

## **AN ORDINANCE**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES CHAPTER 1 "GENERAL PROVISIONS," ARTICLE 1.07 "TREES AND SHRUBS" TO INCLUDE UPDATED DEFINITIONS AND TO ADD SECTIONS DEFINING THE AUTHORITY AND RESPONSIBILITY OF PUBLIC TREES; AND PROVIDING FOR AN EFFECTIVE DATE**

**Whereas**, on September 17, 2020, City Council adopted an ordinance to aid in the preservation of trees and the prevention of oak wilt within Fair Oaks Ranch city limits; and

**Whereas**, the current ordinance does not recognize the ownership of trees on public properties; and,

**Whereas**, the delegation of authority and responsibility of trees on public properties is needed; and,

**Whereas**, City Council determined the responsibility of maintaining trees on all public properties shall be the City; and,

**Whereas**, the City Council deems it necessary to amend Chapter 1 "General Provisions," Article 1.07 "Trees and Shrubs" to include updated definitions and the responsibility of public trees.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:**

- PART 1.** Chapter 1 "General Provisions," Article 1.07 "Trees and Shrubs" is hereby amended as forth in the attached Exhibit A.
- PART 2.** That the recitals contain in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.
- PART 3.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 4.** That it is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.
- PART 5.** This ordinance shall take effect immediately from and after its second reading, passage and publication as may be required by governing law.

**PART 6.** The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.

**PART 7.** The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

**PASSED and APPROVED on first reading by the City Council of the City of Fair Oaks Ranch, Texas, on this 3<sup>rd</sup> day of August 2023.**

**PASSED, APPROVED, and ADOPTED on second and final reading by the City Council of the City of Fair Oaks Ranch, Texas, on reading this 17<sup>th</sup> day of August 2023.**

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Gregory C. Maxton, Mayor

ATTEST:

APPROVED AS TO FORM:

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Christina Picioccio, TRMC, City Secretary

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Denton Navarro Rocha Bernal & Zech, P.C.,  
City Attorney

# Exhibit A

Chapter 1 “General Provisions;” Article 1.07 “Trees and Shrubs” is hereby amended as follows:  
[Deletions shown as strikethrough and additions shown as underscore]

## Division 2. Tree Maintenance

### **Sec. 1.07.032 - Definitions**

For the purposes of this article, the following definitions shall apply unless the context of their usage clearly indicates otherwise:

*Adjacent Property Owner.* The owner of land adjacent to any city street or public property.

*Damage.* Any injury to or destruction of a tree, including but not limited to: uprooting; severance of all or part the root system or main trunk; storage of material on or compaction of surrounding soil; a substantial change in the natural grade above a root system or around a trunk; surrounding the tree with impervious paving materials; or any trauma caused by accident or collision.

*Oak wilt.* A vascular wilt disease of oak trees caused by a fungus, *Bretziella fagacearum*, which invades the water-conducting tissues of roots, trunks, and limbs; and as further defined by the Texas A&M Forest Service.

*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.

*Public property.* All grounds and rights-of-way (ROWs) owned or maintained by the City.

*Public tree.* Any tree or woody vegetation on public property.

*Right-of-Way (ROW).* The surface, the airspace above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement, or similar property within the corporate limits of the City, and in which the City holds a property interest (fee title, easement or otherwise), or over which the City holds and exercises a right of management or control, and which is consistent with the purposes for which it was acquired or dedicated.

*Top or Topping.* The non-standard practice of cutting back of limbs to stubs within a tree’s crown to such a degree so as to remove the normal canopy and disfigure the tree.

*Tree.* A self-supporting woody perennial plant, excluding a bush or shrub.

*Unimproved shoulder.* The area along a street between the curb and the sidewalk; or if there is no curb or sidewalk, the unpaved portion of the area between the street right-of-way line and the paved portion of the street or alley (examples shown below).

### **Authority and Power.**

- (a) Delegation of authority and responsibility. The City Manager or designee, hereinafter referred to as “City Manager,” shall have the authority and responsibility to plant, and to prune, maintain and remove trees and woody plants growing in or upon all city streets, rights-of-ways, city parks, unimproved shoulders, and other public property to clear obstructions that may interfere with pedestrians, view of drivers or traffic signs. This shall also include the removal of trees that may threaten electrical, telephone, gas, or any municipal water or sewer line, or any tree that is affected by fungus, insect, or other disease.

- (b) Coordination among city departments. All city departments will coordinate as necessary with the City Manager and will provide services as required to ensure compliance with this Ordinance as it relates to streets, alleys, rights-of-way, drainage, easements and other public properties.
- (c) Interference. No person shall hinder, prevent, delay, or interfere with the City Manager or his agents while engaged in carrying out the execution or enforcement of this Ordinance.

#### **Adjacent Property Owner Responsibility.**

- (a) The adjacent property owner, when acting within the provisions of this Ordinance, may perform reasonable and routine maintenance of trees and other landscaping in the adjacent unimproved shoulder area and islands.
- (b) No property owner shall allow a tree or other plant growing on his or her property to obstruct or interfere with pedestrians or the view of drivers, thereby creating a hazard. If an obstruction persists, the City Manager shall notify the property owner to prune or remove the tree or plant. If the owner fails to comply with the notice, the City may undertake the necessary work and charge the cost to the property owner.

#### **Prohibition Against Harming Public Trees.**

- (a) It shall be unlawful for any person, firm or corporation to damage, remove, or cause the damage or removal of a tree on rights-of-way along a public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, or similar property without written permission from the City Manager. For any easement that is along either side or rear property line, it is strongly recommended that the City or other public utility be contacted to identify the location of utilities and confirm that any tree may be safely removed.
- (b) It shall be unlawful for any person, firm or corporation to attach any cable, wire, signs or any other object to any street, park, or public tree.
- (c) It shall be unlawful for any person, firm or corporation to "top" any public tree. Trees severely damaged by storms or other causes, where best pruning practices are impractical may be exempted from this provision at the determination of the City Manager.

**Unimproved Shoulder Examples**

(a)

