

EXHIBIT A TO ORDINANCE #2026-XX-XX-XX

ARTICLE V. DEAD AND DISEASED TREES

Sec. 18-207. Definitions.

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:

Certified arborist means an arborist holding current certification from the International Society of Arboriculture (ISA) with demonstrated expertise in oak wilt identification and treatment.

Diseased tree or diseased wood means any tree with oak wilt disease or any other disease that poses a threat to the health of neighboring trees, or any firewood from a tree with oak wilt disease or any other disease that poses a threat to the health of neighboring trees.

Hot zone means an area identified annually by the city, in consultation with the Texas A&M Forest Service (TFS) or a certified arborist, as having a confirmed oak wilt infection or as being located within 450250 feet of a confirmed infection center.

Infected tree means any oak tree confirmed or reasonably suspected to be infected with Bretziella fagacearum based on visual symptoms, laboratory testing, or professional diagnosis.

Oak wilt disease means an infection of the fungus CeratocystisBretziella fagacearum (formerly classified as Ceratocystis fagacearum).

Restricted period means the period February 1 through June 30 of each year, during which all pruning and trimming of oak trees is prohibited except as provided in section 18-211. The restricted period is the period referred to in section 18-211 as the "proscribed period."

Treatment means the application of propiconazole fungicide injection or another Texas A&M Forest Service-approved protocol to combat oak wilt in live oaks.

Tree maintenance business means any person, association, partnership, company, or corporation engaged in the business of pruning, trimming, or removing trees, including any tree-care contractor and any person holding a permit under section 18-217.

Sec. 18-208. Declaration of nuisance.

All species and varieties of diseased trees that are dead or substantially dead, and all diseased wood to which bark is still attached, are hereby declared to be a public nuisance. Additionally, any trees that pose a safety risk to the public are hereby declared to be a public nuisance.

Sec. 18-209. Abatement required; abatement by city.

- (a) ~~Any person or any company licensed by the city to perform tree trimming or removal work, including any tree maintenance business,~~ who discovers or suspects oak wilt infestation or an infected oak 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. The city will determine whether oak wilt is present. If oak wilt is confirmed, the city will notify the owner of the property of the confirmed infection and of the treatment options available under this article. Confirmation of oak wilt does not by itself establish that a tree or wood is a public nuisance. If the city administrator determines under section 18-208 that a tree or wood on the property is a public nuisance, the city will give notice of that determination as provided in section 18-216.~~ It is unlawful for any person within the city to permit any nuisance tree as defined in section ~~22-208~~18-208 to remain on their property within the city, and any such person must, within 30 calendar days ~~after being notified of the presence of a nuisance tree on their~~

Commented [A1]: Does "Confirmed infection center" need defined?. Is it just infected tree?

Commented [A2]: We use 250' 209(d) for notifications. For consistency please use 250' here as well. The 250' number came up to accommodate our larger lot sizes.

Commented [A3R2]: Done — 150 feet changed to 250 feet in the hot zone definition, matching 18-209(d)(2).

Commented [A4]: Definition looks good but is inconsistently used throughout the doc. See Line 32-33,73, 166 as examples where the definition may make more sense. There are some context where the trees being referred to may or may not be infected but treated. Those examples look okay but took me a second to get it. You can be reimbursed for treating non-infected trees on arborist recommendation to prevent the spread from an infected tree within a certain amount of feet from the tree. that distance is situational at the discretion of the arborist.

Commented [KS5R4]: Ill call out each specific example since this must not have made sense.

Commented [CZ6]: I accidentally deleted Council Member's comment:

"Just because a tree is infected does not mean it is a nuisance tree. This sentence implies it does."

My comments:

I split into two notices: a confirmation and treatment notice on confirmation, and a separate 18-216 nuisance notice if and when the tree meets 18-208. I also tied the 30 day clock to the 18-216 notice so the trigger is unambiguous.

Commented [A7]: "Any person or any company licensed ..." is said in different ways in 18-209(A), 18-211(D), 18-217(A). I believe in all instances the intent is to define the same entity. Should this be a definition or at least be the same language?

Commented [A8R7]: Added a defined term: "Tree maintenance business" to Sec. 18-207 and conformed 18-211(d) and 18-217(a) to it.

Commented [KS9]: infected tree

~~property notice is given under section 18-216~~, remove and properly dispose of the tree or provide treatment to control the disease afflicting the tree that constitutes a public nuisance. If any person, after notice given under section ~~22-216~~18-216, fails to remove and properly dispose of any tree that constitutes a public nuisance, the city may do the work necessary to abate the nuisance, or may pay for the work to be done, and may charge the expenses to the owner of the property. These charges will be a personal liability of the owner. In addition, the city council may assess all expenses incurred by the city against the real property on which the work is done.

(b) If any work mentioned in subsection (a) of this section is done by the city, a statement of the expenses incurred in doing the work will be completed, certified and filed with the county clerk, stating the description of the property upon which such work was done, the character of work and the name of the owners of the property, whereupon the city shall have a lien upon the land or premises upon which the work was done for the amount of the expenditures, together with interest on that amount at the rate of ten percent per annum from the date the expenses were incurred until paid.

(c) To recover these expenditures and interest, suit may be instituted and a personal judgment obtained against the owner of the property and recovery and foreclosure may be had in the name of the city against the owner in any court having jurisdiction. The statement of expenditures made and filed, or a certified copy, will be prima facie proof of the amount expended.

(d) City response protocol. Upon confirmation of oak wilt under subsection (a), the city shall:

(1) verify the report by dispatching the city arborist or coordinating with the TFS within 14 calendar days;

(2) notify all property owners within 250 feet of the infection center by first-class mail within seven calendar days of confirmation;

(3) update the city's internal hot zone map, which may be maintained as a layer within the city's geographic information system (GIS); and

(4) provide the affected property owner with written guidance on approved treatment options and available city assistance programs.

Sec. 18-210. Payment of costs of testing, ~~tree removal, and trenching, and tree removal.~~

(a) ~~Laboratory analysis. The property owner must pay for the cost of any laboratory analysis necessary to determine the presence of disease. Laboratory analysis is not required to establish the presence of oak wilt disease. A diagnosis made by a certified arborist on the basis of visual symptoms, in accordance with Texas A&M Forest Service protocols, is sufficient for all purposes under this article. The city administrator may require laboratory analysis only where the city has reason to question the accuracy or the good faith of a diagnosis or of documentation submitted under section 18-219. If the analysis does not confirm the diagnosis submitted by or on behalf of the property owner, the property owner must pay the cost of the analysis; otherwise, the city bears that cost.~~

(b) ~~Removal and disposal. The cost of removing and disposing of any tree or wood determined to be a public nuisance will be borne by the property owner. Where removal is the treatment recommended by a certified arborist for an oak wilt infected tree, the cost of removal and disposal is an eligible use of the oak wilt treatment incentive program established by section 18-219, subject to available funding and to the verification and recoupment requirements of that section.~~

~~(c) Trenching. It shall be the responsibility of the property owner to pay any monies necessary to allow for the execution of a state forest service (TFS) cost sharing program. If any person, after notice given under section 22-216 18-216, fails to meet cost sharing requirements set forth by the TFS cost sharing program, the city shall pay the necessary monies and recover the expenditures as outlined in section 22-209 18-209.~~

Commented [A10]: I do not understand A) and C) in this section. We are not requiring a lab analysis to determine if oak wilt is present. That would get in the way of the spirit of this ordinance in regard to oak wilt. We want people to be more proactive not put in more cost barriers. I could see the test may be required in the case of perceived fraud and the cost should be passed on. But in general the signs are pretty obvious to a certified arborist. The trenching section really makes no sense as we will not be doing that.

As for the removal or disposal the intent of the oak wilt incentive program is to assist homeowners if the prescribed treatment is to remove infected oaks. Not sure how to square that with the section. Removal is a potential recommended treatment for oak wilt infected trees and is applicable use of the incentive funds if available.

I want to be aware and have optionality if someone is removing trees with fraudulent reasons but I don't want this to be so overbearing it defeats the purpose.

Commented [A11]: Reworked the whole section; retitled to drop "trenching." (a) Laboratory analysis — flipped. Testing is now expressly NOT required; a certified arborist's visual diagnosis under TFS protocols is sufficient for all purposes under the article. The city administrator may require lab analysis only where the city has reason to question the accuracy or good faith of a diagnosis or of documentation submitted under 18-219 — i.e., your fraud case. I split the cost: if the analysis doesn't confirm the owner's diagnosis, the owner pays; if it does, the city pays. That keeps it from operating as a cost barrier against honest applicants while still letting you pass the cost to someone who submitted a bad claim. Tell me if you'd rather the owner pay in every instance. (b) Removal and disposal — squared with the incentive program. Baseline is unchanged (owner bears the cost), but I added that where removal is the treatment a certified arborist recommends for an infected oak, removal and disposal are an eligible use of the 18-219 funds, subject to available funding and to 18-219(d)'s verification and recoupment provisions. That's the fraud optionality you want: payment only on verification, and the city can claw back a payment obtained through false or misleading documentation. (c) Trenching — deleted in full. It obligated the city to front money under a TFS cost-share program you're not running. One flag: 18-219(c) already allows incentive funds toward removal, but only for a tree below 70 percent canopy health. 18-210(b) as I've drafted it is broader (any arborist-recommended removal). Let me know which control you want and I'll conform them.

Commented [KS12]: infected tree

Sec. 18-211. Trimming or cutting of trees susceptible to oak wilt.

(a) ~~No person shall trim or cut an oak tree susceptible to oak wilt disease during the period February 1 through June 30 of each year (the "proscribed period"), except for the purpose of protecting the public or protecting property from imminent damage and in compliance with subsection (c) of this section. Any person who trims or cuts an oak tree shall immediately treat the surface of the cut with an acceptable paint to mask the exposed wound from contamination. The trimming or cutting of oak trees susceptible to oak wilt disease for purposes other than protecting the public or protecting property from imminent damage shall be conducted only outside of the period February 1 through June 30 of each year (the "proscribed period"). The surface of the cut must be treated immediately with an acceptable paint to mask the exposed wound from contamination.~~

(b) ~~Any person who wounds an oak tree, whether by trimming, construction or accident, shall treat the wound immediately with an acceptable paint. The owner of the property on which the wound occurs shall ensure that the wound is treated as required by this subsection. Any wounds, whether made by trimming, construction or accident, shall be treated immediately with an acceptable paint.~~

(c) Except in exigent circumstances to protect the public from imminent danger, advance written approval must be obtained to trim or cut an oak tree during the proscribed period to protect the public or to protect property from imminent damage. Written approval may be provided by electronic mail or any other means, as authorized by the city administrator, the building official, or the mayor.

(d) ~~Enhanced enforcement in hot zones. The city shall prioritize enforcement of the trimming restrictions of this section within designated hot zones. A tree care contractor or tree maintenance business tree maintenance business operating within a hot zone shall maintain proof of oak wilt awareness training and shall demonstrate compliance with the wound-sealing requirements of this section upon request by the city.~~

(e) ~~Responsibility of property owner. The owner of property on which an oak tree is trimmed, cut, or removed shall ensure that the work complies with this article, whether the work is performed by the owner, by a tree maintenance business, or by any other person. A violation of this article committed in the course of that work may be charged against the property owner, against the person performing the work, or against both. Nothing in this subsection affects any right the property owner may have against a person performing the work.~~

Sec. 18-212. Storage of firewood.

All firewood shall be stored under clear plastic and shall not be stored next to healthy trees.

Sec. 18-213. Sterilization of equipment used for trimming or cutting oak trees.

Equipment used for trimming or cutting of oak trees in public projects shall be sterilized after each tree is completely cut and before proceeding to the next tree.

Sec. 18-214. Enforcement.

The city administrator, in cooperation with the city police department and the state forest service (TFS), will be responsible for the enforcement of this article. [A violation of this article is subject to the penalties provided in section 18-223.](#)

Sec. 18-215. Inspections.

The city administrator, the city arborist, and the agents of the TFS, as the city's representatives, are authorized to enter upon any property within the city for the purpose of inspecting any trees or firewood situated on the property. If the property is occupied, the city's representatives will make a reasonable effort to locate the owner or

Commented [A13]: Want to make sure this is tight enough that it applies to anyone working on the trees including the homeowner.. "No person shall" I believe is one way to do this :-)

Want to be crystal clear who penalties apply to. I have a general question on what happens if we find the tree work was done incorrectly after the fact? Do we fine the property and have them go after the bad party? Does this ordinance support/consider that scenario.

Commented [CZ14R13]: Revised.

Commented [A15]: Does this language apply to any person? Wounds need to be sealed whether a business or a homeowner.

Commented [CZ16R15]: Revised.

Commented [A17]: We want any tree maintenance businesses in the city to have a awareness training and wound sealing compliance. This should not be limited to hot zones. The original idea was that the city prioritize enforcement in the hotzones but the requirements be everywhere.

Commented [CZ18]: Added.

another person with control of the property to request permission to enter. If the city's representatives are denied permission to enter, and the city's representatives have probable cause to believe that a public nuisance, as defined in this article, exists on the property, the city's representatives may apply for a search warrant through the city's municipal court. The purpose of the warrant will be to determine the presence of a public nuisance and to obtain specimens necessary to confirm the presence of nuisance trees or firewood on the property.

Sec. 18-216. Notice to property owner.

If a tree or firewood is determined to be a nuisance tree, and the city administrator, in cooperation with the TFS or city arborist, determines that the tree or wood is a public nuisance, the city will deliver written notice to the property owner, advising the owner of the determination and requiring the owner to comply with this article. This notice will be given:

- (1) To such owner in person by an officer or employee of the city;
- (2) By letter addressed to such owner at his known post office address; or
- (3) If personal service cannot be obtained, or the owner's post office address is unknown, then notice may be given in the manner provided in V.T.C.A., Local Government Code § 54.005 by delivery to the address of the owner of such property shown in the real property records of the county, and the address listed for the owner of such property as shown in records maintained by the county central appraisal district. If notice is delivered pursuant to V.T.C.A., Local Government Code § 54.005, the procedures set forth in that section shall apply. In addition to the manner provided in this subsection, notice shall be given by:
 - a. Posting a notice on a placard attached to a stake driven into the ground on the property to which the violation relates, if the property contains no buildings; or
 - b. Posting the notice on or near the front door of each building on the property to which the violation relates.

Sec. 18-217. Requirements for conduct of tree maintenance businesses.

- (a) ~~Any person engaged in the business of tree maintenance by pruning, trimming or removing of trees in the city.~~ Any tree maintenance business operating in the city shall comply with all applicable provisions of this article and shall secure an annual permit to do so from the city administrator or official.
- (b) The city administrator will issue a permit upon receipt of the following information:
 - (1) The name, telephone number and address of the applicant and, if the applicant is an association, partnership, company or corporation, the name of such entity together with the names of the persons who will be performing tree maintenance within the city;
 - (2) The names of other communities in which the applicant has performed tree maintenance in the previous twelve months and, if employed by a different company in the other communities, the names of those companies;
 - (3) A sworn acknowledgment of receipt and review of the city's forest protection ordinance; and
 - (4) Copies of any certifications or licenses possessed by the applicant or its employees, agents or representatives related to tree maintenance activities.
 - (5) Proof that the applicant and the applicant's employees who will perform oak tree work have completed oak wilt awareness training, if the applicant performs or may perform tree maintenance within a designated hot zone.
- (c) The applicant and the applicant's employees, agents and representatives must post the permit or a copy of the permit on a sign or company truck, and the permit or copy of the permit must be readily viewable from the street at all times while performing tree maintenance within the city.

Commented [A19]: Should have completed the training working anywhere in the city. I believe this sentence should be removed.

168 (d) The permit will be valid for one year from the date issued.

169 ~~(e) Suspension, revocation, and denial. The city administrator may suspend or revoke a permit issued under this~~
170 ~~section, or deny an application for issuance or renewal of a permit, if the applicant or permittee, or an~~
171 ~~employee, agent, or representative of the applicant or permittee, has violated this article or has obtained or~~
172 ~~sought a permit through false or misleading information. The city administrator shall give the applicant or~~
173 ~~permittee written notice of the action and of the grounds for the action. The applicant or permittee may~~
174 ~~appeal the action to the city council by filing a written request with the city administrator within ten calendar~~
175 ~~days after the notice is given, and the decision of the city council is final.~~

Commented [CZ20]: Added.

176 Sec. 18-218. Pruning of trees adjacent to public streets.

177 (a) Residential and commercial property owners shall be responsible for pruning the trees on their lots adjacent
178 to public streets to provide a minimum of 14 feet of vertical clearance above the street. If, after 30 days of
179 notice as outlined in section ~~22-24618-216~~, the property owner fails to perform any work necessary to comply
180 with this section, the city shall perform the work or pay for the work to be completed and the cost for the work
181 shall be the liability of the property owner as outlined in section ~~22-20918-209~~.

182 (b) Residential and commercial property owners shall be responsible for pruning the trees on their lots adjacent
183 to public streets to provide line-of-sight clearance. If, after 30 days of notice as outlined in section ~~22-24618-~~
184 ~~216~~, the property owner fails to perform any work necessary to comply with this section, the city shall perform
185 the work or pay for the work to be completed and the cost for the work shall be the liability of the property
186 owner as outlined in section ~~22-20918-209~~.

187 (c) The city must prune all trees on public property to provide a minimum of 14 feet of vertical clearance above
188 the street and line-of-sight clearance of 15 feet from intersections.

189 Sec. 18-219. Oak wilt treatment incentive program.

190 (a) Establishment. There is hereby established the Rollingwood oak wilt treatment incentive program to subsidize
191 a portion of the cost of professional treatment of ~~infected oak trees~~.

Commented [KS21]: infected tree

192 (b) Incentive amount and conditions. ~~An A eligible property owner may receive a reimbursement of up to~~
193 ~~\$2,500.00 per tree for an oak exceeding six inches in diameter at breast height (DBH) that receives treatment~~
194 ~~by a certified arborist using Texas A&M Forest Service-approved protocols, subject to the following:~~

Commented [A22]: is "Eligible" necessary? All property owners are eligible if they meet the conditions elsewhere defined.

195 (1) ~~the property owner submits an application to the city prior to, or within 30 calendar days after,~~
196 ~~treatment, including an invoice from a certified arborist and photographic documentation;~~

Commented [A23R22]: "eligible" deleted.

197 (2) ~~the city arborist or designee verifies that the treatment was performed in accordance with approved~~
198 ~~protocols;~~

199 (3) ~~reimbursements are issued on a first-come, first-served basis subject to available annual funding; and~~

200 (4) ~~no single property may receive more than \$5,000.00 in incentive payments per fiscal year.~~

201 (c) Eligible uses. The incentive may be applied toward the treatment of infected or surrounding oaks or, for a tree
202 assessed by a certified arborist to be below 70 percent canopy health, toward the prompt removal of the tree
203 to prevent further spread. ~~Where annual funding remains available, the incentive may also be applied toward~~
204 ~~replacement of a removed tree with a species not susceptible to oak wilt.~~

Commented [A24]: Remove this sentence. We do not want to apply the incentive to tree replacement at this time.

205 (d) Public purpose and recoupment. Incentive payments under this section serve the public purpose of containing
206 oak wilt and protecting the public health and the city's tree canopy. No payment may be made except upon
207 the verification required by this section. The city may recover any incentive payment obtained through false,
208 incomplete, or misleading documentation, or used in a manner inconsistent with this section, and may
209 condition eligibility on the applicant's written agreement to such recoupment.

210 ~~(Ord. No. _____, 5 _____, 2026)~~

Commented [A25]: Typo?

Commented [A26R25]: Deleted.

211 **Sec. 18-220. Water assistance for oak wilt treatment.**

212 (a) Eligibility. Upon verification of an active oak wilt treatment plan by a certified arborist, a property owner with
213 a verified infected or treated tree may apply to the city for water cost relief under this section. A property
214 owner who has engaged a certified arborist and who is carrying out an active oak wilt treatment plan prepared
215 by that arborist for one or more infected or treated oak trees located on the owner's own property may apply
216 to the city for water-cost relief under this section. It is the property owner's responsibility to engage the
217 certified arborist, to obtain the treatment plan, and to submit the application; the city is not obligated to
218 identify eligible properties or to solicit applications. A treatment plan for a tree located on other property,
219 including neighboring property, does not establish eligibility under this section. Relief under this section shall
220 be administered by city staff in a manner consistent with the city's water-leak assistance provisions, with an
221 appeal to the utility commission if necessary.

222 (b) Additional water. The city shall provide water consumed above the property's normal baseline usage for
223 verified oak wilt treatment purposes at the base rate of the usage tier in which the property typically averages,
224 plus the standard administrative fee. The city shall not apply higher-tier pricing to a property that does not
225 typically fall within that tier solely as a result of oak wilt treatment watering.

226 (c) Wastewater averaging. Water consumed for oak wilt treatment purposes, as documented by the property
227 owner and verified by the city, shall not count toward wastewater averaging calculations. The city
228 administrator is authorized to adjust wastewater billing upon receipt of satisfactory documentation.

229 (d) Drought restriction exemption. When drought restrictions are in effect, the city administrator is authorized to
230 grant a waiver permitting soaker-hose or drip irrigation of infected or recently treated oak trees. Exemption
231 requests must be submitted in writing with supporting documentation from a certified arborist.

232 **Sec. 18-221. Awareness and prevention program.**

233 (a) Annual citywide mailer. The city shall budget for and distribute an annual oak wilt awareness mailer to all city
234 households no later than January 15 of each year.

235 (b) Targeted hot zone notification. In addition to the citywide mailer, the city shall annually identify hot zones and
236 distribute targeted notifications, by mail, door hanger, or both, to property owners in and adjacent to
237 designated hot zones. This targeted outreach shall also serve as the notification protocol when a new infection
238 is confirmed on any property. The targeted notification required by this subsection provides advance
239 awareness of recent oak wilt activity in the vicinity. It is in addition to, and does not satisfy or replace, the
240 notification the city must give under section 18-209(d) upon confirmation of a new infection.

241 (c) Annual canopy inspection. The city shall arrange an annual street-level canopy inspection, in coordination with
242 the TFS or a qualified city arborist, focused on designated hot zones and timed during the leaf-drop period
243 when early symptoms are most visible. Areas of concern identified during the inspection shall be referred to
244 the city council.

245 (d) City staff training. The city shall train relevant staff, including code compliance, public works, and parks
246 personnel, to visually recognize signs of oak wilt so that potential infections may be flagged during routine city
247 operations.

248 (e) Hot zone arborist inspection credit. The city may offer a property owner within a designated hot zone a
249 \$100.00 credit on the property's water bill, once per year, for obtaining an annual oak wilt inspection from a
250 certified arborist with oak wilt expertise. The certified arborist must provide a report detailing the condition
251 of the oaks on the property. Arranging the inspection remains the property owner's responsibility, and applying
252 for the credit are the property owner's responsibility.

253 **Sec. 18-222. Fiscal provisions; annual appropriation.**

254 (a) Annual appropriation. The city council shall appropriate funds for the programs authorized under sections 18-
255 219 through 18-221 as part of the annual budget process. All expenditures authorized under those sections

Commented [A27]: It should be clear the property owner needs to engage with a certified arborist for eligibility. The city isn't bring this to people and/or you can't just leverage a neighbor in the program.

Commented [A28R27]: Rewrote 18-220(a) to say three things expressly: (1) the property owner must engage the certified arborist and obtain the treatment plan; (2) the owner must submit the application, and the city has no duty to identify eligible properties or solicit applications; and (3) a treatment plan for a tree on other property, including a neighbor's, does not establish eligibility. The tree must be on the applicant's own property.

Commented [A29]: This is incorrect. When there is a new infection identified, notification should be sent out according to 18-209D. The differences in notification are 221A) general awareness 221B) There has been recent infection nearby and 209(D) Oak wilt was just identified within 250'.

Commented [A30R29]: deleted the sentence. Replaced it with language making clear the 18-221(b) targeted notice is advance awareness of nearby activity and is in addition to, not a substitute for, the 18-209(d) confirmed-infection notice. The three tiers should now read as you describe: 18-221(a) general awareness; 18-221(b) recent nearby infection; 18-209(d) confirmed infection within 250 feet.

Commented [A31]: Identify who these results should be referred to. For now lets say council.

Commented [A32R31]: Done.

Commented [A33]: Arranging the inspection and applying for the credit are the property owner's responsibility.

Commented [A34R33]: Done.

256 are subject to the ~~annual budget caps~~ established by the city council, and total program expenditures may not
257 ~~exceed the annual appropriation.~~

258 (b) ~~No-cost provisions. The water assistance measures in section 18-220 are intended to be administered as no-~~
259 ~~cost or minimal-cost measures by existing city staff, with an appeal to the utility commission if necessary.~~

260 **Sec. 18-223. Penalties.**

261 (a) ~~General violations. A person who violates the trimming restrictions of section 18-211 or who fails to report a~~
262 ~~known or confirmed infection as required by section 18-209~~ any provision of this article shall be subject to a
263 fine not to exceed \$5002,000.00 for each violation. Each day on which a violation occurs or continues
264 constitutes a separate offense.

265 (b) ~~Contractor violations. A tree care contractor or tree maintenance business found in violation of this article~~
266 ~~shall be subject to a fine not to exceed \$1,000.00 for each violation. Each day on which a violation occurs or~~
267 ~~continues constitutes a separate offense.~~

268 (c) ~~Equitable considerations. In adjudicating a violation under this article, the municipal court may consider~~
269 ~~financial hardship, good-faith efforts to comply, and any extraordinary circumstances that may have prevented~~
270 ~~prompt compliance.~~

271 (d) ~~Culpable mental state. A culpable mental state is not required to establish a violation of this article that is~~
272 ~~punishable by a fine of \$500.00 or less, and the city council expressly dispenses with any requirement of a~~
273 ~~culpable mental state for an offense under this article.~~ such an offense. For a violation punishable by a fine
274 exceeding \$500.00, the city must prove that the person acted intentionally, knowingly, recklessly, or with
275 criminal negligence. See Tex. Penal Code § 6.02(f).

276 (e) ~~Cumulative remedies. The penalties provided by this section are in addition to, and not in lieu of, any other~~
277 ~~remedy available to the city at law or in equity, including the nuisance abatement and cost-recovery remedies~~
278 ~~provided in this article.~~

Commented [A35]: annual budget caps

Commented [A36R35]: Done.

Commented [A37]: Remove the restrictive language in this section around 211 and 209. We want any violation of the general ordinance to be subject to the fine up the maximum. is \$500 the maximum allowable?

Commented [A38R37]: Restrictive language removed. On the maximum: \$500 is the general ceiling under Tex. Loc. Gov't Code § 54.001(b), but ordinances governing public health and sanitation may go to \$2,000. Sec. 18-208 declares diseased trees a public nuisance, which supports the \$2,000 tier, so I've drafted at \$2,000. The trade-off: under Tex. Penal Code § 6.02(f), a city cannot dispense with a culpable mental state for an offense punishable by more than \$500. Subsection (d) as drafted dispensed with it across the board. I've rewritten (d) as a two-tier provision: strict liability up to \$500, and a culpable mental state (intent/knowledge/recklessness/criminal negligence) required above that. In practice the prosecutor can elect to cap the request at \$500 in a routine case and avoid proving mental state and reserve the higher exposure for the bad actors.