance; and
- (3) other available relief as provided by law.

SECTION 19. SEVERABILITY

If any portion of this Ordinance, or any section thereof, in any circumstance, is held invalid, the validity of the remainder of the Ordinance and of the application of any of the other provisions or sections shall not be affected.

SECTION 20. REPEAL OF CONFLICTS

All ordinances or parts of ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

SECTION 21. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was 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 Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION 22. EFFECTIVE DATE

This Ordinance shall be effective immediately upon passage.

Approved and adopted this 21st day of May, 2009 by a vote of 5 ayes, 0 nays, and 0 abstentions of the Board of Aldermen of the Village of San Leanna, Travis County, Texas.

VILLAGE OF SAN LEANNA, TEXAS

James E. Payne, Mayor

Attest:

Kathleen Lessing, Village Administrator