

Ashley Wayman

From: Robyn Katz <RKatz@rampagelaw.com>
Sent: Monday, March 1, 2021 2:51 PM
To: Amber Lewis; Ashley Wayman
Cc: Charles Zech
Subject: Oak Wilt Ordinance Report

Amber and Ashley,

You requested an evaluation of the proposed oak wilt ordinance language that Council is considering. After reviewing the language that is currently in your ordinances concerning oak wilt in Section 18 (specifically Sections 18-208 and 18-209), the decision to include additional language is purely a policy decision. However, I would point out that additional language requiring residents/owners to report oak wilt within one business day from when they “notice” or “become aware” of the disease would be unenforceable on the prosecutorial side. It would be virtually impossible to prove the exact time when the property owner “noticed” or “became aware of” the disease because that is a mental impression, unless there is some formal notice provided to the homeowner, such as by a tree company, arborist, or by someone else who has knowledge that oak wilt is/was present on the owner’s property. The current language in your ordinance has a specific timeline, where the property owner is required to remove the oak wilt within 30 days of being notified by the City. This provision *is* enforceable. There is a clear paper trail of when the clock starts as to the 30-day requirement. When reviewing another city’s ordinance with language similar to language Council suggested, Castle Hills, if Council adopted a provision mirroring it, it would be both unenforceable and pose a greater burden on the City. The City would be required to follow up with the state forest service, as well as be required to notify landowners located within a certain distance from the original house where the nuisance was located.

Again, this ordinance is purely a policy decision, but the effects of this ordinance language, if mirroring Castle Hills, would be more burdensome for the City, and the City would have little to no recourse if residents don’t follow this. If Council wants to move forward with this additional language, I would suggest to keep it as simple as possible, such as the following and incorporate it under Section 18-209(a): “Any person or company licensed by the City to perform tree trimming and/or removal work who discovers or suspects oak wilt infestation or an infected oak wilt tree shall report that information to the City Administrator by the next business day. The City will confirm oak wilt, and if confirmed, the owner of the property shall be notified of the nuisance tree.”

Of course, please let me know if you or Council have additional questions about the above, and if the decision is to move forward with the ordinance.

Best,

Robyn Katz
Attorney

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