

## **ARTICLE II. SHADE TREE DISEASES AND PESTS<sup>1</sup>**

### **Sec. 62-19. Declaration of policy.**

The city council has determined that the health of elm and oak trees within the city limits is threatened by fatal tree diseases commonly known as Dutch elm and oak wilt diseases. It has been further determined that the loss of elm and oak trees growing upon public and private property would substantially depreciate the value of property within the city and impair the safety, good order, general welfare and convenience of the public. It is declared to be the expressed goal and objective of the council to control and prevent the spread of these diseases of shade trees and other epidemic diseases of shade trees.

The city council has also determined that the health of the trees in the city is threatened by shade tree pests, and the loss or ill health of trees growing upon public and private property substantially depreciates the value of property within the city and impairs the safety, good order, general welfare and convenience of the public. In addition to and in accordance with Minn. Stats. §§ 89.001, 89.01, and 89.51—89.64, the provisions of this section are adopted as an effort to control and prevent the spread of these shade tree pests.

(Ord. No. 805, 12-10-2018)

### **Sec. 62-19.1. 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:

*Shade tree* means a woody perennial grown primarily for aesthetic or environmental purposes.

*Shade tree pest* means any vertebrate or invertebrate animal, plant pathogen or plant that is determined by the Commissioner of the Minnesota Department of Agriculture or the Commissioner of the Minnesota Department of Natural Resources to be harmful, injurious or destructive to shade trees.

(Ord. No. 805, 12-10-2018)

### **Sec. 62-20. Tree inspector.**

There shall be designated persons or employees within the department of public works as tree inspectors to carry out the enforcement of this article. The inspectors shall be certified upon the passing of an examination prescribed by the state commissioner of agriculture for the purpose of determining that the applicant possesses the necessary qualifications to enforce the rules set forth in this article.

(Ord. No. 805, 12-10-2018)

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<sup>1</sup>Ord. No. 805, adopted Dec. 10, 2018, amended Art. II in its entirety to read as herein set out. Former Art. II, §§ 62-19—62-27, pertained to Dutch Elm Disease, and derived from Code 1977, §§ 8-501—8-503, 8-505—8-509, 8-511.

State law reference(s)—Shade tree pest and disease control, Minn. Stats. § 18G.16.

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## Sec. 62-21. Duties of the tree inspector.

It is the duty of the tree inspector under the direction and control of the city administrator, to know the appropriate state laws and rules relative to oak wilt, Dutch elm and other epidemic diseases of shade trees, shade tree pests, and to know the approved control methods of these diseases. The inspector must know the proper method of collecting samples for disease diagnosis. He must plan, direct and supervise all requirements for controlling shade tree disease within the geographical limits of his control area.

(Ord. No. 805, 12-10-2018)

## Sec. 62-22. Public nuisances.

(a) The following conditions are declared public nuisances:

- (1) Any living or standing elm tree or part thereof infected to any degree with the Dutch elm fungus, *Ceratocystis Ulmi* (Buisman) Moreau, or which harbors any of the elm bark beetles *Scolytus Miltistraiatius* (Eichh), or *Hylurgophinus Refipe* (March);
- (2) Any dead elm tree or part thereof, including, but not limited to, logs, branches, stumps, roots, firewood or other elm material, which has not been stripped of its bark or burned, chipped or buried;
- (3) Any living or standing oak tree or part thereof infected to any degree with mycelium mats or pads;
- (4) Any dead oak tree or part thereof, which in the opinion of the tree inspector constitutes a hazard, including, but not limited to, logs, branches, stumps, roots, firewood or other oak material, which has been stripped of its bark and burned or cut into lengths not greater than 24 inches and split into quarters, or into smaller pieces if originally greater than 16 inches in diameter (for the period of July 1 through March 1 of the following year). Any of this wood left unburned after March 1 must be sealed in a sheet of clear plastic of at least four millimeters in thickness and must remain contained in plastic throughout the period of March 1 through July 1. Any wood not utilized by April 1 shall be removed from the city by the owner or occupant of the property upon which it is located; and
- (5) Other shade trees with injurious insects, shade tree pests, or diseases as determined by the tree inspector.
- (6) Any tree, stump, ash firewood or cut logs found to harbor emerald ash borer.
- (7) Any insect and/or pest that threatens the health of the shade trees, including, but not limited to, the gypsy moth, Asian long-horned beetle, and emerald ash borer.

(b) It is unlawful for any persons, firm or corporation to store bark-bearing elm firewood during the period of April 1 through September 15.

(Ord. No. 805, 12-10-2018)

## Sec. 62-23. Inspection and investigation.

(a) *Annual inspection.* The tree inspector shall inspect all public and private places within the city which might harbor plant pests as often as practicable to determine whether any condition described in section 62-22 exists thereon. He shall investigate all reported incidents of infection or infestation by the Dutch elm fungus, elm bark beetles, oak wilt fungus, shade tree pests or any other epidemic diseases of shade trees. The term "private place" means every place except the private home.

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- (b) *Entry on public and private places.* The tree inspector may enter upon all public and private places at any reasonable time for the purposes of carrying out any of the duties assigned under this article.
  - (c) *Diagnosis.* The tree inspector shall, upon finding symptoms indicating Dutch elm, oak wilt infestation, shade tree pest, or other epidemic diseases of shade trees, notify the property owner of the existence of diseased trees on the property, and inform him of his responsibility to effectively remove such diseased material from the property in accordance with section 62-25. Diagnosis shall be made by field examination, as specified by the commissioner of agriculture.

(Ord. No. 805, 12-10-2018)

### **Sec. 62-24. Abatement of epidemic tree disease nuisance.**

In abating the nuisance, the tree inspector shall cause the infected tree or wood to be removed, burned, buried or chipped, or otherwise effectively treated so as to destroy and prevent as fully as possible the spread of epidemic diseases of shade trees, including, but not limited to, the Dutch elm disease and the associated elm bark beetles or other shade tree pests, and oak wilt disease. To prevent root graft transmission of the diseases, a barrier should be created between diseased and healthy trees, with vapam or other effective and recognized root graft barrier chemicals, or by digging a trench 30 inches deep in the soil surrounding the diseased trees. Such abatement procedure shall be carried out in accordance with current technical and expert opinions and plans as may be designated by the commissioner of agriculture.

(Ord. No. 805, 12-10-2018)

### **Sec. 62-25. Procedure for removal of infected trees and wood.**

Whenever the tree inspector is notified with reasonable certainty that the infestation exists in any tree or wood in any public or private place in the city, the tree inspector shall proceed as follows:

- (1) If the tree inspector finds that the danger of infestation of other shade trees is not imminent because of the dormancy of the infected tree or trees, the tree inspector shall declare such trees as being in noncompliance with this article as of April 1 of the following year and then shall proceed as follows:
  - a. Abating the nuisance as a public improvement under Minn. Stats. ch. 429; or
  - b. Abating the nuisance as provided in section 62-24.
- (2) If the tree inspector finds that danger of infestation of other shade trees is imminent, the tree inspector shall notify the property owner by mail that the nuisance must be abated within a specified time, not more than 90 days from the date of mailing of such notice. After the expiration of the time limited by the notice, the tree inspector may abate the nuisance.
- (3) The tree inspector shall keep a record of the costs, the costs of abatements done under this article and shall report all work done to the city clerk or other appropriate officer for which assessments or billings are made, stating and certifying the description of the land, lots, parcels involved and the amount assessable to each;
- (4) On or before September 1 of each year, the clerk shall list the total unpaid charges for each abatement against each separate lot or parcel to which they are attributable. The city council may then spread the charges or any portion thereof against the property involved as a special assessment under Minn. Stats. § 429.101, and other pertinent statutes, for certification to the county auditor and collection the following year along with current taxes unless provided for otherwise by consent and action of the city council. Such assessment shall be payable in a single installment, pursuant to Minn. Stats. § 429.101, subd. 2; and

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- (5) The owner of the premises on which such a nuisance has been abated by the enforcing officer shall be personally liable for the cost to the city of the abatement, including a 20 percent administrative cost. As soon as the work has been completed and the cost determined, the city clerk shall prepare a bill for the cost and mail it to the owner. Thereupon the amount shall be immediately due and payable at the office of the city clerk. If these amounts are not paid the city clerk shall, on or before September 1 next following abatement of the nuisance, list the total of unpaid charges for each abatement against each separate lot or parcel to which they are attributable under this section. The city council may spread the charges or any portion thereof against the property involved as a special assessment under other pertinent statutes, for certification to the county auditor and collection the following year along with current taxes. Such assessment shall be payable in no more than ten equal annual installments, pursuant to Minn. Stats. § 429.01, subd. 2.

(Ord. No. 805, 12-10-2018; Ord. No. 908, 4-14-2025)

### **Sec. 62-26. Duties of owner when notified; responsibility for removal and disposal.**

- (a) Any owner of real estate in the city who is notified of the existence of diseased trees on their property as provided in section 62-25, must within 90 days from the mailing of said notice, cut down said diseased trees either by themselves, or by a licensed private contractor.
- (b) Any owner of real estate in the city whose property is adjacent to a roadway must keep trees to a clearance of 16 feet above roadway and ten feet above sidewalks.
- (c) All remaining stumps on private and public property must be completely debarked to the ground line or chipped down to six inches below ground level.
- (d) All parts, branches and brush shall be removed to a designated disposal site.
- (e) The owner of property on which abatement or removal procedures are performed under this section shall be personally liable for the cost of any such service. As soon as the service has been completed and the cost determined, the city clerk shall prepare a bill and mail it to such owner and thereupon the bill shall be immediately due and payable at the office of the city clerk.
- (f) The city shall not be responsible for the disposal of diseased trees and tree parts from private property if the property owner cuts down said trees either by themselves or by a licensed contractor.

(Ord. No. 805, 12-10-2018; Ord. No. 908, 4-14-2025)

### **Sec. 62-27. Appeal.**

Any person aggrieved by a decision of the enforcing officer or his assistants may appeal that decision to the city council by filing a written request with the enforcing officer, or his assistants, within five days of service of the notice provided herein. The enforcing officer, or his assistant shall within five days, cause the appeal to be placed on the next regular city council agenda and shall notify the appellant of the date, time and place of such meeting. The city council shall have authority to affirm, amend, or reject the decision of the enforcing officer.

(Ord. No. 805, 12-10-2018)

### **Secs. 62-28—62-57. Reserved.**